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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta ta' l-14 ta' Frar, 1994.

ATT biex jirregola l-kummerċ bankarju.

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 14th February, 1994.

AN ACT to regulate the business of banking.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ATT TA' L-1994 DWAR IL-KUMMERĊ BANKARJU

ARRANGAMENT TA' L-ARTIKOLI

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1. Titolu fil-qosor u bidu fis-sehh
2. Tifsir
3. Setghat u dmirijiet tal-Ministru
4. Setghat u dmirijiet ta' l-Awtorita' Kompetenti
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36. Applikazzjoni ta' l-Att għall-Bank Ċentrali
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Abbozz ta' Liġi
msejjah

ATT biex jirregola l-kummerċ bankarju

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

1. Dan l-Att jista' jissejjah l-Att ta' l-1994 dwar il-Kummerċ Titolu u Bankarju, u għandu jibda jsehh f'dik id-data li l-Ministru jista', b'avviż bidu fis-fil-Gazzetta, jistabbilixxi. sehh.

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

"Awtorita' Kompetenti" tfisser il-korp imsemmi fis-subartikolu (2) ta' l-artikolu 3 ta' dan l-Att;

"azzjoni ta' ekwita'" tfisser azzjoni nominali f'kumpannija meta t-tiżmim ta' azzjonijiet ikun jintitola lill-azzjonista għall-jedd li jivvota, għall-profitti disponibbli lill-azzjonisti għad-distribuzzjoni u għall-attiv disponibbli għad-distribuzzjoni waqt l-istralċ tal-kumpannija, u "tiżmim ta' azzjonijiet ta' ekwita'" għandha tiftiehem skond hekk;

"Bank Ċentrali" tfisser il-Bank Ċentrali ta' Malta kif definit bl-Att dwar il-Bank Ċentrali ta' Malta, Kap 204;

"bank jew istituzzjoni ta' kreditu" jfissru kull persuna li tagħmel kummerċ bankarju;

"depożitu" tfisser somma ta' flus imhallsa fuq il-patti li taħtha tkun se tithallas lura, bi jew mingħajr imghax jew *premium* u jew fuq talba jew fi żmien jew f'ċirkostanzi miftiehma minn jew fisem il-persuna li tagħmel il-hlas u l-persuna li tirċievi l-hlas;

"Direttiva Bankarja" tfisser Direttiva mahruġa minn Awtorita' Kompetenti;

"Direttiva dwar *Exposures* Kbar" tfisser Direttiva li l-Awtorita' Kompetenti tista' tohroġ biex tirregola *exposures* kbar;

"Direttiva dwar il-Fondi tal-Bank stess" tfisser id-Direttiva li l-Awtorita' Kompetenti tista' tohroġ biex tirregola l-"fondi tal-bank stess";

"direttur" tinkludi individwu li jkun jokkupa l-pozizzjoni ta' direttur ta' kumpannija, imsejjah b'isem ikun li jkun, li jkollu s-setgħa li jmexxi sostanzjalment l-istess funzjonijiet relattivi għad-direzzjoni tal-kumpannija bħal dawk magħmula minn direttur u relattivament għal kumpannija registrata jew inkorporata barra minn Malta tinkludi membru ta' bord jew agent jew rappreżentant lokali ta' dik il-kumpannija;

"faċilita' ta' kreditu" tfisser it-tisliġ ta' somma ta' flus b'avvanz, *overdraft* jew self jew xi linja ohra ta' kreditu inkluż l-iskontar

ta' kambjali u *promissory notes*, garanziji, indennizzi, aċċettazzjonijiet, kambjali mdawra b'avall u kuntratti finanzjarji;

"funzjonarju", relattivament għal kumpannija, tinkludi direttur, soċju, *manager* jew segretarju ta' kumpannija jew kull persuna li tkun effettivament ta' dik il-kariga kemm jekk tkun għet mahtura formalment jew le;

"korp ġuridiku" tfisser korp ta' persuni li jkollu personalita' ġuridika distinta minn dik tal-membri tiegħu;

"kummerċ bankarju" tfisser

(a) il-kummerċ ta' persuna li kif speċifikat fis-subartikolu (2) ta' dan l-artikolu taċċetta depożiti ta' flus mill-pubbliku li jistgħu jiġu ritirati jew imħallsa lura fuq talba jew wara perijodu stabbilit jew wara avviż jew li tissellef jew tiġbor flus minghand il-pubbliku (inkluż is-self jew għbir ta' flus bil-hruġ ta' obligazzjonijiet jew *stock* ta' obligazzjonijiet jew dokumenti oħra li jgħolqu jew jirrikonoxxu djun), fil-każ il-wieħed u l-iehor bl-iskop ta' impieg ta' dawk il-flus, kollha jew f'parti, bit-tisliet jew impieg ieħor akkont u għar-riskju tal-persuna li taċċetta dawk il-flus; jew

(b) kull kummerċ definit mill-Ministru bħala li jikkostitwixxi l-kummerċ bankarju b'ordni ppubblikat fil-Gazzetta;

"kontroll" huwa s-setgħa biex jiġu stabbiliti l-*policies* finanzjarji u operattivi ta' korp ġuridiku;

"kontrollur" huwa persuna li, waħedha jew flimkien ma' oħrajn, teżerċita kontroll relattivament għal korp ġuridiku;

"kumpannija" tfisser soċjeta' anonima jew soċjeta' kummerċjali kostitwita f'Malta skond L-Att ta' 1-1993 dwar Kumpanniji u Soċjetajiet Kummerċjali jew kwalunkwe liġi li tista' tkun isseħħ minn żmien għal żmien, jew kumpannija reġistrata jew inkorporata barra minn Malta skond il-liġijiet ta' kwalunkwe pajjiż kemm-il darba dik il-kumpannija, jekk mhux kostitwita f'Malta, tkun harset id-dispożizzjonijiet ta' kull liġi li tista' minn żmien għal żmien tkun isseħħ f'Malta relattivament għaliha;

"liċenza" relattivament għall-kummerċ bankarju, tfisser liċenza mogħtija skond dan l-Att;

"*manager*" tfisser persuna mogħtija l-inkarigu tal-kummerċ jew ta' parti mill-kummerċ ta' kumpannija jew xort' oħra li jkollha rwol sostanzjali ta' sorveljanza bis-setgħa li tagħmel deċizzjonijiet ta' *policy* u deċizzjonijiet eżekuttivi għan-nom tal-kumpannija;

"Ministru" tfisser il-Ministru responsabbli għall-finanzi;

"*money laundering*" għandha l-istess tifsira mogħtija lilha bl-Att ta' 1-1993 kontra *Money Laundering*,

"persuna" tinkludi korp ta' persuni, kemm jekk korp ġuridiku jew le;

"persuni konnessi" tfisser il-persuni definiti bhala tali f'Direttiva ta' *Exposures* Kbar;

"Qorti" tfisser il-Qorti tal-Kummerċ;

"sussidjarju" ghandha l-istess tifsira moghtija lilha bl-Att ta' 1-1993 dwar Kumpanniji u Soċjetajiet.

"tiżmim kwalifikattiv ta' azzjonijiet" tfisser tiżmim ta' azzjonijiet ta' ekwita' dirett jew indirett ta' għall-inqas 10 fil-mija ta' l-azzjonijiet ta' ekwita' ta' kumpannija; iżda meta d-drittijiet miżmuma kwantu għall-perċentaġġ ta' voti, għall-profitti disponibbli għad-distribuzzjoni u għad-drittijiet għall-attiv disponibbli għad-distribuzzjoni waqt stralċ relattivament għal dawk l-azzjonijiet ta' ekwita' ma jkunux identiċi, il-figura perċentwali l-aktar baxxa ghandha titqies li tkun il-perċentaġġ ta' l-azzjonijiet ta' ekwita' miżmuma, u "azzjonista kwalifikattiv" ghandha tiffiehem skond hekk;

"tiżmim sinifikanti ta' azzjonijiet" tfisser tiżmim ta' azzjonijiet ta' ekwita' dirett jew indirett ta' għall-inqas 5 fil-mija iżda mhux iżjed minn 10 fil-mija ta' l-azzjonijiet ta' ekwita' ta' kumpannija; iżda meta d-drittijiet miżmuma kwantu għall-perċentaġġ ta' voti, għall-profitt disponibbli għad-distribuzzjoni u għad-drittijiet għall-attiv disponibbli għad-distribuzzjoni waqt stralċ relattivament għal dawk l-azzjonijiet ta' ekwita' ma jkunux identiċi, il-figura perċentwali l-aktar baxxa ghandha titqies li tkun il-perċentaġġ ta' l-azzjonijiet ta' ekwita' miżmuma, u "azzjonista sinifikanti" ghandha tiffiehem skond hekk;

"uffiċċju rappreżentattiv" tfisser, relattivament għal kumpannija inkorporata barra minn Malta, fond f'Malta li minnu jiġi promoss jew mghejjun b'xi mod il-kummerċ bankarju tal-kumpannija u relattivament għal kumpannija inkorporata f'Malta, fond barra minn Malta li minnu jiġi promoss jew mghejjun b'xi mod il-kummerċ bankarju;

(2) Persuna ghandha titqies li tkun qed taċċetta depożiti ta' flus jekk, tant bhala prinċipal kemm bhala aġent, taċċetta minghand il-pubbliku depożiti ta' flus bhala parti regolari mill-kummerċ tagħha, jew jekk, tant bhala prinċipal kemm bhala aġent, tagħmel avvizi jew stedini għal dawk id-depożiti, minghajr ma jittiehed kont tal-pattijiet u l-kondizzjonijiet li tahtom dawk id-depożiti jkunu ġew mistiedna jew riċevuti u minghajr ma jittiehed kont dwar jekk ċertifikati jew dokumenti oħra jkunux mahruġa relattivament għal xi depożiti tali:

Iżda l-aċċettazzjoni ta' flus kontra xi hruġ ta' obligazzjonijiet jew *stock* ta' obligazzjonijiet jew dokumenti oħra li johlqu jew jirrikonoxxu djun offruti lill-pubbliku skond xi ligi li tkun issehh f'Malta ma ghandhiex titqies minnha n-nifisha li tikkostitwixxi aċċettazzjoni ta' depożiti ta' flus għall-finijiet ta' dan l-Att.

(3) Il-Ministru jista' b'ordni pubblikat fil-Gazzetta jvarja l-attivi perċentwali li jikkostitwixxu tiżmim sinifikanti ta' azzjonijiet u tiżmim kwalifikattiv ta' azzjonijiet għall-finijiet ta' dan l-Att.

(4) Kull riferenza f'dan l-Att għal azzjoni jew tiżmim ta' azzjonijiet ta' kumpannija ghandha, meta applikata għal soċjeta' kummerċjali, tinkludi riferenza għall-interess ta' soċju f'dik is-soċjeta'.

Setgħat u
dmirijiet
tal-Ministru

3. (1) Għandu jkun id-dmir tal-Ministru li jeżerċita s-setgħat mogħtija lilu b'dan l-Att biex jassigura li l-banek iharsu d-dispożizzjonijiet ta' dan l-Att u l-kondizzjonijiet tal-liċenzi tal-banek.

(2) Il-Ministru għandu b'Ordni fil-Gazzetta jinnomina korp biex ikun l-Awtorita' Kompetenti għall-finijiet ta' dan l-Att sabiex jeseġwixxi l-funzjonijiet ta' l-Awtorita' Kompetenti taht dan l-Att u sabiex jaqdi dawk il-funzjonijiet oħra li l-Ministru jista' jqis li jkunu xierqa relattivament għat-thaddim ta' dan l-Att. Dan il-korp għandu jigi mahtur għal dak il-perijodu li l-Ministru jista' jistabbilixxi u l-Ministru għandu jkollu s-setgħa f'kull żmien li jtawwal, iġedded jew itemm dik il-hatra b'Ordni fil-Gazzetta.

(3) Il-Ministru jista' jagħmel ir-regolamenti li jkunu meħtieġa biex jagħti effett lil kull waħda mid-dispożizzjonijiet ta' dan l-Att u jista' jemenda jew jirrevoka dawk ir-regolamenti.

(4) (a) Il-Ministru jista', wara konsultazzjoni ma' l-Awtorita' Kompetenti u l-Bank Ċentrali, jekk ikun jidhirlu spedjent fl-interess pubbliku li jagħmel hekk b'Ordni ppubblikat fil-Gazzetta jiddikjara xi gurnata jew granet bhala vaganza jew vaganzi tal-banek.

(b) F'kull gurnata dikjarata bhala vaganza tal-banek skond dan l-artikolu sew jekk il-gurnata tkun vaganza pubblika sew jekk ma tkunx, ebda bank ma għandu jagħmel xi xogħol mal-pubbliku hliet safejn ikun permess bl-Ordni.

Setgħat u
dmirijiet ta'
l-Awtorita'
Kompetenti.

4. (1) Għandu jkun id-dmir ta' l-Awtorita' Kompetenti li tesegwixxi l-funzjonijiet preskritti b'dan l-Att, li tassigura li l-banek li jagħmlu kummerċ f'Malta jharsu dan l-Att, ir-Regolamenti u Direttivi mahruġa taht dan l-Att u l-kondizzjonijiet tal-liċenzi tagħhom. Bis-saħħa ta' dak id-dmir l-Awtorita' Kompetenti għandha f'kull żmien tagħti dik il-koperazzjoni lill-Bank Ċentrali li l-Bank Ċentrali jkun jeħtieġ fit-twettieq tad-dmirijiet tiegħu.

(2) L-Awtorita' Kompetenti tista' tagħmel id-Direttivi Bankarji li jkunu meħtieġa biex tagħti effett lil kull waħda mid-dispożizzjonijiet ta' dan l-Att. L-Awtorita' Kompetenti tista' temenda jew tirrevoka dawk id-Direttivi Bankarji.

(3) Id-Direttivi Bankarji u kull emenda jew revoka tagħhom għandhom jigu kkomunikati lill-banek uffliċċjalment u għandhom ikunu disponibbli fil-post ta' l-Awtorita' Kompetenti biex ikunu jistgħu jigu miflija mill-pubbliku f'kull hin waqt il-hinijiet tax-xogħol.

(4) Id-Direttivi Bankarji magħmula taht dan l-Att jistgħu jipprovdu għall-impożizzjoni ta' multa jew piena amministrattiva relattivament għal kull kontravvenzjoni ta' jew nuqqas ta' tharis tad-dispożizzjonijiet ta' dan l-Att jew ta' xi Direttiva Bankarja jew Regolament.

Liċenzi għal
attivitajiet
bankarji.

5. (1) Ebda kummerċ bankarju ma għandu jsir f'Malta jew minn Malta hliet minn kumpannija li jkollha liċenza mogħtija taht dan l-Att mill-Awtorita' Kompetenti skond il-*policy* stabbilita mill-Ministru minn żmien għal żmien.

(2) Fil-każ ta' dubbju ragonevoli dwar jekk kummerċ bankarju jkunx jew ma jkunx qed isir f'Malta jew minn Malta minn xi persuna, il-kwistjoni għandha tiġi deċiża mill-Awtorita' Kompetenti.

(3) L-ghoti ta' liċenza għandu jkun sugġett għal dritt annwali li l-Awtorita' Kompetenti tista' tistabbilixxi minn żmien għal żmien.

6. (1) Kull kumpannija li tixtieq tibda kummerċ bankarju f'Malta għandha, qabel ma tibda xi kummerċ tapplika bil-miktub lill-Awtorita' Kompetenti għal-liċenza skond dan l-Att.

Applikazzjoni
għal liċenza.

(2) L-applikazzjonijiet kollha għal liċenza għandhom ikunu f'dik il-forma u għandu jkollhom magħhom dik l-informazzjoni li tista' tiġi preskritta minn żmien għal żmien minn Direttiva Bankarja u applikazzjoni tista' tiġi ritirata biss b'avviż bil-miktub lill-Awtorita' Kompetenti fi żmien qabel l-ghoti jew każda tal-liċenza.

(3) L-Awtorita' Kompetenti għandu jkollha s-setgħa li tordna lil kull persuna biex tipprova dik l-informazzjonini li hija tqis meħtieġa għad-deċiżjoni ta' applikazzjoni għal liċenza u għad-deċiżjoni ta' jekk liċenza għandhiex tiġi ristretta jew revokata.

7. (1) Ebda kumpannija ma għandha tingħata liċenza kemm-il darba:

Hruġ tal-
liċenza.

(a) il-fondi tal-kumpannija stess kemm jekk fliri Maltin jew fi flus oħra aċċettabbli għall-Awtorita' Kompetenti, ma jkunux jammontaw għall-valur ta' żewġ miljuni liri Maltin jew dak l-ammont iehor li jista' jiġi stabbilit mill-Ministru;

(b) ma jkunx hemm għall-inqas żewġ individwi li jkunu effettivament se jmexxu l-kummerċ tal-bank f'Malta;

(c) l-azzjonisti kwalifikattivi u kontrolluri kollha u l-persuni kollha li jkunu effettivament se jmexxu l-kummerċ tal-bank ma jkunux persuni adattati biex jassiguraw il-*management* prudenti tagħha.

(2) Id-dispożizzjonijiet tal-paragrafu (a) tas- subartikolu (1) ta' dan l-artikolu ma għandhomx japplikaw għall-banek li kellhom liċenza bankarja fil-bidu fis-seħh ta' dan l-Att u li l-fondi tagħhom stess ma jilhqux il-livelli preskritti:

Iżda

(a) il-fondi ta' dak-il-bank stess ma jistgħux sussegwentement jaqgħu taht il-livell miżmum f'dik id-data kemm-il darba dik ir-riduzzjoni ma tkunx temporanja u approvata mill-Awtorita' Kompetenti;

(b) jekk il-kontroll ta' dak il-bank jinkiseb minn persuna li ma tkunx il-persuna li kkontrollatu fil-bidu fis-seħh ta' dan l-Att, il-fondi tal-bank stess għandhom jiksbu l-livell preskrit fil-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu f'dak il-perijodu tat-*takeover* li l-Awtorita' Kompetenti tista' tistabbilixxi.

(3) L-Awtorita' Kompetenti ghandha tiddeċiedi kull applikazzjoni għal liċenza fi żmien sitt xhur minn meta tkun irċeviet l-applikazzjoni jew, jekk l-applikazzjoni ma tkunx taqbel mas-subartikolu (2) ta' l-artikolu 6 ta' dan l-Att jew tkun meħtieġa aktar informazzjoni, fi żmien sitt xhur mit-tħaris ta' l-imsemmi subartikolu jew il-provdiment ta' l-informazzjoni skond il-każ, liema jkun ta' l-aħħar. F'kull każ applikazzjoni ghandha tiġi deċiża fi żmien tnax-il xahar minn meta tiġi riċevuta.

(4) L-Awtorita' Kompetenti tista' tiddeċiedi applikazzjoni billi tagħmel xi waħda minn dawn li ġejjin:

- (a) tagħti liċenza mingħajr kondizzjonijiet;
- (b) tagħti liċenza taħt dawk il-kondizzjonijiet li hija tista' tqis xierqa;
- (ċ) tirrifjuta li tagħti liċenza.

Uffiċċji
rappreżentattivi
ta' bank mhux
Maltin.

8. (1) Kumpannija inkorporata barra minn Malta ma tistax tistabbilixxi uffiċċju rappreżentattiv f'Malta kemm-il darba ma tkunx tat avviż ta' mhux inqas minn xahrejn lill-Awtorita' Kompetenti li hija tipproponi li tistabbilixxi uffiċċju tali. Dak l-avviż għandu:

- (a) jispeċifika l-isem li jkun propost li jintuza relattivament għall-attivitajiet ta' l-uffiċċju rappreżentattiv u l-indirizz ta' dak l-uffiċċju;
- (b) ikollu miegħu kopja ċertifikata ta' l-awtorizzazzjoni tal-kumpannija biex tmexxi l-kummerċ bankarju f'pajjiż li ma jkunx Malta.

(2) Kumpannija li jkollha uffiċċju rappreżentattiv f'Malta ghandha xorta waħda tinnotifika lill-Awtorita' Kompetenti:

- (a) għall-inqas xahrejn bil-quddiem b'kull bidla proposta fl-isem ta' l-uffiċċju rappreżentattiv;
- (b) b'kull bidla fil-liċenza tagħha biex tmexxi l-kummerċ bankarju f'pajjiż li ma jkunx Malta, mhux iżjed minn xahrejn wara dik il-bidla.

(3) L-Awtorita' Kompetenti tista', f'kull żmien, tinnotifika uffiċċju rappreżentattiv f'Malta b'avviż ta' oġġezzjoni għall-isem jew isem propost ta' dak l-uffiċċju.

(4) L-Awtorita' Kompetenti ma ghandhiex tagħti avviż bis-saħħa tas-subartikolu (3) ta' dan l-artikolu kemm-il darba ma tkunx tal-fehma li l-isem jew isem propost ikun qarrieqi għall-pubbliku jew xort'oħra mhux desiderabbli u, malli jirċievi dak l-avviż, l-uffiċċju rappreżentattiv ma ghandux juża l-isem li l-Awtorita' Kompetenti tkun oġġezzjonat għalih relattivament għal attivitajiet immexxija f'Malta.

(5) Uffiċċju rappreżentattiv li lilo jingħata avviż skond is-subartikolu (3) ta' dan l-artikolu jista', fi żmien ta' tliet ġimgħat li jibdedw mill-jum li fih ikun irċieva l-avviż, japplika lit-Tribunal Bankarju biex jannulla l-oġġezzjoni, u fuq dik l-applikazzjoni, it-

Tribunal Bankarju jista' jannulla l-ogġezzjoni jew jikkonfermaha (izda minghajr preġudizzju għat-thaddim tagħha qabel dak iż-żmien).

(6) L-Awtorita' Kompetenti tista', b'avviż bil-miktub, tehtieg lil kull kumpanija li jkollha uffiċċju rappreżentattiv f'Malta jew li tkun tat avviż skond is-subartikolu (1) ta' dan l-artikolu biex tippovdi lill-Awtorita' Kompetenti b'dik l-informazzjoni li l-Awtorita' Kompetenti tkun raġonevolment tehtieg, u l-imsemmija kumpanija għandha tosserva dak l'avviż fil-perijodu li jkun raġonevolment speċifikat bl-avviż.

(7) Uffiċċju rappreżentattiv f'Malta għandu jissupplixxi lill-Awtorita' Kompetenti b'kopja ta' kull dokument li huwa mehtieg li jipprovdi lir-Registratur tas-Socjetajiet Kummerċjali mhux aktar tard miż-żmien li sa fih dak id-dokument għandu jiġi provdut lill-imsemmi Registratur.

(8) Il-Ministru jista', wara konsultazzjoni ma' l-Awtorita' Kompetenti b'ordni jipprovdi li l-artikoli 20, 21 u 24 ta' dan l-Att ikunu japplikaw għal uffiċċji rappreżentattivi f'Malta bħalma japplikaw għall-banek.

(9) Il-Ministru jista', wara konsultazzjoni ma' l-Awtorita' Kompetenti, b'regolamenti jimponi fuq kumpaniji li jkunu stabbilixxew jew li jkunu bi hsiebhom jistabbilixxu uffiċċji rappreżentattivi f'Malta, dawk il-htigiet li l-Ministru jqis xierqa dwar dawk l-uffiċċji u l-attivitajiet immexxija minnhom.

(10) L-Awtorita' Kompetenti tista', fi żmien ix-xahrejn imsemmija fis-subartikolu (1), tordna lill-kumpanija msemmija fl-imsemmi subartikolu (1) biex ma tistabbilixxix uffiċċju rappreżentattiv f'Malta u f'kull żmien wara dan tordna l-gheluq ta' kull uffiċċju rappreżentattiv hekk stabbilit.

9. (1) Liċenza awtomatikament tieqaf milli jkollha effett jekk id-detentur tal-liċenza:

Restrizzjoni u
thassir ta'
liċenza.

(a) jirrinunzja l-liċenza; jew

(b) ma jibdiex il-kummerċ bis-sahha tal-liċenza fi żmien tnax-il xahar mill-hruġ tagħha, jew f'dak il-perijodu iehor ta' żmien li jista' jkun speċifikat fil-liċenza; jew

(c) jiġi dikjarat fallut jew jibda likwidazzjoni jew jagħmel ftehim mal-kredituri jew ikun xort'ohra xolt; jew

(d) ma jkunx baqa' jaħdem bħala riżultat ta' *merger* ma' bank iehor; jew

(e) ikun fergħa ta' bank inkorporat barra minn Malta u l-awtoritajiet kompetenti fil-pajjiż ta' inkorporazzjoni jirtiraw l-awtorizzazzjoni lill-bank.

(2) L-Awtorita' Kompetenti tista' timponi restrizzjonijiet fuq liċenza jew tista' thassar liċenza f'kull wahda minn dawn iċ-ċirkostanzi li ġejjin:

(a) jekk xi dokument jew informazzjoni li jkunu ma' l-applikazzjoni ghal liċenza jew xi informazzjoni mogħtija in konnessjoni magħha jkunu foloz f'xi partikolarita' sostanzjali jew jekk id-detentur tal-liċenza jahbi, jew jonqos milli javża, lill-Awtorita' Kompetenti xi dokument jew informazzjoni jew xi bidla fihom li kien fid-dmir tiegħu li juri jew li javża skond dan l-Att; jew

(b) jekk id-detentur tal-liċenza ma jkomplix jagħmel kummerċ bankarju f'Malta għal aktar minn sitt xhur; jew

(c) jekk id-detentur tal-liċenza jonqos milli jħares xi waħda mid-dispożizzjonijiet ta' dan l-Att jew il-kondizzjonijiet li taħthom tkun ingħatat il-liċenza; jew

(d) jekk id-detentur tal-liċenza ma jkunx għadu jippossjedi fondi tiegħu stess; jew

(e) jekk id-detentur tal-liċenza x'aktarx ma jkunx jista' jonora l-obbligi tiegħu jew ma jkunx jista' jiġi fdat aktar biex jissodifa l-obbligi tiegħu lejn id-depożitanti u l-kredituri; jew

(f) jekk id-detentur tal-liċenza ma jkollux attiv bizzejjed biex ikopri l-passiv tiegħu; jew

(g) jekk id-detentur tal-liċenza jkun issospenda l-pagamenti jew ikun se jissospendi l-pagamenti; jew

(h) jekk l-Awtorita' Kompetenti tkun tal-fehma li, minhabba fil-mod ta' kif il-bank ikun qed imexxi jew ikun bi hsiebu jmxexxi l-affarijiet tiegħu, jew għal xi raġuni ohra, l-interessi tad-depożitanti tal-bank ikunu mhedda.

(3) Ir-restrizzjonijiet imposti mill-Awtorita' Kompetenti bis-sahha tas-subartikolu (2) ta' dan l-artikolu għandhom ikunu dawk ir-restrizzjonijiet li l-Awtorita' Kompetenti ikun jidhrilha li jkunu xierqa sabiex il-bank iħares kif imiss id-dispożizzjonijiet ta' dan l-Att u l-kondizzjonijiet, jekk ikun hemm, tal-liċenza tiegħu u għall-protezzjoni tad-depożitanti u jistgħu jinkludu (minghajr preġudizzju għall-generalita' ta' hawnhekk):

(a) it-tnehhija ta' kull funzjonarju tal-bank jew ir-rimpjazzament ta' kull funzjonarju b'dik il-persuna li l-Awtorita' Kompetenti tista' tagħzel;

(b) il-htieġa li kwalunkwe persuna li direttament jew indirettament tkun tippossjedi *holding* fil-bank tirrinunzja dak il-*holding* kollu jew parti minnu;

(c) il-htieġa li l-bank jiehu jew iżomm milli jiehu xi azzjoni;

(d) il-htieġa li l-bank jiġi projbit milli jimpenja ruħu f'xi transazzjoni jew transazzjonijiet jew xi klassi ta' kummerċ jew jithalla jimpenja ruħu f'xi transazzjoni jew transazzjonijiet jew xi klassi ta' kummerċ fuq dawk il-patti biss li l-Awtorita' Kompetenti tista' tippreskrivi.

(4) L-Awtorita' Kompetenti ghandu jkollha s-setgħa li tvarja jew tneħhi kwalunkve restrizzjonijiet imposti taħt dan l-artikolu.

(5) Meta l-Awtorita' Kompetenti tkun bi hsiebha tirrestringi jew thassar liċenza jew tvarja xi restrizzjoni, hija għandha tinnotifika b'avviż bil-miktub il-hsieb tagħha lill-bank; dak l-avviż għandu jispeċifika r-raġunijiet li minhabba fihom l-Awtorita' Kompetenti tkun bi hsiebha li tiegħu azzjoni u għandu jispeċifika perijodu li fih il-bank ikun intitolat li jagħmel sottomissjonijiet għala dik l-azzjoni ma għandhiex tittiehed. Kemm-il darba l-Awtorita' Kompetenti ma tiddeċidix li l-kwistjoni tkun urgenti, hija ma għandhiex timponi jew tvarja xi restrizzjoni jew thassar liċenza qabel ma' jkun għadda dak il-perijodu

(6) Liċenza mogħtija lil ferġha ta' bank inkorporat barra minn Malta tista' tithassar biss wara konsultazzjoni ma' l-awtoritajiet kompetenti tal-pajjiż ta' inkorporazzjoni, kemm-il darba l-Awtorita' Kompetenti ma tiddeċidix li l-kwistjoni tkun urgenti jew li jkun hemm ċirkostanzi fejn ikun impropriu li ssir dik il-konsultazzjoni prijuri.

(7) Mar-restrizzjoni jew thassir ta' liċenza ta' bank inkorporat f'Malta, l-Awtorita' Kompetenti għandha tavża lill-awtoritajiet kompetenti tal-pajjiż ta' kwalunkwe stat barrani li fih il-bank jew is-sussidjarji tiegħu ikunu qed jagħmlu kummerċ bankarju.

10. (1) Il-Ministru għandu jikkostitwixxi tribunal li għandu Appelli. jkun magħruf bhala t-Tribunal Bankarju, jahtar jew inehhi l-membri tiegħu u jagħmel arrangamenti xierqa għall-fondi tiegħu.

(2) Il-membri tat-Tribunal Bankarju għandhom ikunu jikkonsistu f'*Chairman*, li għandu jkun avukat ta' kwalifika ta' mhux anqas minn għaxar snin, u żewġ membri li jkollhom esperjenza fil-kummerċ bankarju jew finanzi.

(3) Kull persuna li thossha aggravata b'deċiżjoni ta' l-Awtorita' Kompetenti

- (a) li timponi xi kondizzjoni fuq l-ghoti ta' liċenza;
- (b) li timponi jew tvarja xi restrizzjoni;
- (c) li thassar liċenza;
- (d) li toħroġ xi avviż jew tagħmel xi ordni skond artikolu 13 ta' dan l-Att;
- (e) li tagħmel xi ordni skond l-artikolu 14 ta' dan l-Att;

tista' tappella kontra d-deċiżjoni lit-Tribunal Bankarju.

(4) Meta appell ikun kontra deċiżjoni li thassar liċenza, it-thassir tal-liċenza għandu jiġi sospiż sakemm jiġi deċiż jew jiġi ritirat l-appell.

(5) Meta appell ikun kontra deċiżjoni li timponi jew tvarja restrizzjoni, it-Tribunal Bankarju għandu jkollu s-setgħa li jissospendi l-eżekuzzjoni tad-deċiżjoni sakemm jiġi deċiż jew jiġi ritirat l-appell.

(6) Il-kwistjoni li tkun trid tiġi deċiża mit-Tribunal Bankarju għandha tkun ta' jekk, għar-raġunijiet miġjuba mill-appellant, id-deċiżjoni ta' l-Awtorita' Kompetenti kenitx legittima jew kenitx ġustifikata bil-provi li fuqhom kienet ibbażata.

(7) Fis-smiġh ta' appell, it-Tribunal Bankarju għandu jkollu s-setgħa:

(a) li jikkonferma, jirrevoka jew ivarja d-deċiżjoni ta' l-Awtorita' Kompetenti u li jordna lill-Awtorita' Kompetenti biex tiehu kull azzjoni li jkollha s-setgħa tiehu taht dan l-Att sabiex timplimenta d-deċiżjoni tat-Tribunal Bankarju;

(b) li jordna l-attendenza ta' kull xhud u li jordna l-produzzjoni ta' kull dokument jew informazzjoni oħra;

(c) li jordna l-hlas ta' l-ispejjeż minn kull parti fl-appell.

(8) Il-Ministru jista' jagħmel regolamenti li jirregolaw il-proċedura għall-għemil u t-tmexxija ta' appelli.

(9) Ikun hemm appell fuq kwistjoni ta' liġi biss minn deċiżjoni tat-Tribunal Bankarju. Fis-smiġh ta' dak l-appell, il-Qorti għandu jkollha s-setgħat kollha tat-Tribunal Bankarju biex tagħmel ordnijiet. Ebda appell ma jinghata minn deċiżjoni tal-Qorti minghajr il-permess tal-Qorti.

Ftuh ta' fergħat.

11. (1) Bank għandu javża lill-Awtorita Kompetenti bil-miktub qabel ma jiftah fergħa ġdida, aġenzija ġdida jew uffiċċju ġdid f'Malta.

(2) Hlief bil-kunsens bil-miktub ta' l-Awtorita Kompetenti ebda bank inkorporat f'Malta ma jista' jiftah fergħa ġdida, aġenzija ġdida jew uffiċċju ġdid jew jistabbilixxi jew jakkwista xi sussidjarju fxi post barra minn Malta.

Użu tal-kelma "bank".

12. (1) Bla hsara għas-subartikoli (2) u (3) ta' dan l-artikolu, hlief bil-permess bil-miktub ta' l-Awtorita Kompetenti ebda persuna barra minn bank b'licenza korrenti ma tista' tuża l-kelma "bank" jew xi derivattivi minnha jew kliem ieħor li jistgħu jindikaw jew li jkunu jidhru li jindikaw l-għemil ta' kummerċ bankarju bi kwalunkwe lingwa fid-deskrizzjoni jew titolu li tahtu dik il-persuna tkun qed tagħmel kummerċ, jew tagħmel xi użu bħal dak fuq xi karta ta' l-ittri, fxi avviz jew reklam, jew b'xi mod ieħor simili.

(2) Bank inkorporat barra minn Malta jista' juża l-isem użat fil-pajjiż ta' inkorporazzjoni tiegħu hlief li, fejn ikun hemm riskju li l-użu ta' isem tali jista' jkun iqarraq, dak il-bank għandu jżid dawk il-partikolaritajiet spjegattivi ma' l-isem tiegħu skond kif l-Awtorita Kompetenti tista' tordna.

(3) Kull bank għandu juża bħala parti mid-deskrizzjoni jew titolu tiegħu il-kelma "bank" jew derivattiv wieħed jew iżjed tagħha.

(4) L-Awtorita Kompetenti għandu jkollha s-setgħa li teżenta lil kwalunkwe persuna mid-dispożizzjonijiet ta' dan l-artikolu.

13. (1) Minkejja kull haġa li tinsab f'xi ligi oħra, ikun meħtieġ il-kunsens ta' l-Awtorita' Kompetenti qabel ma xi persuna tkun legittimament tista': Partecipazzjoni f'bank.

(a) takkwista *holding* sinifikanti jew *holding* kwalifikattiv f'bank;

(b) tkabbar *holding* eżistenti li ma jkunx *holding* sinifikanti jew *holding* kwalifikattiv biex b'hekk isir *holding* sinifikanti jew *holding* kwalifikattiv f'bank;

(c) tkabbar *holding* sinifikanti f'bank biex b'hekk isir *holding* kwalifikattiv;

(d) tkabbar *holding* kwalifikattiv biex b'hekk isir ugwali għal jew jeċċedi l-ghoxrin fil-mija jew tlieta u tletin fil-mija jew hamsin fil-mija jew li ġġiegħel lill-bank isir is-sussidjarju ta' dik il-persuna;

(e) tnaqqas *holding* kwalifikattiv biex b'hekk iġġiegħlu jaqa' taht hamsin fil-mija jew tlieta u tletin fil-mija jew ghoxrin fil-mija li ġġiegħel li l-bank ma jibqax ikun is-sussidjarju ta' dik il-persuna;

(f) tnaqqas *holding* kwalifikattiv jew *holding* sinifikanti biex b'hekk ma jibqax ikun *holding* kwalifikattiv jew *holding* sinifikanti;

(g) tirrinunzja *holding* kwalifikattiv jew *holding* sinifikanti ta' azzjonijiet.

(2) Il-Ministru jista' b'ordni ppubblikat fil-Gazzetta jvarja jew ineħhi kull wieħed mill-perċentaġġi msemmija fil-paragrafi (d) u (e) tas-subartikolu (1) ta' dan l-artikolu.

(3) Is-subartikolu (1) ta' dan l-artikolu għandu japplika kemm jekk l-azzjonijiet rilevanti jkunu jew ma jkunux imnizzla fil-Borża ta' Malta.

(4) Ikun id-dmir ta' bank u tad-diretturi tiegħu li javżaw minnufih lill-Awtorita' Kompetenti malli jsiru jafu li xi persuna tkun bi hsiebha tiegħu xi wieħed mill-passi mnizzla fis-subartikolu (1) ta' dan l-artikolu.

(5) Minkejja kull haġa li tinsab f'xi ligi oħra, ikun meħtieġ il-kunsens ta' l-Awtorita' Kompetenti qabel ma l-bank ikun legittimament jista':

(a) ibiegħ jew jiddisponi mill-kummerċ tiegħu jew xi parti sinifikanti tiegħu;

(b) jingħaqad ma' xi kumpannija oħra, kemm jekk bank jew xort'oħra;

(c) jagħmel xi rikostruzzjoni;

(d) iżid il-kapital azzjonarju nominali jew mahruġ jew jagħmel xi bidla sostanzjali fil-jeddijiet ta' votazzjoni.

(6) Ikun id-dmir tad-diretturi u l-azzjonisti kwalifikattivi kollha ta' bank li javżaw lill-Awtorita' Kompetenti minnufih malli jsiru jafu li l-bank ikun bi hsiebu jiehu xi wiehed mill-passi mnizzla fis-subartikolu (5) ta' dan l-artikolu.

(7) Kull persuna li tkun bi hsiebha tiehu xi wiehed mill-passi mnizzla fis-subartikolu (1) ta' dan l-artikolu u kull bank li bi hsiebu jiehu xi wiehed mill-passi mnizzla fis-subartikolu (5) ta' dan l-artikolu ghandhom javżaw lill-Awtorita' Kompetenti bil-miktub u l-Awtorita' Kompetenti tista' tohrog direttiva bankarja li tirregola l-forma li fih ghandha ssir dik in-notifika u l-informazzjoni li tkun mehtiega li tinghata lill-Awtorita' Kompetenti ma' dik in-notifika.

(8) Fi zmien xahrejn minn meta l-Awtorita' Kompetenti tircievi dik in-notifika jew minn meta tircievi dik l-informazzjoni li hija tista' legittimament tehtieg, liema jkun ta' l-ahhar, l-Awtorita' Kompetenti ghandha tohrog avviz:

(a) li bih hija taghti l-kunsens assolut ghat-tehid tal-pass; jew

(b) li bih hija taghti l-kunsens ghat-tehid tal-pass suggett ghal dawk il-kondizzjonijiet li hija tista' tqis li jkunu xierqa; jew

(c) li bih tirrifjuta li taghti l-kunsens ghat-tehid tal-pass.

(9) Jekk xi persuna jew xi bank jiehd u jew ikunu bi hsiebhom jiehd u xi pass imsemmi fis-subartikoli (1) u (5) ta' dan l-artikolu minghajr ma jiksbu l-kunsens ta' l-Awtorita' Kompetenti, allura, minghajr pregudizzju ghal xi piena ohra li tista' tigi mposta taht dan l-Att, l-Awtorita' Kompetenti jkollha s-setgha li taghmel ordni:

(a) li jzomm lill-persuna jew bank milli jiehd u dak il-pass;

(b) li jiddikjara li dak il-pass ikun null u bla effett;

(c) li jordna lill-persuna jew bank biex jiehd u dawk il-mizuri li jkunu mehtiega biex il-qaghda tingieb lura ghall-qaghda li kienet tezisti minnufih qabel it-tehid ta' dak il-pass;

(d) izzomm lill-persuna jew bank milli jezercitaw xi drittijiet li dak il-pass, kieku skond il-ligi, kien ikun jaghtihom, inkluż id-dritt li jircievu xi pagament;

(e) izomm lill-persuna jew bank milli jiehd u xi pass simili jew xi pass iehor tal-kategoriji mnizzla fis-subartikoli (1) u (5) ta' dan l-artikolu.

Kontroll ta' bank.

14. (1) Kull persuna li tkun kontrollur ta' bank ghandha tkun persuna adatta biex tezercita dak il-kontroll.

(2) Bank ghandu minnufih jinnotifika lill-Awtorita' Kompetenti:

(a) bil-partikolaritajiet kollha tal-persuni kollha li jkunu kontrolluri tal-bank iżda li la jkunu azzjonisti sinifikanti u lanqas azzjonisti kwalifikattivi tal-bank;

(b) bil-partikolaritajiet kollha ta' kull persuna li tkun mistennija li ssir kontrollur tal-bank bla ma tkun jew tkun se ssir azzjonista sinifikanti jew azzjonista kwalifikattiv;

(c) bil-partikolaritajiet kollha ta' kull persuna li tkun mistennija li tiegħa milli tkun kontrollur tal-bank.

(3) Bank għandu jipprova lill-Awtorita' Kompetenti b'kull informazzjoni oħra li hija tista' tehtieg dwar kwalunkwe kontrollur eżistenti jew propost.

(4) Jekk l-Awtorita' Kompetenti tkun tal-fehma li xi persuna li tkun jew tkun mistennija li ssir kontrollur ta' bank bla ma tkun jew tkun se ssir azzjonista sinifikanti jew azzjonista kwalifikattiv ma tkunx persuna adatta biex tkun kontrollur, l-Awtorita' Kompetenti tista' tagħmel ordni li jordna lil dik il-persuna biex tiegħa milli tkun kontrollur jew li jzomm lil dik il-persuna milli ssir kontrollur.

15. (l) Bank ma għandux:

Transazzjonijiet
projbiti.

(a) jagħti xi facilita' ta' kreditu kontra s-sigurta' ta' l-azzjonijiet tiegħu stess jew kontra xi sigurtajiet oħra mahruġa mill-bank innifsu jew kontra xi azzjonijiet jew xi sigurtajiet oħra ta' korp guridiku iehor li fih il-bank ikollu kontroll;

(b) jagħti, jew jippermetti li jibqgħu pendenti, faċilitajiet ta' kreditu mhux assigurat, li fit-total jeċċedu s-somma ta' hamest elef lira Maltija -

(i) lil xi wiehed mid-diretturi tiegħu jew lill-parti l-miżżewġa kemm jekk flimkien jew individwalment jew ma' terzi persuni;

(ii) lil xi persuna li fiha l-bank jew xi wiehed jew iżjed mid-diretturi tiegħu ikun interessat bħala direttur, soċju, *manager*, agent jew membru (li ma jkunx azzjonista f'kumpannija mniżżla fuq il-Borża ta' Malta) jew lil xi persuna li tagħha xi wiehed jew iżjed mid-diretturi tal-bank ikun garanti;

(iii) lil xi korp ta' persuni li fih il-bank jew xi wiehed jew iżjed mid-diretturi tiegħu ikollhom flimkien jew individwalment kontroll, li ma jkunx huwa stess bank jew l-impriża ċentrali tal-bank, sussudjarju ta' din l-impriża ċentrali jew sussidjarju tal-bank;

(c) jagħti jew jippermetti li jibqgħu pendenti relattivament għal xi wiehed mill-funzjonarji, hliet direttur, jew xi impjegat faċilitajiet ta' kreditu mhux assigurati li fit-total jeċċedu s-salarju ta' tna-x-il xahar ta' dak il-funzjonarju jew impjegat

(d) jakkwista jew iżomm xi parti mill-kapital azzjonarju ta' jew xort'oħra jkollu interess dirett jew indirett fi, bank jew kumpannija oħra jew grupp ta' persuni konnessi, li l-valur tal-kost originali tagħha jeċċedi hmistax fil-mija tal-fondi

tal-bank stess u *holdings* tali ma għandhomx jeċċedu fit-total mija fil-mija tal-fondi tiegħu stess:

Iżda:

(i) is-sussidjarji ta' bank meqjusa komplessivament, ma għandhomx jikkostitwixxu grupp ta' persuni konnessi għall-finijiet ta' dan l-artikolu;

(ii) meta l-kapital azzjonarju akkwistat ikun dak ta' bank sussidjarju l-limitu ta' hmistax fil-mija speċifikat f'dan il-paragrafu għandu jkun hamsa u għoxrin fil-mija tal-fondi tal-bank stess;

(iii) il-*holding* ta' azzjonijiet f'kumpanniji barra minn dawk li jaqgħu taħt (ii) ta' hawn fuq ma għandux jeċċedi fit-total sittin fil-mija tal-fondi tal-bank stess;

(iv) meta l-imsemmija perċentagġi jiġu eċċeduti bhala riżultat ta' l-akkwist ta' azzjonijiet biex jiġu ssodisfati djun dovuti lill-bank, huwa jkollu massimu ta' tnax - il xahar jew dak il-perijodu iehor li jista' jiġi stabbilit mill-Awtorita' Kompetenti biex fih jikkonforma ruhu mad-dispożizzjonijiet ta' dan il-paragrafu;

(v) L-Awtorita' Kompetenti tista' tippermetti li bank jeċċedi temporanjament il-limiti speċifikati f'dan il-paragrafu kull meta, fil-fehma ta' l-Awtorita' Kompetenti, dak l-eċċess ikun riżultat ta' riduzzjoni inevitabbli tal-fondi tal-bank stess;

(vi) meta l-bank ikun impriża ċentrali jew sussidjarja l-osservanza tal-limiti speċifikati f'dan il-paragrafu għandha tkun kontrollata fuq bażi konsolidata;

(e) mingħajr il-kunsens ta' l-Awtorita' kompetenti jakkwista jew iżomm azzjonijiet f'kumpannija oħra li ma tkunx bank, li jeċċedu hamsa fil-mija tal-kapital azzjonarju mahruġ ta' dik il-kumpannija;

(f) jixtri, jakkwista jew xort'oħra jżomm xi proprjeta' immobbli jew xi dritt fuqha hlief kif jista' jkun meħtieġ raġonevolment sabiex imexxi l-kummerċ tiegħu jew għall-abitazzjoni jew sabiex jipprovdi amenitajiet għall-persunal tiegħu:

Iżda dan il-paragrafu ma għandux jimpedixxi bank-

(i) milli jixtri parti ta' xi bini li jkun użat sabiex imexxi l-kummerċ tiegħu; jew

(ii) milli jassigura dejn fuq xi proprjeta' immobbli u, fil-każ ta' nuqqas ta' hlas ta' dak id-dejn, milli jakkwista jew iżomm dik il-proprjeta' biex tiġi rejaliżzata fi żmien tnax il-xahar, jew xi perijodu iehor li l-Awtorita' Kompetenti tista' tistabbilixxi;

(iii) f'ċirkostanzi oħra milli takkwista, bl-approvazzjoni minn qabel ta' l-Awtorita' Kompetenti, proprjeta' immobbli li l-kost originali tagħha ma għandux fit-total jeċċedi hamsa fil-mija tal- fondi tal-bank stess;

(2) Fil-paragrafi (ċ) u (d) tas-subartikolu (1) ta' dan l-artikolu l-espressjoni "faċilitajiet ta' kreditu mhux assigurati" tfisser faċilitajiet ta' kreditu magħmula mingħajr sigurta' jew, relattivament għal xi faċilita' ta' kreditu magħmula b'sigurta', kull parti minnha li f'xi żmien teċċedi l-valur fis- suq ta' l-attiv li jikkostitwixxi dik is-sigurta', jew meta l-Awtorita' Kompetenti tkun sodisfatta li ma hemm ebda valur stabbilit fis-suq, fuq il-bażi ta' valutazzjoni approvata mill-Awtorita' Kompetenti nnifisha.

16. L-Awtorita' Kompetenti għandha toħroġ Direttiva Bankarja *Exposures* kbar skond kif ikun jidhrilha xieraq biex tirregola *exposures* kbar.

17. (1) Bank għandu:

Fondi tal-bank
stess u riservi.

(a) iżomm proporzjon tal-fondi tiegħu stess għal attiv b'piz ta' riskju u *off balance sheet items* definiti fi u kkalkulati skond id-dispożizzjonijiet ta' Direttiva Bankarja;

(b) jinnotifika dak il-proporzjon lill-Awtorita' Kompetenti f'dawk iż-żminijiet u b'dak il-mod li jkunu preskritti b'Direttiva Bankarja;

(ċ) javża lill-Awtorita' Kompetenti minnufih malli l-proporzjon jaqa' taħt il-livell meħtieġ bil-paragrafu (a) ta' dan is-subartikolu u ma' dan l-Awtorita' Kompetenti għandha tordna lill-bank biex jieħu dawk il-miżuri meħtieġa biex il-proporzjon jingieb lura għall-livell meħtieġ f'dak iż-żmien li l-Awtorita' Kompetenti tista' tistabbilixxi.

(2) Il-fondi ta' riserva maħluqa taħt l-artikolu 10 ta' l-Att dwar il-Kummerċ Bankarju huma aboliti. Dawn il-fondi għandhom jigu allokati għal dawk ir-riservi interni oħra li jiffurmaw parti mill-fondi tal-bank stess skond kif kull bank jista' jqis xieraq.

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(3) Kull bank għandu dejjem ikollu provdut biżżejjed għal djun inesiġibbli u djun dubbjużi.

18. L-Awtorita' Kompetenti għandha toħroġ Direttiva Bankarja li tispeċifika x'għandu jikkostitwixxi l-attiv speċifikat u l-passiv ta' depożitu ta' bank u li tistabbilixxi l-inqas *holding* ta' attiv speċifikat bhala proporzjon għall-passiv ta' depożitu li bank għandu jzomm.

Likwidita'.

19. (1) Kull bank għandu jissottometti lill Awtorita' Kompetenti:

Informazzjoni-
jiet li għandhom
jingħataw lill-
Awtorita' Kompetenti u
lill-Bank Ċentrali

(a) reżokontijiet perijodiċi li juru qagħda u l-attivi u l-passivi u l-profitti u telf fuq bażi individwali u, fejn ikun xieraq fuq bażi konsolidata inkluż analiżi tagħhom;

(b) dik l-informazzjoni li tkun meħtieġa mill-Awtorita' Kompetenti għal skopijiet statistiċi;

(c) dik l-informazzjoni li l-Awtorita' Kompetenti tista' tehtieg biex tissodisfa lilha nfisha li l-bank ikun qed ihares id-dispożizzjonijiet ta' dan l-Att;

(d) dawk ir-reżokontijiet separati dwar l-uffiċju u l-fergħat tiegħu barra minn Malta f'dik il-forma u f'dawk iż-żminijiet kif l-Awtorita' Kompetenti tista' tehtieg fil-qadi ta' dmirijietha.

(2) Bank għandu jissottometti lill-Bank Ċentrali dik l-informazzjoni li l-Bank Ċentrali jista' jehtieg fil-qadi tad-dmirijiet tiegħu.

(3) Id-dispożizzjonijiet ta' dan l-artikolu għandhom japplikaw ukoll għall-fergħat, aġenziji jew ufficcji f'Malta kollha ta' bank li ma jkunx inkorporat f'Malta

(4) Ir-reżokontijiet kollha mehtieġa taht is- subartikoli (1) u (2) ta' dan l-artikolu għandhom jiġu sottomessi f'dik il-forma u f'dawk il-perijodi li jiġu preskritti bid-Direttiva Bankarja.

(5) Ir-reżokontijiet kollha u l-informazzjoni l-oħra kollha li jingħataw minn bank skond is- subartikoli (1) u (2) ta' dan l-artikolu għandhom jitqiesu bħala sigrieti u konfidenzjali hliet bejn dak il-bank u l-Awtorita' Kompetenti jew il-Bank Ċentrali, skond il-każ, salv illi

(a) l-Awtorita' Kompetenti għandha tagħti dik l-informazzjoni taht dan l-artikolu kif jista' jkun mehtieg mill-Ministru jew mill-Bank Ċentrali u għandha tinforma lill-Ministru u l-Bank Ċentrali jekk fxi żmien fil-fehma tagħha ikun hemm tħassib dwar l-istat ta' l-affarijiet ta' dak il-bank;

(b) il-Bank Ċentrali għandu jipprepara u jippubblika reżokontijiet konsolidati li jiġbru flimkien l-informazzjoni mogħtija taht dan l-artikolu.

Sorveljanza tal-banek.

20. (1) Kull bank għandu jissottometti lill-Awtorita' Kompetenti jew lill-Bank Ċentrali kull informazzjoni li l-Awtorita' Kompetenti jew il-Bank Ċentrali jistgħu raġonevolment jehtieġu fl-eżerċizzju tad-dmirijiet tagħhom taht dan l-Att u l-Att dwar il-Bank Ċentrali ta' Malta, u l-Awtorita' Kompetenti jew il-Bank Ċentrali jistgħu jinvestigaw u jitolbu kjarifika ta' kull informazzjoni hekk sottomessa.

(2) kull talba għal informazzjoni jew għal kjarifika tagħha skond dan l-artikolu għandha tkun b'avviż bil-miktub li għandha tehtieg lir-riċevent biex

(3) Barra minn hekk, l-Awtorita' Kompetenti tista' -

(a) b'avviż bil-miktub notifikat lil bank, tehtieg lill-bank biex jipprovdi rapport minn, *accountant* jew persuna oħra ta' hila professjonali rilevanti dwar, jew dwar xi aspekt ta', kull materja li dwarha l-Awtorita' Kompetenti tkun htieġet setgħet tehtieg biex il-bank jipprovdi l-informazzjoni skond is-subartikolu (1) ta' dan l-artikolu;

(b) b'avviz bil-miktub notifikat lil bank, tehtieg lill-bank biex jipproduci f'dak iż-żmien u f'dak il-post kif speċifikati fl-avviz dak id-dokument jew dokumenti ta' dik id-deskrizzjoni li tkun speċifikata fl-avviz;

(c) tawtorizza uffiċjal, impjegat jew agent ta' l-Awtorita' Kompetenti biex, fuq il-produzzjoni ta' l-awtorita' tiegħu, jehtieg lill-bank biex jipprovdi minnufih dik l-informazzjoni, jew biex jipproduci minnufih dawk id-dokumenti, kif huwa jista' jispeċifika, li tkun informazzjoni jew dokumenti li l-Awtorita' Kompetenti tista' raġonevolment tehtieg għall-qadi tal-funzjonijiet tagħha taht dan l-Att.

(4) L-*accountant* jew il-persuna oħra mahtura mill-bank biex tagħmel xi rapport mehtieg skond il-paragrafu (a) tas-subartikolu (3) ta' dan l-artikolu għandu jkun persuna nominata jew approvata mill-Awtorita' Kompetenti; u l-Awtorita' Kompetenti tista' tehtieg li r-rapport ikun f'dik il-forma kif speċifikat fl-avviz.

(5) Meta, bis-saħħa tas-subartikolu (3) ta' dan l-artikolu, xi persuna jkollha s-setgħa li tehtieg il-produzzjoni ta' xi dokumenti minn bank, dik il-persuna għandu jkollha l-istess setgħa biex tehtieg il-produzzjoni ta' dawk id-dokumenti minn xi persuna li tidher li tkun qed tipposedihom.

(6) Is-setgħa taht dan l-artikolu li bank jew xi persuna oħra jiġu mehtiega biex jipproduci xi dokumenti tinkludi s-setgħa -

(a) jekk id-dokumenti jiġu prodotti, li jittiehdu kopji tagħhom jew estratti minnhom u li l-bank jew persuna, jew xi persuna oħra li tkun funzjonarju tal-preżent jew ta' l-imghoddi tal-bank in kwistjoni jew li tkun jew kienet f'xi żmien impjegata mill-bank in kwistjoni jew li tkun qieghda taġixxi bhala impjegat tal-bank in kwistjoni, jiġu mehtiega jipprovdu spjegazzjoni ta' kwalunkwe wiehed mid-dokumenti; u

(b) jekk id-dokumenti ma, jiġux prodotti lill-persuna li kienet mehtiega biex tipproducihom tiġi mehtiega biex tiddikjara, skond l-aħjar tagħrif u twemmin tagħha, fejn qegħdin.

(7) Jekk l-Awtorita' Kompetenti jkun jidhrilha li jkun desiderabbli fl-interessi tad-depożitanti jew depożitanti potenzjali ta' bank li tagħmel hekk, hija tista' wkoll teżerċita s-setgħat mogħtija bis-subartikoli (1) u (3) ta' dan l-artikolu relativament għal xi persuna li tkun jew li f'xi żmien rilevanti kienet -

(a) *holding company*, kumpannija sussidjarja jew relatata ta' dak il-bank;

(b) ssidjarja ta' *holding company* ta' dak il-bank;

(c) *holding company* ta' sussidjarju ta' dak il-bank; jew

(d) kontrollur ta' dak il-bank.

(8) L-Awtorita' Kompetenti tista' b'avviz, bil-miktub notifikat lil xi persuna li tkun jew se tkun funzjonarju ta' bank tehtieg lil dik il-persuna biex tagħtiha, f'dak iż-żmien kif speċifikat fl-avviz, dik l-informazzjoni jew dokumenti li l-Awtorita' Kompetenti tista'

ragonevolment tehtieg biex tistabilixxi jekk dik il-persuna tkunx persuna adatta biex tokkupa l-pożizzjoni partikolari li hija tokkupa jew tkun se tokkupa.

(9) L-Awtorita' Kompetenti tista' teżercita s-setgħat mogħtija bis-subartikoli (1) u (3) ta' dan l-artikolu relattivament għal kwalunkwe persuna li jkollha *holding* sinifikanti jew *holding* kwalifikattiv ta' azzjonijiet f'bank jekk hija tqis li l-eżercizzju ta' dawk is-setgħat ikun desiderabbli fl-interessi tad-depożitanti jew depożitanti potenzjali ta' dak il-bank.

(10) Dikjarazzjoni magħmula minn persuna skond hteiga imposta bis-saħħa ta' dan l-artikolu tista' tintuża bhala prova kontra tagħha.

(11) L-Awtorita' Kompetenti għandu jkollha s-setgħa li tirkupra minghand bank li jkun sar rapport dwaru skond is-subartikolu (3) ta' dan l-artikolu l-ispejjeż magħmula f'konnessjoni ma' dak ir-rapport.

Dritt ta' dħul
biex jinkisbu
informazzjonijiet
u dokumenti.

21. (1) Kull uffiċjal, impjegat jew agent ta' l-Awtorita' Kompetenti jista', fuq produzzjoni tal-provi meħtieġa ta' l-awtorita' u d tiegħu -

(a) jidhol f'kull fond okkupat minn persuna li lilha jkun gie notifikat avviz skond l-artikolu 20 ta' hawn fuq jew l-artikolu 22 ta' hawn taht sabiex jikseb hemmhekk l-informazzjoni jew dokumenti meħtieġa b'dak l-avviz;

(b) jidhol f'kull fond okkupat minn xi persuna li lilha jista' jigi notifikat avviz skond l-artikolu 20 ta' hawn fuq jew l-artikolu 22 ta' hawn taht sabiex jikseb hemmhekk dik l-informazzjoni jew dokumenti kif speċifikati fl-awtorita' li jkunu informazzjoni jew dokumenti setgħu kienu meħtieġa b'dak l-avviz iżda l-Awtorita' Kompetenti ma għandhomx l-awtorizzazzjoni lil xi persuna biex taġixxi kemm-il darba ma jkollhiex raġun taħseb li jekk dak l-avviz jigi notifikat ma kienx se jigi osservat jew li xi dokumenti li għalihom ikun jirreferi jigi mnehhija, imbagħbsa jew meqruda.

(2) Ebda persuna ma għandha intenzjonalment tfixkel lil persuna li tkun teżercita d-drittijiet mogħtija b'dan l-artikolu.

Investigazz-
jonijiet.

22. (1) Jekk l-Awtorita' Kompetenti jkun jidhrila li jkun desiderabbli li tagħmel hekk fl-interessi tad-depożitanti jew depożitanti potenzjali ta' bank, hija tista' tahtar persuna kompetenti jew iżjed biex jinvestigaw u jirraportaw dwar -

(a) in-natura, it-tmexxija jew l-istat tal-kummerċ tal-bank jew kwalunkwe aspett partikolari tiegħu; jew

(b) l-ownership u l-kontroll tal-bank;

u l-Awtorita' Kompetenti għandha tagħti avviz bil-miktub dwar kull hatra lill-bank konċernat.

(2) Jekk persuna mahtura skond is-subartikolu (1) ta' dan l-artikolu jara li tkun haġa meħtieġa għall-iskopijiet ta' l-investigazzjoni

tieghu, huwa jista' wkoll jinvestiga l-kummerċ ta' kwalunkwe persuna li tkun jew li f'xi żmien rilevanti kienet -

(a) *holding company*, kumpannija sussidjarja jew relatata tal-bank li jkun għaddej investigazzjoni;

(b) kumpannija sussidjarja jew relatata ta' *holding company* ta' dak il-bank;

(c) *holding company* ta' sussidjarju ta' dak il-bank; jew

(d) kontrollur ta' dak il-bank.

(3) L-Awtorita' Kompetenti tista' teżerċita s-setgħat mogħtija bis-subartikolu (1) ta' dan l-artikolu relattivament għal xi persuna li jkollha tiżmim sinifikanti ta' azzjonijiet jew tiżmim kwalifikattiv ta' azzjonijiet f'bank jekk hija tqis li l-eżerċizzju ta' dawk is-setgħat ikun desiderabbli fl-interessi tad-depożitanti jew depożitanti potenzjali ta' dak il-bank.

(4) Meta l-persuna mahtura skond is-subartikolu (1) ta' dan l-artikolu tiddeċiedi li tinvestiga l-kummerċ ta' xi persuna bis-sahħa tas-subartikolu (2) jew tas-subartikolu (3) ta' dan l-artikolu huwa għandu jinforma lil dik il-persuna bil-miktub.

(5) Ikun id-dmir ta' kull persuna li tkun jew kien uffiċjal, impjegat, aġent, bankier, uditur jew konsulent legali ta' korp li jkun taħt investigazzjoni skond dan l-Att, jew xi persuna mahtura biex tagħmel rapport dwar dak il-korp skond dan l-Att u kull persuna li jkollha tiżmim sinifikanti ta' azzjonijiet fi, tiżmim kwalifikattiv fi, jew tkun kontrollur ta', dak il-bank -

(a) li tipproduċi lill-persuni mahtura skond is-subartikolu (1) ta' dan l-artikolu, f'dak iż-żmien u f'dak il-post li huma jkunu jistgħu jeħtieġu d-dokumenti kollha li jkollhom x'jaqsmu mal-korp konċernat li jkunu taħt fil-kustodja jew setgħa tiegħu;

(b) li tattendi quddiem il-persuni mahtura f'dak iż-żmien u f'dak il-post kif huma jistgħu jeħtieġu; u

(c) li xort'ohra tagħti lil dawk il-persuni l-ghajnuna kollha f'konnessjoni ma' l-investigazzjoni li hija ragonevolment kapaci li tagħti;

u dawk il-persuni, jistgħu jieħdu kopji ta' jew estratti skond il-paragrafu hawn fuq.

(6) Persuna li tkun qed teżerċita setgħat bis-sahħa ta' hatra taħt dan l-artikolu għandha jekk tkun hekk meħtieġa tipproduċi provi u awtorita' tagħha.

(7) Ebda persuna ma għandha -

(a) mingħajr raġuni biżżejjed tonqos li tipproduci xi dokumenti li huwa d-dmir tagħha li tipproduci skond is-subartikolu (5) ta' dan l-artikolu;

(b) minghajr raguni biżżejjed tonqos li tattendi quddiem il-persuni mahtura skond is-subartikolu (1) ta' dan l-artikolu meta tkun mehtiega biex taghmel hekk; jew

(c) minghajr raguni biżżejjed tonqos li twiegeb xi mistoqsija li ssirilha mill-persuni hekk mahtura relattivament ghal xi bank li jkun taht investigazzjoni jew korp li jkun qiegħed jigi investigat bis-sahha tas-subartikolu (2) jew (3) ta' dan l-artikolu.

(8) Dikjarazzjoni magħmula minn persuna skond htiega imposta bis-sahha ta' dan l-artikolu tista' tintuża bhala prova kontra tagħha.

(9) L-Awtorita' Kompetenti għandu jkollha s-setgħa tirkupra mingħand bank li jkun sar rapport dwaru skond is-subartikolu (1) ta' dan l-artikolu l-ispejjeż magħmula f'konnessjoni ma' dak ir-rapport.

(10) Għall-finijiet ta' dan l-artikolu, riferenza għal bank għandha tinkludi riferenza għal persuni li jkunu jidhru li qed imexxu l-kummerċ bankarju.

Suspetti ta'
Kontrav-
venzjonijiet

23. (1) Meta l-Awtorita' Kompetenti jkollha ragunijiet biżżejjed biex tissuspetta li persuna tkun hatja ta' għemil ta' reat taht dan l-Att, hija tista' b'avviż bil-miktub tehtieg lil dik il-persuna jew lil xi persuna oħra -

(a) biex tipprovdi, f'dak il-post kif ikun speċifikat fl-avviż u jew minnufih jew f'dak iż-żmien kif ikun hekk speċifikat, dik l-informazzjoni li hija tista' raġonevolment tehtieg għall-investigazzjoni tal-kontravvenzjoni suspettata;

(b) biex tipproduci, f'dak il-post kif ikun speċifikat fl-avviż u jew minnufih jew f'dak iż-żmien kif ikun hekk speċifikat, dawk id-dokumenti, jew dokumenti ta' dik id-deskrizzjoni li tista' tkun speċifikat, l-Awtorita' Kompetenti tista' raġonevolment tehtieg għal dak il-ghan;

(c) biex tattendi f'dak il-post kif ikun speċifikat fl-avviż, u twiegeb għall-mistoqsijiet rilevanti sabiex jigi stabbilit jekk tkunx saret oik il-kontravvenzjoni.

(2) L-Awtorita' Kompetenti jew l-ufficjal, impjegat jew agent tagħha awtorizzat kif imiss jitghu jiehdu kopji ta' jew estratti minn kwalunkwe dokumenti li jigu prodotti skond dan l-artikolu.

(3) Kull ufficjal, impjegat jew agent ta' l-Awtorita' Kompetenti jista', fuq il-produzzjoni jekk mehtiega ta' l-awtorita' tieghu jidhol f'kull fond okkupat minn persuna li lilha jkun gie notifikat avviż skond is-subartikolu (1) ta' dan l-artikolu sabiex jikseb hemmhekk l-informazzjoni jew dokumenti mehtiega bl-avviż, u jagħmel dawk il-mistoqsijiet imsemmija fil-pararafu (c) ta' dak is-subartikolu jew jeżercita s-setgħat mogħtija bis-subartikolu (2) ta' dan l-artikolu.

(4) Ebda persuna ma għandha minghajr skuża raġonevoli tonqos li thares xi htiega imposta fuqha skond dan l-artikolu jew intenzjonalment tfixkel persuna fl-eżercizzju tad-drittijiet mogħtija bis-subartikolu (3) ta' dan l-artikolu.

24. (1) Ebda persuna li tkun taf jew li jkollha suspett li tkun qed issir jew li x'aktarx tkun se ssir investigazzjoni - Ostruzzjoni.

(a) skond l-artikolu 20 jew l-artikolu 22 ta' dan l-Att;
jew

(b) dwar l-ghemil suspettat ta' xi reat taht dan l-Att;

ma tista' tiffalsifika, tahbi, tiddistruggi jew b'xi mod iehor tiddisponi minn, jew iggghiel jew tippermetti l-falsifikazzjoni, habi, distruzzjoni jew tnehhija ta' dokumenti li hija tkun taf jew li jkollha suspett li jkunu jew se jkunu rilevanti ghal dik l-investigazzjoni kemm-il darba ma tippruvax illi hija ma kellha ebda hsieb li tahbi mill-persuni li jkunu qed jaghmlu dik l-investigazzjoni l-fatti mikxufin b'dawk id-dokumenti.

25. (1) Fuq il-bazi ta' ftehim internazzjonli, jew fuq ftehim ta' reciprocita', l-Awtorita' Kompetenti tista' taqsam id-dmirijiet ta' sorveljanza taghha ma' l-awtoritajiet kompetenti barranin ohra fil-każ ta' bank li jopera f'Malta jew fergħa li l-proprjeta' ta' persuna barranija jew fil-każ ta' bank li jkun għal kollox jew f'parti l-proprjeta' ta' residenti Maltin li jkun jopera barra minn Malta. Koperazzjoni u
skambju ta'
nformazzjoni.

(2) Persuna mahtura skond l-artikolu 20 jew l-artikolu 22 ta' dan l-Att għandha tingħatalha aċċess għal kull kont, rendikont jew informazzjoni ohra dwar kull bank li jkunu fil-pussess tal-Bank Ċentrali.

(3) Għandu jkun hemm laqgħat li jsiru bejn bank, l-udituri mahtura tiegħu u l-Awtorita' Kompetenti fuq bażi trilaterali jew bilaterali skond kif ikunu jiġġustifikaw iċ-ċirkostanzi. Dawn il-laqgħat jistgħu jiġu msejha minn kwalunkwe waħda mill-partijiet ikkonċernati iżda għandhom dejjem ikunu preqeduti mill-Awtorita' Kompetenti.

26. (1) Ebda dmir li għalih -

(a) uditur ta' bank, jew

(b) persuna mahtura biex tagħmel rapport skond il-paragrafu (a) tas-subartikolu ta' l-artikolu 20 ta' hawn fuq jew skond is-subartikolu (1) ta' l-artikolu 22 ta' hawn fuq,

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jistgħu jkunu sugġetti ma għandu jitqies li jkun inkiser minhabba f'li huma jkunu b'*bona fede* ikkomunikaw lill-Awtorita' Kompetenti, kemm jekk b'risposta għal talba magħmula minnha jew le, xi informazzjoni jew opinjoni dwar materja li għaliha japplika dan l-artikolu u li tkun rilevanti għal xi funzjoni ta' l-Awtorita' Kompetenti taht dan l-Att.

(2) Relattivament għal uditur ta' bank, dan l-artikolu japplika għal kull materja li taqa' għewwa s-subartikolu (9) ta' l-artikolu 31 ta' dan l-Att.

(3) Relattivament għal persuna matura biex tagħmel rapport skond il-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 20 ta' dan l-Att, dan l-artikolu japplika għal kull materja li hija ssir taf biha fil-kapaċita' tagħha bhala l-persuna li tkun qed tagħmel ir-rapport u li -

(a) ikollha x'taqsam mal-kummerè jew l-affarijiet tal-bank li dwaru dik il-persuna tagħmel ir-rapport tagħha jew xi korp assoċjat ta' dak il-bank, jew

(b) jekk bis-saħħa tas-subartiklu (7) ta' l-artikolu 20 ta' dan l-Att, ir-rapport ikun dwar korp assoċjat ta' bank, ikollha x'taqsam mal-kummerè jew l-affarijiet ta' dak il-korp.

(4) Relattivament għal persuna mahtura biex tagħmel rapport skond is-subartikolu (1) ta' l-artikolu 22 ta' dan l-Att, dan l-artikolu japplika għal kull materja li hija ssir taf biha fil-kapaċità tagħha bhala l-persuna li tkun qed tagħmel ir-rapport.

(a) ikollha x'taqsam mal-kummerè jew l-affarijiet tal-bank li dwaru dik il-persuna tagħmel ir-rapport tagħha jew xi korp assoċjat ta' dak il-bank, jew

(b) jekk bis-saħħa tas-subartikolu (2) ta' l-artikolu 22 ta' dan l-Att, ir-rapport ikun dwar korp assoċjat ta' bank, ikollha x'taqsam mal-kummerè jew l-affarijiet ta' dak il-korp.

(5) F'dan l-artikolu "korp assoċjat", relativament għal istituzjoni, tfisser kull korp bhal dak kif imsemmi fis-subartikolu (7) ta' l-artikolu 20 ta' dan l-Att jew kif imsemmi fis-subartikolu (2) ta' l-artikolu 22 ta' dan l-Att.

(6) Jekk l-Awtorita' Kompetenti jkun jidhrilha li xi *accountants* jew klassi ta' *accountants* li jkunu persuni għalihom li japplika s-subartikolu (1) ta' hawn fuq ma jkunux sugġetti għar-regoli sodisfaċenti magħmula jew gwida mahruġa minn korp professjonali li jispeċifikaw iċ-ċirkostanzi li fihom għandhom jiġu komunikati materji lill-Awtorita' Kompetenti kif imsemmi f'dak is-subartikolu, l-Awtorita' Kompetenti tista', wara konsultazzjoni mal-Bank Ċentrali u dak il-korpi li l-Awtorita' Kompetenti jkun jidhrilha li jirrapprezentaw l-interessi ta' l-*accountants* u tal-banek, tagħmel regolamenti li japplikaw għal dawk l-*accountants* u li jispeċifikaw dawk iċ-ċirkostanzi, u jkun id-dmir ta' *accountant* li għalih ikunu japplikaw ir-regolamenti li jikkomunika kull materja lill-Awtorita' Kompetenti fiċ-ċirkostanzi speċifikati b'dawk ir-regolamenti.

Kumitat Bankarju

27. (1) Għandu jkun hemm kumitat li jkun magħruf bhala l-Kumitat Bankarju (hawnhekk iżjed il quddiem imsejjah "il-Kumitat") li jkollu l-funzjoni li jifformula *policy* regolatorja u ta' sorveljanza u li jsegwi mill-qrib l-integrità tas-sistema bankarja.

(2) Il-Kumitat għandu jkun magħmul minn -

(a) tliet membri mill-Bank Ċentrali, li wiehed minnhom għandu jkun il-Gvernatur tal-Bank Ċentrali; u

(b) żewġ membri mill-Awtorita' Kompetenti.

(3) Il-Gvernatur tal-Bank Ċentrali għandu jkun ic-*Chairman* tal-Kumitat.

(4) Il-Kumitat ma għandux jaġixxi kemm-il darba ma jkunux preżenti għall-inqas tliet membri tal-kumitat inkluż ic-*Chairman*

u membru wiehed mill-Bank ċentrali u membru mill-Awtorita' Kompetenti.

(5) Il-Kumitat ghandu jkollu s-setgħa li jirregola l-proċedura tiegħu stess.

(6) Il-Kumitat ghandu jzomm il-minuti tal-laqgħat u għandu jagħti kopji ta' dawk il-minuti lill-Ministru malli dawn ikunu ġew approvati.

(7) Għall-finijiet ta' dan l-artikolu, il-kelma "Gvernatur" tinkludi d-Deputat Gvernatur tal-Bank Ċentrali meta jkun qed jeżerċita l-funzjonijiet ta' Gvernatur.

28. (1) Nonostanti kull investigazzjoni provduta f'dan l-Att,

Banek li ma jkunux jistgħu jonoraw l-obbligi

(a) meta bank iqis li x'aktarx ma jkunx jista' jonora l-obbligi tiegħu jew li jkun se jissospendi l-pagamenti, huwa għandu minnufih jinforma lill-Awtorita' Kompetenti u Gvernatur tal-Bank Ċentrali bil-miktub;

(b) meta l-Awtorita' Kompetenti ssir taf illi bank x'aktarx ma jkunx jista' jonora l-obbligi tiegħu jew illi jkun ser jissospendi l-pagamenti, hija għandha tinforma minnufih lill-Gvernatur tal-Bank Ċentrali bil-miktub.

(2) Meta l-Bank Ċentrali jsir jaf illi bank x'aktarx ma jkunx jista' jonora l-obbligi tiegħu jew illi ser jissospendi l-pagamenti, huwa għandu jinforma minnufih lill-Awtorita' Kompetenti bil-miktub.

29. (1) Jekk, kemm minn xi rapport magħmul taħt l-artikolu 20 jew l-artikolu 22 ta' dan l-Att jew xort'ohra, ikun jidher lill-Awtorita' Kompetenti jew lill-Bank Ċentrali illi tkun tapplika xi waħda miċ-ċirkostanzi indikati fis-subartikolu (2) ta' l-artikolu 9 ta' dan l-Att, il-Bank Ċentrali jista' -

Setgħa tal-Bank Ċentrali li jiehu kontroll ta' banek.

(a) jehtieg lill-bank minnufih biex jiehu dawk il-passi li l-Bank Ċentrali jqis meħtieġa biex jirrimedja jew jirrettifika l-materja;

(b) jinnomina persuna biex tagħti parir lill-bank dwar it-tnexxija xierqa tal-kummerċ tiegħu;

(c) jinnomina persuna biex tiehu fidejha l-attiv tal-bank jew xi parti minnu sabiex jigu mharsa l-interessi tad-depożitanti;

(d) jinnomina persuna biex tiehu fidejha kontroll tal-kummerċ tal-bank u jew li tkompli tnexxi dak il-kummerċ jew li tagħmel dik il-funzjoni ohra jew funzjonijiet ohra dwar dak il-kummerċ jew parti minnu, kif jordna l-Bank Ċentrali.

(e) jehtieg lill-Awtorita' Kompetenti biex thassar jew tirrestringi liċenzi skond id-dispożizzjonijiet ta' l-artikolu 9 ta' dan l-Att;

(f) jehtieg lill-bank biex jillikwida l-kummeré tieghu jew biex jillikwida l-kummeré tieghu f'Malta;

(g) jinnomina persura biex tagħmilha ta' stralċjarju għall-likwidazzjoni ta' l-affarijiet tal-bank;

(h) jistabilixxi r-rimunerazzjoni li għandha titallas mill-bank lil kull persuna nominata skond dan is-subartikolu.

(2) Meta persuna tiġi nominata mill-Bank Ċentrali:

(a) skond il-paragrafu (b) tas-subartikolu (1) ta' dan l-artikolu il-bank għandu jaġixxi skond il-parir mogħti minn dik il-persuna kemm-il darba u sakemm il-Bank Ċentrali ma jordnax xort'ohra;

(b) skond il-paragrafu (c) tas-subartikolu (1) ta' dan l-artikolu il-bank għandu jikkonsenja lil dik il-persuna l-attiv kollu li hu jkun inkarigat minnu, u s-setgħat, il-funzjonijiet u d-dmirijiet kollha tal-bank dwar dak l-attiv sew jekk eżerċitabbli mill-kumpannija fl-aqgħa ġenerali jew mill-bord tad-diretturi jew minn xi persuna ohra, inkluża r-rappreżentanza legali u ġudizzjarja tal-bank, għandhom jiġu eżerċitati minnha u nvestiti fiha bl-esklużjoni tal-bank;

(c) skond il-paragrafu (d) tas-subartikolu (1) ta' dan l-artikolu, il-bank għandu jissottometti l-kummeré tieghu għall-kontroll minn dik il-persuna; u għandu jipprovdiha b'dawk il-facilitajiet li hija tista' tehtieg biex tkompli tmexxi dak il-kummeré jew biex taqdi l-funzjonijiet mogħtija lilha taht dak il-paragrafu, u s-setgħa, il-funzjonijiet u d-dmirijiet tal-bank, sew jekk eżerċitabbli mill-kumpannija fl-aqgħa ġenerali jew mill-bord tad-diretturi jew minn xi persuna ohra, inkluża r-rappreżentanza legali u ġudizzjarja tal-bank fil-kwistjonijiet kollha għandhom jiġu eżerċitati minnha u vestiti fiha bl-esklużjoni ta' kull persuna ohra.

(3) Meta persuna tiġi nominata skond il-paragrafu (c) jew il-paragrafu (d) tas-subartikolu (1) ta' dan l-artikolu -

taht xi wiehed mill-imsejha paragrafi tkun inkarigata minnu jew li jkun taht il-kontroll tagħha għandhom, kemm-il darba jew sakemm il-Bank Ċentrali ma jordnax xort'ohra jew xi dispozizzjoni espressa ta' ligi ma tispeċifikax xort'ohra, jieqfu milli jkunu hekk eżerċitabbli;

(a) kull funzjoni setgħa jew dmir li jistgħa jiġu eżerċitati minn xi persuna ohra, inkluż il-kuraturi ta' fallut jew xi persuna ohra nominata minn jew taht xi ligi ohra u li għandhom x'jaqsmu ma' xi attiv jew kummeré li l-persuna nominata;

(b) il-persuna nominata skond xi wiehed mill-imsemija paragrafi jkollha, dwar dik il-proprjeta soċjetajiet, ditti jew kummeré iehor kif il-Bank Ċentrali jista' jispeċifika u li fihom il-bank ikollu interess, sew direttament sew indirettament inkluż kull interess li jinholoq minn avvanzi jew self magħmula jew facilitajiet ta' kreditu mogħti jew minn xi responsabbilta' meħuda, dawk is- setgħat, funzjonijiet u dmirijiet, inkluża r-rappreżentanza legali u ġudizzjarja, li l-Bank Ċentrali jista' jordna, u kull setgħa,

funzjoni jew dmir bhal dawk ikunu eżerċitabbli minn dik il-persuna u vestiti fiha bl-esklużjoni ta' kull persuna oħra;

Iżda:

(i) il-Bank Ċentrali għandu jkollu s-setgħa li jordna li kull jew setgħa, funzjoni jew dmir kif intqal qabel għandhom ikunu eżerċitabbli minn xi persuna oħra, u f'kull każ bhal dan, b'seħħ minn dik id-data jew dati li l-Bank Ċentrali jista' jispeċifika u kemm-il darba u sakem il-Bank Ċentrali ma jordnax xort'oħra, is-setgħat, il-funzjonijiet u d-dmirijiet li għalihom japplika l-ordni tal-Bank Ċentrali għandhom ikunu eżerċitabbli minn dik il-persuna l-oħra nominata għal hekk u jkunu vestiti fiha bl-esklużjoni ta' kull persuna oħra;

(ii) meta l-Bank Ċentrali jkun tal-fehma illi bank ma jkun baqagħlu ebda interess kif intqal qabel, huwa għandu jordna li kull setgħa, funzjoni u dmir eżerċitabbli skond dan il-paragrafu jieqfu milli jibqgħu hekk eżerċitabbli, iżda kull direttiva bhal dik ma tolgot ebda haġa li tkun saret jew li tkun naqset milli ssir bis-saħħa ta' jew minhabba xi waħda mill-imsemmija setgħat, funzjonijiet jew dmirijiet;

(c) il-persuna nominata skond xi wiehed mill-imsemmija paragrafi jkollha s-setgħa li tehtieg lil kull persuna oħra biex tipprovdiha b'dawk il-faċilitajiet li jidhrilha mehtiega biex taqdi kull waħda mis-setgħat, funzjonijiet jew dmirijiet skond dan l-artikolu;

(d) id-dispożizzjoni tal-liġi dwar il-falliment u b'mod partikolari t-Taqsima III tal-kodiċi kummerċjali għandha tieqaf milli tapplika u għandha tieqaf milli taħdem dwar kull proprjeta', soċjeta', ditta jew kummerċ iehor speċifikati mill-Bank Ċentrali skond il-paragrafu (b) ta' dan is- subartikolu, kemm-il darba u sakemm jew hlief sa fejn, il-Bank Ċentrali ma jordnax xort'oħra; u f'kull każ bhal dak il-persuna nominata kif intqal qabel għandha, sugġett għal kull direttivi tal-Bank Ċentrali mogħtija fl-interessi tal-kredituri, taġixxi bhallikieku dawk id-dispożizzjonijiet ma kienux jeżistu u daqsliekieku ma kienet saret ebda dikjarazzjoni ta' falliment;

(e) kull persuna li tiġi nominata skond xi waħda mid-dispożizzjonijiet ta' dan l-artikolu għandha tissottometti rapporti ta' kull sitt xhur u kontijiet annwali verifikati minn uditur indipendenti lill-Ministru li jqiegħed dawk ir-rapporti u dawk il-kontijiet fuq il-mejda tal-Kamra tad-Deputati fi żmien hmistax-il gurnata

(4) Meta persuna tiġi nominata skond il-paragrafu tas-subartikolu (1) ta' dan l-artikolu, dik il-persuna tkun l-istralċjarju tal-kumpannija għall-finijiet kollha tal-liġi bl-esklużjoni ta' kull persuna oħra.

(5) Id-dispożizzjonijiet ta' dan l-artikolu għandu jkollhom effett minkejja kull dispożizzjoni oħra ta' kull liġi, u minkejja dak kollu li jinsab f'kull att, kuntratt, kitba jew dokument iehor ikun liema jkun.

(6) Id-dispożizzjonijiet ta' qabel dan l-artikolu li jagħtu setgħat esklussivi ta' rappreżentanza f'persuna nominata mill-Bank Ċentrali bis-saħħa tagħhom għandhom japplikaw ukoll għal kull att jew proċedimenti mibdija jew li saru qabel ma dik ir-rappreżentanza giet vestita kif intqal qabel, u dwar kull għemil jew proċedimenti bħal dawk kull persuna oħra li taġixxi jew li tidher li tkun qed taġixxi, jew li dwarha tittiehed azzjoni, f'dk il-kariga għandha tiegħa parti fi, u għandha tiġi eskluża minn, kull att jew proċedimenti bħal dawk.

(7) Ebda persuna ma għandha b'xi mod tfixxell persuna nominata skond is-subartikolu (1) ta' dan l-artikolu fil-qadi ta' xi wahda mill-funzjonijiet, setgħat jew dmirijiet kondan l-artikolu.

(8) Dwar kull bank li jkun qed jaħdem f'Malta u x'imkien ieħor l-uffiċċji u l-fergħat f'Malta ta' dak il-bank għandhom, jekk il-Bank Ċentrali hekk jordna u safejn hu hekk jordna, jitqiesu li jikkostitwixxu bank separat.

Pubblikazzjoni

30. Kull bank għandu, mhux aktar tard minn erba' xhur mill-egħluq tas-sena finanzjarja tiegħu jew f'xi żmien ieħor li jista' jiġi eċċezzjonalment awtorizzat mill-Awtorita' Kompetenti:

(a) jibgħat lill-Awtorita' Kompetenti u lill-Bank Ċentrali;

(b) jippubblika f' zewġ gazzetti lokali li johorġu kull jum li minnhom wahda tiġi ppubblikata bil-Malti u l-oħra bl-Ingliż; u

(c) jesponi f'pożizzjoni prominenti f'kull wiehed mill-uffiċċji u fergħat f'Malta tiegħu u jhalli hekk esposta matul is-sena kollha

kopja tar-reżokontijiet finanzjarji verifikati tiegħu magħmula skond Direttiva Bankarja.

Udituri.

31. (1) (a) Kull bank għandu jinnomina kull sena uditur jew udituri approvati li d-dmir tagħhom ikun biex jirraporta dwar ir-reżokontijiet finanzjarji tal-bank eżaminati minnhom u dwar ir-reżokonijiet finanzjarji kollha preparati mill-bank;

(b) Għall-finijiet ta' dan l-artikolu uditur approvat għandu jkun persuna li tkun kwalifikata biex tkun uditur skond l-Att ta' 1-1993 dwar Kumpanniji u Soċjetajiet Kummerċjali, u jkollha l-awtorizzazzjoni ta' l-Awtorita' Kompetenti biex taġixxi bħala uditur ta' bank.

(2) Jekk bank jonqos milli jinnomina uditur skond is-subartikolu (1) ta' dan l-artikolu jew, f'xi żmien jonqos milli jimla xi vaġanza fil-kariga ta' uditur, l-Awtorita' Kompetenti jkollha s-setgħa li tinnomina uditur għal dak il-bank u għandha tistabbilixxi l-kumpens li għandu jithallas minn dak il-bank lil dak l-uditur.

(3) Ir-rapport ta' l-udituri għandu jkollu dikjarazzjonijiet dwar il-hwejjeg li ġejjin -

(a) jekk akkwistawx l-informazzjoni u l-ispjegazzjonijiet kollha li skond l-ahjar taghrif u twemmin taghhom kienu mehtiega ghall-iskop tal-verifika taghhom;

(b) jekk fil-fehma taghhom kienux inżammu kotba xierqa tal-kontijiet mill-bank, safejn jidher mill-eżami taghhom ta' dawk il-kotba;

(c) jekk ir-reżokontijiet finanzjarji tal-bank trattati fir-rapport ikunux jaqblu mal-kotba tal-kontijiet;

(d) jekk, fil-fehma taghhom, u skond l-ahjar taghrif taghhom u skond l-ispjegazzjonijiet moghtija lilhom, ir-reżokontijiet finanzjarji msemmija jaghtux l-informazzjoni mehtiega minn kull liġi li tista' minn żmien għal żmien tkun issehh bil-mod hekk mehtieġ u jaghtux veduta vera u ġusta;

(4) Ir-rapport ta' l-udituri għandu jinqara flimkien mar-rapport tad-diretturi tal-bank fil-laqgħa annwali ta' l-azzjonisti.

(5) Kull uditur tal-bank ikollu d-dritt li jitlob minghand kull funzjonarju jew impjegat tal-bank dik l-informazzjoni jew spjegazzjoni li tkun tidhirlu mehtiega fil-qadi tad-dmirijiet tiegħu.

(6) Bank għandu minnufih javża bil-miktub lill-Awtorita' Kompetenti:

(a) malli jinnomina l-udituri tiegħu;

(b) jekk ikun bi hsiebu javża lill-azzjonisti tiegħu biex:

(i) jirrimpjazza l-udituri tiegħu malli jagħlaq iż-żmien tal-kariga taghhom;

(ii) ineħhi l-udituri tiegħu qabel jagħlaq iż-żmien tal-kariga taghhom;

(c) jekk l-udituri jieqfu milli jkunu udituri tal-bank għal xi raġuni li ma tkunx wahda mir-raġunijiet li jinsabu fil-paragrafu (b) ta' dan is-subartikolu.

(7) L-Awtorita' Kompetenti tista' tehtieġ lil bank biex jibdel l-udituri nominati tiegħu meta, fil-fehma ta' l-Awtorita' Kompetenti, dawk l-udituri jitqiesu li ma jkunux adatti għal dik il-kariga.

(8) Uditur għandu javża minnufih lill-Awtorita' Kompetenti jekk:

(a) huwa jirriżenja;

(b) ma jkunx bi hsiebu li jiehu dik il-kariga mill-gdid;

jew

(c) jiddeċiedi li jikkwalifika r-rapport ta' verifika.

(9) Jekk fil-kariga tiegħu bħala uditur ta' bank jew bħala riżultat ta' talba diretta ta' l-Awtorita' Kompetenti skond l-artikolu 20

jew skond l-artikolu 22 ta' dan l-Att, uditur isir jaf b'xi materja li jkollha x'taqsam ma' u li jista' jkollha effett avvers serju fuq id-depożitanti ta' dak il-bank jew xi persuna konnessa li tkun bank, jew jiltaqa' ma' provi ta' xi kontravenzjoni ta' dan l-Att minn dak il-bank jew persuna konnessa li tkun bank huwa ghandu minnufih jgharraf lill-Awtorita' Kompetenti permezz tal-*management* tal-bank jew, jekk iċ-ċirkostanzi ikunu hekk jiġġustifikaw, direttament lill-Awtorita' Kompetenti.

(10) Minkejja kull dispożizzjoni tas-subartikoli ta' qabel dan, l-Awtorita' Kompetenti tista' fil-każ ta' bank mhux inkorporat f'Malta taghti eżenzjoni b'Direttiva Bankarja minn kwalunkwe htieġa ta' dan l-artikolu sakemm dik l-eżenzjoni ma tnaqqasx sostanzjalment l-iskopijiet prinċipali ta' dan l-artikolu.

(11) Sa fejn id-dispożizzjoniet ta' dan l-artikolu huma inkonsistenti mad-dispożizzjonijiet ta' l-Att ta' l-1993 dwar il-Kumpanniji u s-Socjetajiet Kummerċjali, id-dispożizzjonijiet ta' dan l-artikolu ghandhom jipprevalu u d-dispożizzjonijiet ta' l-imsemmi Att ma ghandomx, sa fejn ikunu inkonsistenti, japplikaw ghal bank.

Skwalifika ta'
funzjonarji

32. (1) Ebda persuna -

(a) li tkun giet dikjarata falluta b'sentenza jew li tkun ghamlet akkordju mal-kredituri taghha jew li kienet funzjonarju ta' bank li kellu l-liċenza tiegħu imhassra skond is-subartikolu (2) l-artikolu 9 ta' dan l-Att; jew

(b) li tkun interdotta jew inabilitata jew li kienet involuta f'*money laundering* jew li tkun giet misjuba hatja ta' delitt li jolqot il-fiduċja pubblika, serq, qerq, estorsjoni jew talli xjentement tkun irċeviet oġġetti miksuba b'serq jew b'qerq

ma ghandha taġixxi jew tkompli bhala funzjonarju ta' bank.

Dmirijiet ta'
funzjonarju

33. Kull funzjonarju ta' bank ghandu jiehu l-passi ragonevoli kollha:

(a) biex jassigura li l-bank josserva d-dispożizzjonijiet kollha ta' dan l-Att u tal-liċenza tiegħu jew kull Direttiva Bankarja jew regolament mahruġ taht dan l-Att, u

(b) biex jassigura li ebda informazzjoni skorretta ma tiġi provduta kemm jekk volontarjament jew bhala riżultat ta' negligenza gravi.

Konfidenzjalita'.

34. (1) Ebda haġa f'dan l-Att ma tawtorizza lill-Ministru, lill-Bank Ċentrali jew lill-Awtorita' Kompetenti biex jinvestigaw jew igieghlu li ssir investigazzjoni fl-affarijiet ta' xi klijent individwali ta' bank, hlief:

(a) sabiex jiġi assigurat li xi dispożizzjoni ta' dan l-Att tiġi osservata,

jew

(b) fejn l-*exposure* tal-klijent tkun kbira skond it-termini tad-Direttiva dwar *Exposures* kbar.

(2) Ebda persuna, inkluzi funzjonarji jew agenti ta' l-imghoddi jew tal-prezent ta' bank, ma ghandha tikxef xi informazzjoni dwar l-affarijiet ta' bank jew ta' klijent ta' bank li hija tkun kisbet fil-qadi tad-dmirijiet taghha jew fl-eżerċizzju tal-funzjonijiet taghha skond dan l-Att hlief:

(a) meta tkun awtorizzata biex taghmel hekk skond xi waħda mid-dispożizzjonijiet ta' dan l-Att;

(b) għall-qadi tad-dmirijiet taghha jew għall-eżerċizzju tal-funzjonijiet taghha;

(c) meta tkun mehtieġa legalment biex taghmel hekk minn xi qorti jew skond xi dispożizzjoni ta' xi liġi;

(d) meta fil-kors tad-dmirijiet taghha jkollha għalfejn taħseb li seta' jkun sar reat kriminali u hija għandha tikxef din l-informazzjoni lill-Awtorita' Kompetenti biss.

(3) Meta funzjonarju ta' bank ikollu għalfejn jahseb li tranzazzjoni jew tranzazzjoni proposta tista' tinvolvi *money laundering* huwa għandu jirraporta dik it-tranzazzjoni minnufih lill-Awtorita' Kompetenti. Il-bank għandu jagħti d-dokumentazzjoni kollha, f'konnessjoni ma' dik it-tranzazzjoni li ssuspetta u għandu wkoll josserva dawk ir-regolamenti li l-Awtorita' Kompetenti tista' tistabilixxi f'Direttiva Bankarja mahruġa skond dan l-Att għal dan l-iskop. L-osservanza tad-dispożizzjonijiet ta' dan is-subartikolu ma' għandhiex tikkostitwixxi ksur ta' konfidenzjalita'.

(4) Minkejja kull haġa li tinsab f'dan l-artikolu, l-iskambju ta' informazzjoni bejn bank prinċipali u s-sussidjarji tiegħu ta' servizzi bankarji u ta' *credit cards* u vice-versa dwar klijenti komuni ma għandux jikkostitwixxi ksur ta' konfidenzjalita'. Iżda għall-finijiet ta' dan is-subartikolu, persuna konnessa jew grupp ta' persuni konnessi jew membri ta' dak il-grupp għandhom ukoll jitqiesu bħala klijenti komuni.

35. (1) Kull persuna li -

Reati u
pieni

(a) taghmel xi dikjarazzjoni, wegħda jew tbassira li hija tkun taf li tkun qarrieqa, falza jew li tkun tinganna, jew diżonestament taħbi xi fatti sostanzjali, jew

(b) bi traskuraġni taghmel (diżonestament jew xort'ohra) dikjarazzjoni, wegħda jew tbassira li tkun qarrieqa, falza jew tkun tinganna,

tkun haġa ta' reat jekk hija taghmel id-dikjarazzjoni, wegħda jew tbassira jew taħbi l-fatti sabiex thajjar, jew tkun indifferenti jekk tistax thajjar, persuna ohra (sew jekk tkun jew ma tkunx il-persuna li lilha tkun saret id-dikjarazzjoni, wegħda jew tbassira jew li minnha jkunu nħbew il-fatti) -

(i) biex taghmel, jew iżzomm milli taghmel, depożitu magħha jew ma' xi persuna ohra; jew

(ii) biex tidhol, jew izzomm milli tidhol, fxi ftehim għall-għemil ta' dak id-depożitu.

(2) Is-subartikolu (1) ta' dan l-artikolu ma' għandux japplika hlief jekk -

(a) id-dikjarazzjoni, wegħda jew tbassira f'Malta jew minn Malta, jew jekk il-fatt jinhbew f'Malta jew minn Malta jew jekk isiru arrangamenti f'Malta jew minn Malta għal biex issir dik id-dikjarazzjoni, wegħda jew tbassira jew għal biex jinhbew il-fatti;

(b) il-persuna li fuqha dak it-thajjir ikun intenzjonat li jkollu jew jista' jkollu effett tkun f'Malta; jew

(c) id-depożitu jsir jew ikun ser jsir f'Malta jew jekk il-ftehim isir jew ikun se jsir f'Malta.

(3) Kull persuna li:

(a) tikser jew tonqos li thares xi wahda mid-dispożizzjonijiet ta' dan l-Att;

(b) tikser jew tonqos li thares id-dispożizzjonijiet ta' xi Direttiva Bankarja jew regolament;

(c) tonqos li tosserva xi ordni jew htiega legittima ta' l-Awtorita' Kompetenti jew tal-Bank Ċentrali;

(d) tonqos li tosserva xi ordni jew htiega legittima tat-Tribunal Bankarju;

(e) tonqos li tosserva xi ordni jew htiega legittima ta' xi persuna oħra magħmula skond dan l-Att;

(f) mingħajr skuża raġonevoli taltera, tissopprimi, tahbi, tiddistruggi jew tirrifjuta li tipproduci xi dokument li hija legalment tkun mehtiega li tipproduci lil xi persuna skond dan l-Att

tkun hatja ta' reat.

(4) Kull persuna li xjentement tkun parti fl-għemil jew tipprokura jew tghin jew thajjar l-għemil ta' xi reat taht is-subartikolu (1) u (3) ta' dan l-artikolu tkun hatja ta' reat u tkun soġġetta għall-istess pieni bħall-hati prinċipali.

(5) Korp ġuridiku jkun hati ta' reat taht dan l-artikolu jekk ir-reat isir bl-atti jew ommissjonijiet ta' xi persuna li tkun funzjonarju ta' dak il-korp, tkun impjegata ta' dak il-korp li tkun qed taġixxi fil-kors ta' l-impieg tagħha, tkun kontrollur ta' dak il-korp jew tkun persuna xort'oħra awtorizzata biex taġixxi għal dak il-korp relattivament għal dawk l-atti jew ommissjonijiet.

(6) L-Awtorita' Kompetenti għandha toħroġ Direttivi Bankarji li jippreskrivu l-pieni għal reati taht dan l-artikolu u dawk id-Direttivi Bankarji jistghu:

(a) jippreskrivu l-pieni li huma ezegwibbli bi prosekuzzjoni fil-qrati ta' Malta u pieni amministrattivi li jġu imposti mill-Awtorita' Kompetenti minghajr rikors għal kawza fil-qorti;

(b) jippreskrivu pieni differenti għal kontravvenzjonijiet ta' dispożizzjonijiet differenti ta' dan l-Att;

(c) jippreskrivu pieni kkalkulati skond ma jkun ilu sejjir ir-reat;

(d) jipprovdu għal appell lit-Tribunal Bankarju minn xi deċiżjoni ta' l-Awtorita' Kompetenti li timponi piena amministrattiva.

(7) Il-pieni preskritti b'Direttiva Bankarja mahruġa skond is-subartikolu (6) ta' dan l-artikolu

(a) fil-każ ta' prigunerija, ma għandhomx jipprovdu għal sentenza ta' prigunerija ta' iżjed minn sentejn;

(b) fil-każ ta' multa imposta wara prosekuzzjoni fil-qrati ta' Malta, ma għandhomx jipprovdu għal multa ta' inqas minn 100 lira Maltija jew iżjed minn 50,000 lira Maltija;

(c) fil-każ ta' piena amministrattiva, ma għandhomx jipprovdu għal piena finanzjarja ta' iżjed minn 50,000 lira Maltija.

(8) Il-Ministru jista' b'ordni ppubblikat fil-Gazzetta jżid l-ammont massimu tal-multi jew pieni finanzjarji li għalihom tista' ttipprovdi Direttiva Bankarja mahruġa skond is-subartikolu (6) ta' dan l-artikolu.

36. Id-dispożizzjonijiet ta' dan l-Att ma għandhomx japplikaw għall-Bank Ċentrali, hliet fejn u sa fejn il-Bank Ċentrali huwa msemmi b'ismu.

Applikazzjoni ta' l-Att għall-Bank Ċentrali

37. L-Att dwar il-Kummerċ Bankarju, Kap 215, huwa b'dan imhassar.

Thassir ta' l-Att dwar il-Kummerċ Bankarju Kap 215

Għanijiet u Raġunijiet

L-għan ta' dan l-abbozz huwa li jimmodernizza l-liġi li tirregola l-kummerċ bankarju, itejjeb il-prinċipji u l-prattika mħaddma fis-supervizjoni tiegħu, ihassar l-Att dwar il-Kummerċ Bankarju, Kap 215, u biex jipprovdi għal hwejjeg li huma anċillari jew konsegwenzjali għal dan jew konness miegħu.

BANKING ACT 1994**ARRANGEMENT OF SECTIONS****Section**

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**A Bill
entitled**

AN ACT to regulate the business of banking

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. This Act may be cited as the Banking Act, 1994, and shall come into force on such date as the Minister may, by notice in the Gazette, appoint. Short title and commencement

2. (1) In this Act, unless the context otherwise requires - Interpretation

"bank" or "credit institution" means any person carrying on the business of banking;

"Banking Directive" means a Directive issued by a Competent Authority;

"body corporate" means a body of persons having a legal personality distinct from that of its members;

"business of banking" means

(a) the business of a person who as set out in sub-section (2) of this section accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money; or

(b) any business defined by the Minister as constituting the business of banking by an order published in the Gazette;

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act, 1967;

"company" means a limited liability company or a commercial partnership constituted in Malta in accordance with the Companies and Commercial Partnerships Act, 1993 or any law which may from time to time be in force, or a company registered or incorporated outside Malta under the laws of any country provided that such company, if not constituted in Malta, has complied with the provisions of any law which may from time to time be in force in Malta relating thereto;

"Competent Authority" means the body referred to in subsection (2) of section 3 of this Act;

"connected persons" means persons defined as such in a Large Exposures Directive;

"control" is the power to determine the financial and operating policies of a body corporate;

"controller" is a person who, alone or together with others, exercises control in relation to a body corporate;

"Court" means the Commercial Court;

"credit facility" means the lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances, bills of exchange endorsed "pour aval" and financial leasing;

"deposit" means a sum of money paid-in on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

"director" includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director and in respect of a company registered or incorporated outside Malta includes a member of a local board or agent or representative of that company;

"equity share" means a nominal share in a company when the shareholding entitles the shareholder to a right to vote, to profits available to shareholders for distribution and to assets available for distribution on a winding up of the company, and "equity shareholding" shall be construed accordingly;

"Large Exposures Directive" means a Directive as may be issued by the Competent Authority to regulate large exposures;

"licence", in relation to the business of banking, means a licence granted under this Act;

"manager" means a person who is placed in charge of the business or part of the business of a company or otherwise who has a substantial supervisory role with the power to make policy and executive decisions on behalf of the company;

"Minister" means the Minister responsible for finance;

"money laundering" has the same meaning ascribed to it by the Prevention of Money Laundering Act, 1993;

"officer", in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"Own Funds Directive" means such Directive as may be issued by a Competent Authority to regulate "own funds";

"person" includes a person or body of persons whether a body corporate or not;

"qualifying shareholding" means a direct or indirect equity shareholding of at least 10 per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such equity shares are not identical, the lowest percentage figure shall be deemed to be the percentage of equity shares held, and "qualifying shareholder" shall be construed accordingly;

"representative office" means, in relation to a company incorporated outside Malta, premises in Malta from which the business of banking of the company is promoted or assisted in any way and in relation to a company incorporated in Malta, premises outside Malta from which the business of banking is promoted or assisted in any way;

"significant shareholding" means a direct or indirect equity shareholding of at least 5 per cent but not more than 10 per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution of a winding up in respect of such equity

shares are not identical, the lowest percentage figure shall be deemed to be the percentage of equity shares held, and "significant shareholder" shall be construed accordingly;

"subsidiary" has the same meaning as is assigned to it by the Companies and Commercial Partnerships Act, 1993;

(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of this Act.

(3) The Minister may by an order published in the Gazette vary the percentage holdings which constitute significant shareholdings and qualifying shareholdings for the purposes of this Act.

(4) Any reference in this Act to a share or shareholding of a company shall, when applied to a commercial partnership, include a reference to the interest of a partner in such partnership.

Powers and duties of the Minister

3. (1) It shall be the duty of the Minister to exercise the powers conferred upon him by this Act to ensure compliance by banks with the provisions of this Act and the conditions of bank licences.

(2) The Minister shall by Order in the Gazette nominate a body to be the Competent Authority for the purposes of this Act to carry out the functions of the Competent Authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act. Such body shall be appointed for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such appointment by Order in the Gazette.

(3) The Minister may make regulations as may be required for carrying into effect any of the provisions of this Act and may amend or revoke such regulations.

(4) (a) The Minister may, after consultation with the Competent Authority and the Central Bank, if he deems it expedient in the public interest so to do, by Order published in the Gazette declare any day or days to be a bank holiday or holidays.

(b) On any day declared to be a bank holiday under this section, whether such day is also a public holiday or not, no bank shall do any business with the public except to the extent allowed by the Order.

4. (1) It shall be the duty of the Competent Authority to carry out the functions prescribed by this Act and to ensure that banks carrying on business in Malta comply with this Act, Regulations and Directives issued under this Act and with the conditions of their licences. In pursuance of that duty the Competent Authority shall at all times afford such co-operation to the Central Bank as the Central Bank may require in the discharge of its duties.

Powers and duties of the
Competent Authority

(2) The Competent Authority may make Banking Directives as may be required for carrying into effect any of the provisions of this Act. The Competent Authority may amend or revoke such Banking Directives.

(3) Banking Directives and any amendment or revocation thereof shall be officially communicated to banks and shall be available at the premises of the Competent Authority for the perusal of the public at all times during business hours.

(4) Banking Directives made under this Act may provide for the imposition of a fine or administrative penalty in respect of any contravention of or failure to comply with the provisions of this Act or any Banking Directive or Regulation.

5. (1) No business of banking shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the Competent Authority in accordance with the policy established by the Minister from time to time.

Licences for banking
activities

(2) In the event of reasonable doubt as to whether the business of banking is or is not being transacted in or from Malta by any person, the matter shall be determined by the Competent Authority.

(3) The granting of a licence shall be subject to an annual fee as the Competent Authority may determine from time to time.

Application for a licence

6. (1) Any company desirous of commencing the business of banking in Malta shall, before commencing any such business, apply in writing to the Competent Authority for a licence under this Act.

(2) All applications for a licence shall be in such form and accompanied by such information as shall be prescribed from time to time by Banking Directive and an application may only be withdrawn by written notice to the Competent Authority at a time before it has been granted or refused.

(3) The Competent Authority shall have the power to require any person to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

Issuing of a licence

7. (1) No company shall be granted a licence unless:

(a) its own funds, whether in Maltese liri or in another currency acceptable to the Competent Authority, amount to the value of two million Maltese liri or such other amount as may be determined by the Minister;

(b) there are at least two individuals who will effectively direct the business of the bank in Malta;

(c) all qualifying shareholders, controllers and all persons who will effectively direct the business of the bank are suitable persons to ensure its prudent management.

(2) The provisions of paragraph (a) of sub-section (1) of this section shall not apply to banks which were in possession of a banking licence on the commencement of this Act and whose own funds do not attain the levels prescribed:

Provided that

(a) the own funds of that bank may not subsequently fall below the level held at that date unless such reduction is temporary and approved by the Competent Authority;

(b) if control of that bank is acquired by a person other than the person who controlled it on the commencement of this Act, its own funds must attain the level prescribed in paragraph (a) of subsection (1) of this section within such period of the takeover as the Competent Authority may determine.

(3) The Competent Authority shall determine each application for a licence within six months of receipt of the application or, if the application does not comply with subsection (2) of section 6 of this Act or additional information is required, within six months of compliance with the said subsection or the furnishing of the information as the case may be, which ever be the later. In any event an application shall be determined within twelve months of its receipt.

(4) The Competent Authority may determine an application by doing any of the following:

- (a) granting a licence without conditions;
- (b) granting a licence subject to such conditions as it may deem appropriate;
- (c) refusing to grant a licence.

8. (1) A company incorporated outside Malta shall not establish a representative office in Malta unless it has given not less than two months' notice to the Competent Authority that it proposes to establish such an office. Such notice shall:

Representative offices of non-Maltese banks

- (a) specify the name it is proposed to use in relation to the activities of the representative office and the address of such office;
- (b) be accompanied by a certified copy of the authorisation of the company to conduct the business of banking in a country other than Malta.

(2) A company having a representative office in Malta shall likewise notify the Competent Authority:

- (a) at least two months in advance of any proposed change in name of the representative office;
- (b) of any change in its licence to conduct the business of banking in a country other than Malta, no more than two months after such change.

(3) The Competent Authority may, at any time, serve on a representative office in Malta a notice objecting to the name or the proposed name of such office.

(4) The Competent Authority shall not give a notice pursuant to subsection (3) of this section unless it considers that the name or proposed name is misleading to the public or otherwise undesirable, and upon receipt of such notice, the representative office shall not use the name to which the Competent Authority has objected in relation to activities conducted in Malta.

(5) A representative office to which a notice is given under subsection (3) of this section may, within a period of three weeks beginning with the day it receives the notice, apply to the Banking Tribunal to set aside the objection, and upon such application, the Banking Tribunal may set aside the objection or confirm it (but without prejudice to its operation before that time).

(6) The Competent Authority may, by notice in writing, require any company having a representative office in Malta or which has given notice pursuant to subsection (1) of this section, to provide the Competent Authority with such information or documents as the Competent Authority may reasonably require, and the said company shall comply with such notice in the period as is reasonably specified by the notice.

(7) A representative office in Malta shall supply the Competent Authority with a copy of any document which it is required to provide to the Registrar of Commercial Partnerships no later than the time by which such document must be provided to the said Registrar.

(8) The Minister may, after consultation with the Competent Authority, provide by order that sections 19, 20 and 23 of this Act shall apply to representative offices in Malta as they apply to banks.

(9) The Minister may, after consultation with the Competent Authority, by regulations impose on companies which have established or which propose to establish representative offices in Malta, such requirements as the Minister considers appropriate in connection with those offices and the activities conducted from them.

(10) The Competent Authority may, within the two months referred to in subsection (1), order a company referred to in the said subsection (1) not to establish a representative office in Malta and at any time thereafter order the closure of any representative office so established.

Restriction and revocation
of a licence

9. (1) A licence shall automatically cease to have any effect if the holder:

(a) renounces the licence; or

(b) does not commence business pursuant to the licence within twelve months of its issue, or within such other period of time as may be specified in the licence; or

(c) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or

(d) has ceased to operate as a result of a merger with another bank; or

(e) is a branch of a bank incorporated outside Malta and the competent authorities in the country of incorporation withdraw the authorisation to the bank.

(2) The Competent Authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances:

(a) if any document or information accompanying an application for a licence or any information given in connection therewith is false in any material particular or if the holder of a licence conceals from, or fails to notify to the Competent Authority any document or information or change therein which it was its duty to reveal or notify under this Act; or

(b) if the holder ceases to carry on the business of banking in Malta for more than 6 months; or

(c) if the holder fails to comply with any of the provisions of this Act or with the conditions under which the licence is granted; or

(d) if the holder no longer possesses sufficient own funds; or

(e) if the holder is likely to become unable to meet its obligations or can no longer be relied upon to fulfil its obligations towards depositors and creditors; or

(f) if the holder has insufficient assets to cover its liabilities; or

(g) if the holder has suspended payment or is about to suspend payment; or

(h) if the Competent Authority considers that, by reason of the manner in which the bank is conducting or proposes to conduct its affairs, or for any other reason, the interests of the depositors of the bank are threatened.

(3) Restrictions imposed by the Competent Authority pursuant to subsection (2) of this section shall be such restrictions as the Competent Authority shall consider appropriate for the proper compliance by the bank with the provisions of this Act and the conditions, if any, of its licence and for the protection of depositors and may include (without prejudice to the generality hereof):

(a) the removal of any officer of the bank or the replacement of any officer by such person as the Competent Authority may designate;

(b) the requirement for any person who directly or indirectly possesses a holding in the bank to divest himself of all or part of that holding;

(c) the requirement for the bank to take or refrain from any action;

(d) the requirement that the bank be prohibited from undertaking any transaction or transactions or any class of business or be permitted to undertake any transaction or transactions or any class of business only upon such terms as the Competent Authority may prescribe.

(4) The Competent Authority shall have the power to vary or remove any restrictions imposed under this section.

(5) Where the Competent Authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention on the bank; such notice shall specify the grounds upon which the Competent Authority intends to take action and shall specify a period in which the bank shall be entitled to make representations to the Competent Authority as to why such action should not be taken. Unless the Competent Authority decides that the matter is urgent, it shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(6) A licence granted to a branch of a bank incorporated outside Malta may only be revoked after consultation with the competent authorities of the country of incorporation, unless the Competent Authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(7) Upon the restriction or revocation of a licence of a bank incorporated in Malta, the Competent Authority shall inform the competent authorities of the country of any foreign states in which the bank or its subsidiaries are carrying on the business of banking.

10. (1) The Minister shall constitute a tribunal, to be known as the Banking Tribunal, shall appoint and remove its members and shall make appropriate arrangements for its funding. Appeals

(2) The members of the Banking Tribunal shall consist of a Chairman, who shall be a lawyer of not less than ten years qualification, and two members who shall be experienced in banking or finance.

(3) Any person who is aggrieved by a decision of the Competent Authority

(a) to impose any condition on the grant of a licence;

(b) to impose or vary any restriction;

(c) to revoke a licence;

(d) to issue any notice or make any order under section 12 of this Act;

(e) to make any order under section 13 of this Act; may appeal against the decision to the Banking Tribunal.

(4) Where an appeal is against a decision revoking a licence, the revocation of the licence shall be suspended until the determination or withdrawal of the appeal.

(5) Where an appeal is against a decision imposing or varying a restriction, the Banking Tribunal shall have the power to suspend the operation of the decision until the determination or withdrawal of the appeal.

(6) The question for the determination of the Banking Tribunal shall be whether, for the reasons adduced by the appellant, the decision of the Competent Authority was unlawful or was not justified by the evidence on which it was based.

(7) Upon the hearing of an appeal, the Banking Tribunal shall have the power

(a) to confirm, reverse or vary the decision of the Competent Authority and to direct the Competent Authority to take any action within its powers under this Act to implement the decision of the Banking Tribunal;

(b) to require the attendance of any witness and to require the production of any document or other information;

(c) to order the payment of costs and expenses by any party to the appeal.

(8) The Minister shall make regulations governing the procedure for bringing and conducting appeals.

(9) There shall be an appeal on a question of law only from a decision of the Banking Tribunal to the Court. Upon the hearing of such an appeal, the Court shall have all the powers of the Banking Tribunal to make orders. No appeal shall lie from a decision of the Court without leave of the Court.

Opening of branches

11. (1) A bank shall inform the Competent Authority in writing before opening a new branch, agency or office in Malta.

(2) Unless with the written consent of the Competent Authority, no bank incorporated in Malta may open a new branch, agency or office or set up or acquire any subsidiary in any place outside Malta.

Use of the word "bank"

12. (1) Subject to subsections (2) and (3) of this section, save with the written permission of the Competent Authority, no person other than a bank with a current licence may use the word "bank" or any of its derivatives or other words as may indicate or purport to indicate the carrying on of the business of banking in any language in the description or title under which such person is carrying on business, or make any such use on any letter paper, in any notice or advertisement, or in any other similar manner.

(2) A bank incorporated outside Malta may use the name used in its country of incorporation save that, where there is a risk that the use of such a name may be misleading, such bank shall add such explanatory particulars to its name as the Competent Authority shall direct.

(3) Every bank shall use as part of its description or title the word "bank" or one or more of its derivatives.

(4) The Competent Authority shall have the power to exempt any person from the provisions of this section.

13. (1) Notwithstanding anything contained in any other law, the consent of the Competent Authority shall be required before any person may lawfully: Participation in a bank

(a) acquire a significant holding or a qualifying holding in a bank;

(b) increase an existing holding which is not a significant holding or a qualifying holding so as to cause it to become a significant holding or a qualifying holding in a bank;

(c) increase a significant holding in a bank so as to cause it to become a qualifying holding;

(d) increase a qualifying holding so as to cause it to equal or exceed, twenty per centum or thirty-three per centum or fifty per centum or to cause the bank to become that person's subsidiary;

(e) to reduce a qualifying holding so as to cause it to fall below fifty per centum or thirty-three per centum or twenty per centum or to cause the bank to cease to be that person's subsidiary;

(f) to reduce a qualifying holding or a significant holding so as to cause it to cease to be a qualifying holding or significant holding;

(g) to divest himself of a qualifying holding or a significant shareholding.

(2) The Minister may by an order published in the Gazette vary or remove any of the percentages mentioned in paragraphs (d) and (e) of subsection (1) of this section.

(3) Subsection (1) of this section shall apply whether or not any of the relevant shares are shares listed on the Malta Stock Exchange.

(4) It shall be the duty of a bank and of the directors thereof to notify the Competent Authority forthwith upon becoming aware that any person intends to take any of the actions set out in subsection (1) of this section.

(5) Notwithstanding anything contained in any other law, the consent of the Competent Authority shall be required before any bank may lawfully:

(a) sell or dispose of its business or any significant part thereof;

(b) merge with any other company, whether a bank or otherwise;

(c) undergo any re-construction;

(d) increase its nominal or issued share capital or effect any material change in voting rights.

(6) It shall be the duty of all directors and qualifying shareholders of a bank to notify the Competent Authority forthwith upon becoming aware that the bank intends to take any of the actions set out in subsection (5) of this section.

(7) Any person intending to take any of the actions set out in subsection (1) of this section and any bank intending to take any of the actions set out in subsection (5) of this section shall notify the Competent Authority in writing and the Competent Authority may issue a Banking Directive regulating the form in which such notification shall take place and the information required to be furnished to the Competent Authority with such notification.

(8) Within two months of receipt of such notification or receipt of such information as the Competent Authority may lawfully require, whichever be the later, the Competent Authority shall issue a notice:

(a) granting unconditional consent to the taking of the action; or

(b) granting consent to the taking of the action subject to such conditions as the Competent Authority may deem appropriate; or

(c) refusing consent to the taking of the action.

(9) If any person or any bank takes or intends to take any action set out in subsections (1) and (5) of this section without obtaining the consent of the Competent Authority, then, without prejudice to any other penalty which may be imposed under this Act, the Competent Authority shall have the power to make an order:

- (a) restraining the person or bank from taking the action;
- (b) declaring the action to be void and of no effect;
- (c) requiring the person or bank to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining the person or bank from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment;
- (e) restraining the person or bank from taking any similar action or any other action within the categories set out in subsections (1) and (5) of this section.

14. (1) Any person who is a controller of a bank shall be a suitable person to exercise such control. Control of a bank

(2) A bank shall forthwith notify to the Competent Authority

- (a) full particulars of all persons who are controllers of the bank but are neither significant shareholders nor qualifying shareholders of the bank;
- (b) full particulars of any person who is proposed to become a controller of the bank without being or becoming a significant shareholder or qualifying shareholder;
- (c) full particulars of any person who is proposed to cease to be a controller of the bank.

(3) A bank shall furnish the Competent Authority with any further information it may require concerning any existing or proposed controller.

(4) If the Competent Authority is of the opinion that any person who is or is proposed to become a controller of a bank without being or becoming a significant shareholder or a qualifying shareholder is not a suitable person to be a controller, the Competent Authority may make an order requiring such a person to cease to be a controller or restraining such a person from becoming a controller.

15. (1) A bank shall not:

Prohibited transactions

(a) grant any credit facility against the security of its own shares or against any other securities issued by the bank itself or against any shares or any other securities of another body corporate in which the bank has control;

(b) grant or permit to be outstanding, unsecured credit facilities which in the aggregate exceed the sum of five thousand Maltese liri -

(i) to any one of its directors or their spouses whether jointly or severally as well as with third parties;

(ii) to any person in whom or in which the bank or any one or more of its directors is interested as a director, partner, manager, agent or member (other than as a shareholder in a company listed on the Malta Stock Exchange), or to any person of whom or of which any one or more of the bank's directors is a guarantor;

(iii) to any body of persons in which the bank or any one or more of its directors jointly or severally maintains control, not being itself a bank or the parent undertaking of the bank, a subsidiary of this parent undertaking or a subsidiary of the bank;

(c) grant to or permit to be outstanding in respect of any officer, other than a director, or any employee, unsecured credit facilities which in the aggregate exceed twelve months' emolument of such officer or employee;

(d) acquire or hold any part of the share capital of, or otherwise have a direct or indirect interest in any one bank or other company or group of connected persons, the original cost value of which exceeds fifteen per centum of the bank's own funds and such holdings shall not exceed in the aggregate one hundred per centum of its own funds:

Provided that:

(i) a bank's subsidiaries considered as a whole shall not constitute a group of connected persons for the purpose of this section;

(ii) where the share capital acquired is that of a subsidiary bank the limit of fifteen per centum laid down in this paragraph shall be twenty-five per centum of the bank's own funds;

(iii) shareholding in companies other than those falling under (ii) above shall not exceed in the aggregate sixty per centum of the bank's own funds;

(iv) where the said percentages are exceeded as a result of the acquisition of shares in satisfaction of debts due to the bank, it shall have a maximum of twelve months or such longer period as may be determined by the Competent Authority within which to comply with the provisions of this paragraph;

(v) the Competent Authority may allow a bank to exceed temporarily the limits laid down in this paragraph whenever, in the opinion of the Competent Authority, such excess is the result of an unavoidable reduction of the own funds of the bank;

(vi) where the bank is a parent or subsidiary undertaking compliance with the limits laid down in this paragraph shall be monitored on a consolidated basis;

(e) without the consent of the Competent Authority acquire or hold shares in another company which is not a bank, which exceeds five per centum of that company's issued share capital;

(f) purchase, acquire or otherwise hold any immovable property or any right thereon except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff:

Provided that this paragraph shall not prevent a bank -

(i) from letting part of any building which is used for the purpose of conducting its business; or

(ii) from securing a debt on any immovable property and, in the event of default in payment of such debt, from acquiring or holding such property for realisation within twelve months, or any longer period as may be determined by the Competent Authority;

(iii) in other instances from acquiring immovable property with the prior approval of the Competent Authority the

original cost of which property shall not in the aggregate exceed five per centum of the bank's own funds;

(2) In paragraphs (b) and (c) of subsection (1) of this section the expression "unsecured credit facilities" shall mean credit facilities made without security or, in respect of any credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Competent Authority is satisfied that there is no established market value, on the basis of a valuation approved by the Competent Authority itself.

Large exposures

16. The Competent Authority shall issue a Banking Directive as it shall consider appropriate for the regulation of large exposures.

Own funds and reserves

17. (1) A bank shall:

(a) maintain a ratio of own funds to risk-weighted assets and off balance sheet items defined in and calculated according to the provisions of a Banking Directive;

(b) notify the ratio to the Competent Authority at such times and in such manner as shall be prescribed by a Banking Directive;

(c) notify the Competent Authority forthwith upon the ratio falling below the level required by paragraph (a) of this subsection whereupon the Competent Authority shall require the bank to take necessary measures to restore the ratio to the required level within such period as the Competent Authority may determine.

(2) Reserve funds created under Section 9 of the Banking Act, 1970 are abolished. Such funds are to be allocated to such other internal reserves forming part of own funds as each bank may deem appropriate.

(3) Every bank shall maintain adequate provision for bad and doubtful debts.

Liquidity

18. The Competent Authority shall issue a Banking Directive specifying what shall constitute the specified assets and the deposit liabilities of a bank and laying down the minimum holding of specified assets as a proportion of deposit liabilities which a bank must hold.

Information to be submitted to the Competent Authority and the Central Bank

19. (1) A bank shall submit to the Competent Authority:

(a) periodic statements showing its assets and liabilities and profit and loss position on an individual and, where appropriate, on a consolidated basis including analysis thereof;

(b) such information as is required by the Competent Authority for statistical purposes;

(c) such information as the Competent Authority may require to satisfy itself that the bank is complying with the provisions of this Act;

(d) such separate statements relating to its offices and branches outside Malta in such form and at such times as the Competent Authority may require in the discharge of its duties.

(2) A bank shall submit to the Central Bank such information as the Central Bank may require in the discharge of its duties.

(3) The provisions of this section shall also apply to all branches, agencies or offices in Malta of a bank which is not incorporated in Malta.

(4) All statements required under subsections (1) and (2) of this section shall be submitted in such form and at such periods as shall be prescribed by Banking Directive.

(5) All statements and other information furnished by any bank under subsections (1) and (2) of this section shall be regarded as secret and confidential except as between that bank and the Competent Authority or the Central Bank as the case may be save that

(a) the Competent Authority shall furnish such information under this section as may be required by the Minister or the Central Bank and shall inform the Minister and the Central Bank if at any time in its opinion there is concern regarding the state of affairs of that bank;

(b) the Central Bank shall prepare and publish consolidated statements aggregating the information furnished under this section.

20. (1) Every bank shall submit to the Competent Authority or the Central Bank any information which either of those bodies may reasonably require in the exercise of its duties under this Act and the Central Bank of Malta Act 1967, and the Competent Authority or the Central Bank may enquire into and ask for clarification of any information so submitted. Supervision of banks

(2) Any request for information or for clarification thereof under this section shall be by notice in writing and shall require the recipient to provide the information at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice.

(3) Further, the Competent Authority may -

(a) by notice in writing served on a bank, require the bank to provide a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Competent Authority has required or could require the bank to provide information under subsection (1) of this section;

(b) by notice in writing served on a bank, require it to produce within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified in the notice;

(c) authorise an officer, servant or agent of the Competent Authority, on producing evidence of his authority, to require any bank to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the Competent Authority may reasonably require for the performance of its functions under this Act.

(4) The accountant or other person appointed by a bank to make any report required under paragraph (a) of subsection (3) of this section shall be a person nominated or approved by the Competent Authority; and the Competent Authority may require the report to be in such form as is specified in the notice.

(5) Where, by virtue of subsection (3) of this section, any person has power to require the production of any documents from a bank, that person shall have the like power to require the production of those documents from any person who appears to be in possession of them.

(6) The power under this section to require a bank or any other person to produce any documents includes power -

(a) if the documents are produced, to take copies of them or extracts from them and to require that bank or person, or any other person who is a present or past officer of, or is or was at any time employed by or acting as an employee of, the bank in question, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(7) If it appears to the Competent Authority to be desirable in the interests of the depositors or potential depositors of a bank to do so, it may also exercise the powers conferred by subsections (1) and (3) of this section in relation to any person who is or has at any relevant time been-

- (a) a holding company, subsidiary or related company of that bank;
- (b) a subsidiary of a holding company of that bank;
- (c) a holding company of a subsidiary of that bank; or
- (d) a controller of that bank.

(8) The Competent Authority may by notice in writing served on any person who is or is to be an officer of a bank require him to furnish, within such time as may be specified in the notice, such information or documents as the Competent Authority may reasonably require for determining whether he is a suitable person to hold the particular position which he holds or is to hold.

(9) The Competent Authority may exercise the powers conferred by subsections (1) and (3) of this section in relation to any person who has a significant shareholding or qualifying shareholding in a bank if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that bank.

(10) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(11) The Competent Authority shall have the power to recover from a bank reported on under subsection (3) of this section the costs and expenses incurred in relation to such report.

21. (1) Any officer, servant or agent of the Competent Authority may, on producing if required evidence of his authority -

Right of entry to obtain information and documents

- (a) enter any premises occupied by a person on whom a notice has been served under section 19 above or section 21 below for the purpose of obtaining there the information or documents required by that notice;

(b) enter any premises occupied by any person on whom a notice could be served under section 19 above or section 21 below for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the Competent Authority shall not authorise any person to act under this paragraph unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) No person shall intentionally obstruct a person exercising rights conferred by this section.

Investigations

22. (1) If it appears to the Competent Authority desirable to do so in the interests of the depositors or potential depositors of a bank, it may appoint one or more competent persons to investigate and report on -

(a) the nature, conduct or state of the bank's business or any particular aspect of it; or

(b) the ownership or control of the bank;

and the Competent Authority shall give written notice of any such appointment to the bank concerned.

(2) If a person appointed under subsection (1) of this section thinks it necessary for the purposes of his investigation, he may also investigate the business of any person who is or has at any relevant time been-

(a) a holding company, subsidiary or related company of the bank under investigation;

(b) a subsidiary or related company of a holding company of that bank;

(c) a holding company of a subsidiary of that bank; or

(d) a controller of that bank.

(3) The Competent Authority may exercise the powers conferred by subsection (1) of this section in relation to any person who has a significant shareholding or qualifying shareholding in a bank if it considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that bank.

(4) Where a person appointed under subsection (1) of this section decides to investigate the business of any person by virtue of subsection (2) or subsection (3) of this section he shall inform that person by notice in writing.

(5) It shall be the duty of every person who is or was an officer, employee, agent, banker, auditor or legal adviser of a body which is under investigation under this Act, or any person appointed to make a report in respect of that body under this Act and anyone who has a significant shareholding in, qualifying shareholding in, or is a controller of that body -

(a) to produce to the persons appointed under subsection (1) of this section, within such time and at such place as they may require, all documents relating to the body concerned which are in his custody or power;

(b) to attend before the persons so appointed at such time and place as they may require; and

(c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) No person shall -

(a) without reasonable excuse fail to produce any documents which it is his duty to produce under subsection (5) of this section;

(b) without reasonable excuse fail to attend before the persons appointed under subsection (1) of this section when required to do so; or

(c) without reasonable excuse fail to answer any question which is put to him by persons so appointed with respect to any bank which is under investigation or a body which is being investigated by virtue of subsection (2) or (3) of this section.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(9) The Competent Authority shall have the power to recover from a bank reported on under subsection (1) of this section the costs and expenses incurred in relation to such report.

(10) For the purposes of this section, reference to a bank shall include reference to persons appearing to be carrying out the business of banking.

Suspected contraventions

23. (1) Where the Competent Authority has reasonable grounds for suspecting that a person is guilty of committing any offence under this Act, it may by notice in writing require that person or any other person -

(a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as it may reasonably require for the purpose of investigating the suspected contravention;

(b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description as may be specified which it may reasonably require for that purpose;

(c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such a contravention has occurred.

(2) the Competent Authority or their duly authorised officer, servant or agent may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Competent Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) of this section for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2) of this section.

(4) No person shall without reasonable excuse fail to comply with a requirement imposed on him under this section or intentionally obstruct a person in the exercise of the rights conferred by subsection (3) of this section.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

24. (1) No person who knows or suspects that an investigation is being or is likely to be carried out-

Obstruction

- (a) under section 19 or section 21 of this Act; or
- (b) into the suspected commission of any offence under this

Act;

may falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

25. (1) On the basis of international agreements, or upon reciprocity agreements, the Competent Authority may share its supervisory duties with other foreign competent authorities in the case of a bank or branch operating in Malta which is fully or partly owned by a foreign person or in the case of a bank fully or partly owned by Maltese residents which is operating abroad.

Co-operation and sharing of information

(2) A person appointed under section 19 or section 21 of this Act shall be given access to any accounts, returns, or other information with regard to any bank which are in the possession of the Central Bank.

(3) There shall be meetings held between a bank, its appointed auditors and the Competent Authority on a trilateral or bilateral basis as circumstances may warrant. These meetings may be called by any of the parties concerned but shall always be chaired by the Competent Authority.

26. (1) No duty to which -

- (a) an auditor of a bank; or

(b) a person appointed to make a report under paragraph (a) of subsection (3) of section 19 above or subsection (1) of section 21 above,

Communication by auditors etc with the Competent Authority

may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Competent Authority, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies and which is relevant to any function of the Competent Authority under this Act.

(2) In relation to an auditor of a bank this section applies to any matter falling within subsection (9) of section 30 of this Act.

(3) In relation to a person appointed to make a report under paragraph (a) of subsection (3) of section 19 of this Act, this section applies to any matter of which he becomes aware in his capacity as the person making the report and which -

(a) relates to the business or affairs of the bank in relation to which his report is made or any associated body of that bank, or

(b) if by virtue of subsection (7) of section 19 of this Act the report relates to an associated body of a bank, to the business or affairs of that body.

(4) In relation to a person appointed to make a report under subsection (1) of section 21 of this Act, this section applies to any matter of which he becomes aware in his capacity as the person making the report and which -

(a) relates to the business or affairs of the bank in relation to which his report is made or any associated body of that bank, or

(b) if, by virtue of subsection (2) of section 21 of this Act, the report relates to an associated body of a bank, to the business or affairs of that body.

(5) In this section "associated body", in relation to an institution, means any such body as is mentioned in subsection (7) of section 19 of this Act or mentioned in subsection (2) of section 21 of this Act.

(6) If it appears to the Competent Authority that any accountants or class of accountants who are persons to whom subsection (1) above applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Competent Authority as mentioned in that subsection, the Competent Authority may, after consultation with the Central Bank and such bodies as appear to the Competent Authority to represent the interests of accountants and banks, make regulations applying to those accountants and specifying such circumstances; and it shall be the duty of an accountant to whom the regulations apply to communicate a matter to the Competent Authority in the circumstances specified by the regulations.

27. (1) There shall be a committee to be known as the Joint Banking Committee (hereinafter referred to as "the Committee") which shall have the function of formulating banking regulatory and supervisory policy and monitoring the soundness of the banking system.

Joint Banking Committee

(2) The Committee shall consist of -

(a) three members from the Central Bank, of whom one shall be the Governor of the Central Bank; and

(b) two members from the Competent Authority.

(3) The Governor of the Central Bank shall be the Chairman of the Committee.

(4) The Committee shall not act unless at least three members of the Committee are present, including the Chairman and one member from the Central Bank and one from the Competent Authority.

(5) The Committee shall have the power to regulate its own procedure.

(6) The Committee shall keep minutes of meetings and shall furnish copies of such minutes to the Minister as soon as these have been approved.

(7) For the purposes of this section, the term "Governor" includes the Deputy Governor of the Central Bank when exercising the functions of Governor.

28. (1) Notwithstanding any investigation provided for in this Act,

Banks unable to meet obligations

(a) where a bank considers that it is likely to become unable to meet its obligations or that it is about to suspend payment it shall forthwith inform the Competent Authority and the Governor of the Central Bank in writing;

(b) where the Competent Authority becomes aware that a bank is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the Governor of the Central Bank in writing.

(2) Where the Central Bank becomes aware that a bank is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the Competent Authority in writing.

29. (1) If, whether from any report made under section 19 or section 21 of this Act or otherwise, it appears to the Competent Authority or the Central Bank, that any of the circumstances indicated in subsection 2 of section 8 of this Act apply, the Central Bank may -

(a) require the bank forthwith to take such steps as the Central Bank may consider necessary to remedy or rectify the matter;

(b) appoint a person to advise the bank in the proper conduct of its business;

(c) appoint a person to take charge of the assets of the bank or any portion of them for the purpose of safeguarding the interests of depositors;

(d) appoint a person to assume control of the business of the bank and either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the Central Bank may direct;

(e) require the Competent Authority to revoke or restrict a licence according to the provisions of Section 8 of this Act;

(f) require the bank to wind up its business or to wind up its business in Malta;

(g) appoint a person to act as liquidator for the purpose of winding up the affairs of the bank;

(h) fix the remuneration to be paid by the bank to any person appointed under this subsection.

(2) Where a person is appointed by the Central Bank:

(a) under paragraph (b) of subsection (1) of this section, the bank shall act in accordance with the advice given by such person unless and until the Central Bank otherwise directs;

(b) under paragraph (c) of subsection (1) of this section, the bank shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the bank in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the bank, shall be exercisable by and vest in him to the exclusion of the bank;

(c) under paragraph (d) of subsection (1) of this section, the bank shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the bank, whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the bank in all matters, shall be exercisable by and vest in him to the exclusion of any other person.

(3) Where a person is appointed under paragraph (c) or paragraph (d) of subsection (1) of this section-

(a) any function, power or duty exercisable by any other person, including the curator of a bankrupt or any other person appointed by or under any other law, and relating to, any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall, unless or until the Central Bank otherwise directs or an express provision of law specifically provides otherwise, cease to be so exercisable;

(b) the person appointed under either of the paragraphs aforesaid shall, in respect of such property, partnerships, firms or other business as the Central Bank may specify and in which the bank has an interest, whether directly or indirectly, including any interest arising from advances or loans made or credit facilities given or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the Central Bank may direct, and any such power, function or duty shall be exercisable by and vest in such person to the exclusion of any other person:

Provided that:

(i) the Central Bank shall have power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the Central Bank may specify and unless and until the Central Bank otherwise directs, the powers, functions and duties to which the direction of the Central Bank applies shall be exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;

(ii) where the Central Bank is of the opinion that the bank has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;

(c) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may deem necessary to carry out any of the powers, functions or duties under this section;

(d) the provision of law relating to bankruptcy and in particular Part III of the Commercial Code, shall cease to apply to, and shall cease to operate in respect of, any property, partnership, firm or other business specified by the Central Bank under paragraph (b) of this subsection, unless and until, or except to the extent that, the Central Bank otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the Central Bank given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;

(e) any person appointed by the Central Bank under any of the provisions of this section shall submit six-monthly reports and annual accounts audited by an independent auditor to the Minister who will place such reports and accounts on the table of the House of Representatives within fifteen days.

(4) Where a person is appointed under paragraph (g) of subsection (1) of this section, such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(5) The provisions of this section shall have effect notwithstanding any other provision of any enactment, and notwithstanding any deed, contract, instrument or other document whatsoever.

(6) The foregoing provisions of this section vesting exclusive powers of representation in a person appointed by the Central Bank thereunder shall apply also to any act or proceedings commenced or instituted before such representation vested as aforesaid, and in respect of any such act or proceedings any other person acting or purporting to act, or in respect of whom action is taken, in that capacity shall cease to be a party to, and shall be excluded from, any such act or proceedings.

(7) No person shall in any way obstruct a person appointed under subsection (1) of this section in the performance of any of his functions, powers or duties under this section.

(8) In respect of a bank operating in Malta and elsewhere the offices and branches in Malta of that bank shall, if the Central Bank so directs and to the extent it so directs, be deemed to constitute a separate bank.

30. Every bank shall, not later than four months from the closing of its financial year or at any other time as may be exceptionally authorised by the Competent Authority

Publication of audited financial statements

(a) forward to the Competent Authority and the Central Bank

(b) publish in two local daily newspapers of which one is published in the Maltese language and the other in the English language and

(c) exhibit in a conspicuous position in each of its offices and branches in Malta and keep so exhibited throughout the year

a copy of its audited financial statements drawn up in accordance with a Banking Directive.

31. (1) (a) Every bank shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the bank examined by them and on all financial statements prepared by the bank;

Auditors

(b) For the purpose of this section an approved auditor shall be a person who is qualified to be an auditor in accordance with the Companies and Commercial Partnerships Act, 1993, and holds the authorisation of the Competent Authority to act as auditor of a bank.

(2) If a bank fails to appoint an auditor under subsection (1) of this section or, at any time fails to fill any vacancy in the office of an auditor, the Competent Authority shall have the power to appoint an auditor for that bank and shall fix the remuneration to be paid by that bank to such auditor.

(3) The auditors' report shall contain statements as to the following matters -

(a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit;

(b) whether, in their opinion, proper books of account have been kept by the bank, so far as appears from their examination of those books;

(c) whether the bank's financial statements dealt with by the report are in agreement with the books of account;

(d) whether, in their opinion, and to the best of their knowledge and according to the explanations given them, the said financial statements give the information required by any law which may from time to time be in force in the manner so required and give a true and fair view.

(4) The report of the auditors shall be read together with the report of the directors of the bank at the annual meeting of shareholders.

(5) Every auditor of a bank shall have the right to demand such information or explanation as he deems necessary in the performance of his duties from any officer or employee of the bank.

(6) A bank shall forthwith give written notice to the Competent Authority:

(a) on the appointment of its auditors;

(b) if it proposes to give notice to its shareholders to:

(i) replace its auditors at the expiration of their term of office;

(ii) remove its auditors before the expiration of their term of office;

(c) if the auditors cease to be auditors of the bank for any reason other than those in paragraph (b) of this subsection.

(7) The Competent Authority may require a bank to change its appointed auditors where, in the Competent Authority's opinion, such auditors are considered unfit for this appointment, at any time during their term of office.

(8) An auditor shall immediately advise the Competent Authority if:

(a) he resigns;

(b) he does not seek to be re-appointed; or

(c) he decides to qualify the audit report.

(9) If, in his capacity as an auditor of a bank or due to a direct request by the Competent Authority under section 19 or under section 21 of this Act, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the depositors of that bank or any connected person which is a bank, or discovers evidence of any contravention of this Act by that bank or a connected person which is a bank, he shall immediately inform the Competent Authority through the bank's management or, if circumstances so warrant, directly to the Competent Authority.

(10) Notwithstanding any of the provisions of the foregoing subsections, the Competent Authority may in the case of a bank not incorporated in Malta grant exemption by way of Banking Directive from any of the requirements of this section provided that the same does not materially detract from the main objects of this section.

(11) In so far as the provisions of this section are inconsistent with the provisions of the Companies and Commercial Partnerships Act, 1993 the provisions of this section shall prevail and

the provisions of the said Act shall, to the extent of the inconsistency, not apply to banks.

32. (1) No person -

Disqualification of officers

(a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a bank which has had its licence revoked under subsection (2) of section 8 of this Act; or

(b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud

shall act or continue to act as an officer of a bank.

33. Every officer of a bank shall take all reasonable steps -

Duties of officers

(a) to secure compliance by the bank with all of the provisions of this Act and of its licence or any Banking Directive or Regulation issued under this Act, and

(b) to ensure that no incorrect information is provided either wilfully or as the result of gross negligence.

34. (1) Nothing in this Act shall authorise the Minister, the Central Bank or the Competent Authority to enquire or cause an enquiry to be made into the affairs of any individual customer of a bank except:

(a) for the purpose of ensuring compliance with any of the provisions of this Act; or

(b) where the customer's exposure is large within the terms of the Large Exposures Directive.

(2) No person, including past and present officers or agents of a bank, shall disclose any information relating to the affairs of a bank or of a customer of a bank which he has acquired in the performance of his duties or the exercise of his functions under this Act except:

(a) when authorised to do so under any of the provisions of this Act;

(b) for the purpose of the performance of his duties or the exercise of his functions;

(c) when lawfully required to do so by any court or under a provision of any law;

(d) when during the course of his duties he has reason to believe that a criminal offence may have been committed and he discloses this information to the Competent Authority only.

(3) When an officer of a bank has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall report such transaction forthwith to the Competent Authority. The bank shall furnish all documentation in connection with the suspicious transaction and it shall also comply with such regulations as the Competent Authority may establish in a Banking Directive issued under this Act for this purpose. Compliance with the provisions of this subsection shall not constitute a breach of confidentiality.

(4) Notwithstanding anything contained in this section, exchange of information between a parent bank and its banking and credit card services subsidiaries and vice-versa on mutual customers shall not constitute a breach of confidentiality;

Provided that for the purposes of this subsection, a connected person or a group of connected persons or members of such group shall also be considered mutual customers.

35. (1) Any person who -

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not to the person to whom the statement, promise or forecast is made or from whom the facts are concealed)-

(i) to make, or refrain from making, a deposit with him or any other person; or

(ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

(2) Subsection (1) of this section does not apply unless-

(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, Malta or arrangements are made in or from Malta for the statement, promise or forecast to be made or the facts to be concealed;

(b) the person on whom the inducement is intended to or may have effect is in Malta; or

(c) the deposit is or would be made, or the agreement is or would be entered into, in Malta.

(3) Any person who:

(a) contravenes or fails to comply with any of the provisions of this Act;

(b) contravenes or fails to comply the provisions with any Banking Directive or Regulation;

(c) fails to comply with any lawful order or requirement of the Competent Authority or the Central Bank;

(d) fails to comply with any lawful order or requirement of the Banking Tribunal;

(e) fails to comply with any lawful order or requirement of any other person made under this Act;

(f) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Act

shall be guilty of an offence.

(4) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under subsections (1) and (3) of this section shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

(5) A body corporate shall be guilty of an offence under this section if the offence is committed by the acts or omissions of any person who is an officer of that body, is an employee of that body acting in the course of his employment, is a controller of that body or is a person otherwise authorised to act on behalf of that body in respect of such acts or omissions.

(6) The Competent Authority shall issue Banking Directives prescribing penalties for offences under this section and such Banking Directives may:

(a) prescribe penalties which are enforceable by prosecution in the courts of Malta and administrative penalties which are imposed by the Competent Authority without recourse to a court hearing;

(b) prescribe different penalties for contraventions of different provisions of this Act;

(c) prescribe penalties calculated in accordance with the duration of the commission of the offence;

(d) provide for an appeal to the Banking Tribunal from any decision of the Competent Authority to impose an administrative penalty.

(7) The penalties prescribed by a Banking Directive issued under subsection (6) of this section

(a) in the case of imprisonment, shall not provide for a sentence of imprisonment greater than two years;

(b) in the case of a fine imposed after a prosecution in the courts of Malta, shall not provide for a fine of less than 100 Maltese liri or greater than 500,000 Maltese liri;

(c) in the case of an administrative penalty, shall not provide for a financial penalty greater than 50,000 Maltese liri.

(8) The Minister may by order published in the Gazette increase the maximum amount of fines or financial penalties for which a Banking Directive issued under subsection (6) of this section may provide.

36. The provisions of this Act shall not apply to the Central Bank, save where and to the extent that the Central Bank is referred to by name.

Application of Act to the
Central Bank

37. The Banking Act, Cap 215, is hereby repealed.

Repeal of Banking Act ,
Cap 215

Objects and Reasons

The object of this Bill is to modernise the law governing the business of banking, to improve the operational policies and practices of banking supervision, to repeal the Banking Act, Cap 215, and to provide for matters ancillary or consequential thereto, or connected therewith