Nagħti l-kunsens tiegħi.

(L.S.) GEORGE ABELA
President

6 ta' Novembru, 2009

ATT Nru. XVII ta' l-2009

ATT biex jemenda diversi Liġijiet li għandhom x'jaqsmu mas-servizzi finanzjarji, u biex jimplimenta Direttiva 2007/44/KE.

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

1. It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2009 biex Jemenda Diversi Liġijiet Finanzjarji. Titolu fil-qosor.

TAQSIMA I

2. Din it-Taqsima temenda l-Att dwar Servizzi ta' Investiment u għandha tiftiehem u tinqara ħaġa waħda ma' l-istess Att, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Emenda ta' l-Att dwar Servizzi ta' Investiment. Kap. 370.

3. Fl-artikolu 2 ta' l-Att prinċipali: Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

(a) minnufih wara t-tifsira "ftehim ta' investiment", għandha tiżdied din it-tifsira ġdida li ġejja:

" " jiem tax-xogħol" u "jum tax-xogħol" ma jinkludux is-Sibtijiet u l-ġranet msemmija fl-Att dwar il-Festi Nazzjonali u Btajjel Pubbliċi oħra;"; Kap. 252.

(b) minflok it-tifsira "kapital azzjonarju kwalifikanti", għandu jidħol dan li ġej:

" "kapital azzjonarju kwalifikanti" tfisser il-kontroll dirett jew indirett f'kumpannija li tirrappreżenta għaxra fil-mija jew iżjed tal-kapital azzjonarju jew tal-jeddijiet ta' votazzjoni msemmija fl-Artikoli 9 u 10 tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Diċembru, 2004 dwar l-armonizzazzjoni ta' ħtiġiet ta' trasparenza f'dak li għandu x'jaqsam ma' informazzjoni dwar emittenti li jkollhom it-titoli tagħhom ammessi għall-kummerċ u li temenda d-Direttiva 2001/34/KE meta jiġu ikkunsidrati l-kondizzjonijiet dwar l-aggregazzjoni tagħhom kif stipulata fl-artikolu 12(4) u (5) ta' dik id-Direttiva, jew li jirrendi possibbli t-twettiq ta' influwenza sinifikattiva fuq it-tmexxija tal-kumpannija fejn ikun jeżisti dak il-kontroll, u "azzjonist kwalifikanti" għandha tiftiehem skond hekk:

Iżda sabiex jiġi stabbilit jekk il-kriterji għal kapital azzjonarju kwalifikanti jkunux ġew imwettqa, l-awtorità kompetenti m'għandhiex tqis jeddijiet ta' votazzjoni jew azzjonijiet li detenturi ta' liċenza ta' servizzi ta' investiment, Kumpanniji ta' Investiment Ewropej jew istituzzjonijiet ta' kreditu jista' jkollhom bħala riżultat talli jkunu qegħdin jipprovdu servizz ta' *underwriting* jew ta' tqegħid ta' strumenti finanzjarji fuq bażi ta' impenn sod skond m'hemm fil-punt 6 tat-Taqsima A ma' l-Anness 1 mad-Direttiva, sakemm dawk id-drittijiet m'humiex, min-naħa waħda eżerċitati jew xort'oħra użati biex jintervjenu fil-maniġġ ta' l-emittent u, mill-oħra, li jsir minnhom fi żmien sena mill-akkwist tagħhom;"; u

(ċ) minnufih wara t-tifsira "il-Komunità", għandha tiżdied din it-tifsira ġdida li ġejja:

" "Kumpannija ta' Investiment Ewropew" tfisser kumpannija ta' investiment kif imfissra fl-artikolu 4(1) tad-Direttiva u skond m'hi awtorizzata mill-awtorità regolatorja Ewropea tagħha fil-kuntest tat-tifsira ta' l-artikolu 5 tad-Direttiva jew awtorizzata minn Awtorità regolatorja Ewropea fi Stat ŻEE;".

4. L-artikolu 9A ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 9A ta' l-Att prinċipali.

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "għal rikonoxximent u" għandhom jidħlu l-kliem "u l-kondizzjonijiet għall-għoti ta' rikonoxximent, li jipprovdu dwar ir-rifjut ta' rikonoxximent u dwar it-tibdil, tħassir u sorveljanza ta' rikonoxximent u";

(b) il-paragrafu (viii) tas-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (ix) u minnufih wara l-paragrafu (vii) għandu jiżdied dan il-paragrafu ġdid li ġej:

"(viii) li jiġu imposti pieni amministrattivi sa l-ogħla ammont ta' 45,000 euro jew għal sanzjonijiet amministrattivi oħra fil-każ ta' xi ksur tad-disposizzjonijiet ta' dan l-artikolu jew tar-Regoli ta' Servizzi ta' Investiment li jkunu japplikaw jew ta' xi kondizzjoni marbutin ma' ċertifikat ta' rikonoxximent, meta jkun hemm."; u

(ċ) minnufih wara s-subartikolu (2) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(3) Meta l-awtorità kompetenti tirrifjuta, tibdel, tħassar jew tissospendi rikonoxximent maħruġ skond m'hemm f'dan l-artikolu jew timponi piena amministrattiva skond m'hemm fir-Regoli ta' Servizzi ta' Investiment li japplikaw, jista' jsir appell quddiem it-Tribunal għal Servizzi Finanzjarji u d- disposizzjonijiet ta' l-artikolu 19(3) ta' dan l-Att għandhom ikunu japplikaw għal dak l-appell.".

5. Minflok l-artikolu 10 ta' l-Att prinċipali, għandu jidħol dan li ġej: Emenda ta' l-artikolu 10 ta' l-Att prinċipali.

"Parteċipazzjoni f'detentur ta' liċenza ta' servizzi ta' investiment.

10. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min jaġixxi bi ftehim (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwirent propost") u li jkun ħa deċiżjoni jew li:

(a) jakkwista, direttament jew indirettament, kapital azzjonarju kwalifikanti f'detentur ta' liċenza ta' servizzi ta' investiment;

(b) iżid, direttament jew indirettament, kapital azzjonarju eżistenti li ma jkunx kapital azzjonarju kwalifikanti hekk li jikkaġuna li jsir kapital azzjonarju kwalifikanti f'detentur ta' liċenza ta' servizzi ta' investiment; jew

(ċ) iżid aktar, direttament jew indirettament, dak il-kapital azzjonarju kwalifikanti f'detentur ta' liċenza ta' servizzi ta' investiment li bħala riżultat relattiv il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum ikun jilħaq jew jeċċedi għoxrin fil-mija, tletin fil-mija jew ħamsin fil-mija jew sabiex id-detentur ta' liċenza ta' servizzi ta' investiment isir sussidjarju tiegħu,

(hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwist propost"), għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik, fejn jindika kemm se jkun il-kapital azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ skond ir-Regoli ta' Servizzi ta' Investiment, inkluża l-forma li biha għandha ssir notifika bħal dik u l-kriterji adottati mill-awtorità kompetenti sabiex jiġi stabbilit jekk dik il-persuna tkunx persuna xierqa u idonea.

(2) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min ikun ħa deċiżjoni jew li:

(a) jiddisponi, direttament jew indirettament, minn kapital azzjonarju kwalifikanti f'detentur ta' liċenza ta' servizzi ta' investiment;

(b) inaqqas, direttament jew indirettament, il-kapital azzjonarju kwalifikanti hekk li jikkaġunah li jtemm milli jibqa' kapital azzjonarju kwalifikanti; jew

(ċ) inaqqas, direttament jew indirettament, kapital azzjonarju kwalifikanti sabiex il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum jinżel għal taħt għoxrin fil-mija, tletin fil-mija jew ħamsin fil-mija jew

biex hekk id-detentur ta' liċenza ta' servizzi ta' investiment itemm milli jibqa' sussidjarju tagħha,

għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik fejn jindika kemm se jkun il-kapital azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ skond Regoli ta' Servizzi ta' Investiment.

(3) Is-subartikoli (1) u (2) għandhom ikunu japplikaw irrispettivament minn jekk xi azzjonijiet rilevanti ikunux jew le azzjonijiet elenkati f'xi suq regolat fil-kuntest tat-tifsira ta' l-Att dwar is-Swieq Finanzjarji jew f'suq ekwivalenti li ma jkunx jinsab fi Stat Membru jew fi Stat ŻEE. Kap. 345.

(4) Detentur ta' liċenza ta' servizzi ta' investiment ikollu d-dmir jinnotifika lill-awtorità kompetenti minnufih malli jsir jaf li xi persuna tkun ħadet xi azzjoni stipulata fis-subartikolu (1) jew (2).

(5) Meta xi persuna jew xi detentur ta' liċenza ta' servizzi ta' investiment jieħu jew jiddeċiedi li jieħu xi azzjoni stipulata fis-subartikolu (1) jew (2) mingħajr ma javża lill-awtorità kompetenti jew jikseb l-approvazzjoni tagħha skond l-artikolu 10A, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jieħu jew ikompli għaddej b'dak il-pass ;

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

(ċ) li jkun jeħtieġ lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment jieħu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħed dak il-pass;

(d) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jeżerċita xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li jirċievi xi ħlas jew li jeżerċita xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jieħu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikoli (1) u (2).

(6) Mingħajr preġudizzju għal kull disposizzjoni oħra ta' dan l-Att, meta l-influwenza eżerċitata minn xi persuna li tkun qegħda takkwista jew tipproponi li takkwista kapital azzjonarju kwalifikanti tkun topera, jew x'aktarx li topera, kontra t-tmexxija tajba u prudenti ta' detentur ta' liċenza ta' servizzi ta' investiment, l-awtorità kompetenti tista' toħroġ avviż ta' oġġezzjoni u teżerċita xi waħda mis-setgħat mogħtijin lilha taħt dan l-Att biex itemmu dik is-sitwazzjoni, inkluża s-setgħa li toħroġ Direttivi skond ma tista' tqis li jkunu raġonevoli u adatti fiċ-ċirkostanzi.

(7) Kopja ta' avviż notifikat lill-persuna involuta skond m'hemm fis-subartikolu (6) għandha tiġi notifikata lill-kumpannija li dawk l-ishma jkunu jappartjenu għaliha.

(8) L-awtorità kompetenti, tista', permezz tar-Regoli ta' Servizzi ta' Investiment maħruġin taħt dan l-Att, tindika ċ-ċirkostanzi meta persuni għandhom jitqiesu li "jkunu qegħdin jaġixxu bi ftehim.".

Żjieda ta' l-artikolu ġdid 10A ma' l-Att prinċipali.

6. Minnufih wara l-artikolu 10 ta' l-Att prinċipali, għandu jidħol dan l-artikolu ġdid li ġej:

"Proċedura ta' valutazzjoni.

10A. (1) L-awtorità kompetenti għandha, minnufih u f'kull każ fi żmien jumejn tax-xogħol wara li tasal in-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 10, kif ukoll wara l-wasla sussegwenti li tista' ssir ta' l-informazzjoni msemmija fis-subartikolu (4), tagħti riċevuta tagħha bil-miktub lill-akkwirent propost.

(2) L-awtorità kompetenti jkollha massimu ta' sittin jum tax-xogħol mid-data meta tingħata riċevuta bil-miktub dwar il-wasla tan-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 10 u kull dokument meħtieġ mill-awtorità kompetenti li jiġi anness ma' dik in-notifika (hawn iżjed 'il quddiem f'dan l-Att imsejjaħ "iż-żmien ta' valutazzjoni") sabiex issir valutazzjoni abbażi ta' dik l-informazzjoni skond ma jista' jiġi stabbilit bir-Regoli ta' Servizzi ta' Investiment maħruġa għal dan l-għan.

(3) L-awtorità kompetenti għandha tgħarraf lill-akkwirent propost bid-data meta jiskadi ż-żmien ta' valutazzjoni, u dan fil-waqt li tkun qegħda tagħti r-riċevuta.

(4) L-awtorità kompetenti tista', matul iż-żmien ta' valutazzjoni, jekk ikun meħtieġ u mhux iżjed tard mill-ħamsin jum tax-xogħol ta' dak il-perjodu, titlob kull informazzjoni ulerjuri li tinħtieġ sabiex tiġi kompluta l-valutazzjoni. Dik it-talba għandha ssir bil-miktub u għandha tispeċifika kull informazzjoni addizjonali meħtieġa.

(5) Matul iż-żmien bejn id-data meta ssir talba għal informazzjoni addizzjonali mill-awtorità kompetenti u l-wasla ta' risposta għaliha mill-akkwirent propost, iż-żmien ta' valutazzjoni għandu jitwaqqaf. Iż-żmien ta' waqfien m'għandux ikun ta' iżjed minn għoxrin jum tax-xogħol. Kull talba ulterjuri li ssir mill-awtorità kompetenti sabiex l-informazzjoni tiġi kompluta jew iċċarata ikun fid-diskrezzjoni tagħha iżda ma jkunx iwassal għal waqfien ta' dak il-perjodu.

(6) L-awtorità kompetenti tista' testendi l-waqfien imsemmi fis-subartikolu (5) sa tletin jum tax-xogħol jekk l-akkwirent propost ikun:

(a) jinsab jew regolat f'pajjiżi li ma jkunux Stati Membri jew Stati ŻEE; jew

(b) persuna mhux soġġetta għal superviżjoni taħt:

(i) id-Direttiva;

(ii) id-Direttiva tal-Kunsill 85/611/KEE ta' l-20 ta' Dicembru, 1985 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li jirrelataw ma' impriżi għal investiment kollettiv f'titoli trasferibbli (UCITS);

(iii) id-Direttiva tal-Kunsill 92/49/KEE tat-18 ta' Ġunju, 1992 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li għandhom x'jaqsmu ma' l-assigurazzjoni diretta barra minn assigurazzjoni fuq il-ħajja u li temenda d-Direttivi 73/239/KEE u 88/357/KEE (it-tielet Direttiva fuq l-assigurazzjoni mhux fuq il-ħajja);

(iv) id-Direttiva 2002/83/KE tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Novembru, 2002 li tikkonċerna l-assigurazzjoni fuq il-ħajja;

(v) id-Direttiva 2005/68/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Novembru, 2005 dwar ir-rijassigurazzjoni li temenda d-Direttivi tal-Kunsill 73/239/KEE, 92/49/KEE kif ukoll id-Direttivi 98/78/KE u 2002/83/KE; jew

(vi) id-Direttiva 2006/48/KE tal-Parlament Ewropew u tal-Kunsill tal-14 ta' Ġunju, 2006 dwar il-bidu u prosegwiment tal-kummerċ ta' istituzzjonijiet ta' kreditu (*recast*).

(7) L-awtorità kompetenti għandha, malli titlesta l-valutazzjoni msemmija fis-subartikolu (2) u mhux iżjed tard mid-data meta jiskadi ż-żmien ta' valutazzjoni, toħroġ avviż:

(a) li bih tagħti approvazzjoni bla ebda kondizzjoni għall-akkwist propost;

(b) li bih tagħti approvazzjoni għall-akkwist propost bla ħsara għal dawk il-

kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad l-akkwist propost.

(8) Meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2), l-awtorità kompetenti m'għandha la timponi xi kondizzjoni minn qabel dwar il-livell ta' kapital azzjonarju li għandu jiġi akkwiżit u lanqas teżamina l-akkwist propost skond il-ħtiġiet ekonomiċi tas-suq.

(9) L-awtorità kompetenti tista' tiċħad l-akkwist propost biss jekk ikun hemm motivi raġonevoli għala għandu jsir dan abbażi tal-kriterji stipulati fir-Regoli ta' Servizzi ta' Investiment msemmija fis-subartikolu (1) ta' l-artikolu 10 jew jekk l-informazzjoni provdura mill-akkwirent propost ma tkunx kompluta.

(10) Jekk l-awtorità kompetenti tiddeċiedi li tiċħad l-akkwist propost, hija għandha, fi żmien jumejn tax-xogħol, u mhux iżjed miż-żmien ta' valutazzjoni, tgħarraf lill-akkwirent propost bil-miktub fejn tispeċifika r-raġunijiet għal dik id-deċiżjoni. L-awtorità kompetenti tista', sew fuq talba ta' dak l-akkwirent propost sew xort'oħra, toħroġ dikjarazzjoni pubblika fejn tindika dawk ir-raġunijiet.

(11) Jekk l-awtorità kompetenti ma tiċħadx l-akkwist propost bil-miktub fiż-żmien ta' valutazzjoni, dak l-akkwist propost għandu jitqies li jkun ġie approvat.

(12) Mingħajr preġudizzju għad-disposizzjonijiet ta' l-artikolu 22, meta jiġi akkwistat kapital azzjonarju kwalifikanti f'detentur ta' liċenza ta' servizzi ta' investiment minkejja r-rifjut ta' l-awtorità kompetenti, l-eżerċizzju tal-jeddijiet ta' votazzjoni korrispondenti għandu jiġi sospiż u jekk jintefgħu xi voti bi ksur ta' dan is-subartikolu, dawn ikunu nulli u bla effett.

(13) L-awtorità kompetenti tista' tistabbilixxi l-itwal żmien biex isir l-akkwist propost u ttawlu aktar meta tqis li dan l-għemil ikun adatt.

(14) Minkejja d-disposizzjonijiet tas-subartikoli (1) sa (6), meta żewġ proposti jew aktar biex jiġi akkwistat jew miżjud xi kapital azzjonarju kwalifikanti fl-istess detentur ta' liċenza ta' servizzi ta' investiment jkunu ġew notifikati lill-awtorità kompetenti, din l-aħħar awtorità għandha tittratta lill-akkwirenti proposti b'mod mhux diskriminatorju.".

Żjieda ta' l-artikolu ġdid 10B ma' l-Att prinċipali.

7. Minnufih wara l-artikolu 10A ta' l-Att prinċipali, għandu jidħol dan l-artikolu ġdid li ġej:

"Kooperazzjoni ma' awtoritajiet regolatorji Ewropej u ma' awtoritajiet regolatorji barranin fil-każ ta' akkwisti.

10B. (1) L-awtorità kompetenti għandha tikkopera b'konsultazzjoni sħiħa ma' l-Awtorità regolatorja Ewropea jew ma' awtoritajiet regolatorji barranin meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 10A jekk l-akkwirent propost ikun jaqa' taħt xi kategorija minn dawn li ġejjin:

(a) istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist;

(b) l-impriża li jkollha kontroll ta' istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist; jew

(ċ) persuna li tkun tikkontrolla istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-riassigurazzjoni, kumpannija ta' investiment

jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist.

(2) L-awtorità kompetenti għandha, mingħajr dewmien żejjed, tipprovdi kull informazzjoni li tkun essenzjali jew rilevanti għall-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 10A lill-Awtorità regolatorja Ewropea jew lill-awtorità regolatorja barranija li tkun qegħda titlob dik l-informazzjoni. Meta ssir dik it-talba, l-awtorità kompetenti għandha tikkomunika lill-Awtorità regolatorja Ewropea jew awtorità regolatorja barranija kull informazzjoni rilevanti u għandha tikkomunika b'inizjattiva tagħha stess kull informazzjoni essenzjali. Deċiżjoni mill-awtorità kompetenti skond l-artikolu 10A għandha tindika kull fehma jew riżerva espressa mill-Awtorità regolatorja Ewropea jew awtorità regolatorja barranija li tkun responsabbli għall-akkwirent propost.".

Żjieda ta' l-artikolu ġdid 10Ċ ma' l-Att prinċipali.

8. Minnufih wara l-artikolu 10B ta' l-Att prinċipali, għandu jiżdied dan l-artikolu ġdid li ġej:

"Amalgamazzjonijiet, rikostruzzjonijiet, qsim u tibdiliet fil-kapital azzjonarju jew jeddijiet ta' votazzjoni.

10Ċ. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra, u mingħajr preġudizzju għas-subartikoli (1) u (2) ta' l-artikolu 10, ikun meħtieġ il-kunsens ta' l-awtorità kompetenti mogħti bil-miktub qabel ma detentur ta' liċenza ta' servizzi ta' investiment ikun jista' leġittimament:

(a) ibigħ jew jiddisponi min-negozju tiegħu jew minn xi parti sinifikanti tiegħu;

(b) jamalgama ma' xi kumpannija oħra, sew jekk ikollha ikollha liċenza taħt dan l-Att sew jekk ma jkollhiex;

(ċ) jagħmel xi rikostruzzjoni jew qsim; jew

(d) iżid jew inaqqas il-kapital azzjonarju nominali jew maħruġ tiegħu jew jagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni.

(2) Ikun id-dmir tad-diretturi u l-azzjonisti

kwalifikanti kollha ta' detentur ta' liċenza ta' servizzi ta' investiment li jinnotifikaw lill-awtorità kompetenti minnufih bil-miktub, malli jsiru jafu li dak id-detentur ta' liċenza ta' servizzi ta' investiment ikun bi ħsiebu jieħu xi azzjoni minn dawk stipulati fis-subartikolu (1).

(3) Fi żmien tliet xhur minn meta tasal dik in-notifika jew minn meta tasal dik l-informazzjoni li l-awtorità kompetenti tkun tista' leġittimament teħtieġ, skond liema tkun l-iżjed tardiva, l-awtorità kompetenti għandha toħroġ avviż:

(a) li bih tagħti kunsens bla ebda kondizzjoni għall-għemil ta' dak il-pass;

(b) li bih tagħti l-kunsens għall-għemil ta' dak il-pass bla ħsara għal dawk il-kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad il-kunsens għall-għemil ta' dak il-pass ,

u jekk hija tiċħad milli tagħti kunsens, hija għandha tgħarraf lill-persuna jew lid-detentur ta' liċenza ta' servizzi ta' investiment involut bil-miktub bir-raġuni taċ-ċaħda tagħha.

(4) Meta xi persuna jew xi detentur ta' liċenza ta' servizzi ta' investiment jieħu jew jiddeċiedi li jieħu xi pass stipulat fis-subartikolu (1) mingħajr ma jiksbu l-kunsens ta' l-awtorità kompetenti, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jieħu jew ikompli għaddej b'dak il-pass;

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

(ċ) li jkun jeħtieġ lil dik il-persuna jew detentur ta' liċenza ta' servizz ta'investiment

jieħu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħdet dak il-pass ;

(d) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jeżerċita xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li jirċievu xi ħlas jew li jeżerċitaw xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew detentur ta' liċenza ta' servizzi ta' investiment milli jieħu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikolu (1).".

Emenda ta' l-artikolu 19 ta' l-Att prinċipali.

9. Minflok il-paragrafu (e) tas-subartikolu (1) ta' l-artikolu 19 ta' l-Att prinċipali għandu jidħol dan li ġej:

"(e) kull avviż maħruġ jew ordni magħmul skond l-artikoli 10, 10A u 10Ċ;".

TAQSIMA II

Emenda ta' l-Att dwar il-Kummerċ Bankarju. Kap. 371.

10. Din it-Taqsima temenda l-Att dwar il-Kummerċ Bankarju, u għandha tiftiehem u tinqara ħaġa waħda ma' l-istess Att, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

11. Is-subartikolu (1) ta' l-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) t-tifsira "azzjoni ta' ekwità" għandha titħassar;

(b) minnufih wara t-tifsira "istituzzjoni ta' flus elettroniċi ", għandha tiżdied din it-tifsira ġdida li ġejja:

" "jiem tax-xogħol" u "jum tax-xogħol" ma jinkludux is-Sibtijiet u l-ġranet msemmija fl-Att dwar il-Festi Nazzjonali u Btajjel Pubbliċi oħra;"; Kap. 252.

(ċ) minflok it-tifsira "*holding* kwalifikattiv ta' azzjonijiet", għandha tidħol din it-tifsira ġdida li ġejja:

" "*holding* kwalifikattiv ta' azzjonijiet" tfisser *holding* dirett jew indirett f'kumpannija li tirrappreżenta għaxra fil-mija jew iżjed tal-kapital azzjonarju jew tal-jeddijiet ta' votazzjoni, meta jitqiesu l-jeddijiet ta' votazzjoni kif stipulati fl-Artikoli 9 u 10 tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Diċembru 2004 fuq l-armonizzazzjoni ta' ħtiġiet ta' trasparenza f'dak li għandu x'jaqsam ma' informazzjoni dwar emittenti li jkollhom it-titoli tagħhom ammessi għall-kummerċ u li temenda d-Direttiva 2001/34/KE, kif ukoll il-kondizzjonijiet dwar l-aggregazzjoni relattiva kif stipulata fl-Artikolu 12 (4) u (5) ta' dik id-Direttiva, jew li jirrendi possibbli t-twettiq ta' influwenza sinifikattiva fuq it-tmexxija tal-kumpannija fejn ikun jeżisti dak il-*holding*, u "azzjonist kwalifikattiv" għandha tiftiehem skond hekk:

Iżda, sabiex jiġi stabbilit jekk il-kriterji għal *holding* kwalifikattiv ta' azzjonijiet jkunux ġew imwettqa, l-awtorità kompetenti m'għandhiex tqis jeddijiet ta' votazzjoni jew azzjonijiet li kumpannija ta' investimenti jew istituzzjonijiet ta' kreditu jista' jkollhom bħala riżultat li jkunu jipprovdu li jsir *underwriting* ta' strumenti finanzjarji u, jew ta' tqegħid ta' strumenti finanzjarji fuq bażi ta' impenn sod skond m'hemm fil-punt 6 tat-Taqsima A ma' l-Anness 1 mad-Direttiva 2004/39/KE, sakemm dawk id-drittijiet m'humiex, min-naħa waħda eżerċitati jew xort'oħra użati biex jintervjenu fil-maniġġ ta' l-emittent u, mill-oħra, li jsir minnhom fi żmien sena mill-akkwist tagħhom.";

(d) t-tifsira "*holding* sinifikanti ta' azzjonijiet" għandha titħassar;

(e) minflok it-tifsira "kapital inizjali", għandha tidħol din it-tifsira ġdida li ġejja:

" "kapital inizjali" tfisser kapital imħallas u riservi kif imfissra f'Regola Bankarja fuq kreditu stess;";

(f) t-tifsira "kontroll" għandha titħassar;

(g) minflok it-tifsira "obbligi internazzjonali ta' Malta", għandha tidħol din it-tifsira ġdida li ġejja:

" "obbligi internazzjonali ta' Malta" tfisser kull impenn, responsabbiltà u obbligu li joriġinaw mil-liġi tal-Komunità Ewropea, jew mis-sħubija, jew affiljazzjoni, jew relazzjoni ma' xi organizzazzjoni internazzjonali, globali jew reġjonali jew aggruppament ta' pajjiżi jew minn xi trattat, konvenzjoni jew ftehim internazzjonali jew reċiproku ieħor, ikun kif ikun magħruf, sew bilaterali sew multilaterali, li Malta jew l-awtorità kompetenti ikunu parti fih;";

(h) minflok it-tifsira "rabtiet mill-qrib", għandha tidħol din it-tifsira ġdida li ġejja:

" "rabtiet mill-qrib" tfisser sitwazzjoni fejn żewġ persuni jew iktar ikollhom rabta b'xi wieħed minn dawn il-modi li ġejjin:

(a) bil-parteċipazzjoni, permezz ta' proprjetà diretta jew permezz ta' kontroll, ta' għoxrin fil-mija jew iktar tal-jeddijiet ta' votazzjoni jew tal-kapital ta' korp ġuridiku; jew

(b) bil-kontroll, permezz ta' relazzjoni bejn impriża ċentrali u impriża sussidjarja kif imfisser fl-artikolu 2 (2) ta' l-Att dwar il-Kumpanniji, jew relazzjoni bħal dik bejn persuna naturali jew ġuridika u impriża; jew

(ċ) permanenti ma' l-istess terza persuna unika permezz ta' relazzjoni ta' kontroll;".

Emenda ta' l-artikolu 5 ta' l-Att prinċipali.

12. Fit-test Ingliż tal-proviso mas-subartikolu (2) ta' l-artikolu 5 ta' l-Att prinċipali, minflok il-kliem "entitled to exercise their rights under European Community Law", għandhom jidħlu l-kliem "entitled to exercise its rights under European Community Law".

Emenda ta' l-artikolu 7 ta' l-Att prinċipali.

13. Fis-subartikolu (1) (b) ta' l-artikolu 7 ta' l-Att prinċipali, minflok il-kliem "l-istituzzjoni ta' kreditu f'Malta;", għandhom jidħlu l-kliem "l-istituzzjoni ta' kreditu f'Malta u dawk il-persuni jkollhom fama suffiċjentement tajba u jkollhom esperjenza suffiċjenti biex iwettqu dawk id-dmirijiet;".

Emenda ta' l-artikolu 9 ta' l-Att prinċipali.

14. Fis-subartikolu (2)(d) ta' l-artikolu 9 ta' l-Att prinċipali, minflok il-kliem "fondi tiegħu stess;", għandhom jidħlu l-kliem "fondi tiegħu stess suffiċjenti skond l-artikolu 16A ta' dan l-Att;".

Emenda ta' l-artikolu 10 ta' l-Att prinċipali.

15. Fil-paragrafu (h) ta' l-artikolu 10 ta' l-Att prinċipali, minflok il-kliem "li toħroġ xi avviż jew tagħmel xi ordni taħt l-artikolu 13;", għandhom jidħlu l-kliem "li toħroġ xi avviż jew tagħmel xi ordni taħt l-artikoli 13, 13A u 13Ċ;".

Emenda ta' l-artikolu 11 ta' l-Att prinċipali.

16. Minnufih wara s-subartikolu (2) ta' l-artikolu 11 ta' l-Att prinċipali, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(3) Istituzzjoni ta' kreditu li jkollha liċenza f'Malta ikollha jedd teżerċita d-drittijiet tagħha taħt r-Regolamenti ta' l-2004 dwar id-Drittijiet tal-Passaport Ewropew għal Istituzzjonijiet ta' Kreditu.".

A.L. 88 ta' l-2004.

Emenda ta' l-artikolu 13 ta' l-Att prinċipali.

17. Minflok l-artikolu 13 ta' l-Att prinċipali għandu jidħol dan li ġej:

"Parteċipazzjoni f'istituzzjoni ta' kreditu.

13. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min jaġixxi bi ftehim (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwirent propost"), u li jkun ħa deċiżjoni jew li:

(a) jakkwista, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu;

(b) iżid, direttament jew indirettament, *holding* azzjonarju eżistenti li ma jkunx *holding* kwalifikattiv ta' azzjonijiet hekk li jikkaġuna li jsir *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu; jew

(ċ) iżid aktar, direttament jew indirettament, dak il-*holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu li bħala riżultat relattiv il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum ikun jilħaq jew jeċċedi għoxrin fil-mija, tletin fil-mija jew ħamsin fil-mija jew biex l-istituzzjoni ta' kreditu ssir sussidjarja tiegħu,

(hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwist propost"), għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik, fejn jindika kemm se jkun il-*holding* l azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-

mod li l-awtorità kompetenti tista' tkun teħtieġ skond ir-Regola Bankarja, inkluża l-forma li biha għandha ssir notifika bħal dik u l-kriterji adottati mill-awtorità kompetenti sabiex jiġi stabbilit jekk dik il-persuna tkunx persuna idonea.

(2) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min:

(a) jakkwista, direttament jew indirettament, mill-inqas ħamsa fil-mija iżda inqas minn għaxra fil-mija mill-kapital azzjonarju jew tal-jeddijiet ta' votazzjoni f'istituzzjoni ta' kreditu; jew

(b) iżid, direttament jew indirettament, *holding* azzjonarju eżistenti sabiex il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum ikun jammonta għal mill-inqas ħamsa fil-mija iżda inqas minn għaxra fil-mija,

għandu jgħarraf lill-awtorità kompetenti bil-miktub, billi jindika d-daqs tal-*holding* azzjonarju u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ skond ir-Regola Bankarja. Dik ir-Regola Bankarja tista' tipprovdi, fost l-oħrajn, gwida ġenerali dwar meta l-kapital azzjonarju jitqies li jirriżulta f'influwenza sinifikanti.

(3) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min ikun ħa deċiżjoni jew li:

(a) jiddisponi, direttament jew indirettament, minn *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu;

(b) inaqqas, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet hekk li jġibu li jtemm milli jibqa' *holding* kwalifikattiv ta' azzjonijiet; jew

(ċ) inaqqas, direttament jew indirettament, holding kwalifikattiv ta' azzjonijiet sabiex il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum jinżel għal inqas minn għoxrin

fil-mija, tletin fil-mija jew ħamsin fil-mija jew biex l-istituzzjoni ta' kreditu ittemm milli tibqa' sussidjarja tagħha,

għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik fejn jindika kemm se jkun il-holding azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ skond ir-Regola Bankarja.

(4) Is-subartikoli (1), (2) u (3) għandhom ikunu japplikaw irrispettivament minn jekk xi azzjonijiet rilevanti ikunux jew le ishma elenkati f'xi suq regolat fil-kuntest tat-tifsira ta' l-Att dwar is-Swieq Finanzjarji jew f'suq ekwivalenti f'pajjiż terz.

Kap. 345.

(5) Ikun id-dmir ta' istituzzjoni ta' kreditu u tad-diretturi tagħha, li jinnotifikaw lill-awtorità kompetenti minnufih malli jsiru jafu li xi persuna iddeċidiet li tieħu xi pass stipulat fis-subartikoli (1), (2) jew (3).

(6) Meta xi persuna tieħu jew tiddeċiedi li tieħu xi azzjoni stipulata fis-subartikolu (1) jew (3) mingħajr ma tavża lill-awtorità kompetenti jew tikseb l-approvazzjoni tagħha skond l-artikolu 13A, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli tieħdu jew tkompli għaddejja b'dak il-pass;

(b) li jiddikjara dik l-azzjoni nulla u bla ebda effett;

(ċ) li jkun jeħtieġ lil dik il-persuna jew istituzzjoni ta' kreditu tieħu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħdet dak il-pass;

(d) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli teżerċita xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien

wieħed leġittimu, inkluż id-dritt li tirċievi xi ħlas jew li teżerċita xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli tieħu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikoli (1) u (3).

(7) Mingħajr preġudizzju għal kull disposizzjoni oħra ta' dan l-Att, meta l-influwenza eżerċitata minn xi persuna li tkun qegħda takkwista jew tipproponi li takkwista *holding* kwalifikattiv ta' azzjonijiet tkun topera, jew x'aktarx li topera, kontra l-maniġġ sod u prudenti ta' xi istituzzjoni ta' kreditu, l-awtorità kompetenti tista' teżerċita kull setgħa li għandha taħt dan l-Att biex itemmu dik is-sitwazzjoni, inkluża s-setgħa li toħorġ dawk id-direttivi li hija tista' tqis li jkunu raġonevoli fiċ-ċirkostanzi.

(8) L-awtorità kompetenti, tista', permezz ta' Regola Bankarja maħruġa taħt dan l-Att tindika ċ-ċirkostanzi meta persuni għandhom jitqiesu li "jkunu qegħdin jaġixxu bi ftehim.".

Żjieda ta' l-artikoli 13A, 13B u 13Ċ ġodda ma' l-Att prinċipali.

18. Minnufih wara l-artikolu 13 ta' l-Att prinċipali, għandhom jiżdiedu dawn l-artikoli ġodda li ġejjin:

"Proċedura ta' valutazzjoni.

13A. (1) L-awtorità kompetenti għandha, minnufih u f'kull każ fi żmien jumejn tax-xogħol wara li tasal in-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 13, kif ukoll wara l-wasla sussegwenti li tista' ssir ta' l-informazzjoni msemmija fis-subartikolu (4), tagħti riċevuta tagħha bil-miktub lill-akkwirent propost.

(2) L-awtorità kompetenti jkollha massimu ta' sittin jum tax-xogħol mid-data meta tingħata riċevuta bil-miktub dwar il-wasla tan-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 13 u kull dokument meħtieġ mill-awtorità kompetenti li jiġi anness ma' dik in-notifika (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala "iż-żmien ta' valutazzjoni") sabiex tiġi ġestita l-valutazzjoni abbażi ta' dik l-informazzjoni skond ma jista' jiġi stabbilit minn Regola Bankarja maħruġa għal dan l-għan.

(3) L-awtorità kompetenti għandha tgħarraf lill-akkwirent propost bid-data meta jiskadi ż-żmien ta' valutazzjoni, u dan fil-waqt li tkun qegħda tagħti r-riċevuta.

(4) L-awtorità kompetenti tista', matul iż-żmien ta' valutazzjoni, jekk ikun meħtieġ u u mhux aktar tard mill-ħamsin jum tax-xogħol ta' dak il-perjodu, titlob kull informazzjoni ulerjuri li tenħtieġ sabiex tiġi kompluta l-valutazzjoni. Dik it-talba għandha ssir bil-miktub u għandha tispeċifika kull informazzjoni addizjonali meħtieġa.

(5) Matul iż-żmien bejn id-data meta ssir talba għal informazzjoni addizzjonali mill-awtorità kompetenti u l-wasla ta' risposta għaliha mill-akkwirent propost, iż-żmien ta' valutazzjoni għandu jitwaqqaf. Iż-żmien ta' waqfien m'għandux ikun ta' iżjed minn għoxrin jum tax-xogħol. Kull talba ulterjuri li ssir mill-awtorità kompetenti sabiex l-informazzjoni tiġi kompluta jew iċċarata ikun fid-diskrezzjoni tagħha iżda ma jkunx iwassal għal waqfien ta' dak il-perjodu.

(6) L-awtorità kompetenti tista' testendi ż-żmien ta' waqfien msemmi fis-subartikolu (5) sa tletin jum tax-xogħol jekk l-akkwirent propost ikun:

(a) jinsab jew regolat f'pajjiż terz; jew

(b) persuna mhux soġġetta għal superviżjoni taħt:

(i) id-Direttiva;

(ii) id-Direttiva tal-Kunsill 85/611/KEE tal-20 ta' Diċembru, 1985 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li jirrelataw ma' impriża għal investiment kollettiv f'titoli trasferibbli (UCITS);

(iii) id-Direttiva tal-Kunsill 92/49/KEE tat-18 ta' Ġunju, 1992 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li

għandhom x'jaqsmu ma' l-assigurazzjoni diretta barra minn assigurazzjoni fuq il-ħajja u li temenda d-Direttivi 73/239/KEE u 88/357/KEE (it-tielet Direttiva fuq l-assigurazzjoni mhux fuq il-ħajja);

(iv) id-Direttiva 2002/83/KE tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Novembru, 2002 li tikkonċerna l-assigurazzjoni fuq il-ħajja;

(v) id-Direttiva 2004/39/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta' April, 2004 fuq is-swieq ta' strumenti finanzjarji li temenda d-Direttivi tal-Kunsill 85/611/KEE u 93/6/KEE u d-Direttiva 2000/12/KE tal-Parlament Ewropew u tal-Kunsill u li tħassar id-Direttiva tal-Kunsill 93/22/KEE; jew

(vi) id-Direttiva 2005/68/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Novembru, 2005 fuq ir-rijassigurazzjoni u li temenda d-Direttivi tal-Kunsill 73/239/KEE, 92/49/KEE kif ukoll id-Direttivi 98/78/KE u 2002/83/KE.

(7) L-awtorità kompetenti għandha, malli titlesta l-valutazzjoni msemmija fis-subartikolu (2) u mhux iżjed tard mid-data meta jiskadi ż-żmien ta' valutazzjoni, toħroġ avviż:

(a) li bih tagħti approvazzjoni bla ebda kondizzjoni għall-akkwist propost;

(b) li bih tagħti approvazzjoni għall-akkwist propost bla ħsara għal dawk il-kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad l-akkwist propost.

(8) Meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2), l-awtorità kompetenti m'għandha la timponi xi kondizzjoni minn qabel dwar

il-livell ta' *holding* azzjonarju li għandu jiġi akkwiżit u lanqas teżamina l-akkwist propost skond il-ħtiġiet ekonomiċi tas-suq.

(9) L-awtorità kompetenti tista' tiċħad l-akkwist propost biss jekk ikun hemm motivi raġonevoli għala għandu jsir dan abbażi tal-kriterji stipulati fir-regola Bankarja msemmija fis-subartikolu (1) ta' l-artikolu 13 jew jekk l-informazzjoni provduta mill-akkwirent propost ma tkunx kompluta.

(10) Jekk l-awtorità kompetenti tiddeċiedi li tiċħad l-akkwist propost, hija għandha, fi żmien jumejn tax-xogħol, u mhux iżjed miż-żmien ta' valutazzjoni, tgħarraf lill-akkwirent propost bil-miktub fejn tispeċifika r-raġunijiet għal dik id-deċiżjoni. L-awtorità kompetenti tista', sew fuq talba ta' dak l-akkwirent propost sew xort'oħra, toħroġ dikjarazzjoni pubblika fejn tindika dawk ir-raġunijiet.

(11) Jekk l-awtorità kompetenti ma tiċħadx l-akkwist propost bil-miktub fiż-żmien ta' valutazzjoni, dak l-akkwist propost għandu jitqies li jkun ġie approvat.

(12) Mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt l-Att, meta *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu jiġi akkwiżit minkejja r-rifjut ta' l-awtorità kompetenti, l-eżerċizzju tal-jeddijiet ta' votazzjoni korrispondenti għandu jiġi sospiż u jekk jintefgħu xi voti bi ksur ta' dan is-subartikolu, dawn ikunu nulli u bla effett.

(13) L-awtorità kompetenti tista' tistabbilixxi l-itwal żmien biex isir l-akkwist propost u ttawlu aktar meta tqis li dan l-għemil ikun adatt.

(14) Minkejja d-disposizzjonijiet tas-subartikoli (1) sa (6) ta' dan l-artikolu, meta żewġ proposti jew aktar biex jiġi akkwistat jew miżjud xi *holding* kwalifikattiv ta' azzjonijiet fl-istess istituzzjoni ta' kreditu jkunu ġew notifikati lill-awtorità kompetenti, din l-aħħar awtorità għandha tittratta lill-akkwirenti proposti b'mod mhux diskriminatorju.

Koperazzjoni ma' awtoritajiet regolatorji barranin fil-każ ta' akkwisti.

13B. (1) L-awtorità kompetenti għandha tikkopera b'konsultazzjoni sħiħa ma' l-awtoritajiet regolatorji barranin meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 13A jekk l-akkwirent propost ikun jaqa' taħt xi kategorija minn dawn li ġejjin:

(a) istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist;

(b) l-impriża li jkollha kontroll ta' istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist; jew

(ċ) persuna li tikkontrolla istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist.

(2) L-awtorità kompetenti għandha, mingħajr dewmien żejjed, tipprovdi kull informazzjoni li tkun essenzjali jew rilevanti għall-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 13A lill-awtorità regolatorja barranija fejn titlob dik l-informazzjoni. Meta ssir dik it-talba, l-awtorità kompetenti għandha tikkomunika lill-awtorità regolatorja barranija kull informazzjoni rilevanti u għandha tikkomunika b'inizjattiva tagħha stess kull informazzjoni essenzjali. Deċiżjoni mill-awtorità kompetenti skond l-artikolu 13A ta' dan l-Att

għandha tindika kull fehma jew riżerva espressa mill-awtorità regolatorja barranija li tkun responsabbli għall-akkwirent propost.

Amalgamazzjonijiet, rikostruzzjonijiet, qsim u tibdiliet fil-kapital azzjonarju jew jeddijiet ta' votazzjoni.

13Ċ. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra u mingħajr preġudizzju għas-subartikoli (1) u (3) ta' l-artikolu 13, ikun meħtieġ il-kunsens ta' l-awtorità kompetenti mogħti bil-miktub qabel ma xi istituzzjoni ta' kreditu tkun tista' leġittimament:

(a) tbigħ jew tiddisponi min-negozju tagħha jew minn xi parti sinifikanti tiegħu;

(b) tamalgama ma' xi kumpannija oħra, sew jekk tkun jew ma tkunx istituzzjoni ta' kreditu;

(ċ) tagħmel xi rikostruzzjoni jew qsim; jew

(d) iżżid jew tnaqqas il-kapital azzjonarju nominali jew maħruġ tagħha jew tagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni.

(2) Ikun id-dmir tad-diretturi u l-azzjonisti kwalifikanti kollha ta' istituzzjoni ta' kreditu li jinnotifikaw lill-awtorità kompetenti minnufih bil-miktub malli jsiru jafu li dik l-istituzzjoni ta' kreditu tkun bi ħsiebha tieħu xi pass minn dawk stipulati fis-subartikolu (1).

(3) Fi żmien tliet xhur minn meta tasal dik in-notifika jew minn meta tasal dik l-informazzjoni li l-awtorità kompetenti tkun tista' leġittimament teħtieġ, skond liema tkun l-iżjed tardiva, l-awtorità kompetenti għandha toħroġ avviż:

(a) li bih tagħti kunsens bla ebda kondizzjoni għall-għemil ta' dak il-pass ;

(b) li bih tagħti l-kunsens għall-għemil ta' dak il-pass bla ħsara għal dawk il-kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad il-kunsens għall-għemil ta' dak il-pass,

u jekk hija tiċħad milli tagħti l-kunsens tagħha hija għandha tgħarraf lill-persuna jew lill-istituzzjoni ta' kreditu involuta bil-miktub dwar għaliex tkun qegħda tiċħad għal dan.

(4) Meta xi persuna jew xi istituzzjoni ta' kreditu jieħdu jew jiddeċiedu li jieħdu xi pass stipulat fis-subartikolu (1) mingħajr ma jiksbu l-kunsens ta' l-awtorità kompetenti, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli tieħu jew tkompli għaddejja b'dak il-pass ;

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

(ċ) li jkun jeħtieġ lil dik il-persuna jew istituzzjoni ta' kreditu li tieħdu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħdet dak il-pass ;

(d) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli jeżerċitaw xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li jirċievu xi ħlas jew li jeżerċitaw xi jeddijiet ta' votazzjoni marbutin ma' l- azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew istituzzjoni ta' kreditu milli jieħdu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikolu (1).".

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

19. Minnufih wara subartikolu (4) ta' l-artikolu 14 ta' l-Att prinċipali, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(5) Għall-finijiet ta' dan l-artikolu kontroll tinkludi s-setgħa li tiġi stabbilita b'kull mod li jkun kull politika finanzjarja u operattiva ta' korp ġuridiku, is-setgħa li jinħatru jew jitneħħew l-akbar numru ta' membri tal-bord tad-diretturi jew ta' xi korp regolatorju ekwivalenti jew is-setgħa li tintefa' l-akbar parti ta' voti waqt laqgħat tal-bord tad-diretturi jew korp regolatorju ekwivalenti.".

Emenda ta' l-artikolu 15 ta' l-Att prinċipali.

20. Is-subartikolu (1) ta' l-artikolu 15 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (d) tiegħu, minflok il-kliem "indirettament xi kapital azzjonarju sinifikanti jew kwalifikattiv", għandhom jidħlu l-kliem "indirettament xi kapital azzjonarju kwalifikattiv"; u

(b) fil-paragrafu (iv) tal-proviso mal-paragrafu (d) tiegħu, minflok il-kliem "jitqiesu bħala kapital azzjonarju sinifikanti għall-finijiet", għandhom jidħlu l-kliem "jitqiesu bħala kapital azzjonarju kwalifikattiv għall-finijiet".

Emenda ta' l-artikolu 16A ta' l-Att prinċipali.

21. L-artikolu 16A ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "li ma jkunux konformi mal-ħtiġiet stabbiliti fl-artikolu 109 tad-Direttiva", għandhom jidħlu l-kliem "li ma jkunux konformi mal-ħtiġiet stabbiliti f'Regola Bankarja";

(b) is-subartikoli (3) u (4) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (4) u (5) tiegħu; u

(ċ) minnufih wara s-subartikolu (2) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(3) F'ċerti ċirkostanzi speċifiċi u bil-kunsens bil-miktub ta' l-awtorità kompetenti, meta jkun hemm amalgamazzjoni ta' xi żewġ istituzzjonijiet ta' kreditu jew aktar, il-kreditu stess ta' l-istituzzjonijiet ta' kreditu li jirriżulta mill-amalgamazzjoni ma jistax jinżel taħt il-kreditu stess totali ta' l-istituzzjonijiet ta' kreditu amalgamati fil-waqt ta' l-amalgamazzjoni sakemm ma jkunx inkiseb il-livell speċifikat fl-artikolu 7 (1) (a) ta' l-Att.".

22. Minflok is-subartikolu (2) ta' l-artikolu 17 ta' l-Att prinċipali għandu jidħol dan li ġej: Emenda ta' l-artikolu 17 ta' l-Att prinċipali.

"(2) Meta l-livell tal-ħtieġa kapitali ta' istituzzjoni ta' kreditu ma jkunx ristawrat fil-perjodu stabbilit, l-awtorità kompetenti tista' b'żjieda mas-setgħa li għandha li timponi piena amministrattiva, teżerċita xi waħda mis-setgħat lilha mogħtija taħt id-disposizzjonijiet ta' l-artikolu 9 (2) ta' l-Att.".

23. Minflok l-artikolu 17A ta' l-Att prinċipali għandu jidħol dan li ġej: Sostituzzjoni ta' l-artikolu 17A ta' l-Att prinċipali.

"17A. (1) Kull istituzzjoni ta' kreditu, b'esklużjoni ta' istituzzjoni ta' flus elettroniċi, għandu jkollha provedimenti adegwati għal dejn mitluf jew dubjuż.

(2) L-awtorità kompetenti tista' toħroġ Regola Bankarja skond ma hija tqis li jkun adatt biex tirregola l-provedimenti għal dejn mitluf jew dubjuż.".

24. Fil-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 19 ta' l-Att prinċipali, minflok il-kliem "mill-awtorità kompetenti għal skopijiet statistiċi;", għandhom jidħlu l-kliem "mill-awtorità kompetenti għal skopijiet prudenzjali u statistiċi;". Emenda ta' l-artikolu 19 ta' l-Att prinċipali.

25. Fis-subartikolu (9) ta' l-artikolu 20 ta' l-Att prinċipali, minflok il-kliem "li jkollha *holding* sinifikanti jew *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu", għandhom jidħlu l-kliem "li jkollha *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu". Emenda ta' l-artikolu 20 ta' l-Att prinċipali.

26. L-artikolu 22 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

(a) fis-subartikolu (3) tiegħu, minflok il-kliem "li jkollha *holding* sinifikanti ta' azzjonijiet jew *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu", għandhom jidħlu l-kliem "li jkollha *holding* kwalifikattiv ta' azzjonijiet f'istituzzjoni ta' kreditu";

(b) fis-subartikolu (5) tiegħu, minflok il-kliem "li jkollha *holding* sinifikanti ta' azzjonijiet fi, holding kwalifikattiv ta' azzjonijiet fi, jew tkun kontrollur ta', dik l-istituzzjoni ta' kreditu", għandhom jidħlu l-kliem "li jkollha

holding kwalifikattiv ta' azzjonijiet fi, jew tkun kontrollur ta', dik l-istituzzjoni ta' kreditu".

Emenda ta' l-artikolu 25 ta' l-Att prinċipali.

27. L-artikolu 25 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "Fuq bażi ta' ftehim internazzjonali, jew fuq ftehim ta' reċiproċità, l-awtorità kompetenti tista' taqsam id-dmirijiet ta' sorveljanza tagħha ma' l-awtoritajiet kompetenti barranin oħra", għandhom jidħlu l-kliem "Fuq bażi ta' l-obbligi internazzjonali ta' Malta, l-awtorità kompetenti tista' taqsam id-dmirijiet ta' sorveljanza tagħha ma' awtoritajiet regolatorji barranin";

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "fuq il-bażi ta' ftehim internazzjonali, jew fuq ftehim ta' reċiproċità, tikxef informazzjoni lil awtoritajiet kompetenti oħra barranin.", għandhom jidħlu l-kliem "fuq il-bażi ta' l-obbligi internazzjonali ta' Malta, tikxef informazzjoni lil awtoritajiet regolatorji barranin."; u

(ċ) fis-subartikolu (6) tiegħu, minflok il-kliem "tiżvela lill-Bank Ċentrali, korpi oħra", għandhom jidħlu l-kliem "tiżvela lill-Bank Ċentrali, Banek Ċentrali oħra barranin, korpi oħra".

Emenda ta' l-artikolu 25A ta' l-Att prinċipali.

28. L-artikolu 25A ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "tas-sodezza finanzjarja ta' istituzzjoni ta' kreditu fi Stat Membru ieħor", għandhom jidħlu l-kliem "tas-sodezza finanzjarja ta' istituzzjoni ta' kreditu jew ta' istituzzjoni finanzjarja fi Stat Membru ieħor";

(b) fis-subartikolu (4) tiegħu, minflok il-kliem "L-awtorità kompetenti għandha tikkonsulta", għandhom jidħlu l-kliem "L-awtorità kompetenti għandha, qabel ma tasal biex tiddeċiedi, tikkonsulta"; u

(ċ) fis-subartikolu (6) tiegħu, minnufih wara l-kliem "skond id-Direttiva.", għandhom jiżdiedu l-kliem "Il-Kummissjoni għandha tinżamm mgħarrfa bl-eżistenza u l-kontenut ta' kull ftehim bħal dak.".

TAQSIMA III

Emenda ta' l-Att dwar il-Kummerċ ta' l-Assigurazzjoni.

29. Din it-Taqsima temenda l-Att dwar il-Kummerċ ta' l-Assigurazzjoni, u għandha tiftiehem u tinqara ħaġa waħda ma' l-istess Att, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali". Kap. 403.

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

30. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu:

(i) minnufih wara t-tifsira "impriża ta' l-assigurazzjoni Ewropea", għandha tiżdied din it-tifsira ġdida li ġejja:

" " jiem tax-xogħol" u " jum tax-xogħol" ma jinkludux is-Sibtijiet u l-ġranet msemmija fl-Att dwar il-Festi Nazzjonali u Btajjel Pubbliċi oħra;"; Kap. 252.

(ii) minflok it-tifsira "*holding* kwalifikattiv ta' azzjonijiet", għandu jidħol dan li ġej:

" "*holding* kwalifikattiv ta' azzjonijiet" tfisser *holding* dirett jew indirett f'kumpannija li jirrappreżenta għaxra fil-mija jew iżjed tal-kapital azzjonarju jew tal-jeddijiet ta' votazzjoni, meta jitqiesu l-jeddijiet ta' votazzjoni kif stipulati fl-Artikoli 9 u 10 tad-Direttiva 2004/109/KE tal-Parlament Ewropew u tal-Kunsill tal-15 ta' Diċembru, 2004 fuq l-armonizzazzjoni ta' ħtiġiet ta' trasparenza f'dak li għandu x'jaqsam ma' informazzjoni dwar emittenti li jkollhom it-titoli tagħhom ammessi għall-kummerċ u li temenda d-Direttiva 2001/34/KE, kif ukoll il-kondizzjonijiet dwar l-aggregazzjoni relattiva kif stipulata fl-Artikolu 12(4) u (5) ta' dik id-Direttiva, jew li jirrendi possibbli t-twettiq ta' influwenza sinifikattiva fuq it-tmexxija tal-kumpannija fejn ikun jeżisti dak il-*holding*, u "azzjonist kwalifikattiv" għandha tiftiehem skond hekk:

Iżda, sabiex jiġi stabbilit jekk il-kriterji għal *holding* kwalifikattiv ta' azzjonijiet jkunux ġew imwettqa, l-awtorità kompetenti m'għandhiex tqis jeddijiet ta' votazzjoni jew azzjonijiet li kumpanniji ta' investimenti jew istituzzjonijiet ta' kreditu jista' jkollhom bħala riżultat li jkunu qegħdin jipprovdu *underwriting* ta' strumenti finanzjarji u, jew ta' tqegħid ta' strumenti finanzjarji fuq bażi ta' impenn sod skond m'hemm fil-punt 6 tat-Taqsima A ma' l-Anness 1 mad-Direttiva 2004/39/KE, sakemm dawk id-drittijiet m'humiex, min-naħa waħda eżerċitati jew xort'oħra użati biex jintervjenu fil-maniġġ ta' l-emittent u, mill-oħra, li jsir minnhom fi żmien sena mill-akkwist tagħhom;"; u

(iii) it-tifsira "liċenza għal servizzi ta' investiment" għandha titħassar; u

(b) fis-subartikolu (2) tiegħu:

(i) fil-paragrafu (h) tiegħu, minflok il-kliem "id-Direttivi 98/78/KE u 2002/83/KE; u", għandhom jidħlu l-kliem "d-Direttivi 98/78/KE u 2002/83/KE;"

(ii) il-paragrafu (i) tiegħu għandu jiġi enumerat mill-ġdid bħala paragrafu (j);

(iii) minnufih wara l-paragrafu (h) tiegħu, għandu jiżdied dan il-paragrafu (i) ġdid li ġej:

"(i) Direttiva 2007/44/KE tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Settembru, 2007 li temenda d-Direttiva tal-Kunsill 92/49/KEE u d-Direttivi 2002/83/KE, 2004/39/KE, 2005/68/KE u 2006/48/KE dwar regoli proċedurali u kriterji ta' valutazzjoni għall-valutazzjoni prudenzjali ta' akkwisti u żjieda fil-*holdings* fis-settur finanzjarju; u".

31. Minflok l-artikolu 38 ta' l-Att prinċipali għandu jidħol dan li ġej:

Sostituzzjoni ta' l-artikolu 38 ta' l-Att prinċipali.

"Parteċipazzjoni f'kumpannija awtorizzata.

38. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min jaġixxi bi ftehim (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwirent propost"), u li jkun ħa deċiżjoni jew li:

(a) jakkwista, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet f'kumpannija awtorizzata;

(b) iżid, direttament jew indirettament, *holding* azzjonarju eżistenti li ma jkunx *holding* kwalifikattiv ta' azzjonijiet hekk li jikkaġuna li jsir *holding* kwalifikattiv ta' azzjonijiet f'kumpannija awtorizzata; jew

(ċ) iżid aktar, direttament jew indirettament, dak il-*holding* kwalifikattiv ta' azzjonijiet f'kumpannija awtorizzata li bħala riżultat relattiv il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum ikun jilħaq jew jeċċedi għoxrin fil-mija, tletin fil-mija jew ħamsin fil-mija jew biex il-kumpannija awtorizzata ssir sussidjarja tiegħu,

(hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala l-"akkwist propost"), għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik, fejn jindika kemm se jkun il-*holding* azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ b'regola dwar l-assigurazzjoni, inkluża l-forma li biha għandha ssir notifika bħal dik u l-kriterji adottati mill-awtorità kompetenti sabiex jiġi stabbilit jekk dik il-persuna tkunx persuna xierqa u idonea.

(2) Minkejja kull ma jista' jinsab f'xi liġi oħra, kull min ikun ħa deċiżjoni jew li:

(a) jiddisponi, direttament jew indirettament, minn *holding* kwalifikattiv ta' azzjonijiet f'kumpannija awtorizzata;

(b) inaqqas, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet hekk li jġibu li jtemm milli jibqa' *holding* kwalifikattiv ta' azzjonijiet; jew

(ċ) inaqqas, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet sabiex il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital miżmum jinżel għal inqas minn għoxrin fil-mija, tletin fil-mija jew ħamsin fil-mija jew biex l-kumpannija awtorizzata ittemm milli tibqa' sussidjarja tagħha,

għandu javża lill-awtorità kompetenti bil-miktub b'kull deċiżjoni bħal dik fejn jindika kemm se jkun il-*holding* azzjonarju maħsub u jipprovdi kull informazzjoni rilevanti hekk kif u bil-mod li l-awtorità kompetenti tista' tkun teħtieġ b'regola dwar l-assigurazzjoni.

(3) Is-subartikoli (1) u (2) għandhom ikunu japplikaw irrispettivament minn jekk xi azzjonijiet rilevanti jkunux jew le azzjonijiet elenkati f'xi suq regolat fil-kuntest tat-tifsira ta' l-Att dwar is-Swieq Finanzjarji jew f'suq ekwivalenti fi stat li ma jkunx Stat Membru jew Stat ŻEE.

Kap. 345.

(4) Ikun id-dmir ta' kumpannija awtorizzata u tad-diretturi tagħha, li jinnotifikaw lill-awtorità kompetenti minnufih malli jsiru jafu li xi persuna iddeċidiet li tieħu xi pass stipulat fis-subartikolu (1) jew (2).

(5) Meta xi persuna jew kumpannija awtorizzata tieħu jew tiddeċiedi li tieħu xi azzjoni stipulata fis-subartikolu (1) jew (2) minghajr ma tavża lill-awtorità kompetenti jew tikseb l-approvazzjoni tagħha skond l-artikolu 38A, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli tieħu jew tkompli għaddejja b'dak il-pass;

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

(ċ) li jkun jeħtieġ lil dik il-persuna jew kumpannija awtorizzata tieħu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħed dak il-pass;

(d) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli teżerċita xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li tirċievi xi ħlas jew li teżerċita xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli tieħu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikoli (1) u (2).

(6) Mingħajr preġudizzju għal kull disposizzjoni oħra ta' dan l-Att, meta l-influwenza eżerċitata minn xi persuna li tkun qegħda takkwista jew tipproponi li takkwista *holding* kwalifikattiv ta' azzjonijiet tkun topera, jew x'aktarx li topera, kontra t-tmexxija tajba u prudenti ta' kumpannija awtorizzata, l-awtorità kompetenti tista' teżerċita kull setgħa li għandha taħt dan l-Att biex ittemm dik is-sitwazzjoni, inkluża s-setgħa li toħorġ dawk id-direttivi li hija tista' tqis li jkunu raġonevoli fiċ-ċirkostanzi.

(7) Fil-każ ta' kumpannija li l-uffiċċju prinċipali tagħha jkun f'pajjiż barra minn Malta awtorizzata taħt dan l-Att biex tmexxi f'Malta jew minn Malta l-kummerċ ta' l-assigurazzjoni, id-disposizzjonijiet ta' dan l-artikolu għandhom ikunu japplikaw daqstant biss daqskemm ikun jeħtieġ lil dik il-kumpannija tagħti lill-awtorità kompetenti, mhux aktar tard minn tletin jum minn dik il-bidla jew ġrajja, skond il-każ, l-informazzjoni hemmhekk imsemmija.

(8) L-awtorità kompetenti, tista', permezz ta' regola dwar l-assigurazzjoni maħruġa taħt dan l-Att, tindika ċ-ċirkostanzi meta persuni għandhom jitqiesu li "jkunu qegħdin jaġixxu bi ftehim".".

Żjieda ta' l-artikolu 38A ġdid ma' l-Att prinċipali.

32. Minnufih wara l-artikolu 38 ta' l-Att prinċipali, għandu jidħol dan l-artikolu ġdid li ġej:

"Proċedura ta' valutazzjoni.

38A. (1) L-awtorità kompetenti għandha, minnufih u f'kull każ fi żmien jumejn tax-xogħol wara li tasal in-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 38, kif ukoll wara l-wasla sussegwenti li tista' ssir ta' l-informazzjoni msemmija fis-subartikolu (4), tagħti riċevuta tagħha bil-miktub lill-akkwirent propost.

(2) L-awtorità kompetenti jkollha massimu ta' sittin jum tax-xogħol mid-data meta tingħata riċevuta bil-miktub dwar il-wasla tan-notifika meħtieġa taħt is-subartikolu (1) ta' l-artikolu 38 u kull dokument meħtieġ mill-awtorità kompetenti li jiġi anness ma' dik in-notifika (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala "iż-żmien ta' valutazzjoni") sabiex issir valutazzjoni abbażi ta' dik l-informazzjoni skond ma jista' jiġi stabbilit b'regola dwar l-assigurazzjoni maħruġa għal dan l-għan.

(3) L-awtorità kompetenti għandha tgħarraf lill-akkwirent propost bid-data meta jiskadi ż-żmien ta' valutazzjoni, u dan fil-waqt li tkun qegħda tagħti r-riċevuta.

(4) L-awtorità kompetenti tista', matul iż-żmien ta' valutazzjoni, jekk ikun meħtieġ u mhux aktar tard mill-ħamsin jum tax-xogħol ta' dak il-perjodu, titlob kull informazzjoni ulterjuri li tinħtieġ sabiex tiġi kompluta l-valutazzjoni. Dik it-talba għandha ssir bil-miktub u għandha tispeċifika kull informazzjoni addizzjonali meħtieġa.

(5) Matul iż-żmien bejn id-data meta ssir talba għal informazzjoni addizzjonali mill-awtorità kompetenti u l-wasla ta' risposta għaliha mill-akkwirent propost, iż-żmien ta' valutazzjoni għandu jitwaqqaf. Iż-żmien ta' waqfien m'għandux ikun ta' iżjed minn għoxrin jum tax-xogħol. Kull talba ulterjuri li ssir mill-awtorità kompetenti sabiex l-informazzjoni tiġi kompluta jew iċċarata ikun fid-diskrezzjoni tagħha iżda ma jkunx iwassal għal waqfien ta' dak il-perjodu.

(6) L-awtorità kompetenti tista' testendi ż-żmien ta' waqfien imsemmi fis-subartikolu (5) sa tletin jum tax-xogħol jekk l-akkwirent propost ikun:

(a) jinsab jew regolat fi stat li ma jkunx Stat Membru jew Stat ŻEE; jew

(b) persuna mhux soġġetta għal superviżjoni taħt:

(i) id-Direttiva tal-Kunsill 85/611/KEE ta' l-20 ta' Diċembru, 1985 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li jirrelataw ma' impriża għal investiment kollettiv f'titoli trasferibbli (UCITS);

(ii) id-Direttiva tal-Kunsill 92/49/KEE tat-18 ta' Ġunju, 1992 dwar il-koordinazzjoni tal-liġijiet, regolamenti u disposizzjonijiet amministrattivi li għandhom x'jaqsmu ma' l-assigurazzjoni diretta barra minn assigurazzjoni fuq il-ħajja u li temenda d-Direttivi 73/239/KEE u 88/357/KEE (it-tielet Direttiva fuq l-assigurazzjoni mhux fuq il-ħajja);

(iii) id-Direttiva 2002/83/KE tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Novembru, 2002 li tikkonċerna l-assigurazzjoni fuq il-ħajja;

(iv) id-Direttiva 2004/39/KE tal-Parlament Ewropew u tal-Kunsill tal-21 ta' April, 2004 fuq is-swieq ta' strumenti finanzjarji li temenda d-Direttivi tal-Kunsill 85/611/KEE u 93/6/KEE u d-Direttiva 2000/12/KE tal-Parlament Ewropew u tal-Kunsill u li tħassar id-Direttiva tal-Kunsill 93/22/KEE;

(v) id-Direttiva 2005/68/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Novembru, 2005 dwar ir-rijassigurazzjoni u li temenda D-Direttivi tal-Kunsill 73/239/KEE, 92/49/KEE kif ukoll id-Direttivi 98/78/KE u 2002/83/KE; jew

(vi) id-Direttiva 2006/48/KE tal-Parlament Ewropew u tal-Kunsill ta' l-14 ta' Ġunju, 2006 dwar il-bidu u l-prosegwiment tal-kummerċ ta' istituzzjonijiet ta' kreditu (*recast*).

(7) L-awtorità kompetenti għandha, malli titlesta l-valutazzjoni msemmija fis-subartikolu (2) u mhux iżjed tard mid-data meta jiskadi ż-żmien ta' valutazzjoni, toħroġ avviż:

(a) li bih tagħti approvazzjoni bla ebda kondizzjoni għall-akkwist propost;

(b) li bih tagħti approvazzjoni għall-akkwist propost bla ħsara għal dawk il-kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad l-akkwist propost.

(8) Meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2), l-awtorità kompetenti m'għandha la timponi xi kundizzjoni minn qabel dwar il-livell ta' *holding* azzjonarju li għandu jiġi akkwiżit u lanqas teżamina l-akkwist propost skond il-ħtiġiet ekonomiċi tas-suq.

(9) L-awtorità kompetenti tista' tiċħad l-akkwist propost biss jekk ikun hemm motivi raġonevoli għala għandu jsir dan abbażi tal-kriterji stipulati fir-regola dwar l-assigurazzjoni msemmija fis-subartikolu (1) ta' l-artikolu 38 jew jekk l-informazzjoni provduta mill-akkwirent propost ma tkunx kompluta.

(10) Jekk l-awtorità kompetenti tiddeċiedi li tiċħad l-akkwist propost, hija għandha, fi żmien jumejn tax-xogħol, u mhux iżjed miż-żmien ta' valutazzjoni, tgħarraf lill-akkwirent propost bil-miktub fejn tispeċifika r-raġunijiet għal dik id-deċiżjoni. L-awtorità kompetenti tista', sew fuq talba ta' dak l-akkwirent propost sew xort'oħra, toħroġ dikjarazzjoni pubblika fejn tindika dawk ir-raġunijiet.

(11) Jekk l-awtorità kompetenti ma tiċħadx l-akkwist propost bil-miktub fiż-żmien ta' valutazzjoni,

dak l-akkwist propost għandu jitqies li jkun ġie approvat.

(12) Mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt l-Att, meta *holding* kwalifikattiv ta' azzjonijiet f'kumpannija awtorizzata jiġi akkwiżit minkejja r-rifjut ta' l-awtorità kompetenti, l-eżerċizzju tal-jeddijiet ta' votazzjoni korrispondenti għandu jiġi sospiż u kull vot mitfugħ bi ksur ta' dan l-artikolu jkun null u bla effett.

(13) L-awtorità kompetenti tista' tistabbilixxi l-itwal żmien biex isir l-akkwist propost u ttawlu aktar meta tqis li dan l-għemil ikun adatt.

(14) Minkejja d-disposizzjonijiet tas-subartikoli (1) sa (6) ta' dan l-artikolu, meta żewġ proposti jew aktar biex jiġi akkwistat jew miżjud xi *holding* kwalifikattiv ta' azzjonijiet fl-istess kumpannija awtorizzata jkunu ġew notifikati lill-awtorità kompetenti, din l-aħħar awtorità għandha tittratta lill-akkwirenti proposti b'mod mhux diskriminatorju.".

Żjieda ta' l-artikolu 38B ġdid ma' l-Att prinċipali.

33. Minnufih wara l-artikolu 38A ta' l-Att prinċipali, għandu jiżdied dan l-artikolu ġdid li ġej:

"Koperazzjoni ma' awtoritajiet regolatorji barranin fil-każ ta' akkwisti.

38B. (1) L-awtorità kompetenti għandha tikkopera b'konsultazzjoni sħiħa ma' l-awtoritajiet regolatorji barranin meta tkun qegħda tagħmel il-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 38A jekk l-akkwirent propost ikun jaqa' taħt xi kategorija minn dawn li ġejjin:

(a) istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-riassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist;

(b) l-impriża li jkollha kontroll ta' istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta'

l-assigurazzjoni, impriża tar-rijassigurazzjoni, kumpannija ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist; jew

(ċ) persuna li tkun tikkontrolla istituzzjoni ta' kreditu, impriża ta' l-assigurazzjoni fuq il-ħajja, impriża ta' l-assigurazzjoni, impriża tar-rijassigurazzjoni, impriża ta' investiment jew kumpannija tal-maniġġar UCITS li tkun awtorizzata fi Stat Membru ieħor jew fi Stat ŻEE jew f'settur li ma jkunx dak fejn ikun qiegħed jiġi propost l-akkwist.

(2) L-awtorità kompetenti għandha, mingħajr dewmien żejjed, tipprovdi kull informazzjoni li tkun essenzjali jew rilevanti għall-valutazzjoni msemmija fis-subartikolu (2) ta' l-artikolu 38A lill-awtorità regolatorja barranija fejn titlob dik l-informazzjoni. Meta ssir dik it-talba, l-awtorità kompetenti għandha tikkomunika lill-awtorità regolatorja barranija kull informazzjoni rilevanti u għandha tikkomunika b'inizjattiva tagħha stess kull informazzjoni essenzjali. Deċiżjoni mill-awtorità kompetenti skond l-artikolu 38A għandha tindika kull fehma jew riżerva espressa mill-awtorità regolatorja barranija li tkun responsabbli għall-akkwirent propost.".

Żjieda ta' l-artikolu 38Ċ ġdid ma' l-Att prinċipali.

34. Minnufih wara l-artikolu 38B ta' l-Att prinċipali, għandu jiżdied dan l-artikolu ġdid li ġej:

"Amalgamazzjonijiet, rikostruzzjonijiet, qsim u tibdiliet fil-kapital azzjonarju jew jeddijiet ta' votazzjoni.

38Ċ. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra u mingħajr preġudizzju għas-subartikoli (1) u (2) ta' l-artikolu 38, ikun meħtieġ il-kunsens ta' l-awtorità kompetenti mogħti bil-miktub qabel ma kumpannija awtorizzata tkun tista' leġittimament:

(a) tamalgama ma' xi kumpannija oħra, sew jekk din tkun jew ma tkunx awtorizzata taħt dan l-Att;

(b) tagħmel xi rikostruzzjoni jew qsim; jew

(ċ) iżżid jew tnaqqas il-kapital azzjonarju nominali jew maħruġ tagħha jew tagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni.

(2) Ikun id-dmir tad-diretturi u l-azzjonisti kwalifikattivi kollha ta' kumpannija awtorizzata li jinnotifikaw lill-awtorità kompetenti minnufih bil-miktub malli jsiru jafu li dik il-kumpannija tkun bi ħsiebha tieħu xi pass minn dawk stipulati fis-subartikolu (1).

(3) Fi żmien tliet xhur minn meta tasal dik in-notifika jew minn meta tasal dik l-informazzjoni li l-awtorità kompetenti tkun tista' leġittimament teħtieġ, skond liema tkun l-iżjed tardiva, l-awtorità kompetenti għandha toħroġ avviż:

(a) li bih tagħti l-kunsens bla ebda kondizzjoni għall-għemil ta' dak il-pass;

(b) li bih tagħti l-kunsens għall-għemil ta' dak il-pass bla ħsara għal dawk il-kondizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad il-kunsens għall-għemil ta' dak il-pass,

u jekk hija tiċħad milli tagħti l-kunsens tagħha hija għandha tgħarraf lill-persuna jew lill-kumpannija awtorizzata involuta bil-miktub dwar għaliex tkun qegħda tiċħad għal dan.

(4) Meta xi persuna jew xi kumpannija awtorizzata tieħu jew tiddeċiedi li tieħu xi pass stipulat fis-subartikolu (1) mingħajr ma tikseb il-kunsens ta' l-awtorità kompetenti, allura, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, l-awtorità kompetenti jkollha s-setgħa li tagħmel ordni:

(a) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli tieħu jew tkompli għaddejja b'dak il-pass ;

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

(ċ) li jkun jeħtieġ lil dik il-persuna jew kumpannija awtorizzata li tieħu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħdet dak il-pass;

(d) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli jeżerċitaw xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li jirċievu xi ħlas jew li jeżerċitaw xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew kumpannija awtorizzata milli jieħdu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikolu (1).".

Emenda ta' l-artikolu 43 ta' l-Att prinċipali.

35. Fil-paragrafu (b) tas-subartikolu (2) ta' l-artikolu 43 ta' l-Att prinċipali, minflok il-kliem "tgħarraf lill-awtorità kompetenti", għandhom jidħlu l-kliem "mill-inqas darba fis-sena, tgħarraf lill-awtorità kompetenti".

Emenda ta' l-artikolu 58 ta' l-Att prinċipali.

36. Fil-paragrafu (e) tas-subartikolu (1) ta' l-artikolu 58 ta' l-Att prinċipali, minflok il-kliem "taħt l-artikolu 38", għandhom jidħlu l-kliem "taħt l-artikoli 38, 38A u 38Ċ".

TAQSIMA IV

Emenda ta' l-Att dwar l-Intermedjarji fl-Assigurazzjoni. Kap. 487.

37. Din it-Taqsima temenda l-Att dwar l-Intermedjarji fl-Assigurazzjoni, u għandha tiftiehem u tinqara ħaġa waħda ma' l-istess Att, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Iħassar l-artikolu 42 ta' l-Att prinċipali.

38. L-artikolu 42 ta' l-Att prinċipali għandu jitħassar.

Emenda ta' l-artikolu 44 ta' l-Att prinċipali.

39. Fis-subartikolu (2) ta' l-artikolu 44 ta' l-Att prinċipali, minflok il-kliem "għall-artikolu 54 ta' dan l-Att, safejn jirreferi għall-artikolu 38 ta' l-Att dwar il-Kummerċ ta' l-Assigurazzjoni", għandhom jidħlu l-kliem "għall-artikolu 44A ta' dan l-Att".

Żjieda ta' l-artikolu 44A ġdid ma' l-Att prinċipali.

40. (1) Minnufih wara l-artikolu 44 ta' l-Att prinċipali, għandu jidħol dan l-artikolu ġdid li ġej:

"Parteċipazzjoni f'kumpannija iskritta.

44A. (1) Minkejja kull ma jista' jinsab f'xi liġi oħra, ikun meħtieġ il-kunsens mogħti bil-quddiem u bil-miktub mill-awtorità kompetenti qabel ma persuna tkun tista' leġittimament:

(a) takkwista, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet f'kumpannija iskritta taħt l-artikolu 13 ta' dan l-Att (hawn iżjed 'il quddiem imsejjaħ f'dan l-Att bħala "kumpannija iskritta");

(b) iżżid, direttament jew indirettament, *holding* eżistenti li ma jkunx *holding* kwalifikattiv ta' azzjonijiet hekk li jikkaġuna li jsir *holding* kwalifikattiv ta' azzjonijiet f'kumpannija iskritta;

(ċ) iżżid aktar, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet hekk li tikkaġuna li dan ikun daqs jew li jeċċedi għoxrin fil-mija jew tletin fil-mija jew ħamsin fil-mija jew li jikkaġuna lill-kumpannija iskritta ssir sussidjarja ta' dik il-persuna;

(d) tnaqqas, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet hekk li tikkaġunah li jaqa' taħt ħamsin fil-mija jew tletin fil-mija jew għoxrin fil-mija jew li tikkaġuna lill-kumpannija iskritta milli ttemm li tkun sussidjarja ta' dik il-persuna;

(e) tnaqqas, direttament jew indirettament, *holding* kwalifikattiv ta' azzjonijiet hekk li ġġibu li jtemm milli jibqa' *holding* kwalifikattiv ta' azzjonijiet; jew

(f) tiżvesti ruħha, direttament jew indirettament, minn *holding* kwalifikattiv ta' azzjonijiet.

(2) Is-subartikolu (1) għandu jkun japplika irrispettivament minn jekk xi azzjonijiet rilevanti ikunux jew le azzjonijiet elenkati f'xi suq regolat fil-kuntest tat-tifsira ta' l-Att dwar is-Swieq Finanzjarji jew f'suq ekwivalenti fi stat li mhux Stat Membru jew Stat ŻEE. Kap. 345.

(3) Ikun id-dmir ta' kumpannija iskritta u tad-diretturi tagħha li tinnotifika lill-awtorità kompetenti minnufih malli ssir taf li xi persuna tkun bi ħsiebha tieħu xi pass minn dawk stipulati fis-subartikolu (1).

(4) Minkejja kull ma jista' jinsab f'xi liġi oħra, għandu jkun meħtieġ il-kunsens bil-miktub ta' l-awtorità kompetenti qabel ma xi kumpannija iskritta tkun tista' leġittimament -

(a) tamalgama ma' xi kumpannija oħra, sew jekk din tkun iskritta taħt dan l-Att sew jekk ma tkunx;

(b) tagħmel xi rikostruzzjoni jew qsim; jew

(ċ) iżżid jew tnaqqas il-kapital azzjonarju nominali jew maħruġ tagħha jew tagħmel xi bidla materjali fil-jeddijiet ta' votazzjoni.

(5) Ikun id-dmir tad-diretturi u l-azzjonisti kwalifikanti kollha ta' kumpannija iskritta li jinnotifikaw lill-awtorità kompetenti minnufih malli jsiru jafu li l-kumpannija tkun bi ħsiebha tieħu xi pass minn dawk stipulati fis-subartikolu (4).

(6) Għall-fini ta' dan l-artikolu, l-awtorità kompetenti tista' toħroġ regola dwar l-intermedjarji fl-assigurazzjoni li tkun tistabbilixxi l-forma kif għandha ssir notifika skond m'hemm fis-subartikolu (1) u fis-subartikolu (4) u l-informazzjoni meħtieġa li tingħata flimkien ma' dik in-notifika; u, l-awtorità kompetenti għandha, meta ssir in-notifika minn persuna li tkun bi ħsiebha tieħu xi azzjoni stipulata fis-subartikoli (1)(a) sa (ċ), tistabbilixxi jekk dik il-persuna tkunx persuna xierqa u idonea qabel ma tagħti l-kunsens tagħha.

(7) Fi żmien tliet xhur minn meta tasal dik in-notifika jew minn meta tasal dik l-informazzjoni li l-awtorità kompetenti tkun tista' leġittimament teħtieġ, skond liema jkun l-aktar tardiv, l-awtorità kompetenti għandha toħroġ avviż -

(a) li bih tagħti l-kunsens tagħha bla ebda kundizzjoni għall-għemil ta' dak il-pass;

(b) li bih tagħti l-kunsens tagħha għall-għemil ta' dak il-pass bla ħsara għal dawk il-kundizzjonijiet li l-awtorità kompetenti tista' tqis li jkunu xierqa; jew

(ċ) li bih tiċħad il-kunsens tagħha għall-għemil ta' dak il-pass,

u jekk hija tiċħad milli tagħti kunsens, hija għandha tgħarraf lill-persuna jew lill-kumpannija iskritta involuta bil-miktub bir-raġuni għal dak iċ-ċħid.

(8) Meta xi persuna jew xi kumpannija iskritta tieħu jew ikollha ħsieb tieħu xi pass stipulat fis-subartikolu (1) jew (4) mingħajr il-kunsens bil-miktub mogħti bil-quddiem mill-awtorità kompetenti, l-awtorità kompetenti għandu jkollha, mingħajr preġudizzju għal kull piena oħra li tista' tiġi imposta taħt dan l-Att, is-setgħa li tagħmel ordni:

(a) li jżomm lill-persuna jew lill-kumpannija milli jieħdu jew ikomplu għaddejin b'dak il-pass;

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

(ċ) li jeħtieġ lil dik il-persuna jew kumpannija jieħdu dawk il-passi li jistgħu jkunu meħtieġa sabiex tiġi ristawrata l-pożizzjoni li kienet teżisti minnufih qabel ma jkun ittieħet dak il-pass ;

(d) li jżomm lil dik il-persuna jew kumpannija milli jeżerċitaw xi drittijiet li pass bħal dak kien jagħtihom, li kieku kien wieħed leġittimu, inkluż id-dritt li jirċievu xi ħlas jew li jeżerċitaw xi jeddijiet ta' votazzjoni marbutin ma' l-azzjonijiet akkwistati;

(e) li jżomm lil dik il-persuna jew kumpannija milli jieħdu xi pass bħal dak jew xi pass ieħor fil-kategoriji stipulati fis-subartikoli (1) u (4).

(9) Fil-każ ta' kumpannija barranija iskritta taħt dan l-Att biex tmexxi attivitajiet ta' intermedjarji fl-assigurazzjoni f'Malta jew minn Malta, id-disposizzjonijiet ta' dan l-artikolu għandhom ikunu japplikaw biss fil-qjies li dik il-kumpannija tkun meħtieġa tagħti lill-awtorità kompetenti, mhux aktar tard minn tletin jum minn dik il-bidla jew ġrajja, skond il-każ, l-informazzjoni hemm imsemmija.

(10) Mingħajr preġudizzju għal kull disposizzjoni oħra ta' dan l-Att, meta l-influwenza eżerċitata minn xi persuna li jkollha *holding* kwalifikattiv ta' azzjonijiet, tkun topera, jew x'aktarx li topera, kontra t-tmexxija tajba u prudenti ta' kumpannija iskritta, l-awtorità kompetenti tista' teżerċita kull setgħa li jkollha taħt dan l-Att, inkluża s-setgħa li toħroġ dawk id-direttivi li hija tista' tqis li jkunu raġonevoli fiċ-ċirkostanzi.".

Emenda ta' l-artikolu 50 ta' l-Att prinċipali.

41. Is-subartikolu (2) ta' l-artikolu 50 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) il-paragrafu (h) tiegħu, għandu jiġi enumerat mill-ġdid bħala l-paragrafu (i);

(b) minnufih wara l-paragrafu (g) tiegħu, għandu jiżdied dan il-paragrafu ġdid li ġej:

"(h) li toħroġ xi avviż jew tagħmel xi ordni taħt l-artikolu 44A;".

Emenda ta' l-artikolu 52 ta' l-Att prinċipali.

42. Fil-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 52 ta' l-Att prinċipali, minflok il-kliem "l-artikolu 29, 30, 31A jew 38 ta' l-Att dwar il-Kummerċ ta' l-Assigurazzjoni", għandhom jidħlu l-kliem "l-artikolu 29, 30 jew 31A ta' l-Att dwar il-Kummerċ ta' l-Assigurazzjoni".

Emenda ta' l-artikolu 54 ta' l-Att prinċipali.

43. Minflok il-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 54 ta' l-Att prinċipali, għandu jidħol dan li ġej:

"(a) id-disposizzjonijiet ta' l-artikoli 29 sa 31A ta' l-Att dwar il-Kummerċ ta' l-Assigurazzjoni (hawn iżjed 'il quddiem f'dan l-artikolu msejjaħ "l-Att") għandhom ikunu japplikaw għal persuna iskritta, bħallikieku referenza f'dawk id-disposizzjonijiet:-

(i) għal "awtorizzazzjoni" kienet referenza għal "iskrizzjoni fil-Lista ta' l-Aġenti, fil-Lista tal-*Managers* jew fil-Lista tal-*Brokers*";

(ii) għal "kumpannija awtorizzata" kienet referenza għal "persuna iskritta";

(iii) għal "kummerċ ta' l-assigurazzjoni" kienet referenza għal "attivitajiet ta' intermedjarji fl-assigurazzjoni";" .

TAQSIMA V

Emenda ta' l-Att dwar it-Taxxa fuq l-*Income*.

Kap. 123.

44. Din it-Taqsima temenda l-Att dwar it-Taxxa fuq l-*Income*, u għandha tiftiehem u tinqara ħaġa waħda ma' l-istess Att, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda ta' l-artikolu 12 ta' l-Att prinċipali.

45. Minflok il-paragrafu (d) tas-subartikolu (1) ta' l-artikolu 12 ta' l-Att prinċipali, għandu jidħol dan li ġej:

"(d) l-*income* ta' xi fond għal min jirtira jew skema għal min jirtira li jkollha liċenza, tkun registrata jew xort'oħra awtorizzata taħt l-Att li Jirregola Fondi Speċjali, jew kull Att li jidħol minflok dak l-Att, li ma jkunx *income* minn proprjetà immobbli li tkun tinsab f'Malta;".

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 154 tat-3 ta' Novembru, 2009.

LOUIS GALEA
Speaker

PAULINE ABELA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE ABELA
President

6th November, 2009

ACT No. XVII of 2009

AN ACT to amend various financial services Laws, and to implement Directive 2007/44/EC.

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:-

Short title.

1. The short title of this Act is the Various Financial Laws (Amendment) Act, 2009.

PART I

Amendment of the Investment Services Act. Cap. 370.

2. This Part amends the Investment Services Act, and it shall be read and construed as one with the said Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

3. In article 2 of the principal Act:

(a) immediately after the definition "EEA state", there shall be inserted the following new definition:

> ""European Investment Firm" means an investment firm as defined in article 4(1) of the Directive and as authorized by its European regulatory authority within the meaning of article 5 of the Directive or authorized by a European regulatory authority in an EEA State;";

(b) for the definition "qualifying shareholding", there shall be substituted the following:

" "qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of the 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC taking into account the conditions regarding the aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment services licence holders, European Investment Firms or credit institutions may hold as a result of providing the service of underwriting or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A to Annex 1 to the Directive, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;"; and

(c) immediately after the definition "unit", there shall be inserted the following new definition:

" "working days" shall not include Saturdays and the days referred to in the National Holidays and Other Public Holidays Act.". Cap. 252.

4. Article 9A of the principal Act shall be amended as follows: Amendment of article 9A of the principal Act.

(a) in subarticle (2) thereof, for the words "for recognition and" there shall be substituted the words "and

conditions for granting recognition, providing for the refusal of recognition and for the variation, cancellation and supervision of recognition and";

(b) paragraph (viii) of subarticle (2) thereof shall be renumbered as paragraph (ix) and immediately after paragraph (vii) there shall be added the following new paragraph:

"(viii) to provide for the imposition of administrative penalties up to a maximum of 45,000 euro or for other administrative sanctions in case of any breach of the provisions of this article or of the applicable Investment Services Rules or of any of the conditions attached to a recognition certificate, where any."; and

(c) immediately after subarticle (2) thereof, there shall be added the following new subarticle:

"(3) Where the competent authority refuses, varies, cancels or suspends a recognition issued in terms of this article or imposes an administrative penalty in terms of the applicable Investment Services Rules, an appeal shall lie to the Financial Services Tribunal and the provisions of article 19(3) of this Act shall apply to such appeal.".

Amendment of article 10 of the principal Act.

5. For article 10 of the principal Act, there shall be substituted the following:

"Participation in an investment services licence holder.

10. (1) Notwithstanding anything contained in any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed acquirer") who have taken a decision either to:

(a) acquire, directly or indirectly, a qualifying shareholding in an investment services licence holder;

(b) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an investment services licence holder; or

(c) further increase, directly or indirectly, such qualifying shareholding in an investment services licence holder as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the investment services licence holder would become its subsidiary,

(hereinafter referred to in this Act as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by Investment Services Rules require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a fit and proper person.

(2) Notwithstanding anything contained in any other law, any person who has taken a decision either to:

(a) dispose, directly or indirectly, of a qualifying shareholding in an investment services licence holder;

(b) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(c) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the investment services licence holder would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may, by Investment Services Rules require.

(3) Subarticles (1) and (2) shall apply irrespective

of whether or not any of the relevant shares are shares listed on a regulated market within the meaning of the Financial Markets Act or on an equivalent market which is not situated in a Member State or an EEA State.

(4) It shall be the duty of an investment services licence holder to notify the competent authority forthwith upon becoming aware that any person has taken any action set out in subarticle (1) or (2).

(5) If any person or any investment services licence holder takes or decides to take any action set out in subarticle (1) or (2) without notifying the competent authority or obtaining its approval in terms of article 10A, 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 such person or investment services licence holder from taking, or continuing with, such action;

(b) declaring such action to be void and of no effect;

(c) requiring such person or investment services licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired; or

(e) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in subarticles (1) and (2).

(6) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying

shareholding is, or is likely to, operate against the sound and prudent management of an investment services licence holder, the competent authority may issue a notice of objection and exercise any of the powers assigned to it under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable and appropriate in the circumstances.

(7) A copy of any notice served on the person concerned in terms of subarticle (6) shall be served on the company to whose shares it relates.

(8) The competent authority, may, by means of Investment Services Rules issued under this Act, indicate the circumstances when persons are to be regarded as "acting in concert.".

Addition of new article 10A to the principal Act.

6. Immediately after article 10 of the principal Act, there shall be inserted the following new article:

"Assessment procedure.

10A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under subarticle (1) of article 10, as well as following the possible subsequent receipt of the information referred to in subarticle (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under subarticle (1) of article 10 and all documents required by the competent authority to be attached to such notification (hereinafter referred to in the Act as the "assessment period") to carry out an assessment on the basis of such information as may be determined by Investment Services Rules issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the

assessment period, if necessary and no later than the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption referred to in subarticle (5) up to thirty working days if the proposed acquirer is:

(a) situated or regulated in countries that are not Member States or EEA States; or

(b) a person not subject to supervision under:

(i) the Directive;

(ii) Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(iii) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);

(iv) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;

(v) Directive 2005/68/EC of the Eurpean Parliament and Council of 16 November, 2005 on reinsurance amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; or

(vi) Directive 2006/48/EC of the European Parliament and of the Council of 14 June, 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

(7) The competent authority shall, upon completion of the assessment referred to in subarticle (2) and not later than the date of the expiry of the assessment period, issue a notice:

(a) granting unconditional approval to the proposed acquisition;

(b) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or

(c) refusing the proposed acquisition.

(8) In making the assessment referred to in subarticle (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Investment Services Rules referred to in subarticle (1) of article 10 or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons

for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to the provisions of article 22, where a qualifying shareholding in an investment services licence holder is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this subarticle shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of subarticles (1) to (6), where two or more proposals to acquire or increase qualifying shareholdings in the same investment services licence holder have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.".

Addition of new article 10B in the principal Act.

7. Immediately after article 10A of the principal Act, there shall be inserted the following new article:

"Cooperation with European regulatory authorities and overseas regulatory authorities in case of acquisitions.

10B. (1) The competent authority shall work in full consultation with European regulatory authority or overseas regulatory authorities when carrying out the assessment referred to in subarticle (2) of article 10A if the proposed acquirer is one of the following:

(a) a credit institution, an assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit

institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed; or

(c) a person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in subarticle (2) of article 10A to the European regulatory authority or overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the European regulatory authority or overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 10A shall indicate any views or reservations expressed by the European regulatory authority or overseas regulatory authority responsible for the proposed acquirer.".

Addition of new article 10C in the principal Act.

8. Immediately after article 10B of the principal Act, there shall be added the following new article:

"Mergers, reconstructions, divisions and changes in share capital or voting rights.

10C. (1) Notwithstanding anything contained in any other law, and without prejudice to subarticles (1) and (2) of article 10, the consent of the competent authority given in writing shall be required before an investment services licence holder may lawfully:

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

(b) merge with any other company, whether licensed under this Act or not;

(c) undergo any reconstruction or division;

or

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

(2) It shall be the duty of all directors and qualifying shareholders of an investment services licence holder to notify the competent authority forthwith in writing, upon becoming aware that such investment services licence holder intends to take any of the actions set out in subarticle (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice:

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

(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,

and if it refuses to grant consent, it shall inform the person or the investment services licence holder concerned in writing for the reason for its refusal.

(4) If any person or any investment services licence holder takes or decides to take any action set out in subarticle (1) 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 such person or investment services licence holder from taking, or continuing with, such action;

(b) declaring such action to be void and of

no effect;

(c) requiring such person or investment service licence holder to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or investment services licence holder from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or investment services licence holder from taking any similar action or any other action within the categories set out in subarticle (1).".

Amendment of article 19 of the principal Act.

9. For paragraph (e) of subarticle (1) of article 19 of the principal Act there shall be substituted by the following:

"(e) any notice issued or any order made in terms of articles 10, 10A and 10C;".

PART II

Amendment of the Banking Act.

Cap. 371.

10. This Part amends the Banking Act, and it shall be read and construed as one with the said Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

11. Subarticle (1) of article 2 of the principal Act shall be amended as follows:

(a) for the definition "close links", there shall be substituted the following new definition:

" "close links" means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate; or

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2 (2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or

(c) permanently to one and the same third person by a control relationship;";

(b) the definition "control" shall be deleted;

(c) the definition "equity share" shall be deleted;

(d) for the definition "initial capital", there shall be substituted the following new definition:

" "initial capital" means paid up capital and reserves as defined in a Banking Rule on own funds;";

(e) for the definition "Malta's international commitments", there shall be substituted the following new definition:

" "Malta's international commitments" means commitments, responsibilities and obligations arising out of European Community law, or membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international or reciprocity agreement, however called, whether bilateral or multilateral, to which Malta or the competent authority is a party;";

(f) for the definition "qualifying shareholding", there shall be substituted the following new definition:

" "qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights, taking into account the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities

are admitted to trading and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12 (4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A to Annex 1 to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.";

(g) the definition "significant shareholding" shall be deleted;

(h) immediately after the definition "third country", there shall be inserted the following new definition:

" "working days" shall not include Saturdays and the days referred to in the National Holidays and Other Public Holidays Act.". Cap. 252.

Amendment of article 5 of the principal Act.

12. In the English text of the proviso to subarticle (2) of article 5 of the principal Act, for the words "entitled to exercise their rights under European Community Law", there shall be substituted the words "entitled to exercise its rights under European Community Law".

Amendment of article 7 of the principal Act.

13. In subarticle (1) (b) of article 7 of the principal Act, for the words "credit institution in Malta;", there shall be substituted the words "credit institution in Malta and such persons are of sufficiently good repute and have sufficient experience to perform such duties;".

Amendment of article 9 of the principal Act.

14. In subarticle (2)(d) of article 9 of the principal Act, for the words "sufficient own funds;", there shall be substituted the words "sufficient own funds in terms of article 16A of this Act;".

Amendment of article 10 of the principal Act.

15. In paragraph (h) of article 10 of the principal Act, for the words "to issue any notice or make any order under article 13;", there shall be substituted the words "to issue any notice or make any order under articles 13, 13A and 13C;".

Amendment of article 11 of the principal Act.

16. Immediately after subarticle (2) of article 11 of the principal Act, there shall be inserted the following new subarticle:

"(3) A credit institution licensed in Malta shall be entitled to exercise its rights under the European Passport Rights for Credit Institutions Regulations, 2004.".

L.N. 88 of 2004.

Amendment of article 13 of the principal Act.

17. For article 13 of the principal Act there shall be substituted the following:

"Participation in a credit institution.

13. (1) Notwithstanding anything contained in any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed acquirer"), who have taken a decision either to:

(a) acquire, directly or indirectly, a qualifying shareholding in a credit institution;

(b) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in a credit institution; or

(c) further increase, directly or indirectly, such qualifying shareholding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the credit institution would become its subsidiary,

(hereinafter referred to in this Act as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by a Banking Rule require, including the form in which such notification shall be made and

the criteria adopted by the competent authority in determining whether such person is a suitable person.

(2) Notwithstanding anything contained in any other law, any person who:

(a) acquires, directly or indirectly, at least five per centum but less than ten per centum of the share capital or of the voting rights in a credit institution; or

(b) increases, directly or indirectly, an existing shareholding so that the proportion of the voting rights or of the capital held would amount to at least five per centum but less than ten per centum,

shall inform the competent authority in writing, indicating the size of the shareholding and providing any relevant information as and in the manner that the competent authority may by a Banking Rule require. Such Banking Rule may provide, inter alia, general guidance as to when the shareholding would be deemed to result in significant influence.

(3) Notwithstanding anything contained in any other law, any person who has taken a decision either to:

(a) dispose, directly or indirectly, of a qualifying shareholding in a credit institution;

(b) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(c) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the credit institution would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as

and in the manner that the competent authority may by a Banking Rule require.

(4) Subarticles (1), (2) and (3) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated market within the meaning of the Financial Markets Act or on an equivalent market in a third country.

(5) It shall be the duty of a credit institution and of the directors thereof, to notify the competent authority forthwith upon becoming aware that any person decides to take any of the actions set out in subarticles (1), (2) or (3).

(6) If any person takes or decides to take any action set out in subarticle (1) or (3) without notifying the competent authority or obtaining its approval in terms of article 13A , 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 such person or credit institution from taking, or continuing with, such action;

(b) declaring such action to be void and of no effect;

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

(d) restraining such person or credit institution from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or credit institution from taking any similar action or

any other action within the categories set out in subarticles (1) and (3).

(7) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of a credit institution, the competent authority may exercise any of its powers under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable in the circumstances.

(8) The competent authority, may, by means of a Banking Rule issued under this Act indicate the circumstances when persons are to be regarded as "acting in concert.".

Addition of new articles 13A, 13B and 13C to the principal Act.

18. Immediately after article 13 of the principal Act, there shall be inserted the following new articles:

"Assessment procedure.

13A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under subarticle (1) of article 13, as well as following the possible subsequent receipt of the information referred to in subarticle (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under subarticle (1) of article 13 and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out the assessment on the basis of such information as may be determined by a Banking Rule issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the assessment period, if necessary and no later than

on the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption period referred to in subarticle (5) up to thirty working days if the proposed acquirer is:

(a) situated or regulated in a third country; or

(b) a person not subject to supervision under:

(i) the Directive;

(ii) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(iii) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);

(iv) Directive 2002/83/EC of the European Parliament and of the Council of 5

November 2002 concerning life assurance;

(v) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC; or

(vi) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

(7) The competent authority shall, upon completion of the assessment referred to in subarticle (2) and not later than the date of the expiry of the assessment period, issue a notice:

(a) granting unconditional approval to the proposed acquisition;

(b) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or

(c) refusing the proposed acquisition.

(8) In making the assessment referred to in subarticle (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Banking Rule referred to in subarticle (1) of article 13 or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to

refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to any other penalty which may be imposed under the Act, where a qualifying shareholding in a credit institution is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this subarticle shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of subarticles (1) to (6) of this article, where two or more proposals to acquire or increase qualifying shareholdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Co-operation with overseas regulatory authorities in the case of acquisitions.

13B. (1) The competent authority shall work in full consultation with overseas regulatory authorities when carrying out the assessment referred to in subarticle (2) of article 13A if the proposed acquirer is one of the following:

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit

institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed; or

(c) person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in subarticle (2) of article 13A to the overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 13A of this Act shall indicate any views or reservations expressed by the overseas regulatory authority responsible for the proposed acquirer.

Mergers, reconstructions, divisions and changes in share capital or voting rights.

13C. (1) Notwithstanding anything contained in any other law and without prejudice to subarticles (1) and (3) of article 13, the consent of the competent authority given in writing shall be required before any credit institution may lawfully:

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

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

(c) undergo any re-construction or division; or

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

(2) It shall be the duty of all directors and qualifying shareholders of a credit institution to notify the competent authority forthwith in writing upon becoming aware that such credit institution intends to take any of the actions set out in subarticle (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice:

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

(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,

and if it refuses to grant consent it shall inform the person or the credit institution concerned in writing of the reason for its refusal.

(4) If any person or any credit institution takes or decides to take any action set out in subarticle (1) 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 such person or credit institution from taking or continuing with such action;

(b) declaring such action to be void and of no effect;

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

(d) restraining such person or credit

institution from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or credit institution from taking any similar action or any other action within the categories set out in subarticle (1).".

Amendment of article 14 of the principal Act.

19. Immediately after subarticle (4) of article 14 of the principal Act, there shall be inserted the following new subarticle:

"(5) For the purposes of this article control includes the power to determine in any manner the financial and operating policies of a body corporate, the power to appoint or remove the majority of the members of the board of directors or equivalent governing body or the power to cast the majority of votes at meetings of the board of directors or equivalent governing body.".

Amendment of article 15 of the principal Act.

20. Subarticle (1) of article 15 of the principal Act shall be amended as follows:

(a) in paragraph (d) thereof, for the words "indirectly any significant or qualifying shareholding", there shall be substituted the words "indirectly any qualifying shareholding"; and

(b) in paragraph (iv) of the proviso to paragraph (d) thereof, for the words "considered as a significant shareholding for the purposes", there shall be substituted the words "considered as a qualifying shareholding for the purposes".

Amendment of article 16A of the principal Act.

21. Article 16A of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words "do not meet the requirements laid down in Article 109 of the Directive", there shall be substituted the words "do not meet the requirements laid down in a Banking Rule";

(b) subarticles (3) and (4) thereof shall be re-numbered as subarticles (4) and (5) thereof; and

(c) immediately after subarticle (2) thereof, there shall be inserted the following new subarticle:

"(3) In certain specific circumstances and with the written approval of the competent authority, where there is a merger of two or more credit institutions, the own funds of the credit institutions resulting from the merger may not fall below the total own funds of the merged credit institutions at the time of the merger as long as the level specified in article 7 (1) (a) of the Act have not been attained.".

Amendment of article 17 of the principal Act.

22. For subarticle (2) of article 17 of the principal Act there shall be substituted the following:

"(2) Where the level of the capital requirement of a credit institution is not restored within the determined period, the competent authority may in addition to the power to impose an administrative penalty, exercise any of the powers granted to it under the provisions of article 9 (2) of the Act.".

Substitution of article 17A of the principal Act.

23. For article 17A of the principal Act there shall be substituted the following:

"17A. (1) Every credit institution, to the exclusion of an electronic money institution, shall maintain adequate provisions for bad and doubtful debts.

(2) The competent authority may issue a Banking Rule as it shall consider appropriate for the regulation of provisioning for bad and doubtful debts.".

Amendment of article 19 of the principal Act.

24. In paragraph (b) of subarticle (1) of article 19 of the principal Act, for the words "the competent authority for statistical purposes;", there shall be substituted the words "the competent authority for prudential and statistical purposes;".

Amendment of article 20 of the principal Act.

25. In subarticle (9) of article 20 of the principal Act, for the words "who has a significant shareholding or qualifying shareholding in a credit institution", there shall be substituted the words " who has a qualifying shareholding in a credit institution".

Amendment of article 22 of the principal Act.

26. Article 22 of the principal Act shall be amended as follows:

(a) in subarticle (3) thereof, for the words "who has a significant shareholding or qualifying shareholding in a credit institution", there shall be substituted the words " who has a qualifying shareholding in a credit institution";

(b) in subarticle (5) thereof, for the words "who has a significant shareholding in, qualifying shareholding in, or is a controller of that body", there shall be substituted the words " who has a qualifying shareholding in, or is a controller of that body".

Amendment of article 25 of the principal Act.

27. Article 25 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "On the basis of international agreements, or upon reciprocity agreements, the competent authority may share its supervisory duties with other foreign competent authorities", there shall be substituted the words "On the basis of Malta's international commitments, the competent authority may share its supervisory duties with overseas regulatory authorities";

(b) in subarticle (2) thereof, for the words "on the basis of international agreements, or upon reciprocity agreements, disclose information to other foreign competent authorities.", there shall be substituted the words "on the basis of Malta's international commitments, disclose information to overseas regulatory authorities."; and

(c) in subarticle (6) thereof, for the words "disclose to the Central Bank, other bodies", there shall be substituted the words "disclose to the Central Bank, other overseas Central Banks, other bodies".

Amendment of article 25A of the principal Act.

28. Article 25A of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words "financial soundness of a credit institution in another Member State", there shall be substituted the words "financial soundness of a credit institution or financial institution in another Member State";

(b) in subarticle (4) thereof, for the words "The competent authority shall consult", there shall be substituted

the words "The competent authority shall, prior to its decision, consult"; and

(c) in subarticle (6) thereof, immediately after the words "in accordance with the Directive.", there shall be added the words "The Commission shall be kept informed of the existence and the content of any such agreements.".

PART III

Amendment of the Insurance Business Act. Cap. 403.

29. This Part amends the Insurance Business Act, and it shall be read and construed as one with the said Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

30. Article 2 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof:

(i) the definition "investment services licence" shall be deleted;

(ii) for the definition "qualifying shareholding", there shall be substituted the following:

" "qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights, taking into account the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled,

the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A to Annex 1 to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;"; and

(iii) immediately after the definition "vehicle", there shall be inserted the following new definition:

" "working days" shall not include Saturdays and the days referred to in the National Holidays and Other Public Holidays Act."; and Cap. 252.

(b) in subarticle (2) thereof:

(i) in paragraph (h) thereof, for the words "Directives 98/78/EC and 2002/83/EC; and ", there shall be substituted the words "Directives 98/78/EC and 2002/83/EC;"

(ii) paragraph (i) thereof shall be renumbered as paragraph (j);

(iii) immediately after paragraph (h) thereof, there shall be added the following new paragraph (i):

"(i) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector; and".

Substitution of article 38 of the principal Act.

31. For article 38 of the principal Act there shall be substituted the following:

"Participation in an authorised company.

38. (1) Notwithstanding anything contained in any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed acquirer"), who have taken a decision either to:

(a) acquire, directly or indirectly, a qualifying shareholding in an authorised company;

(b) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an authorised company; or

(c) further increase, directly or indirectly, such qualifying shareholding in an authorised company as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the authorised company would become its subsidiary,

(hereinafter referred to as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by an insurance rule require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a fit and proper person.

(2) Notwithstanding anything contained in any other law, any person who has taken a decision either to:

(a) dispose, directly or indirectly, of a qualifying shareholding in an authorised company;

(b) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(c) reduce, directly or indirectly, a qualifying shareholding so that the proportion of

the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the authorised company would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by an insurance rule require.

(3) Subarticles (1) and (2) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated market within the meaning of the Financial Markets Act or on an equivalent market in a non-Member State or non-EEA State. Cap. 345.

(4) It shall be the duty of an authorised company and of the directors thereof, to notify the competent authority forthwith upon becoming aware that any person decides to take any of the actions set out in subarticle (1) or (2).

(5) If any person or any authorised company takes or decides to take any action set out in subarticle (1) or (2) without notifying the competent authority or obtaining its approval in terms of article 38A, 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 such person or authorised company from taking, or continuing with, such action;

(b) declaring such action to be void and of no effect;

(c) requiring such person or authorised company to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or authorised company from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or authorised company from taking any similar action or any other action within the categories set out in subarticles (1) and (2).

(6) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an authorised company, the competent authority may exercise any of its powers under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable in the circumstances.

(7) In the case of a company whose head office is in a country outside Malta authorised under this Act to carry on in or from Malta the business of insurance, the provisions of this article shall apply to the extent only of requiring such company to give to the competent authority, not later than thirty days from such change or occurrence, as the case may be, the information therein referred to.

(8) The competent authority, may, by means of an insurance rule issued under this Act, indicate the circumstances when persons are to be regarded as "acting in concert".".

Addition of new article 38A to the principal Act.

32. Immediately after article 38 of the principal Act, there shall be inserted the following new article:

"Assessment procedure.

38A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under subarticle (1) of article 38, as well as following the possible subsequent receipt of the information referred

to in subarticle (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under subarticle (1) of article 38 and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out an assessment on the basis of such information as may be determined by an insurance rule issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the assessment period, if necessary and no later than on the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such period.

(6) The competent authority may extend the interruption period referred to in subarticle (5) up to thirty working days if the proposed acquirer is:

(a) situated or regulated in a non-Member State or non-EEA state; or

(b) a person not subject to supervision under:

(i) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(ii) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);

(iii) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;

(iv) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

(v) Directive 2005/68/EC of the European Parliament and Council of the 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; or

(vi) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

(7) The competent authority shall, upon completion of the assessment referred to in subarticle (2) and not later than the date of the expiry of the assessment period, issue a notice:

(a) granting unconditional approval to the proposed acquisition;

(b) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or

(c) refusing the proposed acquisition.

(8) In making the assessment referred to in subarticle (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the insurance rule referred to in subarticle (1) of article 38 or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to any other penalty which may be imposed under the Act, where a qualifying shareholding in an authorised company is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this article shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of subarticles (1) to (6) of this article, where two or more proposals to acquire or increase qualifying shareholdings in the same authorised company have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.".

Addition of new article 38B to the principal Act.

33. Immediately after article 38A of the principal Act, there shall be added the following new article:

"Co-operation with overseas regulatory authorities in the case of acquisitions.

38B. (1) The competent authority shall work in full consultation with overseas regulatory authorities when carrying out the assessment referred to in subarticle (2) of article 38A if the proposed acquirer is one of the following:

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed; or

(c) a person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is

essential or relevant for the assessment referred to in subarticle (2) of article 38A to the overseas regulatory authority requesting such information. Upon request, the competent authority shall communicate to the overseas regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 38A shall indicate any views or reservations expressed by the overseas regulatory authority responsible for the proposed acquirer.".

Addition of new article 38C to the principal Act.

34. Immediately after article 38B of the principal Act, there shall be inserted the following new article:

"Mergers, reconstructions, divisions and changes in share capital or voting rights.

38C. (1) Notwithstanding anything contained in any other law and without prejudice to subarticles (1) and (2) of article 38, the consent of the competent authority given in writing shall be required before an authorised company may lawfully:

(a) merge with any other company, whether authorised under this Act or not;

(b) undergo any reconstruction or division; or

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

(2) It shall be the duty of all directors and qualifying shareholders of an authorised company to notify the competent authority forthwith in writing upon becoming aware that such company intends to take any of the actions set out in subarticle (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority shall issue a notice:

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

(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,

and if it refuses to grant consent it shall inform the person or the authorised company concerned in writing of the reason for its refusal.

(4) If any person or any authorised company takes or decides to take any action set out in subarticle (1) 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 such person or authorised company from taking or continuing with such action;

(b) declaring such action to be void and of no effect;

(c) requiring such person or authorised company to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or authorised company from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or authorised company from taking any similar action or any other action within the categories set out in subarticle (1).".

Amendment of article 43 of the principal Act.

35. In paragraph (b) of subarticle (2) of article 43 of the principal Act, for the words "inform the competent authority", there shall be substituted the words "at least once a year, inform the competent authority".

Amendment of article 58 of the principal Act.

36. In paragraph (e) of subarticle (1) of article 58 of the principal Act, for the words "under article 38", there shall be substituted the words "under articles 38, 38A and 38C".

PART IV

Amendment of the Insurance Intermediaries Act. Cap. 487.

37. This Part amends the Insurance Intermediaries Act, and it shall be read and construed as one with the said Act, hereinafter in this Part referred to as "the principal Act".

Deletion of article 42 of the principal Act.

38. Article 42 of the principal Act shall be deleted.

Amendment of article 44 of the principal Act.

39. In subarticle (2) of article 44 of the principal Act, for the words "article 54 of this Act insofar as it refers to article 38 of the Insurance Business Act", there shall be substituted the words "article 44A of this Act".

Addition of new article 44A in the principal Act.

40. (1) Immediately after article 44 of the principal Act, there shall be inserted the following new article:

"Participation in an enrolled company.

44A. (1) Notwithstanding anything contained in any other law, the prior written consent of the competent authority shall be required before any person may lawfully:

(a) acquire, directly or indirectly, a qualifying shareholding in a company enrolled under article 13 of this Act (hereinafter referred to in this Act as the "enrolled company");

(b) increase, directly or indirectly, an existing holding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an enrolled company;

(c) further increase, directly or indirectly, a qualifying shareholding so as to cause it to equal or exceed, twenty per centum or thirty per centum or fifty per centum or to cause the enrolled company to become that person's subsidiary;

(d) reduce, directly or indirectly, a qualifying shareholding so as to cause it to fall below fifty per centum or thirty per centum or twenty per centum or to cause the enrolled company to cease to be that person's subsidiary;

(e) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(f) divest itself, directly or indirectly, of a qualifying shareholding.

(2) Subarticle (1) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated market within the meaning of the Cap. 345. Financial Markets Act or on an equivalent market in a non-Member State or non-EEA State.

(3) It shall be the duty of an enrolled company 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 subarticle (1).

(4) Notwithstanding anything contained in any other law, the written consent of the competent authority shall be required before any enrolled company may lawfully -

(a) merge with any other company, whether enrolled under this Act or not;

(b) undergo any reconstruction or division; or

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

(5) It shall be the duty of all directors and qualifying shareholders of an enrolled company to notify the competent authority forthwith upon becoming aware that the company intends to take any of the actions set out in subarticle (4).

(6) For the purpose of this article, the competent authority may issue an insurance intermediaries rule determining the form in which notification in terms of subarticle (1) and subarticle (4) shall take place and the information required to be furnished with such notification; and, the competent authority shall, upon a notification by a person intending

to take any action set out in subarticles (1)(a) to (c), determine whether such person is a fit and proper person before giving its consent.

(7) Within three 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;

(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,

and if it refuses to grant consent, it shall inform the person or the enrolled company concerned in writing of the reason for such refusal.

(8) If any person or any enrolled company takes or intends to take any action set out in subarticle (1) or (4) without the prior written consent of the competent authority, the competent authority shall, without prejudice to any other penalty which may be imposed under this Act, have the power to make an order:

(a) restraining the person or company from taking, or continuing with, such action;

(b) declaring such action to be void and of no effect;

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

(d) restraining the person or company from exercising any rights which such action would, if

lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining the person or company from taking any similar action or any other action within the categories set out in subarticles (1) and (4).

(9) In the case of a foreign company enrolled under this Act to carry out insurance intermediaries activities in or from Malta, the provisions of this article shall apply only to the extent of requiring such company to give to the competent authority, not later than thirty days from such change or occurrence, as the case may be, the information therein referred to.

(10) Without prejudice to any other provision of this Act, where the influence exercised by any person holding a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an enrolled company, the competent authority may exercise any of its powers under this Act, including the power to issue directives as it may deem reasonable in the circumstances.".

Amendment of article 50 of the principal Act.

41. Subarticle (2) of article 50 of the principal Act shall be amended as follows:

(a) paragraph (h) thereof, shall be renumbered as paragraph (i);

(b) immediately after paragraph (g) thereof, there shall be added the following new paragraph:

"(h) to issue any notice or make any order under article 44A;".

Amendment of article 52 of the principal Act.

42. In paragraph (b) of subarticle (1) of article 52 of the principal Act, for the words "article 29, 30, 31A or 38 of the Insurance Business Act", there shall be substituted the words "article 29, 30 or 31A of the Insurance Business Act".

Amendment of article 54 of the principal Act.

43. For paragraph (a) of subarticle (1) of article 54 of the principal Act, there shall be substituted the following:

"(a) the provisions of articles 29 to 31A of the Insurance Business Act (hereinafter in this article referred to as "the Act") shall apply to an enrolled person, as if reference in such provisions –

(i) to "authorisation" were a reference to "enrolment in the Agents List, Managers List or Brokers List";

(ii) to "authorised company" were a reference to an "enrolled person";

(iii) to "business of insurance" were a reference to "insurance intermediaries activities";" .

PART V

Amendment of the Income Tax Act.

Cap. 123.

44. This Part amends the Income Tax Act, and it shall be read and construed as one with the said Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 12 of the principal Act.

45. For paragraph (d) of subarticle (1) of article 12 of the principal Act, there shall be substituted the following:

"(d) the income of any retirement fund or retirement scheme licensed, registered or otherwise authorized under the Special Funds (Regulation) Act or any Act replacing the said Act, other than income from immovable property situated in Malta;".

Passed by the House of Representatives at Sitting No. 154 of 3rd November, 2009.

LOUIS GALEA
Speaker

PAULINE ABELA
Clerk to the House of Representatives