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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 tal-5 ta' Lulju, 1994.

ATT biex jirregola l-kummerċ ta' istituzzjonijiet finanzjarji.

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 5th July, 1994.

AN ACT to regulate the business of financial institutions.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ARRANĠAMENT TA' L-ATT

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ABBOZZ TA' LIĠI msejjah

Att biex jirregola l-kummerċ ta' Istituzzjonijiet Finanzjarji

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:-

PRELIMINARI

1. Dan l-Att jista' jissejjah l-Att ta' l-1994 dwar Istituzzjonijiet Titolu fil-qosor u bidu Finanzjarji u għandu jibda jsehh f'dik id-data li l-Ministru responsabbli fis-sehh għall-Finanzi jista, b'avviż fil-Gazzetta, jistabilixxi.

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 12 ta' dan l-Att;

"azzjoni ta' ekwita'" tfisser azzjoni nominali f'kumpanija meta t-tizim 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-kumpanija u "tizim ta' azzjonijiet ta' ekwita'" għandha tiffiehem shond hekk;

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

"Direttiva lill-Istituzzjonijiet Finanzjarji" tfisser Direttiva mahruġa minn Awtorita' Kompetenti;

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

"faċilita' ta' kreditu" tfisser is-self 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;

"fergħa" tfisser fond ta' istituzzjoni finanzjarja, li ma jkunx l-uffiċċju prinċipali, minn fejn jitmexxa kummerċ ta' l-istituzzjoni;

"fondi tagħha stess" għandha l-istess tifsira mogħtija lilha b'Direttiva lill-Istituzzjonijiet Finanzjarji;

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

"grupp ta' kumpaniji" tfisser kumpaniji li għandhom l-istess *holding company* inkluża l-*holding company* nnifisha;

"*holding company*" għandha l-istess tifsira bħal dik mogħtija lill-kliem "*parent company*" fl-Att ta' l-1994 dwar Kumpaniji;

"istituzzjoni finanzjarja" tfisser kull persuna li x-xogħol jew kummerċ regolari tagħha huwa li twettaq:

(a) xi wahda mill-attivitajiet elenkati fl-Iskeda li tinsab ma' dan l-Att;

(b) kull attivita' oħra hekk stabbilita mill-Ministru b'ordni ppublikat fil-Gazzetta li jemenda l-Iskeda li tinsab ma' dan il-Att,

akkont u għar-riskju tal-persuna li tkun qed twettaq dak il-kummerċ:

Izda li dawn l-attivitajiet ma jkunux iffinanzjati b'aċċettazzjoni ta' depożiti jew għbir iehor ta' flus minghand il-pubbliku skond kif imfisser fl-Att ta' l-1994 dwar il-Kummerċ Bankarju;

Izda wkoll li dan l-Att ma għandux japplika għal xi attivita' taht il-paragrafu (a) jew (b) imsemmija qabel liema attivita' hija rregolata bl-Att ta' l-1994 dwar Servizzi ta' Investiment;

"kambjali għall-kummerċ" tfisser kambjali u *promissory notes*;

"kapital azzjonarju kwalifikanti", tfisser il-kontroll dirett jew indirett f'kumpanija li jirrapreżenta għaxra fil-mija jew iżjed tal-kapital azzjonarju mahrug minn dik l-għaqda, jew tal-jedd ta' votazzjoni marbut ma' dak il-kapital azzjonarju jew li jirrendi possibbli t-twettiq ta' influwenza sinifikattiva fuq it-tmexxija tal-kumpanija u "azzjonista kwalifikattiv" għandha tiftiehem skond hekk;

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

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

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

"kumpanija" tfisser soċjeta' anonima jew soċjeta' kummerċjali kostitwita f'Malta skond L-Att ta' l-1994 dwar Kumpaniji jew kull liġi li tista' tkun issehh minn żmien għal żmien, jew kumpanija reġistrata jew inkorporata barra minn Malta skond il-liġijiet ta' xi pajjiż kemm-il darba dik il-kumpanija, jekk mhux kostitwita f'Malta, tkun harset id-dispożizzjonijiet ta' kull liġi li tista' minn żmien għal żmien tkun issehh f'Malta relattivament għaliha;

"liċenzja" relattivament għall-kummerċ ta' istituzzjoni finanzjarja, tfisser liċenzja mogħtija skond dan l-Att;

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

"*money laundering*" għandha l-istess tifsira mogħtija lilha bl-Att ta' 1994 kontra *Money Laundering*,

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

"Qorti" tfisser il-Qorti tal-Kummerċ;

"rikostruzzjoni" għandha l-istess tifsira mogħtija lil kliem "azzjenda sussidjarja" fl-Att ta' l-1994 dwar Kumpaniji;

"sussidjarja" għandha l-istess tifsira bħal "impriza sussidjarja" fl-Att ta' l-1994 dwar Kumpaniji.

(2) Ebda persuna ma għandha titqies li hija istituzzjoni finanzjarja minhabba fil-fatt li dik il-persuna jew:

(a) tagħmel parti minn grupp ta' kumpaniji u tmexxi l-finanzjament ta' kumpaniji li ma humiex banek jew istituzzjonijiet finanzjarji u li jappertjenu għall-istess grupp ta' kumpaniji; jew

(b) tagħmel u toħrog kambjali għall-kummerċ bħala parti mill-attività tagħha taht arrangamenti ta' *hire purchase*, jew ta' bejgħ li jsir bi kreditu meta jintagħmlu kambjali għal kummerċ għall-prezz dovut.

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

HTIĠGIJET GHALL-HRUĠ TA' LIĊENZJI

Liċenzji għall-kummerċ ta' istituzzjonijiet finanzjarji

3. (1) Ebda kummerċ ta' istituzzjoni finanzjarja ma għandu jsir f'Malta jew minn Malta hlief minn kumpanija li jkollha liċenzja mogħtija taht dan l-Att mill-Awtorita' Kompetenti.

(2) Fil-każ ta' dubbju raġonevoli dwar jekk xi attivita' tkun tikkonsisti f'kummerċ ta' istituzzjoni finanzjarja, jew jekk kummerċ ta' istituzzjoni finanzjarja jkun jew ma jkunx qed isir f'Malta jew minn Malta minn xi persuna, il-kwistjoni għandha tiġi konklużivament deċiża mill-Awtorita' Kompetenti.

(3) L-ghoti ta' liċenzja għandu jkun soġġett għal dritt annwali li l-Awtorita' Kompetenti tista' tistabilixxi minn żmien għal żmien.

Applikazzjoni għal liċenzja

4. (1) Kull kumpanija li tixtieq tibda kummerċ ta' istituzzjoni finanzjarja f'Malta għandha, qabel ma tibda xi kummerċ bħal dak, tapplika bil-miktub lill-Awtorita' Kompetenti għal-liċenzja skond dan l-Att.

(2) L-applikazzjonijiet kollha għal liċenzja għandhom ikunu fdik l-għamla u għandu jkollhom magħhom dik l-informazzjoni li tista' tiġi preskritta minn żmien għal żmien minn Direttiva lill-Istituzzjonijiet Finanzjarji u applikazzjoni tista' tiġi ritirata biss b'avviż bil-miktub li jingħata lill-Awtorita' Kompetenti fi żmien qabel l-ghoti jew iċ-ċahda tal-liċenzja.

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

Hruġ ta' liċenzja

5. (1) Ebda kumpanija ma għandha tingħata liċenzja kemm-il-darba:

(a) il-fondi tagħha stess, kemm jekk fliri Maltin jew fi flus ohra aċċettabbli għall-Awtorita' Kompetenti, ma jkunux jammontaw għall-valur ta' dak l-ammont stabbilit mill-Awtorita' Kompetenti kif adattat skond l-attivitajiet li obbliga ruhu li jagħmel l-applikant;

(b) ma jkunx hemm mill-inqas żewġ individwi li jkunu effettivament se jmexxu l-kummerċ ta' l-istituzzjoni finanzjarja f'Malta;

(ċ) l-azzjonisti kwalifikattivi, kontrolluri u l-persuni kollha li jkunu effettivament se jmexxu l-kummerċ ta' l-istituzzjoni finanzjarja ma jkunux persuni adatti biex jassiguraw il-*management* prudenti tagħha.

(2) L-Awtorita' Kompetenti għandha tiddeċiedi kull applikazzjoni għal liċenzja fi żmien tliet xhur minn meta tkun irċeviet l-applikazzjoni jew, jekk l-applikazzjoni ma tkunx taqbel mas-subartikolu (2) ta' l-artikolu 4 ta' dan l-Att jew tkun mehtiega aktar informazzjoni, fi żmien tliet xhur mit-tarix ta' l-imsemmi subartikolu jew il-provdiment ta' l-informazzjoni skond il-każ, liema jkun ta' l-aħhar. F'kull każ l-applikazzjoni għandha tiġi deċiża fi żmien sitt xhur minn meta tiġi reċevuta.

(3) L-Awtorita' Kompetenti tista' tagħti jew tiċhad li tagħti liċenzja li dwarha tkun saret applikazzjoni skond dan l-Att;

(4) Fl-ghoti ta' liċenzja l-Awtorita' Kompetenti tista' tagħmel l-istituzzjoni sogġetta għal dawk il-kondizzjonijiet li jidrilha xieraq, u meta tkun tat liċenzja tista', minn żmien għal żmien, tibdel jew thassar kull kondizzjoni hekk imposta jew timponi kondizzjonijiet ġodda.

(5) Meta l-Awtorita' Kompetenti tonqos għal kwalunkwe raġuni li tiddeċiedi applikazzjoni għal liċenzja fiż-żmien preskritt taht is-subartikolu (2) ta' dan l-artikolu, dan il-fatt għandu jitqies li jikkostitwixxi rifjut li tagħti liċenzja.

6. (1) Liċenzja awtomatikament tieqaf milli jkollha effett jekk id-detentur tal-liċenzja:

Restrizzjoni u thassir ta' liċenzja

(a) jirrinunzja l-liċenzja; jew

(b) ma jibdiex il-kummerċ bis-saħħa tal-liċenzja fi żmien sitt xhur mill-hrug tagħha, jew f'dak il-perijodu iehor ta' żmien li jista' jkun speċifikat fil-liċenzja; jew

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

(d) ma jkunx baqa' jahdem bhala riżultat ta' *merger* ma' istituzzjoni finanzjarja ohra; jew

(e) ikun fergħa ta' istituzzjoni finanzjarja inkorporata barra minn Malta u l-awtoritajiet kompetenti fil-pajjiż ta' inkorporazzjoni jirtiraw l-awtorizzazzjoni lil dik l-istituzzjoni.

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

(a) jekk xi dokument jew informazzjoni li jkunu ma' l-applikazzjoni għal liċenzja jew xi informazzjoni mogħtija in konnessjoni magħha jkunu foloz f'xi partikolarita' sostanzjali jew jekk id-detentur tal-liċenzja 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-liċenzja ma jkomplix jagħmel kummerċ ta' istituzzjoni finanzjarja f'Malta għal aktar minn tliet xhur; jew

(ċ) jekk id-detentur tal-liċenzja jonqos milli jhares xi waħda mid-dispożizzjonijiet ta' dan l-Att jew il-kondizzjonijiet li tahtom tkun ingħatat il-liċenzja; jew

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

(e) jekk id-detentur tal-liċenzja x'aktarx ma jkunx jista' jonora l-obbligi tiegħu; jew

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

(g) jekk l-Awtorita' Kompetenti tkun tal-fehma li, minhabba fil-mod ta' kif l-istituzzjoni finanzjarja tkun qed tmexxi jew tkun bi hsiebha tmexxi l-affarijiet tagħha, jew għal xi raġuni oħra, l-integrità tas-sistema finanzjarja tal-pajjiż tkun mhedda.

(3) Ir-restrizzjonijiet imposti mill-Awtorita' Kompetenti bis-saħħa tas-subartikolu (2) ta' dan l-artikolu għandhom ikunu dawk ir-restrizzjonijiet li l-Awtorita' Kompetenti jkun jidhrilha li jkunu xierqa sabiex l-istituzzjoni finanzjarja thares kif imiss id-dispożizzjonijiet ta' dan l-Att u l-kondizzjonijiet, jekk ikun hemm, tal-liċenzja tagħha u għall-protezzjoni ta' l-integrità tas-sistema finanzjarja tal-pajjiż u jistgħu jinkludu (mingħajr preġudizzju għall-ġeneralità ta' hawnhekk):

(a) it-tnehhija ta' kull funzjonarju ta' l-istituzzjoni finanzjarja 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 tippossiedi *holding* kwalifikat ta' azzjonijiet fl-istituzzjoni finanzjarja tirrinunzja dak il-*holding* kollu jew parti minnu;

(c) il-htieġa li l-istituzzjoni finanzjarja tiehu jew iżzomm milli tiehu xi azzjoni;

(d) il-htieġa li l-istituzzjoni finanzjarja tiġi projbita milli timpenja ruhha f'xi transazzjoni jew transazzjonijiet jew xi attivita' li hemm fl-Iskeda li tinsab ma' dan l-Att jew tithalla timpenja ruhha f'xi transazzjoni jew transazzjonijiet jew xi attivita' elenkata fl-Iskeda li tinsab ma' dan l-Att fuq dawk il-patti biss li l-Awtorita' Kompetenti tista' tippreskrivi.

(4) L-Awtorita' Kompetenti għandu jkollha s-setgħa li tvarja jew tneħhi kwalunkwe restrizzjonijiet imposti taht dan l-artikolu.

(5) Liċenzja mogħtija lil fergħa ta' istituzzjoni finanzjarja inkorporata 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 minn qabel.

(6) Mar-restrizzjoni jew thassir ta' liċenzja ta' istituzzjoni finanzjarja inkorporata f'Malta, l-Awtorita' Kompetenti għandha tavża lill-awtoritajiet kompetenti tal-pajjiż ta' kwalunkwe stat barrani li fih l-istituzzjoni finanzjarja jew is-sussidjarji tagħha jkunu qed jagħmlu xi attivita' li hemm fl-Iskeda li tinsab ma' dan il-Att jew kull attivita' oħra li l-Awtorita' Kompetenti jista' jidrilha li tkun komplimentari għal l-attivitajiet ta' dik l-istituzzjoni f'Malta.

7. (1) Meta l-Awtorita' Kompetenti jkollha l-hsieb:

(a) li tibdel xi kondizzjoni li għaliha tkun soġġetta liċenzja jew li timponi kondizzjoni magħha; jew

(b) li tirrestringi jew thassar liċenzja jew tibdel xi restrizzjoni li għaliha tkun soġġetta liċenzja,

Avviż ta' proposta ta' tibdil, restrizzjoni jew thassir ta' liċenzja

hija ghandha tinnotifika b'avviz bil-miktub il-hsieb taghha lil l-istituzzjoni finanzjarja u ghandha tispeċifika r-raġunijiet li minhabba fihom l-Awtorita' Kompetenti bi hsiebha li tiehu azzjoni.

(2) Kull avviz moghti taht subartikolu (1) ta' dan l-artikolu ghandu jispeċifika perijodu li fih l-istituzzjoni finanzjarja tkun intitolata li taghmel rappreżentazzjonijiet lill-Awtorita' Kompetenti ghaliex dik l-azzjoni ma ghandhiex tittiehed u l-Awtorita' Kompetenti ghandha tikkonsidra kull rappreżentazzjoni hekk maghmula qabel ma tasal ghal deċiżjoni finali.

(3) Kemm il-darba l-Awtorita' Kompetenti ma' tiddeċidix li l-kwistjoni tkun urgenti, hija ma ghandhiex timponi jew tvarja xi restrizzjoni jew kondizzjoni jew thassar liċenzja qabel ma' jkun għadda dak il-perijodu kif stipulat fis-subartikolu (2) ta' dan l-artikolu.

(4) L-Awtorita' Kompetenti ghandha tinnotifika d-deċiżjoni finali taghha bil-miktub lil l-istituzzjoni finanzjarja li lilha jkun inghata avviz taht subartikolu (1) ta' dan l-artikolu.

OBBLIGI TA' DETENTURI TA' LIĊENZJA U OĦRAJN

Ftuh ta' ferġat

8. (1) Istituzzjoni finanzjarja ghandha tavża lill- Awtorita' Kompetenti bil-miktub qabel ma tiftah ferġha ġdida f'Malta.

(2) Hlief bil-kunsens bil-miktub ta' l-Awtorita' Kompetenti, ebda istituzzjoni finanzjarja inkorporata f'Malta ma tista' tiftah ferġha ġdida, aġenzija jew uffiċju, jew tistabbilixxi jew takkwista xi sussidjarja f'xi post barra minn Malta.

Avviz ta'

partecipazzjoni

jew kontroll

ġdid jew mibdul

9. (1) Jekk:

(a) xi persuna tiehu jew taghmel il-hsieb li tiehu xi azzjoni biex tikseb jew tiddisponi minn kapital azzjonarju kwalifikanti f'istituzzjoni finanzjarja jew iżżid jew tnaqqas kapital azzjonarju kwalifikanti biex is-sehem tad-drittijiet tal-votazzjoni jew tal-kapital azzjonarju kontrollat minnha f'dik l-istituzzjoni finanzjarja jkun jilhaq, jaqbez jew jonqos taht 20 fil-mija, 33 fil-mija jew 50 fil-mija jew biex dik l-istituzzjoni finanzjarja issir jew ma tibqax is-sussidjarja ta' dik il-persuna; jew

(b) xi istituzzjoni finanzjarja tiehu jew taghmel il-hsieb li tiehu xi azzjoni biex tbiegh jew tiddisponi mill-kummerċ taghha jew xi parti sinifikanti tiegħu, tinghaqad ma' xi kumpanija oħra, taghmel xi rikostruzzjoni jew iżżid il-kapital azzjonarju nominali jew mahruġ jew taghmel xi bidla sostanzjali fil-jeddijiet tal-votazzjoni,

minghajr ma jiksbu minn qabel il-kunsens ta' l-Awtorita' Kompetenti, hekk, minghajr preġudizzju għal xi piena oħra li tista' tiġi mposta taht dan l-Att, l-Awtorita' Kompetenti jkollha s-setgħa li taghmel ordni:

(i) li jzomm lill-persuna jew istituzzjoni finanzjarja milli tiehu dak il-pass;

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

(iii) li jordna lill-persuna jew istituzzjoni finanzjarja biex tiehu dawk il-miżuri li jkunu meħtieġa biex il-qagħda tingieb lura għall-qagħda li kienet teżisti minnufih qabel it-tehid ta' dak il-pass;

(iv) li jzomm lill-persuna jew istituzzjoni finanzjarja milli teżerċita xi drittijiet li dak il-pass, kieku skond il-liġi, kien ikun jagħtiha, inkluż id-dritt li tirċievi xi pagament;

(v) li jzomm lill-persuna jew istituzzjoni finanzjarja milli tiehu xi pass simili jew xi pass iehor tal-kategoriji mniżżla fil-paragrafi (a) u (b) ta' dan is-subartikolu.

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

(3) Meta persuna taghmel il-hsieb li tiehu xi azzjoni kif stipulat fil-paragrafi (a) u (b) tas-subartikolu (1) ta' dan l-Artikolu, hija għandha qabel ma tiehu din l-azzjoni tavża lill-Awtorita' Kompetenti. L-Awtorita' Kompetenti għandha fi żmien xahrejn li tirċievi din in-notifika tagħti jew ma tagħtix il-kunsens taghha, u jekk dak iż-żmien jgħaddi minghajr ma' l-Awtorita' Kompetenti tkun tat id-deċiżjoni taghha, dak il-fatt għandu jitqies bħala rifjut.

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

10. (1) Istituzzjoni finanzjarja ma ghandhiex:

(a) taghti xi faċilita' ta' kreditu kontra s-sigurta' ta' l-azzjonijiet tagħha stess jew kontra xi sigurtajiet ohra mahruġa mill-istituzzjoni finanzjarja nnifisha jew kontra xi azzjonijiet jew xi sigurtajiet ohra ta' korp ġuridiku iehor li fih l-istituzzjoni finanzjarja jkollha kontroll;

(b) taghti, jew tippermetti 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 tagħha jew lill-parti l-miżżewġa kemm jekk flimkien jew individwalment jew ma' terzi persuni;

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

(iii) lil xi korp ta' persuni li fih l-istituzzjoni finanzjarja jew xi wiehed jew iżjed mid-diretturi tagħha ikollhom flimkien jew individwalment kontroll, li ma tkunx hija stess istituzzjoni finanzjarja jew l-impriza ċentrali ta' l-istituzzjoni finanzjarja, sussidjarju ta' din l-impriza ċentrali jew sussidjarju ta' l-istituzzjoni finanzjarja;

(ċ) taghti jew tippermetti 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' tnaħ-il xahar ta' dak il-funzjonarju jew impjegat.

(2) Fil-paragrafi (b) u (ċ) 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 fxi zmien 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.

11. Minkejja kull investigazzjoni provduta f'dan l-Att,

Istituzzjonijiet
finanzjarji
li ma jkunux jistghu
jonoraw l-obbligi

(a) meta istituzzjoni finanzjarja tqis li x'aktarx ma tkunx tista' tonora l-obbligi taghha, hija ghandha minnufih tinforma lill-Awtorita' Kompetenti u l-Gvernatur tal-Bank Ċentrali bil-miktub;

(b) meta l-Awtorita' Kompetenti ssir taf illi istituzzjoni finanzjarja x'aktarx ma tkunx tista' tonora l-obbligi taghha, hija ghandha tinforma minnufih lill-Gvernatur tal-Bank Ċentrali bil-miktub;

(c) meta l-Bank Ċentrali jsir jaf illi istituzzjoni finanzjarja x'aktarx ma tkunx tista' tonora l-obbligi taghha, huwa ghandu jinforma minnufih lill-Awtorita' Kompetenti bil-miktub.

SETGHAT REGOLATORJI U INVESTIGATTIVI

12. (1) Ghandu jkun id-dmir tal-Ministru li jeżerċita s-setgħat mogħtija lilu b'dan l-Att biex jassigura li l-istituzzjonijiet finanzjarji iharsu d-dispożizzjonijiet ta' dan l-Att u l-kondizzjonijiet tal-liċenzji tagħhom.

Setgħat u dmirijiet
tal-Ministru

(2) Il-Ministru għandu b'Ordni fil-Gazzetta jinnomina korp biex ikun l-Awtorita' Kompetenti għall-finijiet ta' dan l-Att sabiex jesegwixxi l-funzjonijiet ta' l-Awtorita' Kompetenti taħt 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 jiġi nominat għal dak il-perjodu li l-Ministru jista' jistabbilixxi u l-Ministru għandu jkollu s-setgħa f'kull żmien li jtawwal, iġedded jew itemm dik in-nomina b'Ordni fil-Gazzetta.

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

13. (1) Ghandu jkun id-dmir ta' l-Awtorita' Kompetenti li tesegwixxi l-funzjonijiet stabbiliti b'dan l-Att u li tassigura li l-istituzzjonijiet finanzjarji li jagħmlu kummerċ f'Malta jharsu dan l-Att, ir-Regolamenti u Direttivi mahruġa taħt dan l-Att u l-kondizzjonijiet tal-liċenzji tagħhom. Bis-saħħa ta' dak id-dmir l-Awtorita' Kompetenti għandha f'kull żmien taħti dik il-koperazzjoni lill-Bank Ċentrali li l-Bank Ċentrali jista' jkun jeħtieġ fit-tweġtieq tad-dmirijiet tiegħu.

Setgħat u dmirijiet ta'
l-Awtorita' Kompetenti

(2) L-Awtorita' Kompetenti tista' taghmel dawk id-Direttivi lill-Istituzzjonijiet Finanzjarji li jistghu jkunu mehtieġa biex taghti effett lil kull waħda mid-dispożizzjonijiet ta' dan l-Att. L-Awtorita' Kompetenti tista' temenda jew tirrevoka dawk id-Direttivi lill-Istituzzjonijiet Finanzjarji.

(3) Id-Direttivi lill-Istituzzjonijiet Finanzjarji u kull emenda jew revoka tagħhom għandhom jiġu kkomunikati uffiċjalment lill-istituzzjonijiet finanzjarji kollha u l-Awtorita' Kompetenti għandha tagħmel kopji tagħhom disponibbli għal pubbliku.

(4) Direttivi lill-Istituzzjonijiet Finanzjarji magħmula taħt dan l-Att jistghu jipprovdu għall-htigijiet regolatorji differenti li għandhom japplikaw għal klassijiet differenti ta' istituzzjonijiet finanzjarji, li jkollhom liċenzja bis-saħħa ta' dan l-Att, sabiex jiġi assigurat li l-kummerċ huwa mmexxi b'mod prudenti.

Setgħat ta' l-Awtorita'
Kompetenti li titlob
tagħrif

14. (1) Kull istituzzjoni finanzjarja għandha tissottometti dik l-informazzjoni u reżokontijiet dwar il-fergħat tagħha f'Malta jew barra minn Malta li l-Awtorita' Kompetenti tista' tehtieġ fil-qadi ta' dmirijietha taħt dan l-Att jew kull liġi oħra.

(2) Ir-reżokontijiet kollha mehtieġa taħt is-subartikolu (1) ta' dan l-artikolu għandhom jiġu sottomessi f'dik il-forma u f'dawk il-perijodi li jistghu jiġu preskritti minn żmien għal żmien mill-Awtorita' Kompetenti b'Direttivi lill-Istituzzjonijiet Finanzjarji.

(3) Id-dispożizzjonijiet ta' dan l-artikolu għandhom japplikaw ukoll għall-fergħat kollha f'Malta ta' istituzzjoni finanzjarja li ma tkunx inkorporata f'Malta.

(4) Ir-reżokontijiet kollha u l-informazzjoni l-oħra kollha li jingħataw minn istituzzjoni finanzjarja skond is-subartikolu (1) ta' dan l-artikolu għandhom jitqiesu bħala sigrieti u konfidenzjali hlief bejn dik l-istituzzjoni finanzjarja u l-Awtorita' Kompetenti, salv illi

(a) l-Awtorita' Kompetenti għandha taghti dik l-informazzjoni taħt dan l-artikolu kif jista' jkun mehtieġ mill-Ministru jew mill-Bank Ċentrali u għandha tinforma lill-Ministru u l-Bank Ċentrali jekk f'xi żmien fil-fehma tagħha ikun hemm thassib dwar l-istat ta' l-affarijiet ta' dik l-istituzzjoni finanzjarja;

(b) il-Bank Ċentrali għandu jipprepara u jippubblika reżokontijiet konsolidati li jiġbru flimkien l-informazzjoni mogħtija taħt paragrafu (a) ta' dan is-subartikolu.

(5) L-Awtorita' Kompetenti tista', b'avviż bil-miktub, tehtieġ istituzzjoni finanzjarja jew kull funzjonarju tagħha li jagħmlu dan li ġej jew xi waħda minnhom:

(a) li taghti lill-Awtorita' Kompetenti f'dak iż-żmien u post u fdik l-ghamla li tista' tispeċifika, dak it-taghrif u dokumentazzjoni li tista' tehtieg u ta' dik id-deskrizzjoni li tista' tiġi hekk speċifikata fl-avviż;

(b) li taghti lill-Awtorita' Kompetenti kull taghrif jew dokumentazzjoni kif imsemmija verifikati b'dak il-mod li jista' jkun speċifikat;

(ċ) li tidher quddiem l-Awtorita' Kompetenti, jew quddiem persuna mahtura minnha, f'dak iż-żmien u post li tista' tispeċifika, biex twieġeb mistoqsijiet u taghti taghrif u dokumentazzjoni dwar dak li l-Awtorita' Kompetenti tista' raġonevolment tkun tehtieg biex taqdi d-dmirijiet tagħha taht dan l-Att.

(6) L-Awtorita' Kompetenti tista' tagħmel kopji ta' kull dokument moghti jew provdut taht dan l-artikolu.

(7) Meta l-persuna mehtieġa li taghti taghrif jew dokumentazzjoni taht dan l-artikolu ma jkollhiex it-taghrif jew id-dokumentazzjoni rilevanti, din għandha tghid lill-Awtorita' Kompetenti fejn, skond l-aħjar taghrif li jkollha, dak it-taghrif jew dik id-dokumentazzjoni tkun, u l-Awtorita' Kompetenti tista' tehtieg lil kull persuna, sew jekk indikata kif imsemmi qabel sew jekk le, li fil-fehma tagħha jkollha fil-pussess tagħha dak it-taghrif jew dik id-dokumentazzjoni, biex tagħtihelha.

(8) Dikjarazzjoni magħmula u dokumentazzjoni provduta skond xi waħda mill-htigijiet taht dan l-artikolu jistgħu jingiebu bhala prova kontra l-persuna li tagħmel id-dikjarazzjoni jew li tipprovdid-dokumentazzjoni kif ukoll kontra kull persuna li għaliha jirreferu.

(9) Meta l-Awtorita' Kompetenti tkun hatret persuna taht il-paragrafu (ċ) tas-subartikolu (5) ta' dan l-artikolu, dik il-persuna jkollha, sabiex taqdi l-funzjonijiet tagħha skond il-hatra tagħha, dawk is-setgħat kollha mogħtija lill-Awtorita' Kompetenti b'dan l-artikolu u jekk dik il-persuna tehtieg xi haga dik il-htieġa titqies li tkun saret u li jkollha l-istess sahha u effett bhal htieġa ta' l-Awtorita' Kompetenti.

(10) L-Awtorita' Kompetenti tista' tehtieg persuna mahtura taht paragrafu (ċ) tas-subartikolu (5) ta' dan l-artikolu sabiex tissottometti rapport f'dak il-mod li tispeċifika.

(11) L-Awtorita' Kompetenti tista' wkoll teżerċita s-setgħat mogħtija bis-subartikoli (1) u (5) ta' dan l-artikolu relattivament għal xi persuna li tkun jew li f'xi żmien rilevanti kienet -

(a) *holding company*, kumpanija sussidjarja jew kumpanija li hija persuna konnessa ma dik l-istituzzjoni finanzjarja;

(b) sussidjarja jew kumpanija li hija persuna konnessa ta' *holding company* ta' dik l-istituzzjoni finanzjarja;

(c) *holding company* ta' sussidjarja ta' dik l-istituzzjoni finanzjarja;

(d) kontrollur ta' dik l-istituzzjoni finanzjarja; jew

(e) persuna li għandha kapital azzjonarju kwalifikanti ta' dik l-istituzzjoni finanzjarja,

u l-provvedimenti ta' dan l-artikolu ikunu japplikaw għal dik il-persuna.

(12) L-Awtorita' Kompetenti tista' wkoll teżerċita is-setgħat tagħha taht dan l-artikolu meta u fejn għandha raġunijiet validi li tissuspetta li persuna tista' tkun hatja ta' reat taht dan l-Att.

Hatra ta' Spetturi

15. (1) L-Awtorita' Kompetenti tista', kull meta jidhrilha meħtieġ jew xieraq, tahtar spettur jew spetturi biex jistharrġu u jirraportaw dwar l-affarijiet ta' istituzzjoni finanzjarja.

(2) Spettur mahtur taht is-subartikolu (1) ta' dan l-artikolu -

(a) jista' wkoll, jekk jidhirlu meħtieġ jew xieraq għall-finijiet ta' dak l-istharrġ, jistharreġ l-affarijiet ta' kull persuna ohra kif provdut taht is-subartikolu (1) ta' l-artikolu 14 ta' dan l-Att;

(b) ikollu u jkun jista' jeżerċita s-setgħat kollha mogħtija lill-Awtorita' Kompetenti bl-artikolu 14 ta' dan l-Att, u kull haġa li jeħtieġ titqies li tkun u jkollha l-istess sahħa u effett bħal hteġa ta' l-Awtorita' Kompetenti;

(c) jista', u jekk hekk ordnat mill-Awtorita' Kompetenti għandu, jagħmel rapporti *interim* u fuq il-konkluzjoni ta' l-istharrġ tiegħu jagħmel rapport finali lill-Awtorita' Kompetenti.

(3) L-Awtorita' Kompetenti jkollha s-setgħa tordna li l-ispejjeż kollha ta' investigazzjoni, u li għandhom x'jaqsmu magħha, li ssir bis-sahħa ta' dan l-artikolu għandhom jithallsu mill-persuni jew mill-istituzzjonijiet finanzjari involuti.

16. (1) Kull funzjonarju, impjegat jew agent ta' l-Awtorita' Kompetenti, li juri jekk mitlub, evidenza ta' l-awtorita' tieghu, jista' jidhol f'post okkupat minn persuna li lilha jkun notifikat avviż taht l-artikolu 14 ta' dan l-Att jew li l-affarijiet taghha jkunu qed jigu mistharrga taht l-artikolu 15 ta' dan l-Att, sabiex minn hemm jikseb it-taghrif jew id-dokumenti mehtiega b'dak l-avviż, jew xort'ohra ghall-finijiet ta' l-istharrig, u sabiex jeżerċita dawk is-setgħat mogħtija bl-imsemmija artikoli.

Setgħa ta' dhul

(2) Meta persuna li tkun funzjonarju, impjegat jew agent ta' l-Awtorita' Kompetenti jkollha raġuni biżżejjed li taħseb li jekk dak l-avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu kellu jkun notifikat ma jkunx se jithares jew li xi dokumenti li għalih jista' jirreferi jitnehhew, ikunu mbagħabsa jew distrutti, l-imsemmija persuna, tista', wara li turi l-evidenza taghha, jekk mitluba, tidhol f'kull post imsemmi fis-subartikolu (1) ta' dan l-artikolu sabiex minn hemm tikseb kull tagħrif jew dokumenti speċifikati fl-awtorita', liema tagħrif jew dokumenti setgħu kienu mehtiega bis-saħħa ta' dak l-avviż li hemm imsemmi fis-subartikolu (1) ta' dan l-artikolu.

(3) Għall-finijiet ta' kull azzjoni li tittiehed taht id-dispożizzjonijiet ta' dan l-artikolu, l-Awtorita' Kompetenti tista' titlob l-ghajnuna tal-Kummissarju tal-Pulizija, li jista' għal dan l-ghan jeżerċita dawk is-setgħat li huma vestiti fih sabiex iħares milli jsiru reati u sabiex jinforza l-liġi u l-ordni:

Iżda jekk xi fond imsemmi f'dan l-artikolu jkun okkupat bħala residenza, dak id-dhul għandu jsir biss fil-preżenza ta' uffiċjal tal-Pulizija ta' grad ta' mhux anqas minn Spettur u ma jistax isir bejn id-disgħa ta' fil-ghaxija u l-hamsa ta' filgħodu.

17. (1) Jekk, kemm minn xi rapport magħmul taht l-artikolu 14 jew l-artikolu 15 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 6 ta' dan l-Att, il-Bank Ċentrali jista' -

Setgħa tal-Bank Ċentrali li jiehu kontroll ta' istituzzjonijiet finanzjarji

(a) jehtieg lill-istituzzjoni finanzjarja minnufih biex tiehu dawk il-passi li l-Bank Ċentrali jqis mehtiega biex tirrimedja jew tirrettifika l-materja;

(b) jinnomina persuna kompetenti biex tagħti parir lill-istituzzjoni finanzjarja dwar it-tmexxija xierqa tal-kummerċ taghha;

(c) jinnomina persuna kompetenti biex tiehu f'idejha l-attiv ta' l-istituzzjoni finanzjarja jew xi parti minnu sabiex jiġu mharsa l-interessi ta' l-integrità tas-sistema finanzjarja f'Malta;

(d) jinnomina persuna kompetenti biex tiehu f'idejha kontroll tal-kummerċ ta' l-istituzzjoni finanzjarja u jew li tkompli tmexxi dak il-kummerċ jew li tagħmel dik il-funzjoni jew funzjonijiet oħra dwar dak il-kummerċ jew parti minnu, kif jordna l-Bank Ċentrali;

(e) jehtieg lill-Awtorità Kompetenti biex tħassar jew tirrestringi liċenzja skond id-dispożizzjonijiet ta' l-artikolu 6 ta' dan l-Att;

(f) jehtieg lill-istituzzjoni finanzjarja biex tillikwida l-kummerċ tagħha jew biex tillikwida l-kummerċ tagħha f'Malta.

(2) Meta jirċievi rapport kif imsemmi fis-subartikolu (1) ta' dan l-artikolu, il-Bank Ċentrali għandu jinforma lill-Awtorità Kompetenti dwar jekk ikunx ser jiehu azzjoni fuq dak ir-rapport u dwar kull azzjoni li jkun bi hsiebu jiehu fuq.

UDITURI

Hatra u dmirijiet ta' l-Udituri

18. (1) (a) Kull istituzzjoni finanzjarja għandha tinnomina kull sena uditur jew udituri approvati li d-dmir tagħhom ikun biex jirraportaw dwar ir-reżokontijiet finanzjarji ta' l-istituzzjoni finanzjarja eżaminati minnhom u dwar ir-reżokontijiet finanzjarji kollha preparati mill-istituzzjoni finanzjarja;

(b) Għall-finijiet ta' dan l-artikolu uditur approvat għandu jkun persuna li tkun kwalifikata biex tkun uditur skond l-Att ta' l-1994 dwar Kumpaniji.

Iżda li fil-każ ta' istituzzjoni finanzjarji mhux inkorporata f'Malta l-Awtorità Kompetenti tista tagħti eżenzjoni mill-paragrafu (b) ta' dan is-subartikolu sakemm dik l-eżenzjoni ma tnaqqasx sostanzjalment l-iskopijiet prinċipali ta' dan l-artikolu.

(2) Jekk istituzzjoni finanzjarja tonqos milli tinnomina uditur skond is-subartikolu (1) ta' dan l-artikolu jew, fxi żmien tonqos milli timla xi vakanza fil-kariga ta' uditur, l-Awtorità Kompetenti jkollha s-setgħa li tinnomina uditur għal dik l-istituzzjoni finanzjarja u għandha tistabbilixxi l-kumpens li għandu jithallas minn dik l-istituzzjoni finanzjarja lil dak l-uditur.

(3) Istituzzjoni finanzjarja ghandha minnufih tavża bil-miktub lill-Awtorita' Kompetenti:

(a) malli tinnomina l-udituri taghha;

(b) jekk tkun bi hsieba tavża lill-azzjonisti taghha biex:

(i) tirrimpjazza l-udituri taghha malli jaghlaq iż-żmien tal-kariga taghhom;

(ii) tneghi l-udituri taghha qabel jaghlaq iż-żmien tal-kariga taghhom;

(ċ) jekk l-udituri jieqfu milli jkunu udituri ta' l-istituzzjoni finanzjarja ghal xi raġuni li ma tkunx wahda mir-raġunijiet li jinsabu fil-paragrafu (b) ta' dan is-subartikolu.

(4) L-Awtorita' Kompetenti tista' tehtieg lil istituzzjoni finanzjarja tibdel l-udituri nominati taghha meta, fil-fehma ta' l-Awtorita' Kompetenti, dawk l-udituri jitqiesu li ma jkunux adatti ghal dik il-kariga, f'kull żmien matul iż-żmien tal-kariga taghhom.

(5) Uditur ghandu javża minnufih lill-Awtorita' Kompetenti jekk:

(a) huwa jirreżenja;

(b) ma jkunux bi hsiebu li jiehu dik il-kariga mill-ġdid;
jew

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

(6) Jekk fil-kariga tieghu bhala uditur ta' istituzzjoni finanzjarja jew bhala riżultat ta' talba diretta ta' l-Awtorita' Kompetenti skond l-artikolu 14 jew skond l-artikolu 15 ta' dan l-Att, uditur isir jaf b'xi materja li jkollha x'taqsam ma' u li jista' jkollha effett avvers serju fuq l-istat u s-sahha ta' l-istituzzjoni finanzjarja, xi fergħa f'Malta ta' istituzzjoni finanzjarja mhux inkorporata f'Malta jew l-integrità tas-sistema finanzjarja f'Malta, huwa ghandu minnufih jgharraf lill-Awtorita' Kompetenti permezz tal-*management* ta' l-istituzzjoni finanzjarja jew, jekk iċ-ċirkostanzi ikunu hekk jiġġustifikaw, direttament lill-Awtorita' Kompetenti.

(7) Sa fejn id-dispożizzjoni ta' dan l-artikolu huma inkonsistenti mad-dispożizzjonijiet ta' l-Att ta' l-1994 dwar il-Kumpaniji, id-dispożizzjonijiet ta' dan l-artikolu ghandhom jipprevalu u d-dispożizzjonijiet ta' l-imsemmi Att ma ghandhomx, sa fejn ikunu inkonsistenti, japplikaw ghal istituzzjonijiet finanzjarji.

Kommunikazzjoni
mill-Udituri eċċ
ma' l-Awtorita'
Kompetenti

19. Edda dmir (maghdud id-dmir ta'segretezza professjonali) li bih:

(a) uditur ta' istituzzjoni finanzjarja jista' jkun marbut ma ghandu jitqies bhala li jkun gie miksur ghar-raguni li huwa jkun wassal *in bona fede* lill-Awtorita' Kompetenti, sew jekk ghax mitlub minnha jew le, xi taghrif jew fehma fuq xi haga li l-uditur sar jaf biha minhabba fix-xoghol tieghu ta' uditur ta' dik l-istituzzjoni u li tkun relevanti ghall-funzjonijiet ta' l-Awtorita' Kompetenti bis-sahha tad-dispożizzjonijiet ta' dan l-Att jew li tenhtieg li tigi komunikata bis-sahha ta' dan l-Att;

(b) persuna mahtura biex taghmel rapport taht artikolu 14 jew artikolu 15 ta' dan l-Att tista' tkun soggetta ma ghandu jitqies li jkun gie miksur minhabba li dik il-persuna tkun *b'bona fede* ikkomunikat lill-Awtorita' Kompetenti dwar materja relatata mal-kummerċ jew affarijiet ta' l-istituzzjoni finanzjarja li dwarha jkun sar ir-rapport.

KOPERAZZJONI U SKAMBJU TA' INFORMAZZJONI

Koperazzjoni u
skambju ta'
informazzjoni

20. (1) Fuq il-bazi ta' ftehim internazzjonali, jew fuq ftehim ta' reċiproċita', l-Awtorita' Kompetenti tista' taqsam id-dmirijiet ta' sorveljanza taghha ma' l-awtoritajiet kompetenti barranin ohra fil-każ ta' istituzzjoni finanzjarja jew fergħa li topera f'Malta li hi kollha kemm hi jew f'parti minnha l-propjeta' ta' persuna barranija jew fil-każ ta' istituzzjoni finanzjarja li tkun għal kollox jew f'parti minnha l-propjeta' ta' residenti Maltin li tkun qed topera barra minn Malta.

(2) Persuna mahtura skond l-artikolu 14 jew l-artikolu 15 ta' dan l-Att ghandu jinghatalha aċċess għal kull kont, rendikont jew informazzjoni ohra dwar kull istituzzjoni finanzjarja li jkunu fil-pussess tal-Bank Ċentrali.

(3) Ghandu jkun hemm laqgħat li jsiru bejn istituzzjoni finanzjarja, l-udituri mahtura taghha u l-Awtorita' Kompetenti fuq bażi trilaterali jew bilaterali skond kif ikunu jiggustifikaw iċ-ċirkostanzi. Dawn il-laqgħat jistgħu jigu msejjha minn kwalunkwe waħda mill-partijiet ikkonċernati iżda għandhom dejjem ikunu preseduti mill-Awtorita' Kompetenti.

(4) L-Awtorita' Kompetenti u l-Bank Ċentrali għandhom jiddiskutu materji ta' interess komuni fuq istituzzjonijiet finanzjarji taht il-Kumitat Bankarju Kongunt kif kostitwit bl-artikolu 27 ta' l-Att ta' 1944 dwar il-Kummerċ Bankarju.

APPELLI, RIMEDJI, SKWALIFIKA U KONFIDENZJALITA'

21. (1) F'dan l-artikolu, it-"Tribunal għal Servizzi Finanzjarji" ifisser it-Tribunal imwaqqaf skond il-provvedimenti ta' l-artikolu 10 ta' l-Att dwar il-Kummerċ Bankarju, u "Tribunal" għandha tiftiehem f'dan is-sens; u l-provvediment ta' l-artikolu 10 ta' l-Att dwar il-Kummerċ Bankarju għandhom, hlief meta xi waħda minnhom tkun inkompatibbli ma' xi provvediment ta' dan l-artikolu, japplikaw għal appelli li jsiru quddiem it-Tribunal għal Servizzi Finanzjarji magħmula taht dan l-Att.

Appelli

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

(a) li timponi jew tvarja xi kondizzjoni fuq l-ghoti ta' licenzja;

(b) li timponi jew tvarja xi restrizzjoni;

(c) li thassar licenzja;

(d) li tagħmel xi ordni skond l-artikolu 9 ta' dan l-Att;

tista' tappella kontra din id-deċiżjoni lit-Tribunal għal Servizzi Finanzjarji.

(3) Appell kontra deċiżjoni ta' l-Awtorita' Kompetenti ma għandux jissospendi l-eżekuzzjoni ta' dik id-deċiżjoni.

22. (1) Kull persuna li:

Reati

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

(b) tikser jew tonqos li thares id-dispożizzjonijiet ta' xi Direttiva lill-Istituzzjonijiet Finanzjarji, regolament jew kondizzjoni tal-licenzja;

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

(d) tonqos li tosserva xi ordni jew htiega legittima tat-Tribunal ghal Servizzi Finanzjarji;

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

(f) minghajr skuza ragonevoli tibdel, tissopprimi, tahbi, tiddistruggi jew tirrifjuta li tipproduci xi dokument li b'ligi tkun mehtiga li tipproduci lil xi persuna skond dan l-Att,

tkun hatja ta' reat.

(2) Kull persuna li xjentement tkun parti fl-ghemil, jew li tipprokura jew tghin, jew thajjar l-ghemil ta' xi reat taht is-subartikolu (1) ta' dan l-artikolu tkun hatja ta' reat u tkun soggetta ghall-istess pieni bhall-hati principali.

Pieni

23. (1) Persuna hatja ta' reat taht id-dispozizzjonijiet ta' l-artikolu 22 ta' dan l-Att tehel, meta tinsab hatja, multa ta' mhux iżjed minn mitejn elf lira jew ghal prigunerija ghal żmien ta' mhux iżjed minn sentejn, jew dik il-multa u prigunerija flimkien.

(2) Ma jinbdew ebda procedimenti ghal reat kontra dan l-Att minghajr il-kunsens ta' l-Avukat Ġenerali.

(3) Id-dispozizzjonijiet ta' dan l-Att m'ghandhomx jolqtu xi procedimenti kriminali li jistghu jkunu kompetenti taht xi ligi ohra.

Skwalifika ta' funzjonarji

24. (1) Ebda persuna -

(a) li tkun giet dikjarata falluta b'sentenza jew li tkun ghamlet akkordju mal-kredituri taghha jew li kienet funzjonarju ta' istituzzjoni finanzjarja li kellha licenzja taghha imhassra skond is-subartikolu (2) ta' l-artikolu 6 ta' dan l-Att u li ma tkunx giet ezentata bil-miktub mill-Awtorita' Kompetenti mid-dispozizzjonijiet ta' dan l-artikolu; jew

(b) li tkun interdetta jew inabilitata jew li kienet involuta f'*money laundering* jew li tkun instabet hatja ta' reat li jolqot il-fiducja pubblika, serq, qerq, estorsjoni jew talli xjentement tkun irceviet oggetti miksuba b'serq jew b'qerq,

ma ghandha tagixxi jew tkompli bhala funzjonarju ta' istituzzjoni finanzjarja.

25. (1) Ebda haġa f'dan l-Att ma tawtorizza lill-Awtorita' Kompetenti biex tinvestiga jew iġġieghel li ssir investigazzjoni f'istituzzjoni finanzjarja fl-affarijiet ta' xi klijent individwali ta' istituzzjoni finanzjarja hlief:

(a) sabiex jiġi assigurat li tithares kull dispożizzjoni ta' dan l-Att; jew

(b) fejn l-*exposure* tal-klijent tista' tkun ta' theddida għal l-integrità tas-sistema finanzjarja tal-pajjiż.

(2) Ebda persuna inklużi funzjonarji jew agenti ta' l-imghoddi jew preżenti ta' istituzzjoni finanzjarja ma għandha tikxef xi informazzjoni dwar l-affarijiet ta' istituzzjoni finanzjarja jew ta' klijent ta' l-istituzzjoni finanzjarja li hija tkun kisbet fil-qadi tad-dmirijiet tagħha jew fl-eżerċizzju tal-funzjonijiet tagħha skond dan l-Att hlief:

(a) meta tkun awtorizzata biex tagħmel hekk skond xi dispożizzjoni ta' dan l-Att;

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

(ċ) meta tkun mehtieġa b'liġi li tagħmel hekk b'ordni tal-qorti jew skond xi dispożizzjoni ta' xi liġi.

(3) Meta funzjonarju ta' istituzzjoni finanzjarja ikollu għalfejn jahseb li transazzjoni jew transazzjoni proposta tista' tinvolvi *money laundering*, huwa obligat jimxi skond ir-regolamenti mahruġa taht l-Att ta' 1994 kontra *Money Laundering* u skond kull linja ta' gwida magħmula mill-Awtorita' Kompetenti. It-taris tad-dispożizzjonijiet ta' dan is-subartikolu ma għandux jikkostitwixxi ksur ta' konfidenzjalita'.

(4) L-iskambju ta' informazzjoni dwar klijenti komuni jew konnessi bejn l-istituzzjoni finanzjarja, il-*holding company* tagħha jew is-sussidjarji tagħha meta faċilita' ta' kreditu tkun nġhatat jew tista' tingħata lil dak il-klijent ma għandux jikkostitwixxi ksur ta' konfidenzjalita'.

MIXXELLANJI

26. Il-Bank Ċentrali jista' jeżenta l-applikazzjoni ta' l-Att dwar il-Kontroll fuq il-Kambju għal transazzjonijiet li jsiru minn detenturi ta' liċenzja ma' persuni mhux residenti f'Malta għar-raġunijiet ta' l-imsemmi Att.

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

Applikazzjoni ta' l-Att dwar il-Kontroll fuq il-Kambju

Applikazzjoni ta' l-Att għall-Bank Ċentrali

ATTIVITAJIET TA' ISTITUZZJONIJIET FINANZJARJI

1. Self (li jinkludi krediti personali, krediti taht *mortgage*, xiri ta' fatturi kemm bi jew minghajr dritt ta' rikors, finanzjament ta' transazzjonijiet kummerċjali inkluż *forfaiting*);
2. *Financial leasing*;
3. Kapital ta' sogru jew riskju;
4. Servizzi ta' trasferiment ta' flus;
5. Hruġ u amministrazzjoni ta' meżzi ta' pagament (e.g. karti ta' kreditu, *travellers' cheques*, ċedoli bankarji);
6. Garanziji u rabtiet;
7. Negozju bhala prinċipal jew bhala aġent fi:
 - (a) strumenti ta' swieq finanzjarji (ċekkijiet, kambjali, ċertifikati ta' depożitu, eċċ);
 - (b) kambju ta' flus;
 - (ċ) *financial futures* u *options*;
 - (d) strumenti ta' rati ta' kambju w imghax;
 - (e) strumenti ohra finanzjarji li jistgħu jiġu trasferiti;
8. Sehem fil-hruġ ta' ishma u l-ghoti ta' servizzi relatati ma' dak il-hruġ;
9. Pariri lill-kumpaniji dwar strutturi kapitali, strategiji industrijali u affarijiet ohra konnessi kif ukoll pariri u servizzi relatati mat-tagħqid ta' kumpaniji ma' xulxin u x-xiri ta' kumpaniji;
10. Senserija ta' flus;
11. Tmexxija u pariri fuq portafol ta' investimenti;

ATTIVITAJIET ANĊILLARI LI JISTGħU JI TWETTQU BHALA PARTI MINN KULL ATTIVITA' OHRA ELENKATA F'DIN L-ISKEDA

12. Kustodja u amministrazzjoni ta' titoli;
13. Servizzi ta' riferenza ta' kreditu;
14. Servizzi ta' kustodja mhux perikolati.

Għanijiet u Raġunijiet

L-Għan ta' dan l-Abbozz huwa li jipprovdi liġi li tamministra l-kummerċ ta' istituzzjonijiet finanzjarji kif distint minn dak ta' banek taht l-Att ta' 1994 dwar il-Kummerċ Bankarju jew minn dak ta' investiment taht l-Att ta' 1994 dwar Servizzi ta' Investiment, sabiex jistabbilixxi r-regolament u s-supervizjoni ta' istituzzjonijiet finanzjarji, u sabiex jipprovdi għal hwejjeg li huma anċillari jew konsegwenzjali għal dan jew konnessi miegħu.

ARRANGEMENT OF ACT

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2. Interpretation

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8. Opening of Branches
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11. Financial Institutions unable to meet obligations

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12. Power and duties of the Minister
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15. Appointment of Inspectors
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17. Power of the Central Bank to take control of Financial Institutions

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18. Appointment and duties of auditors
19. Communication by Auditors, etc. with the Competent Authority

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20. Co-operation and sharing of information

Appeals, Remedies, Disqualification and Confidentiality

21. Appeals
22. Offences
23. Penalties
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Miscellaneous

26. Application of Exchange Control Act, Cap 233
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Schedule

Activities of Financial Institutions

**A BILL
entitled**

AN ACT to regulate the business of financial institutions

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:

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Financial Institutions Act 1994, and shall come into force on such date as the Minister responsible for Finance may, by notice in the Gazette, appoint.

Interpretation

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

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

"branch" means premises of a financial institution, other than its Head Office, from which the business of the institution is undertaken.

"Central Bank" means the Central Bank of Malta as defined by the Central Bank of Malta Act, Cap 204;

"company" means a limited liability company or a commercial partnership constituted in Malta in accordance with the Companies Act, 1994 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 12 of this Act;

"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;

"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;

"financial institution" means any person whose regular occupation or business is the carrying out of:

- (a) any activity listed in the Schedule to this Act;
- (b) any other activity defined by the Minister as such by an order published in the Gazette amending the Schedule to this Act;

for the account and at the risk of that person carrying out such business.

Provided that these activities are not funded through the taking of deposits or other repayable funds from the public as defined in the Banking Act 1994;

Provided further that this Act shall not apply to any activity under (a) or (b) above which is regulated under the Investment Services Act 1994;

"Financial Institutions Directive" means a Directive issued by a Competent Authority;

"group of companies" means companies having a common holding company, including the holding company;

"holding company" has the same meaning as is assigned to the term "parent company" in the Companies Act 1994;

"licence" in relation to the business of a financial institution means a licence granted under this Act;

"Minister" means the Minister responsible for finance;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act 1994;

"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" has the same meaning as is assigned to it by a Financial Institutions Directive;

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

"qualifying shareholding" means a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate and "qualifying shareholder" shall be construed accordingly;

"reconstruction" has the same meaning as is assigned to it by the Companies Act 1994;

"subsidiary" has the same meaning as "subsidiary undertaking" in the Companies Act 1994;

"trade bills" means bills of exchange and promissory notes.

(2) A person shall not be deemed to be a financial institution by reason of the fact that that person either:

(a) belongs to a group of companies and manages the financing of companies which are not banks or financial institutions and which belong to the same group of companies; or

(b) draws and issues trade bills in the normal course of business under hire purchase agreements, or under sales on credit where trade bills are drawn in respect of the price due .

(3) 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.

LICENSING REQUIREMENTS

Licences for business of financial institutions

3. (1) No business of a financial institution 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.

(2) In the event of reasonable doubt as to whether an activity constitutes the business of a financial institution, or whether the business of a financial institution is or is not being transacted in or from Malta by any person, the matter shall be conclusively 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.

4. (1) Any company desirous of commencing the business of a financial institution in Malta shall, before commencing any such business, ^{Application for a licence} 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 a Financial Institutions 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.

5. (1) No company shall be granted a licence unless: Issuing of a licence

(a) its own funds, whether in Maltese liri or in another currency acceptable to the Competent Authority is equal to amount established by the Competent Authority as appropriate for the activities to be undertaken by the applicant;

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

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

(2) The Competent Authority shall determine each application for a licence within three months of receipt of the application or, if the application does not comply with subsection (2) of section 4 of this Act or additional information is required, within three 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 six months of its receipt.

(3) The Competent Authority may grant or refuse to grant a licence applied for under this Act.

(4) In granting a licence the Competent Authority may subject an institution to such conditions as it may deem appropriate and having granted a licence it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(5) Where the Competent Authority for any reason fails to determine an application for a licence within the time prescribed under subsection (2) of this section, such fact shall be deemed to constitute a refusal to grant a licence.

Restriction and
revocation
of a licence

6. (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 six 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 financial institution; or

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

(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 a financial institution in Malta for more than three 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

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

(g) if the Competent Authority considers that, by reason of the manner in which the financial institution is conducting or proposes to conduct its affairs, or for any other reason, the integrity of the country's financial system is 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 financial institution with the provisions of this Act and the conditions, if any, of its licence and for the protection of the integrity of the country's financial system and may include (without prejudice to the generality hereof):

(a) the removal of any officer of the financial institution 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 significant shareholding in the financial institution to divest himself of all or part of that holding;

(c) the requirement for the financial institution to take or refrain from taking any action;

(d) the requirement that the financial institution be prohibited from undertaking any transaction or transactions or any activity listed in the Schedule to this Act or be permitted to undertake any transaction or transactions or any activity listed in the Schedule to the Act 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) A licence granted to a branch of an institution 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.

(6) Upon the restriction or revocation of a licence of a financial institution incorporated in Malta, the Competent Authority shall inform the competent authorities of the country of any foreign states in which the financial institution or its subsidiaries are carrying on any activity under the Schedule to this Act or any other activity as the Competent Authority may deem complementary to the institution's activities in Malta.

Notification of proposed variation, restriction or revocation of a licence

7. (1) Where the Competent Authority intends:

(a) to vary any condition to which the licence is subject or to impose a condition thereon; or

(b) to restrict or revoke a licence or to vary any restriction thereon;

it shall serve written notice of its intention on the financial institution and shall specify the grounds upon which it intends to take such action.

(2) Every notice given under subsection (1) of this section shall specify a period in which the financial institution shall be entitled to make representations to the Competent Authority as to why such action should not be taken and the Competent Authority shall consider any representations so made before arriving at a final decision.

(3) Unless the Competent Authority decides that the matter is urgent, it shall not impose or vary any restriction or condition or revoke a licence before the expiry of the period as set under subsection (2) of this section.

(4) The Competent Authority shall notify its final decision in writing to the financial institution to whom notice under subsection (1) of this section was served.

OBLIGATIONS OF LICENCE HOLDER AND OTHERS

Opening of branches

8. (1) A financial institution shall inform the Competent Authority in writing before opening a new branch in Malta.

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

9. (1) If:

Notification of new
or variation in
participation in
or control.

(a) any person takes or intends to take any action to acquire or dispose of a qualifying shareholding in a financial institution or to increase or reduce such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in that financial institution reaches, exceeds or falls below 20 per cent, 33 per cent or 50 per cent or so that the financial institution becomes or ceases to be the subsidiary of such person; or

(b) any financial institution takes or intends to take action to sell or dispose of its business or any significant part thereof, merge with any other company, undergo any reconstruction or vary its nominal or issued share capital or effect any material change in voting rights;

without obtaining the prior 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:

(i) restraining the person or financial institution from taking the action;

(ii) declaring the action to be void and of no effect;

(iii) requiring the person or financial institution to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(iv) restraining the person or financial institution from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment;

(v) restraining the person or financial institution from taking any similar action or any other action within the categories set out in paragraph (a) and (b) of this subsection.

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

(3) Where a person intends to take any action as set out in paragraphs (a) and (b) of subsection (1) hereof, he shall before taking such action notify the Competent Authority. The Competent Authority shall within two months of receiving such notification give its consent or otherwise and if that period elapses without the Competent Authority having given its decision such fact shall be deemed to be a refusal.

(4) If the Competent Authority is of the opinion that any person who is or is proposed to become a controller of a financial institution without being or becoming 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.

Prohibited Transactions 10. (1) A financial institution shall not:

(a) grant any credit facility against the security of its own shares or against any other securities issued by the financial institution itself or against any shares or any other securities of another body corporate in which the financial institution 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 financial institution 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 financial institution's directors is a guarantor;

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

(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' emoluments of such officer or employee.

(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.

Financial Institutions
unable to meet
obligations

11. Notwithstanding any investigation provided for in this Act,

(a) where a financial institution considers that it is likely to become unable to meet its obligations 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 financial institution is likely to become unable to meet its obligations it shall forthwith inform the Governor of the Central Bank in writing;

(c) where the Central Bank becomes aware that a financial institution is likely to become unable to meet its obligations it shall forthwith inform the Competent Authority in writing.

REGULATORY AND INVESTIGATORY POWERS

12. (1) It shall be the duty of the Minister to exercise the powers conferred upon him by this Act to ensure compliance by financial institutions with the provisions of this Act and conditions of their licences. Powers and duties of the Minister

(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 nominated for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such nomination 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.

13. (1) It shall be the duty of the Competent Authority to carry out the functions prescribed by this Act and to ensure that financial institutions 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 Financial Institutions Directives as may be required for carrying into effect any of the provisions of this Act. The Competent Authority may amend or revoke such Financial Institutions Directives.

(3) Financial Institutions Directives and any amendment or revocation thereof shall be officially communicated to all financial institutions and the Competent Authority shall make copies thereof available to the public.

(4) Financial Institutions Directives made under this Act may provide for different regulatory requirements to be applicable to different classes of financial institutions, licensed under this Act, to ensure that business is conducted in a prudent manner.

Power of Competent
Authority to require
Information

14. (1) A financial institution shall submit such information and statements relating to its branches in or outside Malta as the Competent Authority may require in the discharge of its duties under this Act or any other law.

(2) All statements required under subsection (1) of this section shall be submitted in such form and at such periods the Competent Authority may from time to time prescribe by Financial Institutions Directives.

(3) The provisions of this section shall also apply to all branches in Malta of a financial institution which is not incorporated in Malta.

(4) All statements and other information furnished by any financial institution under subsection (1) of this section shall be regarded as secret and confidential except as between that financial institution and the Competent Authority 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 financial institution;

(b) the Central Bank shall prepare and publish consolidated statements aggregating the information furnished under paragraph (a) of this subsection.

(5) The Competent Authority may, by notice in writing, require a financial institution or any of its officers to do all or any of the following:

(a) to furnish to the Competent Authority, at such time and place and in such form as it may specify, such information and documentation as it may require and of such description as may be so specified in the notice;

(b) to furnish to the Competent Authority any information or documentation aforesaid verified in such manner as it may specify;

(c) to attend before the Competent Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation as the Competent Authority may reasonably require for the performance of its functions under this Act.

(6) The Competent Authority may take copies of any documents furnished or provided under this section.

(7) Where the person required to provide information or documentation under this section does not have the relevant information or documentation, he shall disclose to the Competent Authority where, to the best of his knowledge, that information or documentation is, and the Competent Authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(8) A statement made and documentation provided in pursuance of any requirement under this section may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(9) Where the Competent Authority has appointed a person under paragraph (c) of subsection (5) of this section, such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Competent Authority by this section and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority.

(10) The Competent Authority may require a person it has appointed under paragraph (c) of subsection (5) of this section to submit a report in such form as it may specify.

(11) The Competent Authority may also exercise the powers conferred by subsections (1) and (5) of this section in relation to any person who is or has at any relevant time been -

(a) a holding company, subsidiary or a company which is a connected person of that financial institution;

(b) a subsidiary or a company which is a connected person of a holding company of that financial institution;

(c) a holding company of a subsidiary of that financial institution;

(d) a controller of that financial institution; or

(e) a qualifying shareholder of that financial institution

and the provisions of this section shall apply to that person.

(12) The Competent Authority may also exercise its powers under this section where it has reasonable grounds for suspecting that a person is guilty of committing any offence under this Act.

Appointment of
Inspectors

15. (1) The Competent Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of a financial institution.

(2) An inspector appointed under subsection (1) of this section -

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any other person as prescribed under subsection (11) of section 14 of this Act;

(b) shall have and may exercise all the powers conferred on the Competent Authority by section 14 of this Act, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Competent Authority;

(c) may, and if so directed by the Competent Authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the Competent Authority.

(3) The Competent Authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this section be paid by the persons or financial institution concerned.

Right of entry

16. (1) Any officer, employee or agent of the Competent Authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under Section 14 of this Act or whose affairs are being investigated under Section 15 of this Act, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said sections.

(2) Where any officer, employee or agent of the Competent Authority has reasonable cause to believe that if such notice as is referred to in subsection (1) of this section were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in subsection (1) of this section for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in subsection (1) of this section.

(3) For the purposes of any action taken under the provisions of this section, the Competent Authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order.

Provided that where an entry as is mentioned in this section involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of Inspector and shall moreover not take place between nine in the evening and five in the morning.

17. (1) If, whether from any report made under Section 14 or Section 15 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 6 of this Act apply, the Central Bank may - Power of the Central Bank to take control of financial institutions

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

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

(c) appoint a competent person to take charge of the assets of the financial institution or any portion of them for the purpose of safeguarding the interests of the integrity of the financial system in Malta;

(d) appoint a competent person to assume control of the business of the financial institution 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 6 of this Act;

(f) require the financial institution to wind up its business or to wind up its business in Malta.

(2) Upon receipt of a report as is mentioned in Subsection (1) of this section, the Central Bank shall inform the Competent Authority on whether it intends to take any action pursuant to such report and of any action it intends to take thereon.

AUDITORS

18. (1) (a) Every financial institution shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the financial institution examined by them and on all financial statements prepared by the financial institution; Appointment and duties of 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 Act, 1994.

Provided that in the case of a financial institution not incorporated in Malta the Competent Authority may grant exemption from paragraph (b) of this subsection subject that the same does not materially detract from the main objects of this section.

(2) If a financial institution 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 institution and shall fix the remuneration to be paid by that financial institution to such auditor.

(3) A financial institution 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 financial institution for any reason other than those in paragraph (b) of this subsection.

(4) The Competent Authority may require a financial institution 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.

(5) An auditor shall immediately inform the Competent Authority in writing if:

- (a) he resigns;
- (b) he does not seek to be re-appointed; or
- (c) he decides to qualify the audit report.

(6) If, in his capacity as an auditor of a financial institution or due to a direct request by the Competent Authority under Section 14 or under Section 15 of this Act, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the financial institution or a branch in Malta of a financial institution not incorporated in Malta or the integrity of the financial system in Malta he shall immediately inform the Competent Authority through the financial institution's management or, if circumstances so warrant, directly to the Competent Authority.

(7) In so far as the provisions of this section are inconsistent with the provisions of the Companies Act 1994, the provisions of this section shall prevail and the provisions of the said Act shall, to the extent of the inconsistency, not apply to financial institutions.

19. No duty (including the duty of professional secrecy) to which:

Communication by
Auditors, etc. with the
Competent Authority

(a) an auditor of a financial institution 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 from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that institution and which is relevant to any functions of the Competent Authority under the provisions of this Act or is required to be communicated by virtue of this Act;

(b) a person appointed to make a report under Section 14 or Section 15 of this Act may be subject shall be regarded as contravened by reason of communicating in good faith to the Competent Authority any matter which relates to the business or affairs of the financial institution in relation to which the report is made.

CO-OPERATION AND SHARING OF INFORMATION

20. (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 financial institution or branch operating in Malta which is fully or partly owned by a foreign person or in the case of a financial institution fully or partly owned by Maltese residents which is operating abroad.

Co-operation and
sharing of
information

(2) A person appointed under Section 14 or Section 15 of this Act shall be given access to any accounts, returns, or other information with regard to any financial institution which are in the possession of the Central Bank.

(3) There shall be meetings held between a financial institution, 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.

(4) The Competent Authority and the Central Bank shall discuss matters of mutual interest on financial institutions under the Joint Banking Committee as constituted under Section 27 of the Banking Act 1994.

APPEALS, REMEDIES, DISQUALIFICATION AND CONFIDENTIALITY

Appeals

21. (1) In this section, the 'Financial Services Tribunal' means the Tribunal established in terms of Section 10 of the Banking Act, and 'Tribunal' shall be construed accordingly; and the provisions of Section 10 of the Banking Act shall except in so far as any of them is incompatible with the provisions of this section, apply to appeals made to the Financial Services Tribunal under this Act.

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

- (a) to impose or vary any condition of the licence;
- (b) to impose or vary any restriction;
- (c) to revoke a licence;
- (d) to make any order under section 9 of this Act;

may appeal against the decision to the Financial Services Tribunal.

(3) An appeal against a decision of the Competent Authority shall not suspend the operation of that decision.

22. (1) Any person who -

Offences

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

(b) contravenes or fails to comply with the provisions of any Financial Institutions Directive, Regulations or licence condition;

(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 Financial Services 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

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

23. (1) A person guilty of an offence under the provisions of Section 22 of this Act shall be liable on conviction to a fine (multa) not two hundred thousand liri or to a term of imprisonment not exceeding two years, or to both such fine and imprisonment. Penalties

(2) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(3) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

24. (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 financial institution which has had its licence revoked under subsection (2) of section 6 of this Act and who has not been exempted in writing by the Competent Authority from the provision of this Section; 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 financial institution.

Confidentiality

25. (1) Nothing in this Act shall authorise the Competent Authority to enquire or cause an enquiry to be made in a financial institution into the affairs of any individual customer of a financial institution except:

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

(b) where it is believed that the customer's exposure could contribute a threat to the integrity of the country's financial system;

(2) No person, including past and present officers or agents of a financial institution, shall disclose any information relating to the affairs of that institution or of a customer of that institution 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;

(3) When an officer of a financial institution has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with the regulations laid down under the Prevention of Money Laundering Act 1994 and any guidelines provided by the Competent Authority. Compliance with the provisions of this subsection shall not constitute a breach of confidentiality.

(4) Exchange of information on mutual or connected customers between the financial institution, its holding company or its subsidiaries where a credit facility has been or may be granted to that customer shall not constitute a breach of confidentiality.

MISCELLANEOUS

26. The Central Bank may exclude the Application of the Exchange Control Act to transactions carried out by licence holders with persons not resident in Malta for the purposes of the said Act. Application of Exchange Control Act

27. 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

SCHEDULE

(Section 2)

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfaiting);
2. Financial leasing;
3. Venture or risk capital;
4. Money transmission services;
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, Certificates of deposits etc.);
 - (b) foreign exchange
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments.
8. Participation in share issues and the provision of services related to such issues;
9. Advice to undertakings on capital structures, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
10. Money broking;
11. Portfolio management and advice;

ANCILLARY ACTIVITIES WHICH CAN BE CARRIED OUT IN CONJUNCTION WITH ANY OF THE OTHER ACTIVITIES LISTED IN THIS SCHEDULE

12. Safekeeping and administration of securities;
13. Credit reference services;
14. Safe custody services.

Objects and Reasons

The Object of this Bill is to provide a law governing the business of financial institutions as distinct from that of credit institutions under the Banking Act 1994 or investment services under the Investment Services Act 1994, to establish the regulation and supervision of financial institutions, and to provide for matters ancillary or consequential thereto or connected therewith.