

MALTA

ATT Nru. XV ta' l-1994

ACT No. XV of 1994

ATT mahruġ b'ligi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT biex jirregola l-kummerċ bankarju.

AN ACT to regulate the business of banking.

ATT TA' L-1994 DWAR IL-KUMMERĊ BANKARJU

ARRANĠAMENT TA' L-ARTIKOLI

Artikolu

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Naghti l-kunsens tieghi,

(L.S.)

UGO MIFSUD BONNICI
President

13 ta' Settembru, 1994

ATT Nru. XV ta' l-1994

ATT biex jirregola l-kummerc bankarju

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

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

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

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

"azzjoni ta' ekwita'" tfisser azzjoni nominali f'kumpanija meta l-*holding* 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-istralc tal-kumpanija, u "*holding* 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;

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

"depożitu" tfisser somma ta' flus imħallsa fuq il-patti li taħtha tkun se tithallas lura, bi jew minghajr imghax jew *premium* u jew fuq talba jew fi żmien jew f'ċirkostanzi miftehma 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 "fondi tal-bank stess";

"direttur" tinkludi individwu li jkun jokkupa l-pożizzjoni 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 aġent 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 oħra ta' kreditu inkluż l-iskontar ta' kambjali u *promissory notes*, garanziji, indennizzi, aċċettazzjonijiet u kambjali mdawra b'avall;

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

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

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

"*holding* kwalifikattiv ta' azzjonijiet" tfisser *holding* ta' azzjonijiet ta' ekwita' dirett jew indirett ta' għall-inqas 10 fil-mija ta'

l-azzjonijiet ta' ekwita' ta' kumpanija; iżda meta d-drittijiet miżmuma kwantu għall-persentaġġ 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 għolja għandha titqies li tkun il-persentaġġ ta' l-azzjonijiet ta' ekwita' miżmuma, u "azzjonista kwalifikattiv" għandha tiftiehem skond hekk;

"*holding* sinifikanti ta' azzjonijiet" tfisser *holding* 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' kumpanija; iżda meta d-drittijiet miżmuma kwantu għall-persentaġġ 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 għolja għandha titqies li tkun il-persentaġġ ta' l-azzjonijiet ta' ekwita' miżmuma, u "azzjonista sinifikanti" għandha tiftiehem skond hekk;

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

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

"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 rtirati 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 ġbir ta' flus bil-hruġ ta' obligazzjonijiet jew *stock* ta' obligazzjonijiet jew dokumenti oħra li johlqu jew jirrikonoxxu djun), fil-każ il-wiehed u l-iehor bl-iskop ta' impieg ta' dawk il-flus, kollha jew f'parti, bit-tisliet jew impieg iehor akkont u għar-riskju tal-persuna li taċċetta dawk il-flus; jew

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

"kumpanija" tfisser soċjeta' anonima kostitwita f'Malta skond l-Att ta' l-1994 dwar Kumpaniji jew kwalunkwe liġi li tista' tkun issehh minn żmien għal żmien, jew kumpanija registrata jew inkorporata barra minn Malta skond il-liġijiet ta' kwalunkwe 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;

"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 deċiżjonijiet ta' *policy* u deċiżjonijiet eżekuttivi għan-nom tal-kumpannija;

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

"*money laundering*" għandha l-istess tifsira mogħtija lilha bl-Att ta' l-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;

"rikostruzzjoni" għandha l-istess tifsira mogħtija lilha bl-Att ta' l-1994 dwar Kumpanniji;

"sussidjarju" għandha l-istess tifsira mogħtija lill-kliem "ażjenda sussidjarja" fl-Att ta' l-1994 dwar Kumpanniji;

"uffiċċju rappreżentattiv" tfisser, relattivament għal korp ġuridiku, korp mhux ġuridiku jew assoċjazzjoni kostitwita skond jew li teżisti taht il-liġijiet ta' pajjiz barrani, fond f'Malta li minnu jiġi promoss jew mghejjun b'xi mod il-kummerċ bankarju, u relattivament għal korp ġuridiku, korp mhux ġuridiku jew assoċjazzjoni kostitwita skond u li teżisti taht il-liġijiet ta' Malta, fond barra minn Malta li minnu jiġi promoss jew mghejjun b'xi mod il-kummerċ bankarju.

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

Izda 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 liġi li tkun issehh f'Malta ma ghandhiex titqies minnha nnifisha 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 *holding* sinifikanti ta' azzjonijiet u *holding* kwalifikattiv ta' azzjonijiet għall-finijiet ta' dan l-Att.

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.

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 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 jiġi nominat 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 in-nomina 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 spedjenti fl-interess pubbliku li jagħmel hekk b'Ordni pubblikat fil-Gazzetta jiddikjara xi ġurnata jew ġranet bħala vaganza jew vaganzi tal-banek.

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

4. (1) Għandu jkun id-dmir ta' l-Awtorita' Kompetenti li tesseġwixxi 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-twettiq tad-dmirijiet tiegħu.

Setgħat u dmirijiet ta' l-Awtorita' Kompetenti.

(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 mgharrfa lill-banek uffiċjalment u l-Awtorita' Kompetenti għandha tagħmel kopji tagħhom disponibbli għall-pubbliku.

(4) Direttivi Bankarji li jimponu xi obligazzjoni jew htieġa fuq il-pubbliku għandhom isiru b'regolamenti skond is-subartikolu (3) ta' l-artikolu 3 ta' dan l-Att.

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 raġonevoli dwar jekk kummerċ bankarju jkunx jew ma jkunx qed isir f'Malta jew minn Malta minn xi persuna, il-kwistjoni għandha tigi deċiża b'mod finali mill-Awtorita' Kompetenti.

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

Applikazzjoni
għal liċenza.

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.

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

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

Hruġ ta'
liċenza.

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

(a) il-fondi tal-kumpannija stess kemm jekk f'liri 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' jigi stabbilit mill-Ministru;

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

(ċ) 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-seħħ 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 jaqghu taht il-livell miżmum fdik 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-seħħ ta' dan l-Att, il-fondi tal-bank stess għandhom jiksbu l-livell preskritt fil-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu f'dak il-perijodu tat-*takeover* li l-Awtorita' Kompetenti tista' tistabilixxi.

(3) L-Awtorita' Kompetenti għandha 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 mehtieġa 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 għandha tiġi deċiża fi żmien tnaħ-il xahar minn meta tiġi riċevuta.

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

(a) taghti liċenza minghajr kondizzjonijiet;

(b) taghti liċenza taht dawk il-kondizzjonijiet li hija tista' tqis xierqa;

(ċ) tirrifjuta li taghti liċenza.

(5) Meta l-Awtorita' Kompetenti tonqos għal kwalunkwe raġuni li tiddeċiedi applikazzjoni fiż-żmien preskritt taht is-subartikolu

(3) ta' dan l-artikolu, dan il-fatt ghandu jitqies li jikkostitwixxi rifjut li taghti licenza.

Uffiċċji
rappreżentattivi
ta' bank mhux
Maltin.

8. (1) Kumpanija inkorporata barra minn Malta li teżercita kummerċ bankarju 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 ghandu:

(a) jispeċifika l-isem li jkun propost li jintuża relattivament għall-attivitajiet ta' l-uffiċċju rappreżentattiv u l-indirizz ta' dak l-uffiċċju;

(b) ikollu mieghu kopja ċertifikata ta' l-awtorizzazzjoni tal-kumpanija biex tmexxi l-kummerċ bankarju f'pajjiż li ma jkunx Malta.

(2) Kumpanija imsemmija fis-subartikolu (1) ta' dan l-artikolu li jkollha uffiċċju rappreżentattiv f'Malta ghandha xorta wahda 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-licenza 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 taghti 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 aktivitajiet immexxija f'Malta.

(5) Uffiċċju rappreżentattiv li lilo jinghata avviż skond is-subartikolu (3) ta' dan l-artikolu jista', fi żmien ta' tliet ġimgħat li jibded mill-jum li fih ikun irċieva l-avviż, japplika lit-Tribunal għal Servizzi Finanzjarji biex jannulla l-oġġezzjoni, u fuq dik l-applikazzjoni, it-Tribunal għal Servizzi Finanzjarji jista' jannulla l-oġġezzjoni jew jikkonfermaha (iżda mingħajr preġudizzju għat-thaddim tagħha qabel dak iż-żmien).

(6) L-Awtorita' Kompetenti tista', b'avviż bil-miktub, tehtieg lil kull kumpanija li jkollha uffiċċu 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 ghandha tosserva dak l-avviż fil-perijodu li jkun raġonevolment speċifikat bl-avviż.

(7) Uffiċċju rappreżentattiv f'Malta ghandu 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 ghandu jigi 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 ghal uffiċċji rappreżentattivi f'Malta bhalma japplikaw ghall-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.

(11) Meta kumpanija msemmija fis-subartikolu (1) ta' dan l-artikolu tigi ordnata mill-Awtorita' Kompetenti biex taghlaq xi uffiċċju rappreżentattiv taghha f'Malta ghandu jkollha dritt ta' appell lit-Tribunal ghas-Servizzi Finanzjarji imwaqqaf taht l-artikolu 10 ta' dan l-Att.

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 tmax-il xahar mill-hruġ taghha, jew f'dak il-perijodu iehor ta' żmien li jista' jkun speċifikat fil-liċenza; jew

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

(d) ma jkunx baqa' jahdem bhala 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 waħda minn dawn iċ-ċirkostanzi li ġejjin:

(a) jekk xi dokument jew informazzjoni li jkunu ma' l-applikazzjoni għal 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 inġatata 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 jissodisfa l-obbligi tiegħu lejn id-depożitanti u l-kredituri; jew

(f) jekk id-detentur tal-liċenza ma jkollux attiv biżżejjed 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 jmexxi l-affarijiet tiegħu, jew għal xi raġuni oħra, l-interessi tad-depożitanti tal-bank ikunu mhedda.

(3) Ir-restrizzjonijiet imposti mill-Awtorita' Kompetenti bis-saħħa tas-subartikolu (2) ta' dan l-artikolu għandhom ikunu daww 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 (mingħajr preġudizzju għall-ġeneralità 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* kwalifikattiv ta' azzjonijiet 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 ruhu f'xi transazzjoni jew transazzjonijiet jew xi klassi ta' kummerċ jew jithalla jimpenja ruhu 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 għandu jkollha s-setgħa li tvarja jew tneħhi kwalunkve restrizzjonijiet imposti taht 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) Għandu jitwaqqaf Tribunal li jkun magħruf bhala "it-Tribunal għal Servizzi Finanzjarji" f'dan l-Att imsemmi "it-Tribunal" li jkollu l-funzjonijiet mogħtija lilu b'dan l-Att, jew b'xi ligi oħra. Appelli.

(2) It-Tribunal jintagħmel minn *Chairman* u zewġ membri oħra mahtura mill-Ministru.

(3) L-*Chairman* għandu jkun avukat b'minimu ta' tnax-il sena ta' prattika legali.

(4) Il-membri l-oħra msemmija fis-subartikolu (2) ta' dan l-artikolu għandhom ikunu persuni li fl-opinjoni tal-Ministru jkollhom it-tagħrif u l-esperjenza meħtieġa fil-kummerċ bankarju jew servizzi finanzjarji.

(5) L-*Chairman* u l-membri l-oħra tat-Tribunal għandhom jibqgħu fil-kariga għal dak iż-żmien li jkun ta' mhux inqas minn tliet snin hekk kif jista' jigi stabbilit fil-hatra tagħhom u ma jistgħux jitnehhew fi żmien iż-żamma tal-kariga tagħhom hlief minhabba f'inkapaċità pruvata li jwettqu l-funzjonijiet tal-kariga tagħhom sew jekk din tkun inkapaċità fiżika jew tal-moħħ jew minhabba kull haga oħra, jew kondotta hażina pruvata.

(6) L-*Chairman* u l-membri l-oħra tat-Tribunal għandhom jirċievu dik ir-rimunerazzjoni li tista' tiġi stabbilita fid-dokument tal-hatra tagħhom.

(7) Ir-rimunerazzjoni msemmija fis-subartikolu (6) ta' dan l-artikolu ma għandhiex tinbidel matul iż-żmien tal-kariga ta' membru li jkun qed jirċeviha, hlief għal dawk il-bidliet li jistgħu minn żmien għal żmien ikunu meħtieġa sabiex jinżamm f'kull żmien matul iż-żamma tal-kariga, il-proporzjon tar-rimunerazzjoni mas-salarju ta' l-mhalled tal-Qrati Superjuri, kif eżistenti fid-data tal-hatra.

(8) 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 taht is-subartikolu (3) ta' l-artikolu 8 ta' dan l-Att;

(e) li taghlaq ufficcju rappreżentattiv;

(f) li toħroġ xi avviż jew tagħmel xi ordni skond l-artikolu 13 ta' dan l-Att;

(g) li tagħmel xi ordni skond l-artikolu 14 ta' dan l-Att;

tista' tappella kontra d-deċiżjoni lit-Tribunal li jkollu kompetenza esklussiva biex jisma' appelli dwar il-ħwejjeġ imsemmija f'dan is-subartikolu.

(9) Appell kontra deċiżjoni ta' l-Awtorita' Kompetenti ma għandux jissospendi l-eżekuzzjoni ta' dik d-deċiżjoni hlief fil-każ ta' appell minn deċiżjoni imsemmija fil-paragrafu (d) tas-subartikolu (8) ta' dan l-artikolu.

(10) Fis-smiġh ta' appell, it-Tribunal 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;

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

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

(11) Il-kwistjoni li tkun trid tiġi deċiża mit-Tribunal għandha tkun ta' jekk, għar-raġunijiet miġjuba mill-appellant,

(a) li l-Awtorita' Kompetenti tkun applikat hazin xi wahda mid-dispożizzjonijiet ta' dan l-Att; jew

(b) li d-deċiżjoni ta' l-Awtorita' Kompetenti tikkostitwixxi abbuż ta' diskrezzjoni jew li tkun manifestament ingusta:

Izda d-diskrezzjoni ta' l-Awtorita' Kompetenti ma tistax, ladarba tkun għet eżerċitata b'mod xieraq, tiġi mistharrġa mit-Tribunal.

(12) It-Tribunal ikollu s-setgħa iharrek xhieda u jagħtihom il-ġurament u li jahtar kull espert jew esperti li jista' jqis mehtiega sabiex jaqta' każ li jkun qed jittratta.

(13) It-Tribunal għandu jittratta kull haġa li titressaq quddiemu kemm jista' jkun bil-heffa u għandu jaqta' dwar każ mingħajr dewmien.

(14) It-Tribunal għandu jzomm is-seduti tiegħu fil-pubbliku hlief jekk, minhabba fix-xorta tal-każ li jkun qed jittratta, it-Tribunal iqis li jkun xieraq u sewwa li jmexxi l-proċedimenti jew parti minnhom bil-maġhluq; f'kull każ bħal dak id-deċiżjoni tat-Tribunal għandha dejjem tingħata fil-pubbliku.

(15) Il-Ministru jista' jagħmel regolamenti li jirregolaw il-proċedura għall-għemil u t-tmexxija ta' appelli taht dan l-artikolu, iżda fin-nuqqas ta' regolamenti bħal dawn u bla hsara għar-regoli tal-Ġustizzja Naturali, it-Tribunal għandu jirregola l-proċedura tiegħu stess.

(16) Ikun hemm appell fuq kwistjoni ta' ligi biss minn deċiżjoni tat-Tribunal lill-Qorti ta' l-Appell. Fis-smiġħ ta' dak l-appell, il-Qorti ta' l-Appell għandu jkollha s-setgħat kollha tat-Tribunal biex tagħmel ordnijiet.

Ftuh ta' ferġat.

11. (1) Bank għandu javża lill-Awtorita' Kompetenti bil-miktub qabel ma jiftaħ ferġa 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' jiftaħ ferġa ġdida, aġenzija ġdida jew uffiċċju ġdid jew jistabbilixxi jew jakkwista xi sussidjarju f'xi 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'liċenza korrenti ma tista' tuża l-kelma "bank" jew xi derivattivi minnha jew kliem iehor 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, f'xi avviz jew reklam, jew b'xi mod iehor 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 daww 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 wiehed jew iżjed tagħha.

Parteċipazzjoni f'bank.

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

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

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

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

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

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

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

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

(2) Il-Ministru jista' b'ordni ppubblikat fil-Gazzetta jvarja jew ineħhi kull wiehed mill-percentagġi 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 imniżżla 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 wiehed mill-passi mniżżla fis-subartikolu (1) ta' dan l-artikolu.

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

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

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

(ċ) 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 mniżżla fis-subartikolu (5) ta' dan l-artikolu.

(7) Kull persuna li tkun bi hsiebha tiehu xi wiehed mill-passi mniżżla fis-subartikolu (1) ta' dan l-artikolu u kull bank li bi hsiebu jiehu xi wiehed mill-passi mniżżla fis-subartikolu (5) ta' dan l-artikolu għandhom javżaw lill-Awtorita' Kompetenti bil-miktub u l-Awtorita' Kompetenti tista' toħroġ Direttiva Bankarja li tirregola l-forma li fih għandha ssir dik in-notifika u l-informazzjoni li tkun meħtieġa li tingħata lill-Awtorita' Kompetenti ma' dik in-notifika.

(8) Fi żmien xahrejn minn meta l-Awtorita' Kompetenti tirċievi dik in-notifika jew minn meta tirċievi dik l-informazzjoni li hija tista' legittimament teħtieġ, liema jkun ta' l-aħhar, l-Awtorita' Kompetenti għandha toħroġ avviż:

(a) li bih hija tagħti l-kunsens assolut għat-tehid tal-pass; jew

(b) li bih hija tagħti l-kunsens għat-tehid tal-pass sugġett għal dawk il-kondizzjonijiet li hija tista' tqis li jkunu xierqa; jew

(ċ) li bih tirrifjuta li tagħti l-kunsens għat-tehid tal-pass:

B'dan iżda illi meta l-Awtorita' Kompetenti tonqos għal kwalunkwe raġuni milli toħroġ l-imsemmi avviż fiż-żmien preskritt, dan il-fatt għandu jitqies bħallikieku gie mogħti avviż ta' rifjut taht il-paragrafu (ċ) ta' dan is-subartikolu.

(9) Jekk xi persuna jew xi bank jiehdu jew ikunu bi hsiebhom jiehdu xi pass imsemmi fis-subartikoli (1) u (5) ta' dan l-artikolu minghajr ma jiksbu l-kunsens ta' l-Awtorita' Kompetenti, allura, minghajr preġudizzju għal xi piena oħra li tista' tigi mposta taht dan l-Att, l-Awtorita' Kompetenti jkollha s-setgħa li tagħmel ordni:

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

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

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

(d) iżżomm lill-persuna jew bank milli jeżerċitaw xi drittijiet li dak il-pass, kieku skond il-liġi, kien ikun jaghtihom, inkluż id-dritt li jirċievu xi pagament;

(e) iżżomm lill-persuna jew bank milli jiehdu xi pass simili jew xi pass ieħor tal-kategoriji mniżżla fis-subartikoli (1) u (5) ta' dan l-artikolu.

14. (1) Kull persuna li tkun kontrollur ta' bank għandha tkun persuna adatta biex teżerċita dak il-kontroll. Kontroll ta' bank.

(2) Bank għandu 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;

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

(3) Bank għandu jipprovdi 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 tieqaf milli tkun kontrollur jew li jżomm lil dik il-persuna milli ssir kontrollur.

15. (1) Bank ma għandux:

Transazzjonijiet
projbiti.

(a) jaghti xi faċilita' 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 ġuridiku ieħor li fih il-bank ikollu kontroll;

(b) jaghti, jew jippermetti li jibqghu pendent, faċilitajiet ta' kreditu mhux assigurat, li fit-total jeċċedu s-somma ta' hamest elef lira Maltija -

(i) lil xi wiehed mid-diretturi tieghu jew lill-konjuġi kemm jekk flimkien jew individwalment jew ma' terzi persuni;

(ii) lil xi persuna li fiha l-bank jew xi wiehed jew iżjed mid-diretturi tieghu ikun interessat bhala direttur, soċju, *manager*, aġent jew membru (li ma jkunx azzjonista f'kumpannija mniżżla fuq il-Borża ta' Malta) jew lil xi persuna li taghha 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 tieghu ikollhom flimkien jew individwalment kontroll, li ma jkunx huwa stess bank jew l-impriża ċentrali tal-bank, sussidjarju ta' din l-impriża ċentrali jew sussidjarju tal-bank;

(ċ) jaghti jew jippermetti li jibqghu pendent relattivament ghal xi wiehed mill-funzjonarji, hlief direttur, jew xi impjegat faċilitajiet ta' kreditu mhux assigurati li fit-total jeċċedu s-salarju ta' tnax-il xahar ta' dak il-funzjonarju jew impjegat;

(d) jakkwista jew iżomm xi parti mill-kapital azzjonarju ta' jew xort'ohra jkollu interess dirett jew indirett f'xi bank jew kumpannija oħra jew grupp ta' persuni konnessi, li l-valur tal-kost originali taghha jeċċedi hmistax fil-mija tal-fondi tal-bank stess u *holdings* tali ma ghandhomx jeċċedu fit-total mija fil-mija tal-fondi tieghu stess:

Iżda:

(i) is-sussidjarji ta' bank meqjusa komplessivament, ma ghandhomx jikkostitwixxu grupp ta' persuni konnessi ghall-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 ghandu jkun hamsa u ghoxrin fil-mija tal-fondi tal-bank stess;

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

(iv) meta l-imsemmija perċentagġi jiġu eċċeduti bħala riżultat ta' l-akkwist ta' azzjonijiet biex jiġu ssodisfati djun dovuti lill-bank, huwa jkollu massimu ta' tmax - il xahar jew dak il-perijodu ieħor 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 jzomm xi proprjeta' immobbli jew xi dritt fuqha hlief kif jista' jkun mehtieg ragonevolment 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 tmax-il xahar, jew xi perijodu ieħor 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 l-originali tagħha ma għandux fit-total jeċċedi hamsa fil-mija tal-fondi tal-bank stess;

(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 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-baži ta' valutazzjoni approvata mill-Awtorita' Kompetenti nnifisha.

Exposures kbar.

16. L-Awtorita' Kompetenti ghandha tohrog' Direttiva Bankarja skond kif ikun jidhrilha xieraq biex tirregola *exposures* kbar.

Fondi tal-bank stess u riservi.

17. (1) Bank ghandu:

(a) iżomm proporzjon tal-fondi tieghu stess ghal 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;

(c) javża lill-Awtorita' Kompetenti minnufih malli l-proporzjon jaqa' taht il-livell mehtieg bil-paragrafu (a) ta' dan is-subartikolu u ma' dan l-Awtorita' Kompetenti ghandha tordna lill-bank biex jiehu dawk il-miżuri mehtiega biex il-proporzjon jingieb lura ghall-livell mehtieg f'dak iż-żmien li l-Awtorita' Kompetenti tista' tistabbilixxi.

Kap.215.

(2) Il-fondi ta' riserva mahluqa taht l-artikolu 9 ta' l-Att dwar il-Kummeré Bankarju huma aboliti. Dawn il-fondi ghandhom jigu allokatu ghal dawk ir-riservi interni ohra li jiffurmaw parti mill-fondi tal-bank stess skond kif kull bank jista' jqis xieraq.

(3) Kull bank ghandu dejjem ikollu provdut biżżejjed ghal djun inesigibbli u djun dubbjuzi.

Likwidita'.

18. L-Awtorita' Kompetenti ghandha tohrog' Direttiva Bankaria li tispeçifika x'ghandu jikkostitwixxi l-attiv speçifikat u l-passiv ta' depożitu ta' bank u li tistabbilixxi l-inqas *holding* ta' attiv speçifikat bhala proporzjon ghall-passiv ta' depożitu li bank ghandu jzomm.

Informazzjonijiet li ghandhom jinghataw lill-Awtorita' Kompetenti u lill-Bank Ċentrali.

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

(a) reżokontijiet perjodiçi li juru l-qaghda u l-attivi u l-passivi u l-profitti u telf fuq baži individwali u, fejn ikun xieraq fuq baži konsolidata inkluż analiżi taghhom;

(b) dik l-informazzjoni li tkun mehtiega mill-Awtorita' Kompetenti ghal skopijiet statistiçi;

(ċ) 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-uffiċċju u l-ferghat tieghu barra minn Malta f'dik il-forma u f'dawk iż-żminijiet kif l-Awtorita' Kompetenti tista' tehtieg fil-qadi ta' dmirijietha.

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

(3) Id-dispożizzjonijiet ta' dan l-artikolu ghandhom japplikaw ukoll ghall-ferghat, aġenziji jew ufficciji f'Malta kollha ta' bank li ma jkunx inkorporat f'Malta.

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

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

(a) l-Awtorita' Kompetenti ghandha taghti dik l-informazzjoni taht dan l-artikolu kif jista' jkun mehtieg mill-Ministru jew mill-Bank Ċentrali u ghandha tinforma lill-Ministru u l-Bank Ċentrali jekk f'xi żmien fil-fehma taghha ikun hemm thassib dwar l-istat ta' l-affarijiet ta' dak il-bank;

(b) il-Bank Ċentrali ghandu jipprepara u jippubblika reżokontijiet konsolidati li jigbru flimkien l-informazzjoni moghtija taht dan l-artikolu.

20. (1) Kull bank ghandu jissottometti lill-Awtorita' Kompetenti jew lill-Bank Ċentrali kull informazzjoni li l-Awtorita' Kompetenti jew il-Bank Ċentrali jistghu ragonevolment jehtiegu fl-eżerċizzju tad-dmirijiet taghhom taht dan l-Att u l-Att dwar il-Bank Ċentrali ta' Malta, u l-Awtorita' Kompetenti jew il-Bank Ċentrali jistghu jinvestigaw u jitolbu kjarifika ta' kull informazzjoni hekk sottomessa.

Sorveljanza tal-banek.

Kap. 204.

(2) Kull talba ghal informazzjoni jew ghal kjarifika taghha skond dan l-artikolu ghandha tkun b'avviż bil-miktub li ghandha tehtieg lir-riċevent biex jipproduċi l-informazzjoni f'dak iż-żmien jew żminijiet

jew f'dawk il-perijodi jew dwar dak il-perijodu jew perijodi kif speċifikat fl-avviz.

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

(a) b'avviz bil-miktub notifikat lil bank, tehtieg lill-bank biex jipprovdi rapport minn *accountant* jew persuna oħra ta' hila professjonali rilevanti dwar, jew dwar xi aspett ta', kull materja li dwarha l-Awtorita' Kompetenti tkun htieget jew setghet 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-saħha 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 jigu mehtiega biex jipproduci xi dokumenti tinkludi s-setgħa -

(a) jekk id-dokumenti jigu prodotti, li jittiehdu kopji tagħhom jew estratti minnhom u li l-bank jew persuna, jew xi persuna oħra li tkun funzjonarju tal-prezent jew ta' l-imghoddi tal-bank in kwistjoni jew li tkun jew kienet f'xi zmien impjegata mill-bank in kwistjoni jew li tkun qiegħda tagixxi bħala impjegat tal-bank in kwistjoni, jigu mehtiega jipprovdu spjegazzjoni ta' kwalunkwe wiehed mid-dokumenti; u

(b) jekk id-dokumenti ma jgħux prodotti lill-persuna li kienet mehtieġa biex tipproduċihom tiġi mehtieġa 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 teżercita s-setgħat mogħtija bis-subartikoli (1) u (3) ta' dan l-artikolu relattivament għal xi persuna li tkun jew li f'xi zmien rilevanti kienet -

(a) *holding company*, kumpannija sussidjarja jew kumpannija li hija persuna konnessa ma' dak il-bank;

(b) kumpannija sussidjarja jew kumpannija li hija persuna konnessa mal- *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 tehtieġ lil dik il-persuna biex tagħtiha, f'dak iż-żmien kif speċifikat fl-avviż, dik l-informazzjoni jew dokumenti li l-Awtorita' Kompetenti tista' raġonevolment tehtieġ biex tistabbilixxi 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 htieġa imposta bis-saħħa ta' dan l-artikolu tista' tintuża bħala prova kontra tagħha.

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

Dritt ta' dhul
biex jinkisbu
informazzjonijiet
u dokumenti.

21. (1) Kull uffiċjal, impjegat jew aġent ta' l-Awtorita' Kompetenti jista', fuq produzzjoni tal-provi mehtieġa ta' l-awtorita' tiegħu -

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

(b) jidhol f'kull fond okkapat minn xi persuna li lilha jista' jiġi notifikat avviż 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 li setgħu kienu mehtieġa b'dak l-avviż iżda l-Awtorita' Kompetenti ma ghandhiex tawtorizza lil xi persuna biex tagixxi skond dan il-paragrafu kemm-il darba ma jkollhiex raġuni għalfejn taħseb li jekk dak l-avviż jiġi notifikat ma kienx se jiġi osservat jew li xi dokumenti li għalihom ikun jirreferi jitnehhew, jitbagħhsu jew jinquerdu:

Iżda jekk xi fond imsemmi f'dan il-paragrafu jkun okkapat bhala 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' filgħaxija u l-ħamsa ta' filgħodu.

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

Investigazzjonijiet.

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 avviż bil-miktub dwar kull hatra lill-bank konċernat.

(2) Jekk persuna mahtura skond is-subartikolu (1) ta' dan l-artikolu tara li tkun haġa mehtieġa għall-iskopijiet ta' l-investigazzjoni tagħha, hija tista' wkoll tinvestiga l-kummerċ ta' kwalunkwe persuna li tkun jew li f'xi żmien rilevanti kienet -

(a) *holding company*, kumpannija sussidjarja jew kumpannija li hija persuna konnessa mal-bank li jkun għaddej investigazzjoni;

(b) kumpannija sussidjarja jew kumpannija li hija persuna konnessa ma' *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' teżercita s-setgħat mogħtija bis-subartikolu (1) ta' dan l-artikolu relattivament għal xi persuna li jkollha *holding* sinifikanti ta' azzjonijiet jew *holding* 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 maħtura skond is-subartikolu (1) ta' dan l-artikolu tiddeċiedi li tinvestiga l-kummerċ ta' xi persuna bis-saħħa tas-subartikolu (2) jew tas-subartikolu (3) ta' dan l-artikolu hija għandha tinforma lil dik il-persuna bil-miktub.

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

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

(b) li tattendi quddiem il-persuni maħtura f'dak iz-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 raġonevolment kapaċi li tagħti,

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

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

(7) Ebda persuna ma ghandha -

(a) minghajr raġuni legali tonqos li tipproduċi xi dokumenti li huwa d-dmir tagħha li tipproduċi skond is-subartikolu (5) ta' dan l-artikolu;

(b) minghajr raġuni legali tonqos li tattendi quddiem il-persuni maħtura skond is-subartikolu (1) ta' dan l-artikolu meta tkun mehtieġa biex tagħmel hekk; jew

(c) minghajr raġuni legali tonqos li twieġeb xi mistoqsija li ssirilha mill-persuni hekk maħtura relattivament għal xi bank li jkun taht investigazzjoni jew korp li jkun qiegħed jigi investigat bis-sahħa tas-subartikolu (2) jew (3) ta' dan l-artikolu.

(8) Dikjarazzjoni magħmula minn persuna skond hteġa imposta bis-sahħa ta' dan l-artikolu tista' tintuża bħala prova kontra tagħha.

(9) L-Awtorita' Kompetenti għandu jkollha s-setgħa tirkupra minghand bank li jkun sar rapport dwaru skond is-subartikolu (1) ta' dan l-artikolu l-ispejjeż magħmula b'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.

Suspett ta' offiżi.

23. (1) Meta l-Awtorita' Kompetenti jkollha raġunijiet biżżejjed biex tissuspetta li persuna tkun hatja ta' għemil ta' reat taht dan l-Att, hija tista' b'avviż bil-miktub tehtieġ 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 tehtieġ għall-investigazzjoni ta' l-offiża suspettata;

(b) biex tipproduċi, 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 tehtieġ għal dak il-ghan;

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

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

(3) Kull ufficjal, impjegat jew agent ta' l-Awtorita' Kompetenti jista', bejn il-hamsa ta' fil-ghodu u d-disgħa ta' fil-ghaxija, fuq il-produzzjoni jekk mehtieġa ta' l-awtorita' tiegħu 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 mehtieġa bl-avviż, u jagħmel dawk il-mistoqsijiet imsemmija fil-paragrafu (c) ta' dak is-subartikolu jew jeżercita s-setgħat mogħtija bis-subartikolu (2) ta' dan l-artikolu.

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

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

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, l-artikolu 22 jew l-artikolu 23 ta' dan l-Att; jew

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

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

25. (1) Fuq il-bażi ta' ftehim internazzjonali, jew fuq ftehim ta' reċiproċita', l-Awtorita' Kompetenti tista' taqsam id-dmirijiet ta' sorveljanza tagħha ma' l-awtoritajiet kompetenti barranin ohra fil-każ ta' bank li jopera f'Malta jew fergħa li huma 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' informazzjoni.

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

(3) Ghandu 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 msejja minn kwalunkwe waħda mill-partijiet ikkonċernati iżda għandhom dejjem ikunu preseduti mill-Awtorita' Kompetenti.

Komunikazzjoni
mill-udituri eċċ
ma' l-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 (3) ta' l-artikolu 20 ta' hawn fuq jew skond is-subartikolu (1) ta' l-artikolu 22 ta' hawn fuq,

jistgħu jkunu sugġetti ma għandu jitqies li jkun inkiser minhabba fli 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' taht s-subartikolu (9) ta' l-artikolu 31 ta' dan l-Att.

(3) Relattivament għal persuna mahtura 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-kummerċ 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-sahha tas-subartikolu (7) ta' l-artikolu 20 ta' dan l-Att, ir-rapport ikun dwar korp assoċjat ta' bank, ikollha x'taqsam mal-kummerċ 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-kapaċita' tagħha bhala l-persuna li tkun qed tagħmel ir-rapport:

(a) ikollha x'taqsam mal-kummeré 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-saħha tas-subartikolu (2) ta' l-artikolu 22 ta' dan l-Att, ir-rapport ikun dwar korp assoċjat ta' bank, ikollha x'taqsam mal-kummeré jew l-affarijiet ta' dak il-korp.

(5) F'dan l-artikolu "korp assoċjat", relattivament għal istituzjoni, tfisser kull korp bħal 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 li għalihom japplika s-subartikolu (1) ta' hawn fuq ma jkunux suġġetti 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 jirrappreżentaw 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.

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

Kumitat Bankarju
Kongunt.

(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 iċ-*Chairman* tal-Kumitat.

(4) Il-Kumitat ma għandux jaġixxi kemm-il darba ma jkunux preżenti għall-inqas tliet membri tal-kumitat inkluż iċ-*Chairman* u membru wiehed mill-Bank Ċentrali u membru mill-Awtorita' Kompetenti.

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

(6) Il-Kumitat għandu 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.

Banek li ma jkunux jistgħu jonoraw l-obbligi.

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

(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 lill-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;

(c) 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.

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

29. (1) Jekk, kemm minn xi rapport magħmul taht 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 wahda miċ-ċirkostanzi indikati fis-subartikolu (2) ta' l-artikolu 9 ta' dan l-Att, il-Bank Ċentrali jista' -

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

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

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

(d) jinnomina persuna kompetenti biex tiehu fidejha kontroll tal-kummerċ tal-bank u jew li tkompli tmexxi dak il-kummerċ jew li

taghmel 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 licenzi skond id-dispożizzjonijiet ta' l-artikolu 9 ta' dan l-Att;

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

(g) jinnomina persuna kompetenti biex taghmilha ta' stralcjarju għall-likwidazzjoni ta' l-affarijiet tal-bank;

(h) jistabbilixxi r-rimunerazzjoni li għandha titallas mill-bank lil kull persuna kompetenti 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 (ċ) 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-setghat, il-funzjonijiet u d-dmirijiet kollha tal-bank dwar dak l-attiv sew jekk eżerċitabbli mill-kumpannija f'laqgħa 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;

(ċ) skond il-paragrafu (d) tas-subartikolu (1) ta' dan l-artikolu, il-bank għandu jissottometti l-kummerċ tieghu għall-kontroll minn dik il-persuna; u għandu jipprovdiha b'dawk il-facilitajiet li hija tista' tehtieg biex tkompli tmexxi dak il-kummerċ jew biex taqdi l-funzjonijiet mogħtija lilha taht dak il-paragrafu, u s-setgha, il-funzjonijiet u d-dmirijiet tal-bank, sew jekk eżerċitabbli mill-kumpannija f'laqgħa 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 (ċ) jew il-paragrafu (d) tas-subartikolu (1) ta' dan l-artikolu -

(a) kull funzjoni, setgha jew dmir li jistghu 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 kummerċ li l-persuna nominata 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'oħra jew xi dispożizzjoni espressa ta' liġi ma tispeċifikax xort'oħra, jieqfu milli jkunu hekk eżerċitabbli;

(b) il-persuna nominata skond xi wiehed mill- imsemmija paragrafi jkollha, dwar dik il-proprjeta, soċjetajiet, ditti jew kummerċ 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 faċilitajiet ta' kreditu mogħti jew minn xi responsabbiltà 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 bħal 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 xi setgħa, funzjoni jew dmir kif intqal qabel għandhom ikunu eżerċitabbli minn xi persuna oħra, u f'kull każ bħal dan, b'seħħ minn dik id-data jew dati li l-Bank Ċentrali jista' jispeċifika u kemm-il darba u sakemm 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 bħal dik ma toqot ebda haġa li tkun saret jew li tkun naqset milli ssir bis-saħħa ta' jew minhabba xi wahda 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 tippovdiha b'dawk il-faċilitajiet li jidhrilha meħtieġa biex taqdi kull wahda mis-setgħat, funzjonijiet jew dmirijiet skond dan l-artikolu;

Kap. 13.

(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 ghandha, sugġett ghal kull direttivi tal-Bank Ċentrali moghtija fl-interessi tal-kredituri, taġixxi bhallikieku dawk id-dispożizzjonijiet ma kienux jeżistu u daqsliekeku ma kienet saret ebda dikjarazzjoni ta' falliment;

(e) kull persuna li tiġi nominata skond xi wahda mid-dispożizzjonijiet ta' dan l-artikolu ghandha tissottometti rapporti ta' kull sitt xhur ta' l-attivita' tieghu u kontijiet annwali ta' l-operazzjonijiet tieghu fil-qadi ta' dawk il-funzjonijiet 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 (g) 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 ohra.

(5) Id-dispożizzjonijiet ta' dan l-artikolu ghandu jkollhom effett minkejja kull dispożizzjoni ohra ta' kull liġi, u minkejja dak kollu li jinsab f'kull att, kuntratt, kitba jew dokument ieħor 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 taġħhom għandhom japplikaw ukoll għal kull att jew proċedimenti mibdija jew li saru qabel ma dik ir-rappreżentanza ġiet vestita kif intqal qabel, u dwar kull għemil jew proċedimenti bhal dawk kull persuna ohra li taġixxi jew li tidher li tkun qed taġixxi, jew li dwarha tittieħed azzjoni, f'dik il-kariga għandha tieqaf milli tkun parti fi, u għandha tiġi eskluża minn, kull att jew proċedimenti bhal dawk.

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

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

Publikazzjoni ta' reżokontijiet finanzjarji verifikati.

30. Kull bank għandu, mhux aktar tard minn erba' xhur mill-eghluq 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'żewġ gazżetti lokali li johorġu kuljum li minnhom wahda tiġi publikata bil-Malti u l-oħra bl-Ingliż, u

(ċ) jesponi f'pożizzjoni prominenti f'kull wieħed mill-uffiċċji u ferġat tiegħu f'Malta 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' 1-1994 dwar Kumpanniji, u jkollha l-awtorizzazzjoni ta' l-Awtorita' Kompetenti biex tagixxi bhala 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 vakanza 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-aħjar tagħrif u twemmin tagħhom kienu meħtieġa għall-iskop tal-verifika tagħhom;

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

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

(d) jekk, fil-fehma tagħhom, u skond l-aħjar tagħrif tagħhom u skond l-ispjegazzjonijiet mogħtija lilhom, ir-reżokontijiet

finanzjarji msemmija jaghtux l-informazzjoni mehtieġa 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 tidhiru mehtieġa 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 tagħhom;

(ii) inehhi l-udituri tiegħu qabel jagħlaq iż-żmien tal-kariga tagħhom;

(ċ) jekk l-udituri jieqfu milli jkunu udituri tal-bank għal xi raġuni li ma tkunx waħda 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

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

(9) Jekk fil-kariga tiegħu bhala uditur ta' bank jew bhala 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' jkollu effett avvers serju fuq id-depożitanti ta' dak il-bank, jew ta' ferġat f'Malta kollha ta' bank li ma jkunx inkorporat f'Malta, jew ta' xi persuna konnessa li tkun bank, huwa għandu minnufih jgħarraf lill-Awtorita' Kompetenti permezz

tal-management tal-bank jew, jekk iċ-ċirkostanzi jkunu 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-1994 dwar Kumpanniji, id-dispożizzjonijiet ta' dan l-artikolu għandhom jipprevalu u d-dispożizzjonijiet ta' l-imsemmi Att ma għandomx, sa fejn ikunu inkonsistenti, japplikaw għal banek.

Swalifika ta' funzjonarji.

32. (1) Ebda persuna -

(a) li tkun ġiet dikjarata falluta b'sentenza jew li tkun għamlet akkordju mal-kredituri tagħha jew li kienet funzjonarju ta' bank li kellu l-liċenza tiegħu imħassra skond is-subartikolu (2) ta' l-artikolu 9 ta' dan l-Att, u li ma tkunx ġiet eżentata bil-miktub mill-Awtorita' Kompetenti mid-dispożizzjonijiet ta' dan l-artikolu; jew

(b) li tkun interdetta jew inabilitata jew li kienet involuta f'*money laundering* jew li tkun ġiet 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 għandha taġixxi jew tkompli taġixxi bħala funzjonarju ta' bank.

Dmirijiet ta' funzjonarji.

33. Kull funzjonarju ta' bank għandu jiehu l-passi raġonevoli 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 taħt dan l-Att, u

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

Konfidenzjalita'.

34. (1) Ebda haġa f'dan l-Att ma tawtorizza lill-Bank Ċentrali jew lill-Awtorita' Kompetenti biex jinvestigaw jew iġieghlu li ssir

investigazzjoni fil-bank fl-affarijiet ta' xi klijent individwali ta' bank, hliet:

(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 u huma tal-fehma illi t-tali *exposure* jista' jkun ta' theddid għal dak il-bank jew għas-settur bankarju b'mod ġenerali.

(2) Ebda persuna, inklużi funzjonarji jew aġenti ta' l-imghoddi jew tal-prezent ta' bank, ma għandha tikxef xi informazzjoni dwar l-affarijiet ta' bank jew ta' klijent ta' bank li hija tkun kisbet fil-qadi tad-dmirijiet tagħha jew fl-eżerċizzju tal-funzjonijiet tagħha skond dan l-Att hliet:

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

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

(ċ) meta tkun mehtieġa legalment biex tagħmel hekk minn xi qorti jew skond xi dispożizzjoni ta' xi liġi.

(3) Meta funzjonarju ta' bank ikollu għalfejn jahseb li transazzjoni jew transazzjoni proposta tista' tinvolvi *money laundering*, huwa obligat jimxi skond ir-regolamenti mahruġa taht l-Att ta' l-1994 kontra *Money Laundering* u skond linji ta' gwida magħmula mill-Awtorita' Kompetenti. It-taris tal-provvedimenti ta' dan is-subartikolu ma jkunx jikkostitwixxi 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 viċi-versa dwar klijenti komuni li lilhom il-bank prinċipali jew is-sussidjarji taw jew qegħdin jagħtu faċilita' ta' kreditu, ma għandux jikkostitwixxi ksur ta' konfidenzjalita'.

Lzda 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) tagħmel 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 tagħmel (dizonestament jew xort'ohra) dikjarazzjoni, wegħda jew tbassira li tkun qarrieqa, falza jew tkun tinganna,

tkun hatja ta' reat jekk hija tagħmel 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 tagħmel, jew iżzomm milli tagħmel, depożitu magħha jew ma' xi persuna ohra; jew
- (ii) biex tidhol, jew iżzomm milli tidhol, f'xi ftehim għall-ghemil ta' dak id-depożitu.

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

(a) id-dikjarazzjoni, wegħda jew tbassira f'Malta jew minn Malta, jew jekk il-fatti jinħbew 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 jinħbew 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 waħda 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 hteġa legittima ta' l-Awtorita' Kompetenti jew tal-Bank Ċentrali;

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

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

(f) minghajr skuża raġonevoli taltera, tissopprimi, taħbi, tiddistruggi jew tirrifjuta li tipproduċi xi dokument li hija legalment tkun meħtieġa li tipproduċi lil xi persuna skond dan l-Att,

tkun hatja ta' reat.

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

(5) Il-Ministru għandu jorogħ regolamenti li jippreskrivu il-pieni għal reati kontra dan l-Att, u dawn ir-regolamenti jistgħu:

(a) jippreskrivu l-pieni li huma eżegwibbli bi prosekuzzjoni fil-qrati ta' Malta .

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

(ċ) jippreskrivu pieni kkalkulati skond ma jkun ilu sejjer ir-reat;

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

(6) Il-pieni preskritti b'regolamenti mahruġa skond is-subartikolu (5) 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 500,000 lira Maltija.

(7) Il-Ministru jista' b'regolamenti jipprovdi għal pieni amministrattivi li jistgħu jiġu imposti mill-Awtorita' Kompetenti minghajr rikors għal kawża fil-qorti:

B'dan iżda illi piena amministrattiva ma tistax timponi piena finanzjarja ta' iżjed min 50,000 lira Maltija.

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.

Thassir ta' l-Att dwar il-Kummerċ Bankarju, Kap. 215. 37. (1) Bla hsara ghad-dispożizzjonijiet tas-subartikoli ta' wara ta' dan l-artikolu, l-Att dwar il-Kummerċ Bankarju huwa b'dan imħassar.

(2) Kull liċenza, hatra, ordni jew ghemil iehor ikun xi jkun taht l-Att dwar il-Kummerċ Bankarju mħassar bis-subartikolu (1) ta' dan l-artikolu ghandu jkompli fis-sehh bhallikieku l-istess liċenza, hatra, ordni jew ghemil iehor sar taht dan l-Att.

Kap. 330. (3) Id-dispożizzjonijiet ta' dan l-artikolu ma japplikawx ghal kumpanniji bankarji *offshore* li huma registrati taht l-Att dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta sa dik id-data li l-Ministru jista' b'avviż fil-Gazzetta jistabbilixxi.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 303 ta' l-20 ta' Lulju, 1994.

LAWRENCE GONZI

Speaker

RICHARD J. CAUCHI

Skriivan tal-Kamra tad-Deputati

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

1. Short title and commencement
2. Interpretation
3. Powers and duties of the Minister
4. Powers and duties of the Competent Authority
5. Licences for banking activities
6. Application for a licence
7. Issuing of a licence
8. Representative offices of non-Maltese banks
9. Restriction and revocation of a licence
10. Appeals
11. Opening of branches
12. Use of the word "bank"
13. Participation in a bank
14. Control of a bank
15. Prohibited transactions
16. Large exposures
17. Own funds and reserves
18. Liquidity
19. Information to be submitted to the Competent Authority and the Central Bank
20. Supervision of banks
21. Right of entry to obtain information and documents
22. Investigations
23. Suspected offences
24. Obstruction
25. Co-operation and sharing of information
26. Communication by auditors etc with the Competent Authority
27. Joint Banking Committee
28. Banks unable to meet obligations
29. Power of the Central Bank to take control of banks
30. Publication of audited financial statements
31. Auditors
32. Disqualification of officers
33. Duties of officers
34. Confidentiality
35. Offences and penalties
36. Application of Act to the Central Bank
37. Repeal of the Banking Act, Cap. 215

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XV of 1994

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 responsible for finance 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;

"branch" means premises of a bank, other than its head office, from which the business of banking is undertaken;

"business of banking" means

(a) the business of a person who as set out in subsection (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;

Cap. 204

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

"company" means a limited liability company 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 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 and bills of exchange endorsed 'pour aval'.

"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;

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

"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, 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 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 highest percentage figure shall be deemed to be the

percentage of equity shares held, and "qualifying shareholder" shall be construed accordingly;

"reconstruction" has the same meaning as in the Companies Act, 1994;

"representative office" means, in relation to a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a foreign country, premises in Malta from which the business of banking is promoted or assisted in any way, and in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of 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 highest 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 the term "subsidiary undertaking" by the Companies Act, 1994.

(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.

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 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.

(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 the Competent Authority shall make copies thereof available to the public.

(4) Banking Directives imposing an obligation or requirement on the public shall be made by regulations in accordance with subsection (3) of section 3 of this Act.

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

Licences for banking activities.

under this Act by the Competent Authority in accordance with the policy established by the Minister from time to time.

(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 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.

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 subsection (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, whichever 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.

(5) Where the Competent Authority for any reason fails to determine an application for a licence within the time prescribed under subsection (3) of this section, such fact shall be deemed to constitute a refusal to grant a licence.

8. (1) A company incorporated outside Malta which carries on the business of banking 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:

(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.

Representative offices of non-Maltese banks.

(2) A company mentioned in subsection (1) of this section 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 Financial Services Tribunal to set aside the objection, and upon such application, the Financial Services 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 20, 21 and 24 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.

(11) Where a company mentioned in subsection (1) of this section has been ordered by the Competent Authority to close any representative office in Malta, an appeal from that order shall lie to the Financial Services Tribunal set up in accordance with section 10 of this Act.

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

Restriction and revocation of a licence.

- (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 qualifying shareholding 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) There shall be a Tribunal to be known as "The Financial Services Tribunal" in this Act referred to as "the Tribunal", having the functions and powers assigned to it by this Act, or by any other law.

Appeals.

(2) The Tribunal shall consist of a Chairman and two other members appointed by the Minister.

(3) The Chairman shall be an advocate with a minimum of twelve years legal practice.

(4) The two other members mentioned in subsection (2) of this section shall be persons who in the opinion of the Minister possess the necessary expertise and experience in banking or financial services.

(5) The Chairman and other members of the Tribunal shall hold office for such period being of not less than three years as may be determined in their appointment and cannot be removed during their term of office except on grounds of proved inability to perform the functions of their office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(6) The Chairman and other members of the Tribunal shall receive such remuneration as may be determined in their instrument of appointment.

(7) The remuneration referred to in subsection (6) of this section shall not be altered during the tenure of office of a member by whom it is receivable, except for such changes as may from time to time be required to preserve at all times during the tenure of the appointment the proportion of the remuneration to the salary of a Judge of the Superior Courts, as existed on the date of the appointment.

(8) 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 a notice under subsection (3) of section 8 of this Act;
- (e) to close a representative office;
- (f) to issue any notice or make any order under section 13 of this Act;
- (g) to make any order under section 14 of this Act;

may appeal against the decision to the Tribunal which shall have exclusive competence to hear appeals on the matters listed in this subsection.

(9) An appeal against a decision of the Competent Authority shall not suspend the operation of that decision except in the case of an appeal from a decision as is mentioned in paragraph (d) of subsection (8) of this section.

(10) Upon the hearing of an appeal, the 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 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.

(11) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant,

(a) the Competent Authority has, in its decision wrongly applied any of the provisions of this Act; or

(b) the decision of the Competent Authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the Competent Authority may not, so long as it has been exercised properly, be queried by the Tribunal.

(12) The Tribunal shall have the power to summon witnesses and to administer the oath thereto, and to appoint any expert or experts as it may deem necessary for the determination of the case before it.

(13) The Tribunal shall deal with any matter before it with utmost urgency and shall give its decision without delay.

(14) The Tribunal shall hold its sittings in public unless having regard to the nature of the matter before it, the Tribunal deems it fit and proper to conduct the proceedings or part thereof in private; in any such case the decision of the Tribunal shall always be delivered in public.

(15) The Minister may make regulations governing the procedure for bringing and conducting appeals under this section, provided that in the absence of such regulations and subject to the rules of Natural Justice, the Tribunal shall regulate its own procedure.

(16) There shall be an appeal on a question of law only from a decision of the Tribunal to the Court of Appeal. Upon the hearing of such an appeal, the Court of Appeal shall have all the powers of the Tribunal to make orders.

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

Opening of branches.

(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.

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

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

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

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

(d) increase a qualifying shareholding 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) reduce a qualifying shareholding 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) reduce a qualifying shareholding or a significant shareholding so as to cause it to cease to be a qualifying shareholding or significant shareholding;

(g) divest himself of a qualifying shareholding 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:

Provided that where the Competent Authority fails for any reason to issue such a notice within the prescribed period, this fact shall be construed as if a refusal notice had been issued in terms of paragraph (c) of this subsection.

(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.

Control of a bank.

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

(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.

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

17. (1) A bank shall: Own funds and reserves.

(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.

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(2) Reserve funds created under section 9 of the Banking Act, 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 provisions 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, and the Competent Authority or the Central Bank may enquire into and ask for clarification of any information so submitted. Supervision of banks.
Cap. 204.

(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 by 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 that 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 a company which is a connected person of that bank;

(b) a subsidiary or a person which is a company connected to 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, employee 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 20 above or section 22 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 20 above or section 22 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:

Provided that where an entry as is mentioned in this subsection involves premises that are occupied for the purposes 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.

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

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 -

Investigations.

(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 a company which is a connected person of the bank under investigation;

(b) a subsidiary or a company which is a connected person 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 or auditor 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 lawful excuse fail to produce any documents which it is his duty to produce under subsection (5) of this section;

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

(c) without lawful 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.

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 - Suspected offences.

(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 offence;

(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 an offence has occurred.

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

(3) Any officer, employee or agent of the Competent Authority may, between five o'clock in the morning and nine o'clock at night, 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 lawful 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.

Obstruction.

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

(a) under section 20, section 22 or section 23 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.

Co-operation and sharing of information.

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.

(2) A person appointed under section 20 or section 22 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 20 above or subsection (1) of section 22 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 31 of this Act.

(3) In relation to a person appointed to make a report under paragraph (a) of subsection (3) of section 20 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 20 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 22 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 22 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 20 of this Act or mentioned in subsection (2) of section 22 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.

Joint Banking Committee.

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.

(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. 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;

(c) 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 20 or section 22 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 9 of this Act apply, the Central Bank may -

Power of the Central Bank to take control of banks.

(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 competent person to advise the bank in the proper conduct of its business;

(c) appoint a competent 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 competent 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 9 of this Act;

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

(g) appoint a competent 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 competent person appointed under this subsection.

(2) Where a competent 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; Cap. 13

(e) any person appointed by the Central Bank under any of the provisions of this section shall submit six-monthly reports of

his activities and annual accounts of all transactions carried out by him in the performance of his functions 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.

(9) 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.

Publication of audited financial statements.

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:

(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. 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.

(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, 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 20 or under section 22 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, of the branches in Malta of a bank which is not incorporated in Malta, or of any 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 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 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 9 of this Act; and who has not been exempted in writing by the Competent Authority from the provisions 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 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 Central Bank or the Competent Authority to enquire or cause an enquiry to be made in a bank into the affairs of any individual customer of a bank except:

Confidentiality

(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 and they believe that such an exposure can be a threat to that bank or to the banking sector in general.

(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.

(3) When an officer of a bank has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with 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) 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 to whom the parent bank or its subsidiaries may have granted or is granting a credit facility, 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.

Offences and penalties.

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 with the provisions of 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 Tribunal for Financial Services;

- (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) The Minister shall issue regulations prescribing penalties for offences against this Act, and such regulations may:

(a) prescribe penalties which are enforceable by prosecution in the courts of Malta;

(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 Tribunal for Financial Services from any decision of the Competent Authority to impose an administrative penalty.

(6) The penalties prescribed by regulations issued under subsection (5) 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.

(7) The Minister may by regulations provide for administrative penalties which may be imposed by the Competent Authority without recourse to a court hearing:

Provided that an administrative penalty may not impose a financial penalty greater than 50,000 Maltese liri.

Application of Act to the Central Bank.

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.

Repeal of Banking Act, Cap. 215.

37. (1) Saving the provisions of the following subsections of this section, the Banking Act is hereby repealed.

(2) Every licence, appointment, order or other action whatsoever under the Banking Act repealed by subsection (1) of this section, shall continue in force as if such licence, appointment, order or other action were taken under this Act.

(3) The provisions of this section shall not apply to banking offshore companies registered under the Malta International Business Activities Act, until such time as the Minister may by order Cap. 330 in the Gazette establish.

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

