

Nru. 30

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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Tonio Borg, M.P., Viċi Prim Ministru u Ministru tal-Gustizzja u l-Intern u moqri għall-Ewwel darba fis-Seduta tas-26 ta' Lulju, 2004.

A BILL introduced by the Honourable Tonio Borg, M.P., Deputy Prime Minister and Minister for Justice and Home Affairs, and read the First time at the Sitting of the 26th July, 2004.

ATT biex jemenda l-Att dwar it-Trusts, Kap. 331

AN ACT to amend the Trusts Act, Cap. 331

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

ATT biex jemenda l-Att dwar it-Trusts, Kap. 331

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

TAQSIMA I

1. (1) It-titolu fil-qosor ta' dan l-Att huwa Att ta' l-2004 dwar it-Trusts, u din it-Taqsima għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar it-Trusts, hawnhekk iżjed 'il quddiem f'din it-Taqsima imsejjaħ "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. Minflok l-artikoli 1 ta' l-Att prinċipali għandu jidhol dan li ġej:-

Sostituzzjoni ta' l-artikolu 1 ta' l-Att prinċipali.

“1. It-titolu ta' dan l-Att huwa l-Att dwar *Trusts* u *Trustees*.”.

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

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

(a) fis-subartikolu (1) tieghu:

(i) fit-tifsira ta' "the Act" u kull fejn jinsabu fit-test Inġliż ta' l-Att prinċipali, minflok il-kliem "Malta Financial Services Centre" ghandhom jidhlu f'kull każ il-kliem "Malta Financial Services Authority";

(ii) minnufih wara t-tifsira ta' "dokument ta' *trust*" ghandha tidhol it-tifsira ġdida li ġejja:-

“ “ġurisdizzjoni approvata” tfisser ġurisdizzjoni li tkun ġiet approvata mill-Awtorità għall-finijiet ta' dan l-Att;”;

(iii) minnufih wara t-tifsira ta' "persuna" ghandha tidhol it-tifsira ġdida li ġejja:-

“ “persuna approvata” tfisser persuna ta' reputazzjoni tajba li jkollha esperjenza u kwalifiki fis-servizzi finanzjarji, fiduċjarji, ta' kontijiet jew legali u li tkun approvata mill-Awtorità bħala idonea u adatta biex taqdi d-dmirijiet ta' *trustee*;”;

(iv) minnufih wara t-tifsira ta' "the Act" fit-test Inġliż ghandha tidhol it-tifsira ġdida li ġejja:-

“ “the Authority” means the Malta Financial Services Authority;”;

(v) minnufih wara t-tifsira ta' "ġurisdizzjoni approvata" ghandha tidhol it-tifsira ġdida li ġejja:-

“ “għan ta' karità” tfisser kull għan ta' karità u filantropiku u bla hsara għall-ġeneralità ta' dak imsemmi hawn qabel, tinkludi b'mod partikolari:-

(a) l-avvanz ta' l-edukazzjoni, maghduda edukazzjoni fiżika u sports;

(b) l-avvanz ta' reliġjon;

(c) l-avvanz ta' sahha;

(d) l-avvanz soċjali u tal-komunità;

(e) l-avvanz kulturali, ta' l-arti u tal-wirt nazzjonali;

(f) l-avvanz tat-tharis u t-titjib ta' l-ambjent; u

(g) il-promozzjoni tal-jeddijiet tal-bniedem, ir-risoluzzjoni ta' konflitt u r-rikonciljazzjoni;

izda ma tinkludix ghan politiku;

Ghall-finijiet ta' din it-tifsira “ghan politiku” tfisser il-promozzjoni ta' l-interessi ta' partit politiku jew kandidat politiku, sew fuq livell lokali, nazzjonali jew internazzjonali, jew l-ghan li jinkisbu jew ikunu opposti tibdiliet fil-ligi jew fil-politika jew decizjonijiet tal-gvern, hlief meta dik il-ligi jew dik il-politika jew decizjonijiet tal-gvern ikunu direttament jirrigwardaw il-ksib ta' l-ghanijiet ta' karita;”;

(vi) it-tifsira ta' “the Centre” fit-test Inghliz ghandha tithassar;

(vii) minnufih wara t-tifsira ta' “*settlor*” ghandha tidhol it-tifsira gdida li ghejja:-

““transazzjoni kummercjali” tfisser it-transazzjonijiet li ghejjin u t-transazzjonijiet kollha konnessi maghhom jew ancillari ghalihom:-

(a) offerti ta' sigurtajiet, sew jekk lill-pubbliku jew privatament, amministrazzjoni ta' portafol u kustodja ta' strumenti ta' investment;

(b) *is-securitisation* ta' attiv;

(c) l-ghoti ta' interessi ta' sigurtà reali jew personali maghduda ipoteki, *mortgages*, privileggi u garanziji;

(d) skemi ta' investment kollettiv;

(e) skemi jew arrangamenti ta' beneficcju ghal impjegati jew ghal min jirtira;

(f) ftehim ta' self sindakat u facilitalijiet bankarji ghal diversi kredituri ohra;

(g) poloz ta' assigurazzjoni u l-hlas tahtthom;

(h) strutturi ta' *timeshare* u proprjeta' multipla; u

(i) dawk it-transazzjonijiet kummerċjali l-oħra li jistghu jkunu preskritti b'avviz mahruġ mill-Ministru;”;

(viii) minflok it-tifsira ta' “il-Konvenzjoni” għandha tidhol it-tifsira ġdida li ġejja:-

““il-Konvenzjoni” tfisser il-Konvenzjoni ta' l-Ajja dwar il-liġi applikabbli għal *trusts* u għall-gharfien tagħhom, li kienet adottata mill-Konferenza ta' l-Ajja fuq id-Dritt Internazzjonali Privat fl-20 ta' Ottubru 1984 u li dahlet fis-seħh fl-1 ta' Jannar 1992, murija fil-partijiet materjali kollha fl-Iskeda li tinsab ma' dan l-Att;”;

(ix) minnufih wara t-tifsira ta' “*trustee*” għandha tidhol it-tifsira ġdida li ġejja:-

“ “*trustee* korporat” tfisser *trustee* li jkun persuna legali jkun fejn ikun inkorporat;”;

(x) minflok it-tifsira “il-qorti” għandha tidhol it-tifsira li ġejja:-

“ “Qorti” tfisser il-Qorti Ċivili fil-ġurisdizzjoni volontarja tagħha kemm-il darba ma jidhirx mod iehor jew ir-rabta tal-kliem ma tirreferix għal xi qorti li tkun hadet konjizzjoni ta' kwistjoni, f'liema każ tkun il-qorti fejn tinqala' l-kwistjoni;”;

(xi) minnufih wara t-tifsira ta' “Ministru” għandha tidhol it-tifsira ġdida li ġejja:-

““obbligi internazzjonali ta' Malta” tfisser obbligi, responsabbilitajiet u obligazzjonijiet li johorġu minn shubija, affiljazzjoni jew relazzjoni ma' xi organizzazzjonijiet internazzjonali, globali jew reġjonali jew gruppi ta' pajjiżi jew minn xi trattat, konvenzjoni jew ftehim internazzjonali iehor, ikun x'ikun imsejjah, sew bilaterali jew multilaterali, li Malta tkun parti fih;

(xii) minnufih wara t-tifsira ta' "*trust* barrani" ghandha tidhol it-tifsira ġdida li ġejja:-

"*trust* Malti" tfisser *trust* li l-liġi proprja taghha hija il-liġi ta' Malta;";

(xiii) minnufih wara t-tifsira ta' "*settlor*" ghandha tidhol it-tifsira ġdida li ġejja:-

" "topera f'Malta" tfisser l-eżistenza ta' uffiċju, fergħa, jew ċentru ieħor ta' attivitajiet professjonali jew kummerċjali ta' xorta regolari f'Malta u ma tinkludix xi ghemil jew ghemjjel sporadiċi u li ma jkunux konnessi;";

(xiv) it-tifsiriet ta' "proprjetà immobbli sitwata f'Malta", "kumpannija *nominee*" u "persuna kwalifikata" ghandhom jithassru;

(xv) minnufih wara t-tifsira ta' "reġistru" ghandha tidhol it-tifsira ġdida li ġejja:-

" "remunerazzjoni" tfisser xi hlas jew kumpens biex tagħmilha ta' *trustee* li jithallas minn proprjetà ta' *trust* skond il-kondizzjonijiet taghha, jew xort'ohra, li ma jkunx il-hlas lura ta' spejjeż tat-*trustee* jew l-indennizz favur it-*trustee* għal spejjeż, responsabbiltajiet u talbiet ohra;

(xvi) minnufih wara t-tifsira ta' "dokument ta' *trust*" ghandha tidhol it-tifsira ġdida li ġejja:-

"*exchange* ta' investiment rikonoxxut" ghandha l-istess tifsir mogħti lilha bl-Att dwar is-Swieq Finanzjarji;";

(xvii) minflok it-tifsira ta' "residenti f'Malta" ghandha tidhol din li ġejja:-

" "residenti f'Malta" tfisser, f'każ ta' individwu, persuna li r-residenza abitwali taghha tkun f'Malta u f'każ ta' kumpannija, kumpannija reġistrata f'Malta;";

(xviii) minnufih wara t-tifsira ta' "il-Konvenzjoni" ghandha tidhol it-tifsira ġdida li ġejja:-

““kondizzjonijiet ta’ *trust*” tfisser il-kondizzjonijiet ta’ *trust* sew bil-miktub sew verbali, espressi jew mifhuma, u l-kondizzjonijiet l-oħra kollha li jkunu applikabbli bil-liġi proprja;”;

(xix) minflok it-tifsira ta’ “*trustee*” ghandha tidhol din li ġejja:-

“ “*trustee*” għar-rigward ta’ proprjetà, tfisser il-persuna jew il-persuni li f’idejhom ikollhom jew li fihom il-proprjetà tkun vestita skond id-disposizzjonijiet ta’ dan l-Att jew li xort’oħra jkunu meqjusa bhala *trustee* taht dan l-Att;”; u

(xx) minnufih wara t-tifsira ta’ “*trustee*” ghandha tidhol it-tifsira ġdida li ġejja:-

“*unit trust*” tfisser kull *trust* stabbilita bil-għan, jew li jkollha l-effett, jew li ttiprovdi, sabiex persuni li jkollhom għad-disposizzjoni tagħhom fondi għal investment, faċilitajiet sabiex huma jkunu jistgħu jipparteċipaw bhala beneficijarji taht *trust*, f’xi profitti jew dhul li jinkiseb mill-akkwist, tiżmim, manigġar jew disponiment ta’ xi proprjetà tkun li tkun, li tkun skema ta’ investment kollettiv kif imfisser fl-Att ta’ l-1994 dwar Servizzi ta’ Investment;”;

(b) is-subartikolu (4) tiegħu għandu jithassar;

(c) is-subartikolu (5) tiegħu għandu jiġi enumerat mill-ġdid bhala s-subartikolu (4).

Emenda ta’ l-artikolu 3 ta’ l-Att prinċipali.

4. L-artikolu 3 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “iżzomm jew” għandhom jidhlu l-kliem “iżzomm, bhala sid jew” u minflok il-kliem “li ma jkunx għall-benefiċċju tat-*trustee*” għandhom jidhlu l-kliem “għal għan ta’ karità li ma jkunx biss għall-benefiċċju tat-*trustee*”; u

(b) minflok is-subartikolu (2) tiegħu għandu jidhol dan li ġej:-

“(2) Il-proprjetà ta’ *trust* għandha tikkostitwixxi fond separat proprjetà tat-*trustee*, distinta u separata mill-proprjetà

personali tat-*trustee* u minn kull proprjetà ohra miżmuma mit-*trustee* taht xi *trust* ohra.”; u

(c) minnufih wara s-subartikolu (3) tieghu, ghandhom jizdiedu s-subartikoli (4) sa (6) godda li ġejjin:-

“(4) It-tiżmim ta’ proprjetà fi *trust* ikollha l-effetti legali li ġejjin:-

(a) il-kredituri personali tat-*trustee* ma jkollhomx drittijiet kontra l-proprjetà tat-*trust*;

(b) il-proprjetà tat-*trust* ma tkunx taghmel parti mill-beni personali tat-*trustee* meta dan ikun insolventi jew fallut; u

(c) il-proprjetà tat-*trust* ma tkunx taghmel parti mill-proprjetà matrimonjali tat-*trustee* jew tal-parti l-ohra miżzewġa lanqas parti mill-beni tat-*trustee* ma’ mewtu.

(5) *Trustee* ikollu dritt li jidher jew jaġixxi fil-kariga tieghu bhala *trustee* quddiem qorti, nutar jew xi persuna li taġixxi f’kariga ufficjali.

Meta *trustee* jkun irid jirreġistra proprjetà, mobbli jew immobbli, jew dokumenti li jaghtu titolu ghaliha, dan ikollu dritt li jaghmel dan fil-kariga tieghu bhala *trustee* jew b’dak il-mod l-iehor li bih tinkixef l-eżistenza tat-*trust*.

(6) *Trusts* johlqu obligazzjonijiet fiduċjarji fuq it-*trustee* favur il-benefiċjarju tat-*trusts*. Is-*settlor* ta’ *trusts* ma jkollu ebda drittijiet dwar il-proprjetà ta’ *trust* hlief kif provdut b’dan l-Att.”.

5. L-artikolu 5 ta’ l-Att prinċipali ghandu jiġi emendat kif ġej:-

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

(a) fis-subartikolu (2) minflok il-kliem “il-Konvenzjoni” ghandhom jidhlu l-kliem “l-Att”; u

(b) fis-subartikolu (3) tieghu l-kliem “mil-liġi ta’ Malta” ghandhom jithassru.

6. Minnufih wara l-artikolu 5 ta’ l-Att prinċipali ghandu jidhol l-artikolu ġdid 5A li ġej:-

Żieda ta’ artikolu ġdid 5A ma’ l-Att prinċipali.

“Applikabbiltà tal-Konvenzjoni. **5A.** (1) Id-disposizzjonijiet ta’ l-artikoli minn 1 sa 12, 14, 15, 16 (l-ewwel paragrafu biss), 17, 18 u 22 (l-ewwel paragrafu biss) tal-Konvenzjoni li hi murija fl-Iskeda li tinsab ma’ dan l-Att ghandu jkollha l-forza ta’ liġi f’Malta.

(2) Dawk id-disposizzjonijiet ghandhom, safejn applikabbli, ikollhom effett mhux biss dwar it-*trusts* deskritti fl-artikoli 2 u 3 tal-Konvenzjoni iżda wkoll dwar *trusts* oħra ta’ proprjetà li jaqgħu taht il-liġi ta’ pajjiż iehor.

(3) Fl-artikolu 17 tal-Konvenzjoni, ir-riferenza għal Stat tinkludi riferenza għal kull pajjiż jew territorju (ikun jew ma jkunx parti fil-Konvenzjoni) li jkollu s-sistema tal-liġi tiegħu stess.

Kap. 374. (4) L-artikolu 22 tal-Konvenzjoni ma ghandux jiftiehem bhala li jolqot il-liġi li ghandha tiġi applikata dwar xi haġa li tkun saret jew li tkun naqset milli ssir qabel il-bidu fis-sehh ta’ l-Att li jirrikonoxxi *Trusts*.

(5) Ebda haġa fil-Konvenzjoni ma ghandha tolqot l-interpretazzjoni tal-liġijiet ta’ Malta dwar hwejjeġ fiskali.”.

Sostituzzjoni ta’ l-artikolu 6 ta’ l-Att prinċipali.

7. Minflok l-artikolu 6 ta’ l-Att prinċipali ghandhom jidhlu l-artikoli ġodda 6, 6A u 6B li ġejjin:-

“Validità ta’ *trusts* u rikonoxximent tagħhom. **6.** (1) Meta l-liġi proprja għal *trust* tkun il-liġi ta’ Malta bhala liġi applikabbli magħzula tat-*trust* jew kif stabbilit skond l-artikolu 7 tal-Konvenzjoni, minkejja d-disposizzjonijiet ta’ kull liġi oħra, il-validità tat-*trust*, l-interpretazzjoni tagħha, l-effetti tagħha u l-amministrazzjoni tat-*trust* ghandhom ikunu regolati b’dan l-Att u, disposizzjonijiet oħra tal-liġi Maltija dwar *trusts*.

(2) Meta l-liġi proprja għal *trust* tkun liġi barranija bhala l-liġi applikabbli magħzula tat-*trust* jew kif stabbilit skond l-artikolu 7 tal-Konvenzjoni, minkejja d-disposizzjonijiet ta’ kull liġi oħra, il-validità tat-*trust*, l-interpretazzjoni tagħha u l-amministrazzjoni tat-*trust* ghandhom ikunu regolati b’dik il-liġi barranija u ghandhom ikunu rikonoxxuti u mogħtija effett f’Malta skond il-Konvenzjoni u dan l-Att.

(3) L-amministrazzjoni ta’ *trust* tista’ tkun regolata minn liġi differenti mil-liġi proprja tat-*trust*.

(4) *Trusts* mahluqa jew rikonoxxuti skond dan l-Att ma humiex projbiti bl-artikoli 331, 757 sa 761 u 1776 tal-Kodiċi Ċivili.

(5) L-artikolu 586 tal-Kodiċi Ċivili ma ghandu jkollu l-ebda effett fuq xi kondizzjoniji ta' *trust* minhabba li tirreferi ghall-wirt tas-*settlor* jew ghax xi disposizzjoni dwar xi proprjetà fi *trust* ghandha ssehħ wara l-mewt tas-*settlor*.

(6) Bla hsara ghad-disposizzjonijiet ta' l-artikolu 11 u tas-subartikolu (7) ta' l-artikolu 21 ta' dan l-Att, meta transazzjoni kummerjali tinkludi l-hatra ta' *trustee* biex iżomm proprjeta' fi *trust* ghall-iskop ta' dik it-transazzjoni, l-imsemmi *trust* ghandu jopera skond il-pattijiet espressi tad-dokument tat-*trust*.

Regoli
mandatorji
jipprevalu.

6A. (1) Bla hsara ghad-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, f'każ ta' *trust* li tkun regolata bil-liġi ta' Malta, meta l-liġi ta' Malta jkun fiha disposizzjonijiet dwar il-hwejjeġ li ġejjin:-

- (i) il-protezzjoni ta' minuri jew persuni inkapaċi;
- (ii) l-effetti personali u patrimonjali taż-żwieġ;
- (iii) drittijiet tas-suċċessjoni, kemm minn testament jew *ab intestato*, speċjalment il-porzjoni riżervata tal-mara u r-raġel u qraba;
- (iv) it-trasferiment ta' titolu ghal proprjetà u interessi ipotekarji fi proprjetà;
- (v) il-protezzjoni ta' kredituri fi hwejjeġ ta' insolvenza;
- (vi) il-protezzjoni, f'aspetti ohra, ta' terzi persuni li jaġixxu *in bona fide*;

li ma tkunx tista' ssir deroga minnhom b'att volontarju, dawk il-liġijiet ghandhom jipprevalu fuq il-kondizzjonijiet tat-*trust* kemm-il darba ma jkunx provdut xort'ohra b'dan l-Att jew f'disposizzjonijiet ohra tal-liġi applikabbli dwar *trusts* u hwejjeġ relatati.

(2) Sal-limitu li jkunu jeżistu regoli ta' applikazzjoni mandatorja, il-qrati ghandhom japplikaw ir-

regoli mandatorji bla hsara ghad-disposizzjonijiet ta' l-artikolu 6B ta' dan l-Att.

(3) Meta *trust* tkun regolata bil-liġi ta' Malta u ma jkollha ebda konnessjoni ma' Malta minhabba d-domicilju tas-*settlor* fiż-żmien li l-proprjeta' titqiegħed fit-*trust*, jew is-*situs* tal-proprjeta', meta immobbli, id-disposizzjonijiet ta' dan l-Att għandhom japplikaw għat-*trust*, u d-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ma għandhom japplikaw b'ebda mod. F'każijiet bħal dawk ma jitteħidx kont -

(i) tad-domicilju, residenza abitwali, reġistrazzjoni, awtorizzazzjoni jew post tan-negozju f'Malta tat-*trustee* jew xi protettur jew xi persuna li tagħti servizzi ta' amministrazzjoni, kontijiet jew servizzi oħra lit-*trustee*; jew

(ii) il-fatt li l-liġi proprja tat-*trust* tkun il-liġi Maltija; jew

(iii) is-*situs* tal-proprjeta' ikun f'Malta, meta mobbli; jew

(iv) il-post fejn ikun gie eżegwit l-att tat-*trust*, xi dokumenti li jkollhom x'jaqsmu mat-*trust* jew mal-proprjeta' tat-*trust* jew dokumenti ta' transazzjoni oħra f'Malta.

(4) Fil-każ ta' *trust* barrani, id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu japplikaw biss għal dak it-*trust* meta s-*settlor* ikun domiciljat f'Malta fiż-żmien li jkun inħoloq it-*trust*, dejjem bla hsara għar-regoli msemmija fl-artikolu 6B ta' dan l-Att.

(5) Fil-każ ta' *trust* barrani, meta s-*settlor* ta' dak it-*trust* ma jkunx domiciljat f'Malta fiż-żmien li jinħoloq it-*trust*, id-disposizzjonijiet ta' dan l-Att għandhom japplikaw biss safejn jirregolaw ir-rikonoxximent jew xort'oħra f'Malta ta' l-effetti ta' dak it-*trust*.

(6) Sal-limitu li jkunu jeżistu regoli ta' applikazzjoni mandatorja fil-liġi applikabbli fiċ-ċirkostanzi skond il-liġi internazzjonali privata ta' Malta il-qrati ta' Malta jistgħu japplikaw dawk ir-regoli mandatorji bla hsara għad-disposizzjonijiet ta' l-artikolu 6B ta' dan l-Att.

(7) Meta qorti tkun mitluba tirrikonoxxi deċiżjoni barranija li tinforza xi regoli b'applikazzjoni mandatorja kif imsemmi fis-subartikolu (6), il-qorti tista' tilqa' dik it-talba skond id-disposizzjonijiet ta' l-artikolu 6B ta' dan l-Att.

Disposizzjonijiet dwar amministrazzjoni ta' konflitti.

6B. (1) Sabiex ikun żgurat li d-disposizzjonijiet tal-liġi applikabbli, li ma tistax issir deroga minnhom b'att volontarju, ikunu applikati b'mod li kemm jista' jkun jikkonservaw ir-relazzjoni li tinholq bit-*trust*, ir-regoli ta' interpretazzjoni li ġejjin ghandhom japplikaw dawn:-

(a) l-applikazzjoni tar-regoli mandatorji ma ghandhiex tipproduċi n-nuqqas jew l-invalidità tat-*trust*, u meta jkun possibbli, it-*trust* ghandha tkompli taht l-istess kondizzjonijiet dwar proprjetà li ma tkunx milquta b'dawk il-liġijiet mandatorji. Bla hsara ghal kull ordni tal-qorti, il-proprjetà milquta ghandha tinzamm mit-*trustee* fit-*trust* ghas-*settlor* assolutament, jew jekk ikun mejjet, ghall-werrieta tieghu;

(b) it-*trustee* ikollu s-setgha:-

(i) li jvarja l-kondizzjonijiet tat-*trust* safejn jirrelataw max-xorta jew limitu tal-benefiċċju, jew

(ii) jaghmel dak li hu mehtieg u permess skond il-liġi,

sabiex jiżgura li l-benefiċjarju jikseb il-benefiċċji skond l-intenzjonijiet espressi mis-*settlor* fid-dokument tat-*trust* b'mod li jkun kompatibbli mar-regoli mandatorji u kull proprjetà li ssir hielsa mit-*trust* ghal xi raġuni, ghandha tinzamm mit-*trustee* fit-*trust* ghas-*settlor* assolutament, jew jekk ikun mejjet, ghall-werrieta tieghu;

(c) sabiex ikunu riżolti konflitti bejn ir-relazzjoni li tinholq bit-*trust* u disposizzjonijiet mandatorji u sabiex it-*trust* tkun tista' titkompla kif speċifikat fil-paragrafi (a) u (b) ta' hawn qabel, il-kondizzjonijiet tat-*trust*, meta ma jghidu xejn, ghandhom jitqiesu li jinkludu:

(i) is-setgha, minghajr obbligu li hekk jaghmel, tat-*trustee* li jnaqqas l-attiv tat-*trust* kollu jew parti minnu u li jirritornah lis-*settlor*, jew lill-beni tas-*settlor* sabiex jikseb tharis ta' dawk id-disposizzjonijiet tal-liġi;

(ii) is-setgħa tat-*trustee* li jidhol fi ftehim ta' arbitraġġ u medjazzjoni u li jilhaq kompromess dwar kwistjonijiet u talbiet ta' terzi; u

(iii) is-setgħa li jikseb direzzjoni tal-qorti dwar dawn il-hwejjeg,

dawn is-setgħat li huma eżerċitabbli minkejja kull disposizzjonijiet kuntrarja tat-*trust* u, kemm-il darba t-*trustee* jaġixxi onestament, *in bona fide* u b'mod raġonevoli, dawk l-atti ma jikkostitwux ksur tat-*trust*;

(d) il-proprjetà tas-*settlor* li ma tkunx tqieghdet fit-*trust* għandha l-ewwel tkun utilizzata, safejn possibbli, biex ikunu sodisfatti talbiet ta' kull persuna li tfittex li tinvalida jew tnaqqas l-proprjetà fi *trust*;

(e) minkejja kull ligi oħra applikabbli, it-*trustee* jista' jissodisfa talba valida li tkun qed issir kontra l-proprjetà tat-*trust*, sew volontarjament kif ukoll bhala riżultat ta' sentenza tal-qorti, bil-hlas ta' valur fi flus u ma jkunx obligat li jirritorna proprjetà mqieghda fi *trust* fi speċi;

(f) kull persuna li jirnexxilha tnaqqas il-proprjetà fi *trust* jew li tikseb ordni biex tinvalida *trust* f'parti, u kull persuna li tgawdi l-benefiċċji ta' arrangament mat-*trustee* kif provdut fis-subparagrafu (i) tal-paragrafu (c) ta' hawn qabel, titlef il-benefiċċji li jista' jkollha taht it-*trust*, kemm-il darba il-kondizzjonijiet tat-*trust* ma jeskludux espressament dak l-effett jew t-*trustee* ma jikkunsidrax li ma tkunx raġonevoli fiċ-ċirkostanzi u jikseb il-kunsens tal-qorti biex iżomm fis-sehħ *trust* favur dawk il-persuni bla hsara għal dawk il-kondizzjonijiet li l-qorti jidhrilha xierqa;

(g) f'kull każ, u minkejja kull disposizzjoni tal-ligi, *trustee* ma jkunx soġġett għall-obbligu li jhallas jew li jrodd lura iktar mill-proprjetà tat-*trust* miżmuma minnu taht it-*trust*, wara li jitnaqqsu d-drittijiet u l-ispejjeż kollha, u ma jkun soġġett għal ebda obbligu li jagħti kont dwar xi tqassim li jkun għamel *in bona fide* qabel ma jkun irċieva avviz bil-miktub dwar xi talba.”.

8. Minflok l-artikolu 7 ta' l-Att prinċipali ghandu jidhol dan li ġej:-

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

“Holqien ta' *trust*.

7. (1) Għall-fini ta' kif imfisser fl-artikolu 3 ta' dan l-Att, *trust* jista' jibda jeżisti b'kull mod li jkun.

(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1) ta' dan l-artikolu, *trust* jista' jibda jeżisti jew b'mod unilaterali jew xort'ohra b'dikjarazzjoni verbali, jew b'dokument miktub magħdud testment, bl-operat tal-liġi jew b'deċiżjoni ġudizzjarja:

Iżda meta attiv ikun miżmum, akkwistat jew riċevut minn persuna għan-nom ta' persuna ohra fuq il-baži ta' arrangament verbali ta' xorta fiduċjarja, espress jew mifhum, għandu jitqies li jkun hemm mandat regolat bit-*Titolu XVIII* tat-*Tieni Ktieb tal-Kodiċi Ċivili* jew depożitu regolat bit-*Titolu XIX* tat-*Tieni Ktieb tal-Kodiċi Ċivili*, skond il-każ, kemm-il darba ma jkunx hemm prova ta' hsieb li tinholoq *trust* verbali.

(3) Dikjarazzjoni unilaterali ta' *trust* hija dikjarazzjoni bil-miktub magħmula minn *trustee* fejn jiddikjara li hu *t-trustee* ta' *trust*, li jkun fiha l-kondizzjonijiet kollha tat-*trust* kif ukoll l-ismijiet jew l-informazzjoni meħtieġa biex ikunu identifikati l-benefiċjarji kollha.

(4) *Unit trust* tinholoq bi strument miktub.”.

9. Minflok l-artikolu 8 ta' l-Att prinċipali ghandu jidhol dan li ġej:-

Sostituzzjoni ta' l-artikolu 8 ta' l-Att prinċipali.

“Ġurisdizzjoni tal-qrati ta' Malta.

8. (1) Il-qrati ta' Malta jkollhom ġurisdizzjoni meta:-

(a) *it-trust* tkun *trust* Maltija; jew

(b) *it-trustee* jkun residenti f'Malta jew ikun *trustee* awtorizzat mill-Awtorità, jew ikun xort'ohra kostitwit skond il-liġi ta' Malta; jew

(c) xi proprjetà ta' *trust* tkun sitwata f'Malta; jew

(d) l-amministrazzjoni ta' xi proprjetà ta' *trust* tkun immexxija f'Malta.

(2) Minkejja d-disposizzjonijiet tal-Kodiċi ta' *Organizzazzjoni u Proċedura Ċivili*, meta dokument ta' *trust*

ikollu disposizzjoni li tkun taghti ġurisdizzjoni lill-qrati tal-pajjiż li l-liġi tiegħu tkun espressament tirregola *t-trust*, il-qrati ta' Malta għandhom iwaqqfu l-proċedimenti li jistgħu jinbdeu f'Malta favur il-ġurisdizzjoni magħzula jekk issir talba *in limine litis* f'dan is-sens minn xi parti fil-proċeduri:

Iżda l-qorti tista' f'kull każ tohroġ l-ordnijiet temporanji biex thares lil xi parti interessata kif jidhrilha xieraq, u iżda wkoll il-qorti jkollha diskrezzjoni jekk twaqqafx il-proċedimenti jekk il-proprjetà tat-*trust* tkun jekk tikkonsisti fi proprjetà immobbli f'Malta jew jekk is-*settlor* jew il-benefiċjarji jkunu domiciljati u residenti f'Malta.

(3) Bla hsara għad-disposizzjonijiet ta' qabel ta' dan l-artikolu, għandhom japplikaw id-disposizzjonijiet tas-Subtitolu III tat-Titolu II tat-Tielet Ktieb, tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (“Fuq Talbiet dwar Ġurisdizzjoni”) għandhom japplikaw.”.

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

10. Minflok l-artikolu 9 ta' l-Att prinċipali jidhol dan li ġej:-

“Drittijiet tal-benefiċjarji.

9. (1) Benefiċjarju jkollu dritt, imsejjah interess benefiċjali fi jew għall-proprjetà tat-*trust*, skond il-każ. Il-benefiċjarju jista' jgawdi l-interess benefiċjali bla hsara għall-kondizzjonijiet tat-*trust* u għad-disposizzjonijiet ta' dan l-Att u għad-disposizzjonijiet ta' kull liġi oħra applikabbli għal *trusts*.

(2) Drittijiet ta' benefiċjarju huma personali għalih u, bla hsara għal kull liġi applikabbli u biss kif dikjarat fil-kondizzjonijiet tat-*trust*, kredituri, konjuġi, werrieta jew legatarji tal-benefiċjarju jista' jkollhom biss drittijiet sal-limitu tad-dritt tal-benefiċjarju taht it-*trust* u ma għandhom ebda drittijiet oħra dwar il-proprjetà tat-*trust* jew kontra *t-trustee*.

(3) L-interess ta' benefiċjarju taht *trust* għandu jitqies li hu proprjetà mobbli, ukoll jekk il-proprjetà tat-*trust* tinkludi proprjetà immobbli.

(4) Persuna ma jkollhiex dritt tibbenifika taht *trust* kemm-il darba:-

(a) ma tkunx identifikabbli b'isimha; jew

(b) ma tkunx tista' tiġi aċċertata b'riferenza għal klassi jew għal relazzjoni ma' xi persuna, sew hajja sew le fiż-żmien li taht il-kondizzjonijiet tat-*trust* ikun iż-

żmien li b'riferenza ghalih ghandhom ikunu stabbiliti membri ta' xi klassi;

u jekk ebda benefiċjarji ma jistghu jkunu identifikabbli jew aċċertati kif hawn qabel imsemmi, *it-trust* ifalli, kemm-il darba l-iskop tat-*trust* ma jkunx skop ta' karità.

(5) Persuni li ma jkunux għadhom konċepiti fiż-żmien meta l-proprjetà titqiegħed fit-*trust* jistghu jissemmew bhala benefiċjarji jew bhala li jiffurmaw parti minn klassi ta' benefiċjarji, iżda l-jeddijiet jinholqu biss meta dawn il-persuni jitwiieldu vijabbli.

(6) *Settlor* ta' *trust* jista' jkun ukoll benefiċjarju taħt *it-trust*.

(7) Il-kondizzjonijiet tat-*trust* jistghu jipprovdu ghaż-żieda ta' persuna bhala benefiċjarju, l-esklużjoni ta' benefiċjarju mill-benefiċċju, jew l-impożizzjoni fuq benefiċjarju ta' obbligu bhala kondizzjoni għall-benefiċċju.

(8) Meta t-*trustee* jinghata s-setgħa li jżid benefiċjarju, dik is-setgħa tkun valida bil-kondizzjoni li dik il-persuna tkun identifikabbli b'isimha jew tifforma parti minn klassi ta' persuni li l-membri tagħha jkunu b'mod raġonevoli aċċertabbli individwalment, dik l-identifikazzjoni issir jew fid-dokument tat-*trust* jew f'dokument ieħor miktub, iffirmit mis-*settlor*, sew jekk ikun jew ma jkunx jorbot lit-*trustee*.

(9) Persuna li tkun tista' tizdied bhala benefiċjarju skond setgħa mogħtija lit-*trustee* ma tgawdi ebda dritt dwar il-proprjetà tat-*trust* jew kontra t-*trustee* u ma għandhiex titqies bhala benefiċjarju sakemm tkun maħtura benefiċjarju mit-*trustee*.

(10) *Trustee* ikun jista' jinghata diskrezzjoni dwar liema benefiċjarji għandhom jibbenefikaw, il-kwantità ta' kull benefiċċju, f'liema żmien u b'liema mod benefiċjarji għandhom jibbenefikaw u daww is-setgħat l-oħra dwar il-hatra, l-applikazzjoni jew l-avvanz tal-proprjetà tat-*trust*.

(11) Benefiċjarju li favur tiegħu tista' tkun eżerċitata diskrezzjoni biex jaħtar jew javvanza proprjetà, ma jkollha ebda drittijiet fi jew dwar xi proprjetà partikolari tat-*trust* sa dak iż-żmien li dik id-diskrezzjoni tkun eżerċitata bil-hatra, applikazzjoni jew avvanz ta' dik il-proprjetà ta' *trust* favur dak il-benefiċjarju:

Iżda ebda haġa f'dan is-subartikolu ma ghandha tiftiehem bhala li teskludi d-dmir tat-*trustee* li b'mod xieraq u ġust jikkonsidra dawk il-benefiċjarji kollha fl-eżerċizzju tad-diskrezzjoni tiegħu.

(12) Benefiċjarju jista' jirrinunzja l-interess kollu tiegħu b'dokument bil-miktub u dik ir-rinunzja tkun wahda irrevokabbli.

(13) Bla hsara għall-kondizzjonijiet tat-*trust*, benefiċjarju jista' jirrinunzja għal parti mill-interess tiegħu, kemm jekk ikun irċieva jew le xi benefiċċju mill-interess tiegħu;

f'kull każ bhal dak, iżda bla hsara għall-kondizzjonijiet tat-*trust*, rinunzja tista', bid-dokument li bih l-interess ikun rinunzjat, ssir revokabbli, u mbaġhad tkun tista' tiġi revokata b'dak il-mod u taht dawk iċ-ċirkostanzi msemmija jew riferiti fih.

(14) Bla hsara għall-kondizzjonijiet tat-*trust*, benefiċjarju jista' b'dokument bil-miktub, ibiegh, jaddebita, jittrasferixxi jew xort'ohra jinnegozja l-interess tiegħu b'kull mod li jkun.

(15) Id-disposizzjonijiet ta' dan l-artikolu ghandhom japplikaw għal *trusts* testamentarji minkejja d-disposizzjonijiet ta' l-artikoli 688, 693 u 695 u disposizzjonijiet ohra tal-Kodiċi Ċivili.”.

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

11. Minflok l-artikolu 10 ta' l-Att prinċipali ghandu jidhol dan li ġej:-

“Proprietà ta' *trust* addizzjonali.

10. (1) Bla hsara għall-kondizzjonijiet tat-*trust*, *trustee* jista' jaċċetta xi proprjetà biex tizdied mal-proprjetà tat-*trust* taht l-istess kondizzjonijiet tat-*trust*.

(2) Il-proprjetà tat-*trust* tkun dik il-proprjetà li titqiegħed fit-*trust* mis-*settlor*, li tkun wara miżjuda, il-frott kollu tagħha u proprjetà li tirrapreżenta l-proprjetà oriġinali u miżjuda.”.

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

12. L-artikolu 11 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) minflok in-nota marginali relattiva ghandha tidhol din li ġejja:

“Falliment ta’ *trust*.”;

(b) fis-subartikolu (1) tiegħu, minflok il-kliem “ma tkunx valida u esegwibbli f’Malta” ghandhom jidhlu l-kliem “tkun falliet”;

(c) minflok is-subartikolu (2) tiegħu ghandu jidhol dan li ġej:-

“(2) *Trusts* ifallu jekk xi qorti tiddikjara li l-ghan tagħhom jew il-kondizzjonijiet tat-*trust* ma jkunux possibbli, jew ikunu illegali jew kuntrarju għall-ordni pubbliku, jew xort’ohra vizzjati bi żball, frodi vjolenza, jew għal xi raġuni ohra li tinvalida atti legali skond il-liġijiet ta’ Malta.”;

(d) minflok is-subartikolu (3) tiegħu ghandu jidhol dan li ġej:-

“(3) Il-Qorti tista’ tiddikjara l-falliment ta’ l-ghanijiet jew kondizzjonijiet kollha jew ta’ xi wiehed jew iktar minnhom u jkollha s-setgħa tordna li l-ghanijiet jew kondizzjonijiet li jistgħu jkunu separati sewwa mill-ghanijiet jew kondizzjonijiet falluti, jibqgħu jkunu validi u eżegwibbli bla hsara għal kull direttiva li tista’ tagħti.”; u

(e) minnufih wara s-subartikolu (5) tiegħu ghandu jidhol is-subartikolu (6) ġdid li ġej:-

“(6) Proprjetà li dwarha *trust* ikun falla għal kollox jew f’parti għandha, bla hsara għal kull ordni tal-qorti, jew direzzjoni mahruġa taht l-artikolu 38C tinżamm mit-*trustee* fit-*trust* għan-nom tas-*settlor* assolutament, jew jekk dan ikun mejjet, tal-werrieta tiegħu.”.

13. Fis-subartikolu (2) ta’ l-artikolu 12 ta’ l-Att prinċipali, minnufih wara l-kliem “għal għan ta’ karità” ghandhom jidhlu l-kliem “jew għal *unit trust*”. Emenda ta’ l-artikolu 12 ta’ l-Att prinċipali.

14. L-artikolu 13 ta’ l-Att prinċipali ghandu jiġi emendat kif ġej:- Emenda ta’ l-artikolu 13 ta’ l-Att prinċipali.

(a) id-disposizzjoni preżenti għandha tiġi enumerata mill-ġdid bhala s-subartikolu (1);

(b) fil-paragrafu (c) tiegħu, minflok il-kliem “il-kredituri tiegħu.” ghandhom jidhlu l-kliem “il-kredituri tiegħu; jew”;

(ċ) minnufih wara l-paragrafu (c) tiegħu għandu jidhol il-paragrafu ġdid li ġej:-

“(d) mhux soġġett għal sekwestru mahruġ b’ordni kontra t-*trustee* jew għat-terminazzjoni minghajr, il-kunsens bil-quddiem tal-Qorti, meta l-interess jingħad li hu għall-manteniment tal-benefiċjarju jew bhala pensjoni.”; u

(d) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid għandu jidhol is-subartikolu (2) ġdid li ġej:-

“(2) Fil-każ ta’ *trust* testamentarju u meta l-benefiċċju tal-benefiċjarju jikkonsisti f’*annuity* jew pensjoni jew l-użu u t-tgawdija ta’ proprjetà u t-tgawdija tal-frott minnha, il-kondizzjonijiet tat-*trust* jistgħu jagħmlu l-interess tal-benefiċjarju:

(a) soġġett għal restrizzjoni dwar trasferiment jew negożju;

(b) mhux soġġett għal sekwestru notifikat lit-*trustee* bhala sekwestrarju; jew

(ċ) mhux soġġett għal terminazzjoni minghajr il-kunsens bil-quddiem tal-Qorti.”.

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

15. Minnufih wara s-subartikolu (3) ta’ l-artikolu 15 ta’ l-Att prinċipali għandhom jiżdiedu s-subartikoli (4) u (5) ġodda li ġejjin:-

“(4) Meta *trusts* ikunu istitwiti minn iktar minn *settlor* wiehed u jkunu espressi bhala revokabbli, *trusts* bħal dawk jistgħu jkunu revokati biss bil-kunsens espress tas-*settlors* kollha.

(5) Kemm-il darba l-kondizzjonijiet ta’ *trust* ma jipprovdux espressament li *trust* ikun revokabbli jew li jkun jista’ jinbidel, is-*settlor* ma’ jistax jirrevoka jew jemenda d-dokument tat-*trust*.”.

Emenda ta’ l-artikolu 16 ta’ l-Att prinċipali.

16. Minflok in-nota marginali għall-artikolu 16 ta’ l-Att prinċipali għandha tidhol din li ġejja:-

“Tmiem ta’ interess jew terminazzjoni.”.

Emenda ta’ l-artikolu 18 ta’ l-Att prinċipali.

17. L-artikolu 18 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) fis-subartikolu (1) tiegħu, minnufih wara l-kliem “jkun hekk provdut.” għandu jiżdied il-paragrafu li ġej:-

“Il-fatt li jista’ ma jkunx hemm *trustee* fil-kariga f’xi żmien ma għandux ikollu l-effett li johloq l-invalidità jew it-terminazzjoni ta’ xi *trust* u f’każijiet bħal dawn il-kwistjoni għandha tiġi stabbilita skond il-kondizzjonijiet tat-*trust* u d-disposizzjonijiet ta’ dan l-artikolu.”;

(b) minflok is-subartikolu (2) tiegħu għandu jidhol dan li ġej:-

“(2) *Trustee* jista’ jkun persuna naturali li tkun maġġorenni u jkollha l-kapaċità legali u li ma tkunx taht xi impediment legali biex hekk taġixxi. *Trustee* jista’ jkun ukoll persuna ġuridika li l-għanijiet tagħha jinkludu dak li taġixxi bhala *trustee*.”; u

(c) minnufih wara s-subartikolu (6) tiegħu għandu jiżdied is-subartikolu (7) ġdid li ġej:-

“(7) Fil-każ tal-mewt ta’ *trustee*, il-werrieta jew l-eżekutur testamentarju tiegħu jkunu marbutin li jittrasferixxu l-proprjetà tat-*trust* kollha lil *trustee* suċċessur mahtur skond id-dokument tat-*trust* jew mill-Qorti. Fil-każ ta’ insolvenza, ix-xoljiment jew l-istralc ta’ *trustee* korporat, dak l-obbligu għandu jitwettag minn kull persuna li jkollha s-setgħa li torbot lit-*trustee* korporat li tkun qed taġixxi bhala direttur, stralcjarju, amministratur temporanju jew funzjonarju simili u dan minkejja kull proċedura jew formalità applikabbli meta jiġri dak imsemmi hawn qabel. Sakemm dak l-obbligu jitwettag, il-persuni kollha li jkollhom taht il-kontroll tagħhom proprjetà tat-*trust* ikunu obbligati li jikkonservaw l-assi tat-*trust* u jkunu marbuta bl-obbligi fiduċjarji fir-relazzjon mal-benefiċjarju.”.

18. L-artikolu 19 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

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

(a) minflok is-subartikolu (1) tiegħu għandu jidhol dan li ġej:-

“(1) Hadd ma jkun obligat li jaċċetta l-hatra tat-*trustee*, iżda jekk xi persuna li tkun hekk mahtura tagħmel xi att jew xi haġa dwar il-proprjetà tat-*trust* konsistenti ma’ l-istatus ta’ *trustee* ta’ dik il-proprjetà, dik il-persuna titqies li tkun aċċettat il-hatra bhala *trustee*.”; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem “Kumpannija *nominee*” għandhom jidhlu l-kliem “*Trustee*”.

Emenda ta' l-
artikolu 20 ta' l-
Att prinċipali.

19. L-artikolu 20 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) minflok is-subartikolu (1) tiegħu ghandu jidhol dan li ġej:-

“(1) Bla hsara għad-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, *trustee* jista' jirriżenja bhala *trustee* billi jagħti avviż bil-miktub lit-*trustees* l-oħra u fil-każ li ma jkun hemm ebda *trustee* ieħor, lill-benefiċjarji jew, jekk diffiċli fil-prattika, lil mill-anqas lil benefiċjarju wiehed, jew jekk ma hemm hadd li lili jista' jinghata l-avviż, lis-*settlor*, jew lis-suċċessur tat-*trustee* mahtur kif imiss u r-riżenja għandha tibda ssehh mal-konsenja ta' l-imsemmi avviż.”; u

(b) minflok il-paragrafu (c) tas-subartikolu (3) tiegħu ghandu jidhol dan li ġej:-

“(c) mat-tehid ta' passi għall-istralċ, jew għad-dikjarazzjoni tal-falliment tal-persuna li tkun qed taġixxi bhala *trustee*.”.

Emenda ta' l-
artikolu 21 ta' l-
Att prinċipali.

20. L-artikolu 21 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) minflok is-subartikolu (2) tiegħu ghandu jidhol dan li ġej:-

“(2) Bla hsara għad-disposizzjonijiet ta' dan l-Att, it-*trustees* għandhom jeżegwixxu u jamministraw it-*trust* skond il-kondizzjonijiet tiegħu;

u bla hsara għal dak imsemmi hawn qabel, it-*trustees* għandhom jiżguraw illi l-proprjetà tat-*trust* tkun vestita fihom jew li tkun taħt il-kontroll tagħhom u għandhom safejn ikun raġonevoli u bla hsara għall-kondizzjonijiet tat-*trust*, iharsu l-proprjetà tat-*trust* minn kull telf jew hsara:

Iżda l-ghoti ta' sigurtà b'ċessjoni jew bi pleġġ kif awtorizzat mill-kondizzjonijiet tat-*trust* ikun permess:

Iżda wkoll ikun permess li jsir it-trasferiment mit-*trustee* ta' proprjetà tat-*trust* lil entità legali li tkun għal kollox proprjetà tat-*trustee* jew kontrollata minnu sew direttament jew indirettament, jew lil xi *trust* ieħor li tiegħu jkun l-uniku *trustee*, jew lil xi *trustee* ieħor taħt *trusts* għall-benefiċċju uniku tat-*trustee*, u f'dak il-każ id-dmirijiet u r-responsabilitajiet tat-*trustee* taħt dan l-Att jew dokument tat-*trust* ma jkunux imnaqqsa jew xort'ohra milquta b'xi mod, ikun li jkun.”;

(b) minflok il-paragrafu (c) tas-subartikolu (3) ghandu jidhol dan li ġej:-

“(c) akkont tiegħu stess, ma’ persuna li tkun relatata miegħu b’affinità jew b’konsangwinità fil-linja diretta jew sat-tielet grad fil-linja kollaterali jew ma’ soċju f’xi soċjetà, jagħmel kull transazzjoni dwar il-proprjetà tat-*trust*.”;

(c) minflok is-subartikolu (4) tiegħu ghandu jidhol dan li ġej:-

“(4) *It-trustees* ghandhom iżommu kontijiet u *records* eżatti tat- *trusteeship* tagħhom u ghandhom, fuq talba ta’ kull benefiċjarju, jiżvelaw dawk il-kontijiet u *records* lil dak il-benefiċjarju u ghandhom, skond il-kondizzjonijiet tat-*trust*, jipprovdu kopja ta’ dawk il-kontijiet fi żmien raġonevoli minn meta ssir talba għaldaqstant:

Iżda benefiċjarju jkun jista’ jissospendi dawk id-drittijiet favur terzi indipendenti meta l-benefiċjarju jkun mehtieg li jagħmel hekk b’xi ftehim jew bil-liġi bhala riżultat ta’ xi konflitt ta’ interess eżistenti jew potenzjali, u dan għal dak iż-żmien li matulu jkomplu l-imsemmi konflitt u taht dawk il-kondizzjonijiet li jistgħu jkunu miftehma jew li xort’ohra jkunu applikabbli.”;

(d) is-subartikolu (5) ghandu jiġi emendat billi minflok il-kliem “identifikabbli minnhom.” ghandhom jidhlu l-kliem “identifikabbli minnhom:” u billi jiżdied miegħu l-proviso ġdid li ġej:

“Iżda *t-trustees* jistgħu, jekk espressament permessi jagħmlu dan bil-kondizzjonijiet tat-*trust*, jew f’xi każ fejn il-proprjetà tat-*trust* tkun tikkonsisti f’oġġetti funġibbli, iqieghdu u jżommu l-proprjetà tat-*trust* f’*pool* komuni ta’ assi identiċi jew f’kont tal-klijenti jew komuni.”;

(e) minnufih wara s-subartikolu (5) tiegħu ghandhom jiżdiedu s-subartikoli (6) u (7) ġodda li ġejjin:-

“(6) *Trustees* ma jkunux jistgħu jgawdu xi benefiċċju taht xi *trust* li tiegħu jkunu l-uniku *trustee* minghajr l-awtorità bil-quddiem:-

(a) Ta’ l-Awtorità fil-każ ta’ *trustee* awtorizzat skond l-artikolu 43 jew jekk ma jkunx hemm il-htieġa ta’ awtorizzazzjoni skond is-subartikolu (6) ta’ l-artikolu 43 ta’ dan l-Att; jew

(b) tal-Qorti, f'kull każ iehor:

Iżda f'każ ta' *trust* fiss espress favur it-*trustee* tkun mehtieġa biss notifika bil-miktub bil-quddiem lill-Awtorità:

Iżda wkoll trasferiment ta' proprjetà mit-*trustee* lil *trust* iehor li tiegħu jkun l-uniku *trustee* jew l-uniku benefiċjarju, ma għandux jittqies bħala benefiċċju taht dan is-subartikolu:

Iżda wkoll remunerazzjoni biex persuna taġixxi bħala *trustee* jew indennizz għal spejjeż, danni jew talbiet oħra ma għandhomx jittqiesu bħala benefiċċju taht *trust*:

Iżda wkoll dan is-subartikolu ma għandux japplika għal *trustee* li jkun qed iżomm proprjetà dwar transazzjoni kummerċjali.

(7) Minkejja d-disposizzjonijiet ta' dan l-Att u disposizzjonijiet oħra li minnhom ma hemmx deroga b'att volontarju, meta transazzjoni kummerċjali, tinkludi l-hatra ta' *trustee* biex iżomm proprjetà għal l-iskop ta' dik it-transazzjoni, id-dmirijiet u r-responsabilitajiet tat-*trustees* kif stipulati f'dan l-Att jistgħu jkunu varjati bil-kondizzjonijiet tat-*trust* u jkunu regolati esklużivament bil-kondizzjonijiet espressi tat-*trust* jew skond dawk il-liġijiet li jkunu japplikaw:

Iżda ebda haġa f'dan is-subartikolu ma tippermetti lil *trustee* li jkun eżonorat mill-effetti, jew li jingħata indennizz minhabba fi, frodi, imġieba hażina jew negliġenza tiegħu nnifsu.”.

Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

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

(a) id-disposizzjoni preżenti għandha tiġi enumerata mill-ġdid bħala s-subartikolu (1);

(b) minflok il-kliem “tiġi reġistrata bil-miktub:” għandhom jidhlu l-kliem “tiġi reġistrata bil-miktub.”;

(c) il-proviso relattiv għandu jithassar; u

(d) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid għandu jidhol is-subartikolu (2) ġdid li ġej:-

“(2) Il-proprjetà tat-*trust* tkun f'kull żmien vestita fil-*co-trustees* f'pussess bejniethom *pro indiviso*.”.

Emenda ta' l-artikolu 29 ta' l-Att prinċipali.

22. L-artikolu 29 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) is-subartikoli (2) u (3) tiegħu għandhom jithassru; u

(b) is-subartikolu (1) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (2) tiegħu;

(c) fis-subartikolu (2) tiegħu kif enumerat mill-ġdid:-

(i) minflok il-kliem “ta’ dak id-dmir;” għandhom jidhlu l-kliem “ta’ dak id-dmir.”; u

(ii) il-paragrafu (d) tiegħu u l-proviso relattiv għandhom jithassru;

(d) is-subartikolu (1) ġdid li ġej għandu jidhol minnufih qabel is-subartikolu (2) kif enumerat mill-ġdid:-

“(1) *Trustee* għandu safejn ikun raġonevoli u fi żmien xieraq minn meta jirċievi talba bil-miktub f’dak is-sens, jipprovi tagħrif shiħ u preċiż dwar l-istat u l-ammont tal-proprjetà tat-*trust*, inklużi l-kontijiet tat-*trust*, u bla hsara għad-disposizzjonijiet tas-subartikolu (2) ta’ dan l-artikolu u t-tmexxija ta’ l-amministrazzjoni tat-*trust*:-

(a) lill-Qorti;

(b) bla hsara għall-kondizzjonijiet tat-*trust*, lis-*settlor*;

(c) lill-protettur tat-*trust*;

(d) bla hsara għall-kondizzjonijiet tat-*trust*, lil kull benefiċjarju tat-*trust* li jkun maġġorenni u jkun mentalment kapai, jew jekk ikun minorenni, lit-tutor jew rappreżentant leġittimu tiegħu;

(e) bla hsara għall-kondizzjonijiet tat-*trust*, lil kull karità msemmija b’isimha li għall-benefiċċju tagħha t-*trust* tkun giet stabbilita; u

(f) fil-każ ta’ *trust* stabbilit għal għan ta’ karità, lill-Avukat Ġenerali jew lill-awtorità rilevanti taht il-liġi li tkun applika.”;

(e) minnufih wara s-subartikolu (2) tiegħu kif enumerat mill-ġdid għandhom jidhru s-subartikoli ġodda minn (3) sa (12) li ġejjin:-

“(3) Kemm-il darba l-kondizzjonijiet tat-*trust* ma jiddeterminawx espressament iż-żmien meta u l-mod kif

benefiċjarji jkunu mgħarrfa bid-dritt tagħhom taht *trust*, it-*trustee* jkun obbligat li jgħarraf lil kull benefiċjarju bid-dritt tiegħu, bil-miktub, fi żmien raġonevoli minn meta jaċċetta li jaġixxi.

(4) Meta l-kondizzjonijiet tat-*trust* jagħtu diskrezzjoni skond is-subartikolu (10) ta' l-artikolu 9 ta' l-Att, il-kondizzjonijiet tat-*trust* jistgħu jissospendu, sakemm diskrezzjoni tkun eżerċitata favur tagħhom, id-dmir tat-*trustee* li jgħarraf lil dawk il-benefiċjarji li dawn ikunu jistgħu jibbenefikaw taht it-*trust* jew li huma jkunu jagħmlu parti minn klassi li minnha jistgħu jinhatru l-benefiċjarji. Il-kondizzjonijiet tat-*trust* jistgħu wkoll juru ż-żmien meta u l-metodu kif dawk il-benefiċjarji għandhom ikunu mgħarrfa.

(5) Jekk id-dokument tat-*trust* espressament jipprojbixxi n-notifika ta' tagħrif lil benefiċjarji jew lil persuni li jagħmlu parti minn klassi li minnha jistgħu jinhatru benefiċjarji, mingħajr riferenza għal xi żmien partikolari, stabbilit jew li jista' jiġi stabbilit, dik il-kondizzjoni għandha tiftiehem li timponi dmir fuq it-*trustee* li jgħarraf lil dawk il-persuni fi żmien raġonevoli wara l-mewt tas-*settlor*.

(6) Jekk it-*trustee* jikkonsidra li l-ghoti ta' tagħrif kif mehtieg bis-subartikolu ta' qabel dan ikun ta' preġudizzju għall-benefiċjarji tat-*trust*, jew ta' xi wiehed minnhom, it-*trustee* jista' jagħmel rikors fil-Qorti u l-Qorti tista' tehles lit-*trustee* mill-obbligu li jagħti t-tagħrif taht dawk il-kondizzjonijiet li jidhrilha xierqa.

(7) Id-dmir li jagħti t-tagħrif kif provdut hawn qabel ma jinholoqx jekk it-*trustee* ikollu fil-pussess tiegħu tagħrif li b'mod raġonevoli jkun juri li dawk li għandhom dritt għal dak it-tagħrif ikunu diġà ġew mgħarrfa jew diġà jkunu jafu b'dak it-tagħrif.

(8) Fil-każ ta' *trust* stabbilit għal għanijiet ta' karità, ma għandu jkun hemm ebda dmir li jkunu mgħarrfa sew benefiċjarji mhux imsemmija li jagħmlu parti minn klassi, sew persuni li jagħmlu parti minn klassi ta' persuni li jistgħu jinhatru bhala benefiċjarji taht setgħa mogħtija lit-*trustee*, minkejja il-kondizzjonijiet tat-*trust* kemm-il darba, fil-każ ta' benefiċjarji mhux imsemmija, t-*trustee* ma jistabbilix li jkun hemm inqas minn għaxar benefiċjarji li jkunu jagħmlu parti minn dik il-klassi ta' benefiċjarji. Barra minn hekk, fil-każ ta' xi indikazzjoni kuntrarja, il-benefiċjarji mhux imsemmija

jew il-persuni li jistgħu jiżdiedu bhala benefiċjarji taht setgħa għandhom jitqiesu li huma persuni li jmxexxu l-attivitajiet ta' karità rilevanti prinċipalment f'Malta.

(9) It-*trustee* għandu jaqdi dak id-dmir li jgħarraf skond l-aħjar hila tiegħu u għas-spejjeż tat-*trust* u fil-każ li t-*trustee* ikun jidhirlu li dak l-eżerizzju jkun jiswa wisq jew ikun ta' piż, it-*trustee* jista' jagħmel rikors fil-Qorti għal direzzjoni u l-Qorti jkollha s-setgħa li tehles lit-*trustee* minn dak id-dmir taht dawk il-kondizzjonijiet li jidhirlha xierqa.

(10) Is-sospensjoni tad-dmir ta' *trustee* li jgħarraf lill-benefiċjarji kif provdut f'dan l-artikolu ma għandhiex tnaqqas id-dmirijiet tal-benefiċjarju jew id-dmirijiet u r-responsabbiltajiet tat-*trustee* favur dawk il-benefiċjarji skond dan l-Att.

(11) Persuni li jistgħu jiżdiedu bhala benefiċjarji taht setgħa imsemmija fis-subartikolu (7) ta' l-artikolu 9 ta' dan l-Att ma jkollhomx dritt li jkunu mgħarrfa sa dak iż-żmien li jkunu mahtura benefiċjarji mit-*trustee* skond dik is-setgħa.

(12) Fil-każ ta' *trust* biex tinżamm proprjetà għal skop ta' transazzjoni kummerċjali, id-dmirijiet tat-*trustee* dwar l-ghoti ta' tagħrif u d-drittijiet tal-benefiċjarji għal dak it-tagħrif jista' jkunu stabbiliti bil-kondizzjonijiet tat-*trust* u f'dak il-każ, is-subartikoli ta' hawn fuq ta' dan l-artikolu ma japplikawx.”; u

(f) minflok in-nota marginali relattiva għandha tidhol din in-nota li ġejja:-

“Dmir tat-*trustee* li jipprovdi informazzjoni.”.

23. L-artikolu 37 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

Emenda ta' l-artikolu 37 ta' l-Att prinċipali.

(a) minflok il-paragrafu (b) tas-subartikolu (2) tiegħu għandu jidhol dan li ġejja:-

“(b) tagħmel kull dikjarazzjoni dwar il-validità jew eżegwibilità ta' *trust*, l-eżistenza ta' kull *trust* riżultanti jew kostruttiv, ksur ta' *trust* jew falliment ta' *trust*.”; u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem “mill-Avukat Ġenerali” għandhom jidhlu l-kliem “mill-Avukat Ġenerali jew minn kull persuna oħra li jkollha interess legittimu”;

(c) minnufih wara s-subartikolu (3) tieghu ghandu jidhol il-proviso ġdid li ġejj:

“Iżda fil-każijiet meta d-dmir biex ikun mgharraf benefiċjarju bl-interess tieghu fi *trust* ikun gie sospiż skond l-artikolu 29 ta’ dan l-Att u sakemm dik is-sospensjoni tibqa’ fis-sehħ, u fin-nuqqas ta’ protettur ta’ *trust*, is-*settlor* ta’ *trust* jista’ wkoll jagħmel rikors lill-Qorti skond dan is-subartikolu. Meta tkun qed tittratta dak ir-rikors, il-Qorti tista’ tistabbilixxi jekk is-sospensjoni tad-drittijiet ta’ tagħrif lil xi benefiċjarji li jkollhom id-dritt li jinforzaw il-kondizzjonijiet tat-*trust* ghandhiex tibqa’ fis-sehħ għal kollox jew f’parti jew għall-benefiċjarji kollha jew għal xi uħud minnhom.”.

Żieda ta’ artikolu 37A ġdid ma’ l-Att prinċipali.

24. Minnufih wara l-artikolu 37 ta’ l-Att prinċipali għandu jidhol l-artikolu 37A ġdid li ġejj:

“**37A.** (1) Meta xi qorti tagħmel ordni fuq it-talba ta’ benefiċjarju li jkun gie preġudikat bħala riżultat ta’ *mala fede* mit-*trustee* fl-operat ta’ relazzjoni ta’ *trust* jew in konnessjoni ma’ proprjetà ta’ *trust*, il-qorti jkollha s-setgħa li tqegħdu lura fil-pożizzjoni li kien ikun fiha li kieku ma tkunx saret l-azzjoni li fuqha saret it-talba jew xort’ohra biex thares l-interessi tieghu.”.

(2) Meta persuna domiciljata f’Malta jkollha l-obbligu li thallas manteniment skond il-Kodiċi Ċivili u din tkun benefiċjarja taht *trust* diskrezzjonarju, il-Qorti jkollha dawk is-setgħat li jkunu meħtieġa sabiex tirrevedi l-eżerizzju tad-diskrezzjoni mit-*trustee* u tqis sew id-drittijiet ta’ persuni li jkollhom dritt jitolbu manteniment.”.

Emenda ta’ l-artikolu 38 ta’ l-Att prinċipali.

25. L-artikolu 38 ta’ l-Att prinċipali għandu jiġi emendat kif ġejj:-

(a) minflok is-subartikolu (1) tieghu għandu jidhol is-subartikolu (1) ġdid li ġejj:-

“(1) Ma jkun hemm ebda appell minn xi digriet, ordni, dikjarazzjoni jew direzzjoni tal-Qorti Ċivili fil-ġurisdizzjoni volontarja tagħha mogħtija taht id-disposizzjonijiet ta’ dan l-Att.”;

(b) is-subartikolu (2) tieghu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (6);

(c) minnufih wara s-subartikolu (1) tieghu għandhom jidhlu s-subartikoli ġodda (2) sa (5) li ġejjin:-

“(2) Dawk id-digrieti, ordnijiet, dikjarazzjonijiet jew direzzjonijiet għandhom jibqgħu fis-sehħ sakemm ikunu

sostitwiti jew mibdula mill-Qorti fil-ġurisdizzjoni tagħha volontarja jew kontenzjuża.

(3) Matul is-smigh ta' rikors quddiem il-Qorti t-*trustee* jew ir-rikorrent ghandu ma' l-ewwel opportunità jagħti lill-Qorti l-fatti materjali kollha maghrufa minnu u li jistgħu jkunu rilevanti għar-rikors, maghduda l-eżistenza ta' *res judicata* jew azzjoni ġudizzjarja pendenti mogħtija jew mibdija f' Malta jew quddiem qorti barranija.

(4) Ir-rikorsi kollha lill-Qorti għandhom ikunu notifikati lit-*trustee* u r-rikorrent għandu wkoll jinnotifika lill-persuni kollha li fil-fehma tiegħu jkollhom interess fil-kontenut tar-rikors. Il-Qorti jkollha s-setgħa li tordna n-notifika lill-persuni l-oħra kollha li fil-fehma tagħha jkollhom interess kif jidhrilha xieraq.

(5) Il-Qorti għandha tisma' lit-*trustee* u lil kull parti interessata kif jidhrilha xieraq.”; u

(d) minflok in-nota marginali relattiva għandha tidhol din in-nota li ġejja:-

“Rikorsi, infurzar u smigh.”.

26. Minnufih wara l-artikolu 38 ta' l-Att prinċipali għandhom jidhlu l-artikoli ġodda 38A, 38B u 38C li ġejjin:-

Żieda ta' artikoli ġodda 38A, 38B u 38C ma' l-Att prinċipali.

“Konfidenzjalità.

38A. (1) Il-proċedimenti kollha taħt dawn l-artikoli għandhom jinstemgħu *in camera* u jkunu biss il-partijiet fil-proċedimenti, it-*trustees* u l-benefiċjarji li juru li jkollhom interess fil-proċeduri għas-sodisfazzjon tal-Qorti u l-avukati u l-prokuraturi legali rispettivi tagħhom li jistgħu jithallew fil-Qorti waqt is-smigh.

(2) Kull digriet jew sentenza tal-Qorti għandha żżomm il-kunfidenzjalità tal-proċedimenti u għandha biss tikxef dawk il-fatti li jkunu meħtieġa biex din tkun tagħmel sens u tkun tista' tiġi infurzata mill-partijiet u mit-*trustees*.

(3) Kull rikors, risposta, ġurament, opinjoni, dikjarazzjoni u dokument u prova oħra għandhom jinżammu mir-Reġistratur tal-Qorti b'mod kunfidenzjali u ma jkun hemm ebda aċċess għalihom hliet bil-kunsens tal-Qorti.

(4) Il-Qorti tista' tordna n-notifika ta' kull ordni lin-nutar depożitarju kif imsemmi fl-artikolu 43A ta' dan l-Att jekk tqis li jkun hekk xieraq fiċ-ċirkostanzi.

Regoli tal-Qorti.

38B. Il-Bord stabbilit taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel Regoli tal-Qorti dwar rikorsi magħmulin taht jew skond dan l-Att.

Direzzjonijiet mill-Awtorità.

38C. Minghajr preġudizzju għad-disposizzjonijiet ta' kull liġi oħra applikabbli, *trustee* jista' jirrikorri għand l-Awtorità għal direzzjonijiet dwar il-mod kif huwa jista' jew għandu jaġixxi dwar kull haġa li għandha x'taqsam mat-*trust* jew il-proprjetà tagħha meta dik il-haġa tkun tirrelata mat-twettiq ta' l-obbligi tiegħu dwar it-tħaris minn *money laundering*. Kull komunikazzjoni *in bona fide* jew żvelar li jsir skond dan l-artikolu ma għandux jitqies bħala ksur tad-dmir tas-segretezza professjonali jew xi restrizzjoni oħra sew imposta bi statut sew xort'oħra, meta jsir l-iżvelar tat-tagħrif u kull tagħrif żvelat skond dan l-artikolu jista' jintuza biss dwar sħarriġ ta' attivitajiet ta' *money laundering*.”.

Emenda ta' l-artikolu 40 ta' l-Att prinċipali.

27. Minnufih wara s-subartikolu (2) ta' l-artikolu 40 ta' l-Att prinċipali għandhom jizjeddu is-subartikoli (3) sa (6) godda li ġejjin:-

“(3) Persuna li tittratta ma' *trustee* dwar proprjetà ta' *trust* ma għandhiex għalfejn:-

(a) tagħmel sħarriġ dwar il-kondizzjonijiet tat-*trust*; jew

(b) tikseb il-kunsens tal-benefiċjarji jew ta' xi persuna oħra;

u jkollha, bla hsara għal li tkun *in bona fide*, id-dritt li toqgħod fuq id-dikjarazzjonijiet magħmula mit-*trustee* dwar kull haġa li għandha x'taqsam mas-setgħat tiegħu.

(4) It-*trustee* jista' jagħti lil kull persuna ċertifikat li jkun fih it-tagħrif li ġej minghajr ma jikser ebda obbligu ta' konfidenzjalità:

(a) li t-*trust* teżisti u d-data meta kien eżegwit id-dokument tat-*trust*;

(b) l-identità u l-indirizz tat-*trustee* kurrenti;

(c) li *t-trustee* jkun awtorizzat kif imiss u li ghandu s-setgħa li jwettaq it-transazzjoni rilevanti u jkun kiseb il-kunsensi kollha meħtieġa;

(d) ir-revokabbilità, jew l-irrevokabbilità tat-*trust* u, jekk ikun revokabbli, li *t-trust* ma jkunx gie revokat.

(5) Meta jkun hemm iktar minn *trustee* wiehed, ċertifikat jista' jkun iffirmit u awtentikat minn kull *trustee*.

(6) Kull *trustee* li johroġ xi ċertifikat li jkun fih xi dikjarazzjoni li hu jkun jaf jew li ghandu jkun jaf li hu falz ikun hati ta' reat u jehel meta jinsab hati l-piena ta' prigunerija għal żmien ta' mhux aktar minn sentejn jew multa.”.

28. L-artikolu 40A ta' l-Att prinċipali għandu jiġi emendat kif ġej:- Emenda ta' l-artikolu 40A ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “ksur ta' *trust*.” għandhom jidhlu l-kliem “ksur ta' *trust*.”; u

(b) minnufih wara s-subartikolu (1) tiegħu għandu jidhol il-proviso li ġej:-

“Izda t-trasferiment ta' proprjetà immobbli mit-*trustee* kif provdut fl-artikolu 958A tal-Kodiċi Ċivili ma johloqx id-drittijiet provduti f'dan l-artikolu favur xi persuna li titlob il-legittima.”.

29. Minflok l-artikolu 42, it-titlu “Reġistrazzjoni ta' *Trusts*”, l-artikoli 43 u 43A li hemm tahtu, it-titlu “Eżenzjonijiet Fiskali u Ohrajn”, l-artikoli 44 sa 46A li hemm tahtu, it-titlu “Kumpanniji *Nominee*” u l-artikoli 47 u 48 li hemm tahtu, ta' l-Att prinċipali għandhom jidhlu dawn li ġejjin: Sostituzzjoni ta' l-artikoli 42 sa 48 ta' l-Att prinċipali.

“REGOLAMENTAZZJONI TA' *TRUSTEES*

Trustees. **42.** Persuni jistgħu jaqdu l-attivitajiet ta' *trustee* sew f'kapacità professjonali sew privata u, skond il-każ għandhom ikunu soġġetti għad-disposizzjonijiet tal-artikoli 43 u 43A ta' dan l-Att.

Htiġiet għal awtorizzazzjoni ta' trustees.

43. (1) Hlief kif provdut skond is-subartikoli (6) u (7) ta' dan l-artikolu, kull persuna, residenti jew li topera minn Malta, jew *trustee* korporat, li tirċievi proprjetà fi *trusts* jew taċċetta li taġixxi ta' *trustee* jew *co-trustee* ta' *trust* li:-

(a) tirċievi jew ikollha dritt għal rimunerazzjoni sabiex hekk taġixxi; jew

(b) hekk tagħmel fuq bażi regolari u abitwali; jew

(c) turi lilha nnifisha bhala *trustee*;

tinhtieg awtorizzazzjoni mill-Awtorità skond dan l-Att tkun xi tkun il-liġi proprja tat-*trusts* li jkollhom u kemm jekk il-proprjetà tat-*trust* tkunx kollha kemm hi jew f'parti minnha f'Malta:

Izda fil-każ ta' dubju raġonevoli dwar xi jfisser li persuna tkun qed taġixxi ta' *trustee* fuq bażi regolari u abitwali, il-kwistjoni għandha tiġi konklużivament deċiża mill-Awtorità.

(2) L-Awtorità tista' tohroġ regoli biex tistabbilixxi meta *trustees* jitqiesu li jirċievu rimunerazzjoni, meta attività ssir fuq bażi regolari jew abitwali, u meta persuna turi lilha nnifisha bhala *trustee*. L-Awtorità tista' wkoll tohroġ regoli li jeżentaw persuni mill-applikazzjoni ta' dan l-artikolu.

(3) Kull persuna, sew jekk individwu jew kumpannija tista' tapplika bil-miktub lill-Awtorità biex tkun awtorizzata bhala *trustee* u l-Awtorità tista' tagħti l-awtorizzazzjoni meta tkun sodisfatta li l-kondizzjonijiet stabbiliti b'dan l-artikolu jkunu ġew sodisfatti u dik l-awtorizzazzjoni tista' tkun jew ġenerali jew ristretta għal attivitajiet partikolari speċifiċi.

(4) Il-kondizzjonijiet imsemmija fis-subartikolu ta' qabel dan huma li:-

(i) fil-każ li l-applikant ikun kumpannija:-

(a) l-ghanijiet tagħha jinkludu li taġixxi bhala *trustee* u li tmexxi attivitajiet li huma anillari jew inċidentali għalihom; u

(b) l-attivitajiet attwali tagħha jkunu kompatibbli u konnessi mas-servizzi ta' *trustee*; u

(c) id-diretturi tal-kumpanija ma jkunux inqas minn tnejn u jkunu individwi li jkunu persuni approvati; u

(d) il-kumpanija tkun stabbiliet sistemi xierqa biex iżzomm *records* tajba ta' l-identità u r-residenza tal-benefiċjarji, it-transazzjonijiet u l-attiv li għandhom x'jaqsmu ma' *trusts* u t-tharis mal-liġi li tapplika; u

(e) kull persuna li jkollha interess dirett jew indirett fil-kumpanija, tkun persuna approvata; u

(f) l-isem tal-kumpanija ma jkunx inkonsistenti ma' l-attività tagħha bħala *trustee*.

(ii) fil-każ ta' applikant bħala individwu li dak l-individwu jkun:–

(a) residenti f'Malta jew jopera minn Malta; u

(b) persuna approvata;

(c) stabblixa sistemi xierqa biex iżzomm *records* tajba tal-identità u r-residenza tal-benefiċjarji, it-transazzjonijiet u l-attiv li għandhom x'jaqsmu ma' *trusts* u tharis mal-liġi applikabbli.

(5) *Trustee* għandu javża lill-Awtorità b'kull tibdil jew ċirkostanza li tkun tolqot l-istat tiegħu bħala persuna approvata u fil-każ ta' *trustee* korporat, b'kull tibdil fid-dokument, memorandum jew statut ta' assoċjazzjoni jew strument ieħor li jikkostitwixxi l-kumpanija, id-diretturi jew il-membri u fil-każ ta' kumpaniji reġistrati f'Malta dak it-tibdil ma għandux jiġi reġistrat jekk u sakemm ma jkunx ġie hekk notifikat u approvat mill-Awtorità.

(6) (a) Il-persuni li ġejjin ma jkunux mehtieġa li jiksbu awtorizzazzjoni skond dan l-Att biex jaġixxu bħala *Trustees* waqt it-tmexxija ta' l-attivitajiet li għalihom għandhom liċenza:

(i) persuna li jkollha fil-pussess tagħha liċenza valida mahruġa skond l-Att dwar il-Kummerċ Bankarju; jew

(ii) persuna li jkollha liċenża skond l-Att dwar is-Servizzi ta' Investiment, biex iżżomm flejjes u assi ta' klijenti; jew

(iii) persuna awtorizzata skond l-Att dwar in-Negożju ta' l-Assigurazzjoni, jew li tkun iskritta fil-lista ta' *Brokers* taht l-Att dwar *Brokers* ta' l-Assigurazzjoni u Intermedjarji ohra, biex iżżomm flejjes u assi tal-klijenti;

(iv) persuna b'liċenża ekwivalenti għal waħda minn dawk imsemmija fis-subparagrafi (i) sa (iii) ta' dan il-paragrafu mahruġa mill-awtorità regolatorja rilevanti f'għurisidizzjoni approvata ohra.

(b) Persuna awtorizzata mill-Awtorità Marittima ta' Malta biex taġixxi bhala *trustee* ta' *shipping trust* jew fondazzjoni ta' *shipping* kif imfisser fl-artikolu 84Z ta' l-Att dwar il-Bastimenti Merkantili, ma tkunx tehtieg aktar awtorizzazzjoni skond dan l-Att.

(7) Minghajr preġudizzju għall-obbligazzjoni ta' kull persuna biex tikseb awtorizzazzjoni skond xi liġi ohra li tista' tkun applikabbli, id-disposizzjonijiet ta' dan l-artikolu u ta' l-artikolu 43A ma għandhomx japplikaw:-

(a) għal persuna meta taġixxi bhala *trustee* taht *trusts* mahluqa sabiex tinzamm sigurtà fil-forma ta' ipoteki, plegġijiet, assenjazzjonijiet, mandati jew xort'ohra, mogħtija dwar xi transazzjoni finanzjarja għall-benefiċċju ta' min jislef jew kredituri ohra f'dik it-transazzjoni;

(b) għal persuna meta taġixxi bhala *trustee* ta' xi proprjetà mobbli miżmuma b'sigurtà u għall-benefiċċju ta' persuni li d-dritt tagħhom ikun kondizzjonat jew determinabbli skond il-kondizzjonijiet tat-*trust* jew tal-kuntratt li dwaru jkun inħoloq il-*holding*;

(c) għal stralċjarju, kuratur f'falliment jew amministratur maħtur mill-qorti li jaġixxi waqt stralċ, falliment jew amministrazzjoni;

(d) persuna li jkollha *warrant* biex teżerita l-professjoni ta' avukat, nutar pubbliku, prokuratur legali, jew *accountant* pubbliku ċertifikat, iżda jekk biss it-

trust tkun limitata ghal dak li hu mehtieg u inidentali waqt l-eżerizzju tal-professjoni u ma tkunx turi lilha nnifisha bhala *trustee* lill-pubbliku;

iżda dik il-persuna tkun obbligata li żżomm *records* xierqa ta' l-assi tal-klijenti ghal żmien ta' mhux inqas minn hames snin jew żmien itwal kif stabbilit f'xi liġi ohra li tirregola l-professjoni tagħha;

(e) ghal persuni li jaġixxu bhala *trustees* ta' *unit trust* li tkun skema ta' investment kollettiv, li tkun rikonoxxuta taht l-Att dwar is-Servizzi ta' l-Investment jew li tkun eżentata minn liċenza skond l-imsemmi Att li l-istabbiliment tagħha jkun notifikat lill-Awtorità;

(f) ghal individwu li jaġixxi bhala *trustee* taht *trusts* b'ghan ta' karità kemm-il darba ma jkunx rimunerat u ma jurix lilu nnifsu bhala li jipprovdi dawk is-servizzi;

(g) kull persuna li taġixxi bhala *co-trustee*, meta *trustee* iehor jew, jekk ikun hemm iktar minn wiehed, il-maġġoranza tat-*trustees* ikunu awtorizzati skond dan l-artikolu;

(h) kumpanniji jew entitajiet legali ohra, inkorporati f'ġurisdizzjoni approvata, li jkollhom persuni approvati bhala diretturi, u li jkunu ghal kollox proprjetà, inkluż bhala *trustee*, u kontrollati minn *trustees* awtorizzati skond dan l-artikolu u li jkunu stabbiliti biss għall-ghan li jzommu proprjetà ta' *trust* u atti anillari, li jkollhom persuni approvati bhala diretturi, u li d-dettalji tagħhom ikunu avżati bil-miktub lill-Awtorità minn *trustee* awtorizzat;

(i) ghal parti f'kuntratt li taqbel li tircievi jew iżżomm proprjetà bhala *trustee* fir-rigward jew anċillari għat-twertiq ta' kuntratt kemm-il darba t-*trustee* xort'ohra ma jurix lilu nnifsu mal-pubbliku li hu *trustee* u ma jkunx rimunerat għal hekk;

(j) ghal persuna li jzomm azzjoni wahda jew iżjed f'kumpannija reġistrata f'Malta meta dawn ma jkollhom ebda jedd għal vot speċjali u l-valur nominali individwali tagħhom ma jkunx jeċċedi lira Maltija jew l-ekwivalenti f'xi munita ohra.

(8) Persuna msemija f'dan l-artikolu tista' tapplika ghand l-Awtorità, u l-Awtorità ghandha tawtorizza skond dan l-artikolu:

(i) persuna b'licenza jew awtorizzazzjoni li tkun ekwivalenti ghal dak imsemmi fis-subparagrafi (i) sa (iii) tal-paragrafu (a) tas-subartikolu (6) ta' dan l-artikolu mahruġa mill-Awtorità jew l-awtorità regolatorja rilevanti f'gürisdizzjoni approvata, u li jkunu qed jaġixxu ta' *trustees* mhux waqt in-negożju ordinarju li ghalih ikollhom licenza; jew

(ii) persuna li jkollha licenza jew awtorizzazzjoni biex taġixxi bhala *trustee* mahruġa mill-awtorità regolatorja rilevanti f'gürisdizzjoni approvata:

Izda dik il-persuna sew jekk Maltija jew barranija, ghandha tavża lill-Awtorità bil-miktub, bil-hsieb taghha li taġixxi bhala *trustee* f'Malta ghall-anqas hamsa u erbghin jum qabel ma tibda l-attivitajiet f'Malta, u li tirievi konferma minghand l-Awtorità li ma toġġezzjonax ghalha.

Avviż moghti taht dan is-subartikolu ghandu jaghti informazzjoni dwar l-attivitajiet proposti u ghandu jkollu mieghu dak it-taghrif li l-Awtorità tkun tinhtieg minn żmien ghal żmien.

Sal-limitu li l-Awtorità tistabilixxi xi restrizzjonijiet jew kondizzjonijiet ghal dawk l-attivitajiet, fuq risposta inizjali ghal avviż jew f'xi żmien iehor, dawk ir-restrizzjonijiet u kondizzjonijiet ghandhom jibdew isehhu kif dikjarat fir-risposta jew b'avviż sussegwenti ta' l-Awtorità.

(9) (a) Jistgħu jinżammu biss fi *trust*:

(i) sigurtajiet jew interessi ohra fi jew mahruġa minn entità legali Maltija, hlief ghal sigurtajiet elenkati fil-Borża ta' Malta jew *exchange* ohra ta' investiment rikonoxxut; jew

(ii) proprjetà immobbli f'Malta, (hawnhekk iżjed 'il quddiem imsejha "proprjetà rilevanti") minn *trustees* li ma jkunux awtorizzati, jekk persuna:

(aa) tkun awtorizzata skond is-subartikoli (3) u (8) ta' dan l-artikolu, jew

(bb) ma tkunx mehtieġa li tkun awtorizzata taht il-paragrafu (a) tas-subartikolu (6) u tal-paragrafi (e), (g) u (h) tas-subartikolu (7) ta' dan l-artikolu.

(hawnhekk iżjed 'il quddiem imsejha “persuna kwalifikata” li tkun imqabnda bil-miktub mit-*trustee* biex taqdi l-funzjonijiet ta' tharis imsemmija fil-paragrafu (b) ta' dan is-subartikolu fuq bażi mhux definita b'riferenza speċifika ghal dik il-proprjetà rilevanti u dik in-nomina tkun notifikata lill-Awtorità qabel xi akkwist ta' dik il-proprjetà u li jkollu miegħu dak it-tagħrif li l-Awtorità tkun tinhtieġ minn żmien għal żmien.

(b) Il-persuna kwalifikata għandha tiżgura li jkun hemm tharis ta' l-obbligi kollha fiskali, dwar hasil ta' flus u obbligi legali oħra li għandhom x'jaqsmu mal-proprjetà rilevanti u għandha tagħti avviż lill-Awtorità jekk tirriżenja, jekk ikollha l-ingaġġ tagħha mitmum jew jekk xort'oħra tkun imfixkla mil-qadi tad-dmirijiet tagħha taht dan l-Att.

(c) Is-subparagrafi (a) u (b) ta' dan is-subartikolu għandhom japplikaw ukoll għaž-żamma ta' proprjetà rilevanti minn mandatarju għal persuna oħra.

(d) Jekk f'xi żmien ma jkunx hemm persuna kwalifikata biex taqdi l-funzjonijiet kif mehtieġ f'dan is-subartikolu, il-Qorti tista' tahtar persuna kwalifikata fuq rikors ta' l-Awtorità jew ta' xi persuna li jkollha interess.

(e) L-Awtorità tista' minn żmien għal żmien permezz ta' regoli tistabbilixxi l-forma u l-kondizzjonijiet dwar dak l-avviż u d-dmirijiet ta' persuni kwalifikati.

(10) Ebda transazzjonijiet dwar proprjetà rilevanti, magħduda interessi benefiċjarji fi *trust*, ma għandhom isiru mingħajr il-kunsens bil-miktub ta' persuna kwalifikata li għandha tiżgura tharis xieraq ta' l-obbligazzjonijiet fiskali dwarhom:

Iżda ebda haġa f'dan l-artikolu ma għandha tfisser li persuna kwalifikata tkun hi nnifisha *trustee* jew li tkun solidalment responsabbli għall-qadi ta' l-

obbligazzjonijiet tat-*trustee* dwar proprjetà rilevanti jew transazzjonijiet relatati.

(11) Il-htieġa ghal persuna kwalifikata ma ghandhiex tapplika:-

(a) ghaż-żamma ta' azzjoni wahda jew iżjed f'kumpannija meta dawn ma jkollhom ebda jedd ghall-vot speċjali u l-valur nominali individwali tagħhom ma jkunx jeċċedi lira Maltija jew l-ekwivalenti tagħhom f'xi munita ohra, jew

(b) ghaż-żamma minn *trustees* nominati u mahtura b'testament li johloq it-*trust* dwar l-ewwel perjodu ta' sitt xhur mid-data ta' l-aċċettazzjoni mit-*trustee* dwar l-wirt tat-testatur kemm-il darba ma jkunx hemm il-htieġa li tagħmel xi transazzjoni dwar proprjetà rilevanti, hliet ghal trasferimenti jew dikjarazzjonijiet oriġinali mit-*trustee* biex jassumi l-proprjetà u l-kontroll tal-proprjetà tat-*trust* f'liema każ persuna kwalifikata tinhatar qabel ma jiġri dan.

(12) Minghajr preġudizzju għax-xorta tar-relazzjoni legali f'xi każ partikolari, għall-finijiet ta' dan l-artikolu, kull persuna li:-

(a) taġixxi bhala *nominee* ghal xi persuna ohra; jew

(b) taġixxi bhala amministratur, *trustee*, direttur jew funzjonarju simili, tkun kif tkun tissejjah, ta' fondazzjoni privata;

għandha titqies li tkun *trustee* u tkun tinhtieġ, kemm-il darba ma tkunx persuna msemmija fis-subartikolu (6) ta' dan l-artikolu, awtorizzazzjoni skond dan l-artikolu, irrISPettivament mil-limitu ta' l-attivitajiet tagħha, jekk tithallasx rimunerazzjoni dwarhom jew jekk tkunx tippreżenta lilha nnifisha bhala li ttiprovdi dawk is-servizzi jew le.

Għall-finijiet ta' dan is-subparagrafu "fondazzjoni privata" hija fondazzjoni stabbilita jew topera minn Malta għall-benefiċċju ta' interess privat jew bhal xi għan li ma jkunx tal-karità.

(13) Kull persuna li taġixxi bhala direttur ta' entità legali msemmija fis-subartikoli (7)(h) u (8)(b) ta' dan l-artikolu li tirievi proprjetà ta' *trust* minghand *trustee* biex iżommha f'isem it-*trustee*, tkun persuna approvata.

(14) Ebda haġa f'dan l-artikolu ma għandha tiftiehem li persuna meqjusa bhala *trustee* taht *trust* kostruttiv jew rizultanti jew bhala rizultat ta' xi disposizzjoni statutorja jew dikjarazzjoni ġudizzjarja tkun aġixxiet bi ksur ta' dan l-Att matul xi perjodu qabel ma tkun saret taf b'dawk it-*trusts* u f'dak il-każ tista' tingieb bhala difiża fi prosekuzzjoni taht dan l-Att il-prova li dik il-persuna ma kienetx taf bid-dmirijiet tagħha tahtu.

Trustees
privati u
proċedura
nutarili.

Kap. 50.

43A. (1) F'dan l-artikolu l-frazi "Liġi Nutarili" tfisser l-Att dwar il-Professjoni Nutarili u Arkivji Nutarili.

(2) Individwu li jaqbel li jaġixxi bhala *trustee* minhabba:

(a) li jkun relatat mas-*settlor*, b'konsangwinità jew b'affinità fil-linja diretta f'kull grad jew fil-linja kollaterali sar-raba' grad inkluzivament, jew

(b) li jkun ilu jaf lis-*settlor* għal mill-inqas għaxar snin, u fil-każijiet kollha:

(i) ma jkunx rimunerat ukoll indirettament, hliet kif permess b'xi regoli mahruġa mill-Awtorità;

(ii) ma jurix lilu nnifsu bhala *trustee* mal-pubbliku;

(iii) ma jkunx abitwalment jaġixxi bhala *trustee*, f'kull każ dwar iktar minn hames *settlors* f'daqqa, (hawnhekk iżjed 'il quddiem imsejjah "*trustee* privat") jista' jaġixxi bhala *trustee* mingħajr il-htieġa ta' awtorizzazzjoni skond l-artikolu ta' qabel, bla hsara għall-kondizzjonijiet murija fis-subartikolu (3) ta' dan l-artikolu.

(3) *Trustee* privat jista' jaġixxi bhala *trustee* taht il-kondizzjonijiet li ġejjin li għandhom japplikaw skond il-każ:-

(i) fil-każ ta' *trust* testamentarju, li fi żmien sitt xhur milli jaççetta biex jaġixxi bhala *trustee*, jagħmel inventarju b'att nutarili skond it-Taqsima IIIA tal-Liġi Nutarili u għandu jiddikjara fl-att li l-inventarju jinkludi l-proprjetà kollha taht it-*trust* u estratt tat-testment li jkun fih il-kondizzjonijiet kollha ta' l-imsemmi *trust* għandu jkun meħmuż ma' dak l-att nutarili;

(ii) fil-każ ta' *trust inter vivos* it-*trust* għandu jinholoq b'att nutarili;

(iii) meta proprjetà, barra minn proprjetà immobbli, tiżdied mat-*trust* minn *settlor* jew minn xi persuna oħra, skond l-artikolu 10 ta' dan l-Att jew b'dikjarazzjoni tat-*trustee*, dik iż-żieda għandha tkun reġistrata b'att ta' *trust* nutarili mal-konsenja tal-proprjetà addizzjonali lit-*trustee*, jekk prattikabbli, iżda f'kull każ mhux aktar tard minn 14-il jum tax-xogħol minn meta dik il-proprjetà tkun riċevuta mit-*trustee*. Fil-każ ta' proprjetà immobbli ż-żieda fil-proprjetà għandha ssir b'att nutarili li kopja awtentika tiegħu tkun konsenjata lin-nutar depożitarju għall-harsien u reġistrazzjoni mad-dokumenti tat-*trust* f'dak iż-żmien;

(iv) *records* ta' laqgħat ma' beneficjarji, konsulenti jew protetturi, l-eżerizzju tad-diskrezzjoni mit-*trustee* fil-hatra jew fit-tneħħija ta' beneficjarju, fit-tnaqqis, tqassim jew avvanz ta' proprjetà tat-*trust*, fit-terminazzjoni tat-*trust* għal xi raġuni, jew grajjiet materjali oħra għandu jsir bil-miktub u għandu, flimkien ma' kull kontijiet annwali u digriet, ordnijiet, dikjarazzjonijiet jew direzzjonijiet tal-qorti li jistgħu jinħarġu dwar il-proprjetà tat-*trust*, ikun konsenjat lin-nutar depożitarju;

(v) fil-każijiet kollha, it-*trustee* għandu jiddikjara l-fatti applikabbli għalih biex juri li ma jeħtieġx awtorizzazzjoni biex jaġixxi bhala *trustee* skond dan l-Att u li ma jkunx skwalifikat skond l-artikolu 53 ta' dan l-Att, wara li n-nutar ikun wissieħ bl-importanza tal-verità ta' dawk id-dikjarazzjonijiet.

(vi) f'każ ta' *trust* dwar proprjetà rilevanti għall-finijiet tas-subartikolu (9) tal-artikolu 43 ta' dan l-Att, in-nutar depożitarju għandu jivverifika li d-disposizzjonijiet tal-artikolu 43 jiġu osservati mit-*trustee*.

(4) Meta *trustee* ikun *trustee* privat, in-nutar pubbliku li jippubblika testment li jkun fih *trust* testamentarju jew li jirċievi att ta' *trust inter vivos*, ghandu jkun l-uniku depożitarju ta' l-atti kollha msemmija fis-subartikolu ta' qabel dan u dak in-nutar ikun magħruf bhala n-nutar depożitarju:

Izda jekk dak in-nutar pubbliku jkun mahtur bhala *trustee* fl-att li johloq it-*trust* u jaċċetta li hekk jaġixxi, dak in-nutar ghandu jiżgura li l-att tat-*trust* isemmi lil nutar pubbliku iehor biex jaqdi l-funzjonijiet ta' nutar depożitorju.

(5) Minkejja kull liġi ohra dwar il-professjoni ta' nutari pubbliċi, nutar li jirċievi testment jew att ta' *trust* nutarili ma jkunx prekluz milli jinhatar bhala t-*trustee* f'dak l-att, izda jekk nutar ikun *trustee* ma jkunx jista' jaġixxi bhala n-nutar depożitarju jew in-nutar konservatur:

Izda jekk in-nutar depożitorju jinhatar *trustee* wara l-holqien tat-*trust*, l-aċċettazzjoni tiegħu biex jaġixxi tkun bil-kondizzjoni li dak in-nutar jikkonsenja d-dokumenti tat-*trust* kollha lil nutar depożitarju iehor ghas-sodisfazzjon ta' l-Awtorità u kif provdut fis-subartikolu (9).

(6) Id-dokumenti kollha relattivi għal *trust* għandhom jinghataw lin-nutar depożitarju fi żmien 15-il jum minn meta jibdew jeżistu jew minn meta jiġu fil-pussess tat-*trustee* jew mid-data tal-ġrajja rilevanti li għaliha jirreferi d-dokument, skond il-każ. Malli jirċievi xi dokument bhal dak in-nutar ghandu jiddikjara bil-miktub fuq id-dokument id-data, il-hin u l-post fejn ikun irċevih. Dik id-dikjarazzjoni għandha, sakemm ma jiġix muri mod iehor, tghodd bhala prova tal-kontenut tagħha. Kull dokument bhal dak għandu jinżamm għall-harsien u r-registrazzjoni bil-mod kif l-Awtorità tista' tistabbilixxi minn żmien għal żmien.

(7) L-att tat-*trust* u d-dokumenti kollha relattivi għat-*trust* ipprezentati lil nutar depożitarju jkunu konfidenzjali. In-nutar depożitarju ma jkunx obligat li jagħti tagħrif fuq l-att tat-*trust* jew xi dokument relattiv għalih hlief kif provdut b'dan l-Att u bil-kunsens bil-miktub tat-*trustee* jew meta tinghata l-ordni mill-qorti.

(8) Meta skond il-Liġi Nutarili nutar ikun inhatar nutar konservatur minflok nutar depożitarju, in-nutar konservatur ikun in-nutar depożitarju relattiv għat-*trust* u riferenza għan-nutar depożitarju f'din u f'kull liġi ohra għandha tiftiehem f'dan is-sens.

(9) *It-trustee* jista' b'avviż bil-miktub lin-Nutar u lill-Awtorità jissostitwixxi lin-nutar depożitarju jew lin-nutar konservatur mill-kariga tiegħu bhala nutar depożitarju u dan ta' l-ahhar ghandu jikkonsenja lin-nutar depożitarju sostitut id-dokumenti kollha fil-pussess tiegħu kif imsemmi fis-subartikoli ta' qabel dan u, fil-każ ta' atti pubbliċi, kopji awtentikati tagħhom u dan fi żmien 30 jum mid-data li jkun irċieva dak l-avviż kemm-il darba ma jkunx ordnat biex ma jagħmilx hekk mill-Awtorità. In-nutar sostitwit jista' jitlob riċevuta bil-miktub u jzomm kopji tad-dokumenti konsenjati lin-nutar depożitarju mahtur iżda ghandu jzomm dawk il-kopji f'sigurtà u b'konfidenzjalità stretta u ma ghandux jipprovdì aċċess lil xi persuna barra min-nutar depożitarju li jkun qed iservi, *lit-trustee* jew lill-Awtorità.

(10) Nutar li jonqos li jhares id-disposizzjonijiet ta' dan l-artikolu jkun hati ta' reat u jehel, meta jinsab hati, ammenda ta' mhux inqas minn LM50 u mhux iktar minn LM100:

Iżda ma jinbdew ebda proċeduri meta n-nutar, ma' l-avviż bil-miktub ta' l-Awtorità, jammetti li jhallas dik l-ammenda fl-ammont massimu tagħha.

(11) Meta *trust* jinholoq skond id-disposizzjonijiet ta' dan l-artikolu, *it-trustee* jibqa' soġġett għall-htigiet stabbiliti dwar in-nutar depożitarju sat-terminazzjoni tat-*trust* ukoll jekk *it-trustee* ikun awtorizzat jew sostitwit minn *trustee* awtorizzat jew li m'hemmx htieġa li jkun awtorizzat skond l-artikolu 43 ta' dan l-Att.

(12) Meta *trust* ma jinholoqx skond id-disposizzjonijiet ta' dan l-artikolu, u sussegwentement ikun mahtur fil-kariga *trustee* privat, tkun kondizzjoni għall-aċċettazzjoni tiegħu biex jaġixxi li jkun eżegwit att nutarili ta' aċċettazzjoni b'dak il-mod li d-disposizzjonijiet ta' dan l-artikolu jkunu mharsa kemm jista' jkun f'dak l-istadju, fejn issir riferenza għas-*settlor* għall-finijiet tan-nota ta' iskrizzjoni u inventarju shih tal-proprjetà tat-*trust* li tkun qed tiġi trasferita *lit-trustee* li jkun qed jintrabat.

(13) Jekk xi persuna tkun tixtieq tohloq *trust* u tahtar *trustee* barra minn *trustee* privat u tkun tixtieq ukoll li d-disposizzjonijiet ta' dan l-artikolu jkunu japplikaw, dik il-persuna tista' tagħzel li tagħmel hekk billi tavża lin-nutar pubbliku li tkun ix-xewqa tagħha li jkunu japplikaw id-

disposizzjonijiet ta' dan l-artikolu u li n-nutar jaġixxi bhala nutar depożitarju skond id-disposizzjonijiet ta' dan l-artikolu. F'każ bhal dan in-nutar għandu jitlob lit-*trustee* biex jiddikjara, minflok id-dikjarazzjoni tas-subparagrafu (v) tas-subartikolu (3) ta' dan l-artikolu, li hu awtorizzat, jew mhux mehtieg li jiġi awtorizzat, skond l-artikolu 43 ta' dan l-Att, u jkun jaf bl-obbligazzjonijiet tiegħu taht dan l-artikolu. F'dawn il-każijiet il-htigiet skond l-artikolu 50 tal-Liġi Nutarili fis-sens li n-nutar jirreġistra n-nota ta' riferenza li tirreferi għall-holqien ta' *trust* ma tkunx tapplika jekk is-*settlor* jeżentah espressament minn dak id-dmir.

(14) F'kull każ il-Qorti tista' teżerçita s-setgħa li tahtar, tnehhi, tissostitwixxi u tagħti direzzjonijiet lil nutar depożitarju fuq rikors tan-nutar depożitarju kull persuna li jkollha interess, jew l-Awtorità.

APPLIKAZZJONI, GHOTI, REVOKA, EĊĊ. TA' AWTORIZZAZZJONI

Applikazzjoni għal awtorizzazzjoni.

44. Applikazzjoni għal awtorizzazzjoni skond l-artikolu 43 ta' dan l-Att għandha ssir fil-forma u bil-mod mehtieg mill-Awtorità u barra minn hekk:–

(a) għandu jkun fiha jew ikollha magħha dak it-tagħrif u partikolaritajiet, b'żieda ma dawk mehtieġa b'dan l-artikolu, kif l-Awtorità tista' tehtieg jew kif jista' jiġi preskritt;

(b) għandha tkun verifikata bil-mod u sal-limitu mehtieg mill-Awtorità, jew kif jista' jiġi preskritt;

(c) għandu jkun fiha l-indirizz f'Malta fejn l-applikant ikun jista' jiġi notifikat b'xi avviż jew dokument iehor li b'dan jew taht dan l-Att ikun mehtieg jew awtorizzat li jiġi notifikat lilu;

(d) ikollha magħha dak id-dritt li jista' jkun preskritt li għandu jithallas dwar l-awtorizzazzjoni li tkun saret l-applikazzjoni dwarha.

Setgħa għar-rifjut jew għoti ta' awtorizzazzjoni.

45. (1) L-Awtorità tista' tagħti jew tirrifjuta li tagħti awtorizzazzjoni li dwarha ssir applikazzjoni taht dan l-Att.

(2) Fl-ghoti ta' awtorizzazzjoni l-Awtorità tista' tagħtiha bla hsara għal dawk il-kondizzjonijiet li jidhrilha xierqa, u wara li tkun tat awtorizzazzjoni tista', minn żmien għal żmien, tiddel jew tirrevoka kull kondizzjoni hekk imposta jew timponi kondizzjonijiet godda.

(3) Meta tkun qed tikkunsidra jekk tagħtix jew tirrifjutax awtorizzazzjoni l-Awtorità għandha, b'mod partikolari, tikkunsidra:–

(a) it-tħaris ta' *settlers* u benefiċjarji; u

(b) it-tħaris tar-riputazzjoni ta' Malta meta jitqiesu l-obbligi internazzjonali ta' Malta; u

(c) il-promozzjoni ta' kompetizzjoni u għażla.

(4) Mingħajr preġudizzju għad-disposizzjonijiet tas-subartikolu (8) tal-artikolu 43, l-Awtorità' għandha tavża lil kull applikant bid-deċiżjoni tagħha jekk tagħtix jew tirrifjutax li tagħti l-awtorizzazzjoni li dwarha tkun saret l-applikazzjoni mimlija kif imiss fi żmien tlett xhur minn meta tirċievi l-applikazzjoni li ssir skond id-disposizzjonijiet applikabbli ta' dan l-Att.

(5) Kull hteġa f'dan l-Att li persuna tkun persuna approvata biex tmexxi ċerti attivitajiet jew funzjonijiet għandha tiftiehem bhala hteġa, fil-każ ta' entità legali, li kull direttur jew uffiċjal ta' dik il-persuna, u, fil-każ ta' *trust*, kull wiehed mit-*trustees* tagħha ikun persuna approvata biex tmexxi dawk l-attivitajiet jew funzjonijiet.

Setgħa għat-tħassir jew sospensjoni ta' awtorizzazzjoni.

46. (1) L-Awtorità tista' f'kull żmien tħassar jew tissospendi awtorizzazzjoni skond id-disposizzjonijiet ta' dan l-Att:–

(a) jekk jidhrilha li d-detentur tagħha ma jkunx jew ma jkunx baqà persuna approvata biex taġixxi bhala *trustee*; jew

(b) jekk tikkunsidra li d-detentur tagħha ma jkunx jissodisfa l-htigijiet, jew ikun kiser, xi wahda mid-disposizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti magħmula tahtu, jew ikun naqas milli jissodisfa jew iħares xi obligazzjoni jew kondizzjoni li

ghalih hu jew l-awtorizzazzjoni tkun suġġetta bis-sahha ta' dan l-Att jew tahtu; jew

(c) jekk l-Awtorità tkun inghatat minn *trustee* awtorizzat jew f'ismu, taghrif li jkun falz, mhux preċiż jew qarrieqi; jew

(d) jekk it-*trustee* awtorizzat ma jkunx beda l-attivitajiet fiż-żmien li jista' jkun provdut fl-awtorizzazzjoni jew ikun waqaf jipprovdi dak is-servizz; jew

(e) jekk tqis mehtieġ li thassar jew tissospendi l-awtorizzazzjoni ghat-tharis tal-pubbliku ġenerali jew tarriputtazzjoni ta' Malta meta jitqiesu l-obbligi internazzjonali ta' Malta; jew

(f) fuq it-talba tat-*trustee* awtorizzat; jew

(g) f'kull ċirkostanza ohra li tahtha l-awtorità kienet tkun prekluzja li tohroġ awtorizzazzjoni taht dan l-Att jew kien ikollha l-jedd li tirrifjuta l-ghoti ta' dik l-awtorizzazzjoni.

Avviż dwar proposta ta' rifjut, tibdil, thassir jew sospensjoni ta' awtorizzazzjoni.

46A. (1) Meta l-Awtorità tipproponi:–

(a) li tibdel xi kondizzjoni li ghalha tkun soġġetta l-awtorizzazzjoni jew li timponi kundizzjoni fuqha; jew

(b) li tirrifjuta applikazzjoni ghal awtorizzazzjoni jew li thassar jew tissospendi awtorizzazzjoni;

din ghandha taghti lill-applikant jew, skond il-każ, lit-*trustee* awtorizzat avviż bil-miktub ta' l-intenzjoni taghha li hekk taghmel u taghti r-raġunijiet ghad-deċiżjoni li bi hsieba tiehu.

(2) Kull avviż moghti taht is-subartikolu (1) ta' dan l-artikolu ghandu jghid li min jirievi l-avviż jista', f'dak iż-żmien raġonevoli wara li jiġi notifikat, liema żmien ma jkunx inqas minn tmienja u erbghin siegħa u mhux iżjed minn tletin jum, jagħmel rappreżentazzjonijiet bil-miktub lill-Awtorità fejn jagħti raġunijiet għaliex id-deċiżjoni proposta ma ghandhiex tittiehed, u l-Awtorità ghandha tikkunsidra kull rappreżentazzjoni hekk magħmula qabel ma tittiehed deċiżjoni finali.

(3) L-Awtorità ghandha tavża kemm jista' jkun malajr id-deċiżjoni tagħha finali bil-miktub lill-applikant jew lit-*trustee* awtorizzat, skond il-każ.

SETGHAT REGOLATORJI U INVESTIGATTIVI

Setgħa li tehtieg tagħrif.

47. (1) Minkejja kull disposizzjoni oħra ta' dan l-Att, l-Awtorità tista' b'avviż bil-miktub tehtieg lil kull persuna li tkun jew li kienet taġixxi jew li tkun tidher li qed taġixxi jew kienet taġixxi bhala *trustee* jew li kienet tipprovdi servizzi li dwarhom tkun mehtieġa awtorizzazzjoni skond dan l-Att u lil kull persuna li tkun tidher li jkollha fil-pussess tagħha tagħrif rilevanti biex tagħmel xi haġa jew kull haġa minn dawn li ġejjin:-

(a) li tagħti lill-Awtorità, f'dak iż-żmien u post u f'dik il-forma li tista' tispeċifika, dak it-tagħrif u dokumentazzjoni li tkun tista' tehtieg dwar kull attività kif hawn qabel imsemmi;

(b) li tagħti lill-Awtorità kull tagħrif jew dokumentazzjoni kif imsemmi qabel verifikati b'dak il-mod li tista' tispeċifika;

(c) li tattendi quddiem l-Awtorità, jew quddiem persuna mahtura minnha, f'dak il-hin u post li tista' tispeċifika, biex twieġeb mistoqsijiet u tipprovdi tagħrif u dokumentazzjoni dwar kull attività kif hawn qabel imsemmi.

(2) L-Awtorità tista' tiehu kopji ta' dokumenti mogħtija jew provduti taht dan l-artikolu.

(3) Meta l-persuna mehtieġa li tagħti tagħrif jew dokumentazzjoni taht dan l-artikolu ma jkollhiex it-tagħrif jew id-dokumentazzjoni, din ghandha tiżvela lill-Awtorità fejn, skond l-aħjar tagħrif tagħha, ikun qiegħed it-tagħrif jew id-dokumentazzjoni, u l-Awtorità tista' tehtieg lil kull persuna, sew jekk indikata kif imsemmi qabel jew le, li tkun tidher li jkollha fil-pussess tagħha dak it-tagħrif jew dokumentazzjoni, li tipprovdihom lilha.

(4) Dikjarazzjoni magħmula u dokumentazzjoni skond xi htieġa ta' dan l-artikolu tista' tingieb bhala prova kontra l-persuna li tagħmel id-dikjarazzjoni jew tipprovdi d-dokumentazzjoni kif ukoll kontra l-persuna li għaliha tirreferi.

Kap.377.
Kap. 9.
Kap. 12.

(5) Hlief kif provdut fl-artikolu 642(1) tal-Kodiċi Kriminali u fl-artikolu 588(1) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, id-disposizzjonijiet ta' dan l-artikolu għandhom japplikaw għal kull tagħrif jew dokumentazzjoni, minkejja d-disposizzjonijiet ta' l-Att dwar is-Segretezza Professionali.

(6) Is-setgħa li tkun meħtieġa l-produzzjoni ta' dokumentazzjoni taħt id-disposizzjonijiet ta' dan l-artikolu tkun bla hsara għal kull *lien* jew *charge* mitluba minn xi persuna dwar dik id-dokumentazzjoni.

(7) Meta l-Awtorità tkun hatret persuna taħt il-paragrafu (c) tas-subartikolu (1) ta' dan l-artikolu, dik il-persuna jkollha, għall-fini tal-qadi tal-funzjonijiet tagħha skond il-hatra, is-setgħat mogħtija lill-Awtorità b'dan l-artikolu u hteġa magħmula mill-persuna titqies li tkun saret u li jkollha l-istess saħħa u effett bħal hteġa ta' l-Awtorità.

Setgħa għall-
hruġ ta'
direttivi.

48. (1) Mingħajr preġudizzju għal xi wahda mis-setgħat mogħtija lilha b'dan l-Att, l-Awtorità tista', kull meta jidrilha meħtieġ, tagħti b'avviż bil-miktub, dawk id-direttivi li jidhrilha xierqa fiċ-ċirkostanzi, u kull persuna li lilha jingħata l-avviż għandha tobdi, thares u xort'ohra tagħti effett lil kull direttiva bħal dawk fiż-żmien u bil-mod imsemmi fid-direttiva.

(2) Mingħajr preġudizzju għall-ġeneralità tad-disposizzjonijiet ta' qabel ta' dan l-artikolu, direttiva taħt dan l-artikolu tista':-

(a) teħtieġ kull haġa li ssir jew li tonqos li ssir, jew timponi kull projbizzjoni, restrizzjoni jew limitazzjoni, jew kull hteġa ohra, u tagħti setgħat, dwar kull transazzjoni jew għemil iehor, jew xi attiv, jew xi haġa ohra tkun li tkun;

(b) teħtieġ li xi persuna li jkollha l-funzjonijiet ta' *trustee* titneħħa jew tiġi sostitwita minn persuna ohra aċċettabbli għall-Awtorità;

(c) teħtieġ *trustee* biex jieqaf milli jopera u li jistralċja l-affarijiet tiegħu, skond dawk il-proċeduri u direzzjonijiet li jistgħu jkunu speċifikati fid-direttiva, li tista' tipprovdi għall-hatra ta' persuna li tiegħu pussess u kontroll tad-dokumenti, *records*, assi u proprjetà kollha

li jkunu tat-*trustee* awtorizzat jew ikunu fil-pussess jew taht il-kontroll tieghu.

(3) Is-setgħa li tagħti direttivi taht dan l-artikolu għandha tinkludi s-setgħa li tvarja, tibdel, iżżid jew tirtira kull direttiva, kif ukoll is-setgħa li tohroġ direttivi ġodda jew direttivi oħra.

(4) Meta l-Awtorità tkun sodisfatta li ċ-ċirkostanzi hekk jitolbu, tista' f'kull żmien tagħmel pubblika kull direttiva li tkun tat taht id-disposizzjonijiet ta' dan l-artikolu.”.

Emenda ta' l-artikolu 49 ta' l-Att prinċipali.

30. L-artikolu 49 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) għandu jiġi enumerat mill-ġdid bħala l-artikolu 56 u għandu jiġi traspost skond is-sekwenza numerika tiegħu kif ġie enumerat mill-ġdid;

(b) fis-subparagrafu (b) tiegħu, minflok il-kliem “kumpanniji *nominee*” u “kumpanniji” kull fejn jinsabu għandha tidhol f'kull każ il-kelma “*trustees*”; u

(c) is-subparagrafu (e) tiegħu għandu jiġi enumerat mill-ġdid bħala subparagrafu (o); u

(d) minnufih wara s-subparagrafu (d) tiegħu, għandhom jidhlu s-subparagrafi (e) sa (n) ġodda li ġejjin:-

“(e) ikompli jirregola l-attivitajiet tat-*trustees* kif ukoll is-servizzi provduti u l-attivitajiet li jsiru b'konnessjoni magħhom jew b'relazżjoni magħhom, fejn jipprovdu għal kull haġa li jidhirlu spedjenti magħduda l-ħolqien u l-eżerċizzju tad-drittijiet minn jew għall-benefiċċju tal-benefiċjarji jew *settlers* u l-impożizzjoni ta' dmirijiet u obligazzjonijiet fuq persuni awtorizzati biex jaġixxu bħala *trustees*;

(f) jistabbilixxi l-htigiet dwar il-kotba tal-kontijiet li għandhom jinżammu mit-*trustees*, il-forma u l-kontenut tal-kontijiet li t-*trustees* ikunu obbligati jhejju, liema kontijiet għandhom jagħtu stampa vera u ġusta ta' l-assi taht it-*trust*, il-htigiet ta' revizjoni jew verifika ta' dawk il-kontijiet, id-dmirijiet ta' udituri li jistgħu jitqabbdu u hwejjeġ relatati;

(g) jeżenta kull attivitajiet jew klassijiet ta' persuni mill-htigiet ta' l-artikoli 43 u 43A ta' dan l-Att u li jimponi

kondizzjonijiet li jidhirlu xierqa li jimponi ghal eliġibbiltà ghal eżenzjoni;

(h) Minghajr preġudizzju ghal regoli li jistgħu japplikaw skond l-Att dwar is-Servizzi ta' l-Investment, jistabbilixxi regoli applikabbli għar-responsabilitajiet tat-*trustees* ta' *unit trusts* taht dan l-Att, il-hruġ ta' unitajiet, id-drittijiet u r-responsabilitajiet ta' detenturi ta' unitajiet u l-hwejjeġ l-oħra kollha li jkun hemm il-htieġa li jkunu regolati dwar *unit trusts*;

(i) jirregola kull haġa li għandha x'taqsam ma' l-użu ta' *trusts* fi transazzjonijiet kummerċjali, jistabbilixxi l-kondizzjonijiet dwarhom, u jemenda t-tifsir ta' transazzjoni kummerċjali f'dan l-Att;

(j) jirregola kull haġa li għandha x'taqsam ma' *trustees* ta' garanzija u ta' *trusts* ta' garanzija inkluż id-definizzjoni ta' x'inhom mgħieba ġusta u xierqa fil-kuntest ta' l-eżekuzzjoni ta' garanzija minn *trustee*;

(k) jirregola *trusts* li jipprovdu għall-manteniment ta' persuni jew għall-provdiment ta' *annuities* jew pensjonijiet;

(l) jirregola l-akkumulazzjoni ta' dhul u t-tqassim ta' dhul u kapital mit-*Trustees* u hwejjeġ oħra;

(m) jirregola d-dmirijiet ta' *trustees* privati u d-dmirijiet u l-funzjonijiet ta' nutara depożitarji, il-proċeduri li għandhom jintużaw għall-harsien u reġistrazzjoni tad-dokumenti kollha reġistrati ma' dak in-nutar dwar *trust* u kull haġa anċillari;

(n) jirregola hwejjeġ li għandhom x'jaqsmu ma' *trusts* maħluqa minn detenturi ta' kariga pubblika u persuni oħra kif jista' jiġi preskritt, magħduda l-kwalifiki tat-*trustees*, is-setgħat tal-hatra ta' dawk it-*trustees*, is-setgħat u d-dmirijiet ta' dawk it-*trustees*, il-jeddijiet ta' beneficijarji u terzi persuni f'kazijiet bħal dawn u l-hwejjeġ kollha anċillari;"; u

(e) fis-subartikolu (2) tiegħu, minflok il-kliem "Regolamenti u regoli" għandha tidhol il-kelma "Regolamenti".

Żieda ta' l-artikolu 49 ġdid ta' l-Att prinċipali.

31. Minnufih wara l-artikolu 48 ghandu jidhol l-artikolu 49 ġdid li ġejj:

“Tibdil ta' informazzjoni u kollaborazzjoni.

Kap. 330.

49. (1) Ghar-rigward ta' *trustees*, id-disposizzjonijiet ta' l-artikolu 17 ta' l-Att dwar l-Awtorità ghas-Servizzi Finanzjarji ta' Malta ghandhom japplikaw *mutatis mutandis*.

(2) L-Awtorità tista' teżerċita is-setgħat mogħtija lilha bis-saħħa ta' dan l-Att fuq talba ta' awtorità regolatorja estera jew bil-għan li tgħin lil dik l-awtorità:–

(a) meta l-assistenza tkun mitluba mill-awtorità regolatorja barranija għall-finijiet ta' l-eżerċizju ta' xi wahda jew aktar mill-funzjonijiet regolatorji tagħha; jew

(b) meta tkun hekk mitluba fil-parametri tar-rabtiet internazzjonali li għandha Malta; jew

(c) meta tkun hekk mitluba fil-parametri ta' rabtiet assunti f'pattijiet ta' ftehim bilaterali jew multilaterali għall-iskambju ta' informazzjoni u għamliet oħra ta' kollaborazzjoni ma' awtoritajiet regolatorji barranin inkluża talba li ssir taħt *memorandum of understanding* li jsir ma' l-Awtorità.”

Sostituzzjoni ta' l-artikoli 50, 51, 52 u 53 ta' l-Att prinċipali bl-artikoli ġodda 50 sa 53.

32. L-artikoli 50, 51, 52 u 53 ta' l-Att prinċipali għandhom jiġthassru u jiġu sostitwiti bl-artikoli 50 sa 53 ġodda li ġejjin:–

“Setgħa għal dhul.

50. (1) Kull uffiċjal, impjegat jew aġent ta' l-Awtorità jista', mal-produzzjoni jekk hekk meħtieġa tal-prova ta' l-awtorità tiegħu, jidhol f'kull post okkupat minn persuna li lilha jkun notifikat avviz taħt dan l-Att sabiex tikseb it-tagħrif jew dokumenti meħtieġa b'dak l-avviz, jew xort'oħra għall-fini ta' l-istħarriġ, u sabiex ikunu eżerċitati xi setgħat mogħtija lill-Awtorità.

(2) Meta xi uffiċjal, impjegat jew aġent ta' l-Awtorità jkollu tassew għax jahseb li jekk ikun notifikat dak l-avviz hekk kif imsemmi fis-subartikolu (1) ta' dan l-artikolu, dan ma jiġix imħares jew li xi dokumenti li għalihom jirreferi jitneħħew, ikun imbagħbsin jew distrutti, dik il-persuna tista', mal-produzzjoni jekk hekk meħtieġa tal-prova ta' l-awtorità tagħha, tidhol f'kull post imsemmi fis-subartikolu (1) ta' dan l-artikolu sabiex tikseb minn hemm kull tagħrif jew dokument speċifikat fl-awtorità, li jkunu tagħrif jew dokumenti li setgħu

kienu mehtieġa taht dak l-avviż kif imsemmi fis-subartikolu (1) ta' dan l-artikolu.

(3) Għall-finijiet ta' kull azzjoni li tittiehed taht id-disposizzjonijiet ta' dan l-artikolu, l-Awtorità tista' titlob l-għajnuna tal-Kummissarju tal-Pulizija, li jista' għal dak l-għan jeżerita dawk is-setgħat li huma vestiti fih għall-prevenzjoni ta' reati u għall-infurzar tal-liġi u l-bon ordni.

SANZJONIJIET

Reati.

51. (1) Kull persuna li tikser jew li tonqos li thares xi wahda mid-disposizzjonijiet ta' dan l-Att, jew tikser jew tonqos li thares xi awtorizzazzjoni, kondizzjoni, obligazzjoni, htieġa, direttiva jew ordni magħmula jew mogħtija taht xi wahda mid-disposizzjonijiet ta' dan l-Att, tkun hatja ta' reat.

(2) Kull persuna li għall-finijiet ta', jew skond, xi wahda mid-disposizzjonijiet ta' dan l-Att jew ta' xi regoli jew regolamenti magħmulin bis-saħħa tiegħu, jew ta' xi kondizzjoni, obligazzjoni, htieġa, direttiva jew ordni magħmula jew mogħtija kif imsemmi qabel, tagħti tagħrif jew tagħmel stqarrija jew dikjarazzjoni li tkun taf li ma tkunx preċiża jew li tkun falza jew qarrieqa f'xi haġa materjali, jew bi traskuraġni tagħti tagħrif jew tagħmel stqarrija li ma tkunx preċiża jew li tkun falza jew qarrieqa f'xi haġa materjali, tkun hatja ta' reat.

(3) Kull persuna li bil-hsieb li tevita li tinqabad bl-għemil ta' reat taht dan l-Att tneħhi, tiddistruġġi, taħbi jew b'mod frawdulenti tibdel xi ktieb, dokument jew karta ohra, tkun hatja ta' reat.

(4) Kull persuna li bil-hsieb tfixkel lil persuna milli teżerita drittijiet mogħtija b'dan l-Att tkun hatja ta' reat.

(5) Kull persuna li taġixxi jew li turi li tkun qed taġixxi bhala *trustee* jew mod iehor f'Malta mingħajr ma tkun awtorizzata li hekk tagħmel mill-Awtorità, meta hekk mehtieġa b'dan l-Att, tkun hatja ta' reat.

(6) Kull persuna li tkun hatja ta' reat taht is-subartikoli (1), (2), (3), (4) u (5) ta' dan l-artikolu u, sakemm ma tkunx provduta xi piena oghla b'xi liġi ohra, tista' tehel, meta tinsab hatja, multa ta' mhux iktar minn mitejn elf lira

jew prigunerija ghal żmien ta' mhux iżjed minn erbgħa snin, jew dik il-multa u prigunerija flimkien.

(7) Meta *trustee* jikser jew jonqos milli jħares xi waħda mill-kondizzjonijiet imposti f'awtorizzazzjoni meħtieġa taħt l-artikolu 43 ta' dan l-Att jew il-kondizzjonijiet ta' l-artikolu 43A jew jikser jew jonqos milli jħares xi direttiva, obbligazzjoni jew ħtieġa oħra magħmula jew mogħtija mill-Awtorità, l-Awtorità tista' timponi penali amministrattiva li ma tistax tkun iżjed minn erbgħin elf lira Maltin.

(8) Ksur jew nuqqas ta' tharis minn xi persuna ta' xi waħda mid-disposizzjonijiet ta' dan l-Att dwar l-awtorizzazzjoni ta' dik il-persuna li taġixxi bħala *trustee* jew xort'oħra ma għandha b'ebda mod tippreġudika l-validità jew l-eżegwibbilità ta' *trust* jew tolqot id-dmirijiet u r-responsabbiltajiet ta' dik il-persuna skond dan l-Att.

REGOLI

Setgħa
għall-hruġ
ta' regoli.

52. L-Awtorità tista' toħroġ Regoli li jirregolaw *trustees*, kemm jekk ikunu awtorizzati kif ukoll jekk ma ħumiex meħtieġa li jiksibu awtorizzazzjoni skond dan l-Att, l-operazzjonijiet ta' *trustees* f'Malta, u l-kwalifiki ta' persuna biex taġixxi bħala *trustee*. Ir-Regoli jkunu jorbtu lit-*trustees* u persuni oħra kif jiġi speċifikat fihom. Ir-Regoli jistgħu jistabbilixxu ħtiġiet addizzjonali u kondizzjonijiet dwar l-attivitajiet ta' *trustees*, ir-responsabbiltajiet tagħhom lejn l-Awtorità, kodiċi ta' mġieba u kull haġa oħra li l-Awtorità jidhrilha xierqa, magħduda l-forma u l-kontenut ta' *records* tal-kontijiet li għandhom jinżammu minn *trustees*.

Ordni ta'
skwalifika.

53. (1) Il-qorti, fuq rikors ta' l-Awtorità, tista' tagħmel ordni ta' skwalifika kontra kull persuna li tinsab haġja ta' reat taħt dan l-Att jew xi liġi oħra, barra minn reat li dvaru l-piena tkun multa, jew li tkun kisret xi ħtieġa ta' dan l-Att.

(2) Il-qorti, fuq rikors ta' l-Awtorità jew xi persuna li jkollha nteress, tista' wkoll tagħmel ordni ta' skwalifika kontra kull persuna jekk tkun sodisfatta li l-imġieba tagħha bħala *trustee* ta' *trust*, sew jekk mehuda wehedha jew flimkien ma' l-imġieba tagħha bħala *trustee* ta' xi *trust* jew *trusts* oħra, tagħmilha mhux kwalifikata biex tkun *trustee*.

(3) Ordni ta' skwalifika magħmul taħt dan l-artikolu jista' jkun għal perjodu minimu ta' sena u perjodu massimu ta' hmistax-il sena.

(4) Għall-finijiet ta' dan l-artikolu, ordni ta' skwalifika huwa ordni li bih persuna ma tistax, minghajr il-permess tal-qorti:–

(a) tkun *trustee* ta' *trust* jew fondazzjoni privata; jew

(b) tkun delegata xi funzjonijiet, dmirijiet jew setgħat ta' *trustee*; jew

(c) taqdi jew teżerita xi funzjonijiet jew xort'ohra taġixxi f'kariga fiduċjarja dwar mandat, *trust* jew fondazzjoni privata.

(5) Avviż ta' ordni ta' skwalifika magħmul taħt dan l-artikolu għandu:–

(a) ikun konsenjat mir-Registru tal-Qorti lill-Awtorità;

(b) ukoll jitniżżel f'registru li jinżamm għal dan l-għan mill-Awtorità u għandu jkun miftuħ għal spezzjoni pubblika.

(6) Kull persuna li fil-waqt li tkun is-soġġett ta' ordni ta' skwalifika, taġixxi b'kontravvenzjoni tiegħu, tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux iżjed minn għoxrin elf lira jew prigunerija għal żmien ta' mhux iżjed minn tliet snin jew dik il-multu u prigunerija flimkien.

(7) Id-disposizzjonijiet ta' dan l-artikolu jkunu bla hsara għal kull reati jew rimedji ohra li jistgħu jeżistu taħt xi liġi ohra.”

33. Minnufih wara l-artikolu 53 għandhom jidhlu l-artikoli 54 sa 56 godda li ġejjin:

Żieda ta' l-artikoli 54 sa 56 ma' l-Att prinċipali.

“Persuni mhux kwalifikati biex jinhatru jew iżommu l-kariga ta' *trustees*.

54. Persuna ma tkunx kwalifikata biex tinhatar jew biex iżzomm il-kariga ta' *trustee* jekk:–

(a) tkun interdett jew inkapaċitata jew tkun falluta;

(b) tkun instabet hatja ta' xi wiehed mid-delitti kontra l-fiduċja pubblika jew serq jew frodi jew li xjentement tkun irċeviet proprjetà miksuba b'serq jew bi frodi;

(c) tkun minuri; jew

(d) tkun soġġetta għal ordni ta' skwalifika taht l-artikolu 53 ta' dan l-Att.

APPELLI

Appelli.

55. (1) F'dan l-artikolu, "Tribunal għas-Servizzi Finanzjarji" ifisser it-Tribunal stabbilit skond l-artikolu 21 ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta u l-kelma "Tribunal" għandha tinftehem f'dak il-mod;

u d-disposizzjonijiet ta' l-imsemmi artikolu 21 għandhom, hliet safejn xi wahda minnhom ma tkunx kompatibbli mad-disposizzjonijiet ta' dan l-artikolu, japplikaw għal appelli magħmula lit-Tribunal għas-Servizzi Finanzjarji taht dan l-Att.

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

(a) li tirrifjuta li tohroġ awtorizzazzjoni;

(b) li timponi jew tvarja xi kondizzjoni ta' awtorizzazzjoni;

(c) li timponi jew tvarja xi restrizzjoni;

(d) li tirrevoka awtorizzazzjoni;

(e) li tagħmel xi ordni taht dan l-Att;

tista' tappella kontra d-deċiżjoni tat-Tribunal għas-Servizzi Finanzjarji f'dak iż-żmien u taht dawk il-kondizzjonijiet li huma stabbiliti taht l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta.

(3) Appell kontra deċiżjoni ta' l-Awtorità ma għandux jissospendi l-operat ta' dik id-deċiżjoni.

Tifsir tal-
kelma
“trustee”.

56. Ghall-finijiet tal-artikoli 44 sa 55 ta’ dan l-Att il-kelma *trustee* ghandha tinftiehem li tinkludi dawk il-persuni msemmija fis-subartikolu (12) tal-artikolu 43.”.

34. Minflok l-Iskeda li tinsab ma’ l-Att prinċipali ghandha tidhol l-Iskeda li tinsab ma’ dan l-Att.

Jissostitwixxi l-Iskeda li tinsab ma’ l-Att prinċipali.

35. (1) Id-disposizzjonijiet li ġejjin f’ din it-Taqsima japplikaw dwar *Trusts* reġistrati, *trustees* ta’ *trusts* mhux reġistrati, *Nominees* Liċenzjati u Kumpanniji *Nominee* kif imfissra fl-Att prinċipali kif kien fis-sehh minnufih qabel ma dahlet fis-sehh din it-Taqsima u fl-Att dwar iċ-Ċentru ghas-Servizzi Finanzjarji ta’ Malta, kif miżmum fis-sehh bl-Att XVII ta’ l-2002 hawnhekk iżjed ’il quddiem imsejjah “il-liġi applikabbli.”

Dispożizzjonijiet transitorji.

(2) Hekk kif tiġi fis-sehh din it-Taqsima ma jkunux jistgħu jiġu reġistrati aktar *trusts* skond l-Att prinċipali kif kien fis-sehh minnufih qabel ma ġiet fis-sehh din il-Parti.

Trusts reġistrati.

(3) It-*trusts* kollha reġistrati qabel ma ġiet fis-sehh din it-Taqsima jibqgħu irregolati mill-Att prinċipali skond ma kien fis-sehh minnufih qabel ma din it-Taqsima ġiet fis-sehh għall-perjodu massimu ta’ għaxar snin mid-data tar-reġistrazzjoni tagħhom u għandhom jibqgħu jgawdu d-drittijiet u eżenzjonijiet u l-privileġġi l-oħra dovuti lilhom skond l-Att prinċipali kif kien fis-sehh minnufih qabel ma ġiet fis-sehh din it-Taqsima.

(4) *Trustee* ta’ *trust* reġistrat li l-perjodu tiegħu ta’ għaxar snin intemm qabel ma dahlet fis-sehh din it-Taqsima għandu jemenda id-*deed* ta’ *trust* fuq konsultazzjoni mas-*settlor*, ma kull *protector* jew partijiet oħra interessati sabiex jinkiseb it-tharis ta’ l-Att prinċipali skond kif emendat b’ din it-Taqsima, sa perjodu massimu ta’ sentejn minn meta din it-Taqsima tkun ġiet fis-sehh.

(5) *Trustee* ta’ *trust* reġistrat li l-perjodu tiegħu ta’ għaxar snin ikun ser jintemm fid-data jew wara li tiġi fis-sehh din it-Taqsima għandu jemenda l-att ta’ *trust* b’konsultazzjoni mas-*settlor*, ma’ kull *protector* jew xi parti oħra interessata sabiex jinkiseb it-tharis ta’ l-Att prinċipali skond kif emendat b’ din il-parti sa perjodu massimu ta’ sentejn minn meta jintemm l-imsemmi perjodu ta’ għaxar snin.

(6) Minkejja d-disposizzjonijiet tas-subartikoli (4) u (5) hawn imsemmija, *trustee* ta’ *trust* reġistrat jista’ f’kull żmien qabel ma’ jintemm l-imsemmi perjodu ta’ għaxar snin jemenda l-att ta’ *trust* kif fuq imsemmija sabiex jinkiseb it-tharis ta’ l-Att prinċipali skond kif

emendat b'din it-Taqsima u l-imsemmi emenda timplika rinunċja ghad-drittijiet u eżenzjonijiet u privileġġi kollha l-oħra ikkontemplati mid-disposizzjonijiet ta' l-Att prinċipali kif fi sehh minnufih qabel ma ġiet fis-sehh din it-Taqsima.

Trustees ta' trusts
mhux reġistrati.

(7) It-*trustee* ta' kull *trust*, minbarra *trust* reġistrat, li jkun jeżisti mad-data tal-bidu fis-sehh ta' dan it-Taqsima li ghalih japplikaw d-dispożizzjonijiet tas-subartikolu (1) tal-artikolu 43 ta' l-Att prinċipali kif emendat b'din it-Taqsima, għandu, f'sentejn minn dik id-data, jagħmel dak kollu li hu mehtieg biex iħares id-disposizzjonijiet ta' dan l-Att inkluz:-

(a) li japplika u jikseb awtorizzazzjoni bhala *trustee* skond l-artikolu 43 ta' l-Att prinċipali kif emendat b'din it-Taqsima; jew

(b) jagħmel id-dikjarazzjonijiet rilevanti u jhejji dak l-inventarju ta' attiv tat-*trust* kif mehtieg bl-artikolu 43A ta' l-Att prinċipali kif emendat b'din it-Taqsima; jew

(c) jinnotifika lill-Awtorità bl-attivitajiet tieghu safejn ikun mehtieg; jew

(d) jieqaf milli jaġixxi bhala *trustee* f'Malta sakemm ma jkunx awtorizzat skond l-Att prinċipali kif emendat b'din it-Taqsima.

(8) Ebda azzjoni valida li tkun saret u li għandha x'taqsam ma' *trust* qabel ma' din it-Taqsima tkun ġiet fis-sehh, ma għandha tkun milquta biha u ebda azzjoni li tkun saret qabel ma' din it-Taqsima tkun ġiet fis-sehh, mingħajr preġudizzju għal kull *trust* regolat b'liġi barranija u bid-disposizzjonijiet ta' l-Att dwar ir-Rikonoxximent ta' *Trusts*, ebda relazzjoni li kienet teżisti qabel ma din it-Taqsima tkun ġiet fis-sehh ma għandha titqies bhala relazzjoni ta' *trust* kemm-il darba ma jkunx jidher b'mod mhux ambigwu mir-relazzjoni li kienet maħsuba biex tohloq relazzjoni ta' *trust*.

Nominees
Liċenzjati.

(9) Mal-bidu fis-sehh ta' din il-Parti, l-ebda liċenża ta' *nominee* li jkollha liċenża ma għandha tinhareġ skond il-liġi applikabbli u l-liċenzi validi eżistenti kollha maħruġa sa dik id-data għandhom jiskadu ma' l-gheluq ta' sentejn mill-bidu fis-sehh ta' din it-Taqsima.

(10) (a) Malli jgħaddu sitt xhur mill-bidu fis-sehh ta' din it-Taqsima u sa dik id-data ta' skadenza msemmija, ebda *nominee* li jkollha liċenża ma għandha tagħmel xi attivitajiet godda bhala *nominee* li jkollha liċenża u għandha tkompli tagħti servizz biss dwar arrangamenti eżistenti;

(b) *Nominee* li jkollha liċenza għandha, qabel ma jgħaddu sentejn mill-bidu fis-sehħ ta' din it-Taqsima;

(i) jew tapplika għal awtorizzazzjoni taht l-artikolu 43 ta' l-Att prinċipali kif emendat b'din it-Taqsima;

(ii) jew tieqaf mill-attivitajiet ta' negozju tagħha:

Iżda jekk dik in-*nominee* li jkollha liċenza ma tiksibx awtorizzazzjoni biex taġixxi bhala *trustee* taht l-artikolu 43 dik in-*nominee* li jkollha liċenza tkun obbligata li tiżgura li d-drittijiet kollha tal-proprjetà taht *trusts* jew arrangamenti oħra jkunu konsenjati fil-forma mehtieġa bil-liġi lil persuna li tkun awtorizzata kif imiss biex taġixxi bhala *trustee* skond l-imsemmi artikolu 43 jew li d-disposizzjonijiet ta' l-artikolu 43A ikunu mharsa, skond il-każ.

(11) Minkejja kull limitazzjoni fil-memorandum u fl-istatut ta' assoċjazzjoni ta' xi kumpannija reġistrata bhala *nominee* li jkollha liċenza skond il-liġi applikabbli, kull kumpannija bhal dik tista' f'kull żmien tapplika għal, u tista' tinghata, awtorizzazzjoni biex taġixxi bhala *trustee* skond dan l-Att.

(12) Mal-hruġ ta' awtorizzazzjoni, skond l-artikolu 43 ta' l-Att prinċipali kif emendat b'din it-Taqsima, lil xi kumpannija bhal dik biex taġixxi bhala *trustee*, kull liċenza mahruġa skond il-liġi applikabbli għandha tiskadi u tkun kancellata u għandha tintradd lura lill-Awtorità.

(13) Mal-bidu fis-sehħ ta' din it-Taqsima, ma jinharġu ebda *warrants* bhala kumpanniji *nominee* skond il-liġi applikabbli. Kumpanniji
Nominee.

(14) (a) Meta fil-bidu fis-sehħ ta' din it-Taqsima, kumpannija *nominee* tkun qed taqdi biss il-funzjonijiet ta' stralċjarju ta' kumpannija *offshore*, din għandha minnufih trodd il-*warrant* tagħha lill-Awtorità għall-modifika u dak il-*warrant* għandu jibqa' jiġġedded biss rigward il-funzjonijiet ta' stralċjarju u sakemm il-kumpannija *nominee* tlesti l-istralċ tal-kumpanniji *offshore*, u minnufih wara l-kumpannija *nominee* għandha trodd lura l-*warrant* modifikat lill-Awtorità biex jiġi kancellat.

(b) Kumpannija *nominee* li tkun qed taqdi biss il-funzjonijiet ta' stralċjarju kif imsemmi ma għandha taġixxi bhala *trustee* f'ebda mod u hija ma tkunx intitolata li tapplika għall-awtorizzazzjoni biex taġixxi ta' *trustee* skond l-Att prinċipali kif emendat b'din it-Taqsima.

(15) (a) Meta mal-bidu fis-sehh ta' din it-Taqsima, kumpannija *nominee* tkun qieghda taqdi biss il-funzjonijiet ta' *trustee* ta' *trusts* reġistrati, il-*warrant* ta' dik il-kumpannija *nominee* ghandu jkun imġedded ghal perjodu massimu ta' sentejn mill-bidu fis-sehh ta' din it-Taqsima u dik il-kumpannija *nominee* ghandha, matul dak il-perjodu, tibqa regolata bl-Att prinċipali kif fis-sehh qabel il-bidu fis-sehh ta' din it-Taqsima u bid-disposizzjonijiet rilevanti tal-liġi applikabbli.

(b) Kumpannija *nominee* li tkun qieghda taqdi biss il-funzjonijiet ta' *trustee* kif imsemmi, ghandha, qabel jaghlaq il-perjodu ta' sentejn mill-bidu fis-sehh ta' din it-Taqsima:–

(i) jew tapplika ghal awtorizzazzjoni biex taġixxi ta' *trustee* skond l-artikolu 43 tal-Att prinċipali kif emendat b'din it-Taqsima;

(ii) jew tieqaf milli taġixxi ta' *trustee*:

Iżda meta kumpannija *nominee* ma tiksibx awtorizzazzjoni biex taġixxi bhala *trustee* skond l-artikolu 43 tal-Att prinċipali, hija jkollha l-obbligu li tiżgura li d-drittijiet kollha tal-proprjetà taht *trusts* jew arrangamenti ohra jkunu konsenjati fil-forma mehtieġa mil-liġi lill-persuna li tkun awtorizzata kif imiss biex taġixxi bhala *trustee* skond l-artikolu 43 jew li d-disposizzjonijiet ta' l-artikolu 43A ikunu mharsa, skond il-każ.

(16) Meta mal-bidu fis-sehh ta' din it-Taqsima, kumpannija *nominee* tkun qieghda taqdi sew il-funzjonijiet ta' stralċjarju ta' kumpanniji *offshore* kif ukoll il-funzjonijiet ta' *trustee* ta' *trusts* reġistrati, id-disposizzjonijiet tas-subartikolu (12) ghandhom *mutatis mutandis* japplikaw ghal dik il-kumpannija *nominee* fir-rigward tal-funzjonijiet taghha ta' *trustee*, u d-disposizzjonijiet tal-paragrafu (a) tas-subartikolu (11) ghandhom *mutatis mutandis* japplikaw ghal dik il-kumpannija *nominee* fir-rigward tal-funzjonijiet taghha ta' stralċjarju, u l-modifika tal-*warrant* kif provdut fil-paragrafu (a) tas-subartikolu (11) tkun mehtieġa biss fir-rigward tal-perjodu wara l-gheluq tas-sentejn mill-bidu fis-sehh ta' din it-Taqsima, li matulu l-kumpannija *nominee* tkompli taġixxi bhala stralċjarju ta' kumpanniji *offshore*.

(17) L-Awtorità ghandu jkollha s-setgħa li tehtieg dak it-tibdil fil-memorandum u fl-istatut ta' assojazzjoni ta' kull *nominee* li jkollha liċenza jew xi kumpannija *nominee* li tkun qed tapplika għall-awtorizzazzjoni, maghdud tibdil fl-isem, li jitqies mehtieġ sabiex l-istat taghha jkun iktar ċar, iżda l-ebda tibdil m'ghandu jkixkel lill-kumpannija milli tapplika għal, u tikseb, awtorizzazzjoni biex taġixxi bhala *trustee*

skond l-Att prinċipali kif emendat b'din it-Taqsima jew il-funzjonijiet bhala stralċarju ta' kumpannija *nominee* taht il-liġi applikabbli.

TAQSIMA II

EMENDI TAL-KODIĊI ĊIVILI, KAP. 16

36. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa wahda mal-Kodiċi Ċivili, hawnhekk iżjed 'il quddiem f'din it-Taqsima, imsejjah "il-Kodiċi".

Emendi tal-Kodiċi Ċivili, Kap. 16.

(2) Din it-Taqsima ghandha tibda ssehħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' jistabbilixxi b'avviż fil-Gazzetta, u dati differenti jistghu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew ghanijiet differenti tagħha.

37. L-artikolu 20 tal-Kodiċi għandu jiġi emendat kif ġej:-

Emenda ta' l-artikolu 20 tal-Kodiċi.

(a) fis-subartikolu (3) tiegħu, minnufih wara l-kliem "kemm immobbli" għandhom jidhlu l-kliem "u kull dhul li jinholq taht *trust*"; u

(b) fis-subartikolu (5) tiegħu, minnufih wara l-kliem "jew immobbli" għandhom jidhlu l-kliem "kif ukoll ta' kull interess benefiċjarju taht *trust*".

38. L-artikolu 163 tal-Kodiċi għandu jiġi emendat kif ġej:-

Emenda ta' l-artikolu 163 tal-Kodiċi.

(a) fil-paragrafu (f) tiegħu, minflok il-kliem "jew traskurati." għandhom jidhlu l-kliem "jew traskurati;"; u

(b) minnufih wara l-paragrafu (f) tiegħu għandu jidhol il-paragrafu ġdid li ġej:-

"(g) dawġ li huma *trustees* ta' proprjetà għall-benefiċċju tat-tfal taht l-età."

39. Minnufih wara l-artikolu 958 tal-Kodiċi għandhom jiżdiedu t-Titlu ġdid IIIA u l-artikoli ġodda minn 958A sa 958J li ġejjin:-

Żieda ta' artikoli ġodda minn 958A sa 958J mal-Kodiċi.

“Titlu IIIA

Fuq *Trusts* u l-Effetti Tagghom

Trusts u
regoli
applikabbli.

958A. (1) Il-proprjetà taht *trusts* ghandha tkun regolata bil-liġi speċjali dwar *trusts* u safejn applikabbli bir-regoli espressament provduti ta’ dan il-Kodiċi dwar *trusts*.

Transazzjonijiet dwar proprjetà taht *trusts*.

(2) (a) Dawk it-transazzjonijiet li jirreferu ghal proprjetà, inkluż:–

(i) it-tqeghid ta’ proprjetà taht *trusts* ukoll jekk tkun magħmula b’dikjarazzjoni unilaterali jew tirriżulta minn deċiżjoni jew b’ordni ta’ qorti;

(ii) it-tqassim, l-applikazzjoni jew l-avvanz ta’ proprjetà minn *trustee* lil xi benefiċjarju;

(iii) ir-reverżjoni ta’ proprjetà lis-*settlor* jew lill-patrimonju tiegħu meta *trust* ifalli jew ikun mitmum;

(iv) iċ-ċessjoni, vestiment jew trasferiment ta’ proprjetà taht *trusts* minghand *trustee* lil *trustee* iehor taht l-istess *trusts*,

ikunu soġġetti ghal-liġijiet speċjali li jirreferu ghal *trusts* u l-effetti tagħhom meta dawk it-transazzjonijiet jinqalghu bl-operat tal-liġi jew jitmexxew fil-forma u bil-mod meħtieġ bil-liġi applikabbli.

(b) Meta dawk it-transazzjonijiet ikunu mahsuba biex isir trasferiment tal-proprjetà jew jeddijiet ohra ghal hwejjeġ jew fi hwejjeġ minghand persuna ghal ohra, dawk it-transazzjonijiet ghandhom iharsu l-htigiet applikabbli kollha ghat-trasferiment tal-proprjetà ta’ dawk il-hwejjeġ, magħduda d-disposizzjonijiet ta’ l-artikolu 996 meta jkunu applikabbli, u meta hekk jitwettqu ghandhom:–

(i) ikunu modi effettivi ta’ trasferiment tal-proprjetà jew jeddijiet ohra ghal dawk il-hwejjeġ jew fihom;

(ii) jirriżultaw fil-holqien jew tmiem ta’ interessi li jistghu jkunu inforzati legalment f’dawk jew ghal dawk

il-hwejjeg favur dawk il-persuni kif provdut bil-ligijiet speċjali dwar *trusts*; u

(iii) joperaw kontra terzi.

(c) L-unika kawża għall-validità ta' dawk it-transazzjonijiet tista' tkun l-impożizzjoni jew assunzjoni, it-twettiq, jew it-tmiem, skond il-każ, ta' obligazzjonijiet li jistgħu jkunu inforzati legalment fuq jew minn *trustee* dwar dawk il-hwejjeg.

Disponiment minn *trustees* ta' proprjetà.

(3) *Trustee* jista' validament jiddisponi minn, u jitransferixxi, proprjetà ta' *trust* lil terzi minkejja kull dritt ta' legittima li jinholoq mill-applikazzjoni ta' l-artikoli minn 615 sa 653 u tad-disposizzjonijiet l-oħra ta' dan il-Kodiċi dwar it-tnaqqis ta' proprjetà ta' *trust*.

Trust Statutorju favur legittimarju li jagħmel talba.

(4) F'kull każ meta, wara l-mewt tas-*settlor*, it-*trustee* ikun formalment notifikat b'talba għal legittima f'ċirkostanzi fejn proprjetà ta' *trust* għandha tinbiegħ, it-*trustee* għandu jżomm fit-*trust* għall-benefiċċju ta' kull ma jagħmel talba għal dak id-dritt somma fi flus li l-valur tagħha jkun ibbażat fuq il-valur tat-trasferiment nett tal-proprjetà fiż-żmien tat-trasferiment sakemm it-talba għal-legittima tkun deċiża jew tkun skadjet.

(5) Jekk proprjetà ta' *trust* tkun soġġetta għal talba għal legittima jew, meta tkun inbiegħet, id-dhul mill-bejgħ ikun diġà tqassam lil kull benefiċjarju, it-talba legittimarja tista' ssir kontra dak il-benefiċjarju daqslikieku kien werriet, legatarju jew donatarju, skond il-każ, u jekk jifdal xi proprjetà taht dawk it-*trusts*, proporzjonalment bejn il-proprjetà tat-*trust* u l-benefiċjarju.

It-*trustee* iżomm il-valur għal hames snin għal-legittimarju.

(6) L-obbligu tat-*trustee* li jżomm il-valur provdut fis-subartikolu (4) ta' dan l-artikolu għandu jsehh biss għal perijodu perentorju ta' hames snin mid-data tal-mewt tal-persuna mejta. Dan ma jippreġudikax id-dritt ta' xi hadd li jagħmel talba dwar proprjetà oħra li tagħmel parti mill-eredità iżda li ma tkunx imqiegħda fi *trust*.

Limitazzjoni fuq drittijiet ta' tgawdija tal-benefiċċju.

958B. (1) *Trusts* għall-benefiċċju ta' persuna li ma tkunx kapaċi li tirċievi proprjetà, sew b'disposizzjoni testamentarja jew b'donazzjoni taht id-disposizzjonijiet ta' dan il-Kodiċi, jew b'mod assolut jew iktar milli permiss b'dan

il-Kodiċi, ikunu soġġetti għal tnaqqis shih jew għall-parti żejda skond dan l-artikolu:

Iżda f'każ ta' membri ta' l-ordnijiet monastiċi jew tax-xirkiet reliġjużi ta' regolari, id-disposizzjonijiet ta' l-artikolu 611 għandhom japplikaw għal *trusts* favur dawk il-persuni *mutatis mutandis*.

Tnaqqis ta' proprjetà li titqiegħed fi *trust*.

(2) Bla hsara għad-disposizzjonijiet ta' l-artikolu 6B ta' l-Att dwar it-*Trusts* u t-*Trustees*, hlief f'każijiet meta t-*trustee* jeżerċita setgħa ta' varjazzjoni jew xort'ohra jaġixxi sabiex iħares id-disposizzjonijiet ta' dan il-Kodiċi, proprjetà mqiegħda fi *trust* għandha titnaqqas għas-sehem permess bil-liġi jekk fiż-żmien tal-ftuħ tas-suċċessjoni tas-*settlor* tinsab li tkun teċċedi s-sehem tal-beni tiegħu li minnu jista' jiddisponi:

Iżda meta l-proprjetà ta' *trust* titnaqqas, l-eċċess tal-proprjetà għandu jinżamm mit-*trustee* assolutament għall-werrieta tas-*settlor* jew għall-benefiċċju tal-persuni li jkollhom dritt għalih, skond il-każ.

(3) Meta l-benefiċjarju li jkollu dritt għall-proprjetà li tkun aktar minn dak permess bil-liġi jkun il-parti l-ohra fiż-żwieġ tas-*settlor*, dak l-eċċess ta' proprjetà għandu jinżamm taht *trust* separat għall-użu u tgawdija tal-frott għal tul il-hajja ta' dik il-parti l-ohra fiż-żwieġ u, bla hsara għall-kondizzjonijiet tat-*trust*, wara għall-werrieta tas-*settlor* taht dritt assolut.

(4) Ir-regoli stabbiliti bl-artikolu 621 u bl-artikoli 647 sa 653, dwar it-tnaqqis ta' disposizzjonijiet testamentarji, għandhom ikunu mharsa dwar it-tnaqqis ta' proprjetà li titqiegħed fi *trust*, bla hsara għad-dispożizzjonijiet ta' dan it-titolu.

(5) It-tnaqqis ta' proprjetà mqiegħda fi *trust* tista' tintalab biss minn dawk li favur tagħhom il-liġi rizervat sehem tal-proprjetà tal-mejjet, u mill-werrieta tagħhom jew minn ohrajn li jagħmlu t-talba għalihom, u

(a) bla hsara għall-artikolu 1240, dawk il-persuni ma jistgħux jirrinunzjaw dak id-dritt matul il-hajja tas-*settlor*, sew b'dikjarazzjoni espressa sew bil-kunsens għal dak it-tqegħid fi *trust*;

(b) donatarji, legatarji jew kredituri tal-mejjet ma jistghux jitolbu t-tnaqqis tal-proprjetà fi *trust* jew jibbenefikaw minnu;

(c) *trusts* li jiformaw parti minn transazzjoni kummerċjali ma jistghux jitnaqqsu bl-ebda mod sakemm ma tkunx intemmet it-transazzjoni kummerċjali, meta l-proprjetà residwali tkun soġġetta għar-regoli msemmija f'dan l-artikolu.

Benefiċċju ta' diskussjoni ta' proprjetà oħra.

(6) Ebda tnaqqis ta' proprjetà mqieghda fi *trust* ma jista' jsir sakemm il-valur tal-proprjetà kollha mqassma taht xi testment ikun eżawrit u meta jigri dak it-tnaqqis, dan għandu jinbeda bl-aħħar tqeghid fit-*trust* u hekk suċċessivament, mill-aħħar sat-tqeghid precedenti.

(7) Id-dritt li jinholoq bit-tnaqqis ta' proprjetà tat-*trust* huwa li jkun riċevut il-valur u ma jkun hemm ebda dritt ta' restituzzjoni ta' proprjetà fi speċi.

(8) Sal-limitu ta' dak li ma jkunx tqassam qabel avviz għal talba, it-*trustee* għandu jirrestitwixxi il-frott ta' dik il-parti tal-proprjetà li tqieghdet fit-*trust* li teċċedi s-sehem disponibbli mill-jum tal-ftuh tas-suċċessjoni tas-*settlor* jekk l-azzjoni għat-tnaqqis tkun ingiebet fi żmien sena, xort'oħra mid-data tat-talba. Fil-każ imsemmi fis-subartikolu (4) ta' l-artikolu 958A, min jagħmel it-talba jkollu dritt għall-imghax fuq il-valur miżmum għall-benefiċċju tiegħu bir-rata mhallsa mill-banek fuq kontijiet ta' tiffidil mid-data tan-notifika tat-talba tiegħu lit-*trustee* jew mid-data li fiha t-*trustee* jirċievi r-rikavat, skond liema jigri l-aħħar.

Effetti ta' talba għal legittima.

(9) Salvi d-disposizzjonijiet ta' l-Att dwar it-*Trusts* u t-*Trustees*, kemm-il darba l-kondizzjonijiet tat-*trust* ma jeskludux espressament dak l-effett -

(a) persuna li titlob il-legittima minghand *trustee* titlef kull benefiċċju taht it- *trust*; u

(b) id-disposizzjonijiet tas-subartikolu (4) ta' l-artikolu 620 ta' dan il-Kodiċi għandhom japplikaw dwar kull qliegh li jkun riċevut skond il-kondizzjonijiet tat-*trust*.

(10) Meta l-benefiċċju għall-benefiċċjarju jkun jikkonsisti fl-użu u fit-tgawdija ta' proprjetà u t-tgawdija tal-

frott taghha jew f'vitalizju, u jkun jidher li l-valur tal-fond tat-*trust* jeċċedi s-sehem tal-beni li minnu jista' jiddisponi s-*settlor*, il-persuni li jkollhom dritt ghal-legittima jistgħu jitolbu –

(a) jew il-legittima u jtilfu l-benefiċċji kollha taht it-*trust* u kull testment, jekk ikun hemm; jew

(b) jirċievu minghand it-*trustee* wara l-mewt ta' l-imsemmi benefiċjarju u minkejja kull kondizzjoni tat-*trust*, ammont li jkun daqs l-imsemmija legittima u mgħax ta' 5% fis-sena mingħajr kumulu sal-valur tal-proprjetà tat-*trust* li jkun fadal f'dak iż-żmien u f'dak il-każ ma jkollhomx dritt għal benefiċċji taht it-testment jew it-*trust*. Dak li jifdal mill-proprjetà tat-*trust* għandu wara jkun applikat skond il-kondizzjonijiet tat-*trust*; jew

(c) jagħzlu li ma jagħmlux talba u jgawdu l-benefiċċji kollha taht xi *trust* jew xi testment.

(11) Meta, fil-każ imsemmi fis-subartikolu minnufih qabel dan, il-benefiċjarju jkun soġġett għal diżabilità mentali jew fiżika li tagħmlu inkapaċi li jista' jmantni lili nnifsu, jekk fil-fehma tat-*trustee* il-proprjetà tat-*trust* ma tkunx tista' tinqasam, tinbiegħ jew titnaqqas biex tissodisfa t-talbiet ta' legittimarju skond il-paragrafu (a) tas-subartikolu (10) ta' dan l-artikolu mingħajr ma jkunu preġudikati materjalment l-interessi ta' l-imsemmi benefiċjarju, it-*trustee* jista' jagħmel rikors lill-Qorti u l-Qorti tista' tordna li l-proprjetà ma tinbiegħx, ma tkunx maqsuma jew ma titnaqqasx sal-mewt ta' l-imsemmi benefiċjarju. Barra minn hekk f'każ bħal dan:–

(a) il-benefiċjarju ma jkollux dritt li jitlob it-tnaqqis tat-*trust* favur tiegħu u jitlob il-legittima, u

(b) kull legittimarju iehor ikollu dritt li jagħzel li japplika l-paragrafu (b) tas-subartikolu (10) ta' dan l-artikolu fil-hin tal-mewt tal-benefiċjarju kemm-il darba ma jkunx għamel għażla skond il-paragrafu (c) ta' dak l-artikolu fi żmien hames snin mill-mewt tas-*settlor*.

(12) Il-legittimarji jistgħu jagħmlu kull wahda mill-għażliet fuq imsemmija b'avviż bil-miktub lit-*trustee* u lill-werrieta jew eżekutori l-oħra tal-wirt.

Preskrizzjoni. (13) L-azzjoni għal tnaqqis, sew kontra *trustees* jew terzi, tkun preskritta malli jghaddu hames snin li jkunu kalkolati mill-jum tal-ftuh tas-suċċessjoni. L-imsemmi żmien jghodd ukoll kontra minuri u persuni interdetti u ma jkunx jista' jkun sospiz jew interrott b'att ġudizzjarju jew xort'ohra.

Persuni li m'humix denji li jirċievu taht *trusts*. **958C.** (1) Id-disposizzjonijiet ta' l-artikolu 605 għandhom japplikaw għal *trusts* bl-istess mod kif japplikaw għal testmenti, u fil-każijiet hemmhekk maħsuba, *trusts* favur persuna bhal dik ikunu jistgħu jingiebu fit-tmiem fuq it-talba tat-*trustee* jew xi persuna li jkollha interess.

(2) Minkejja li proprjetà tkun tqieghdet fi *trust* mingħajr ir-rizerva tad-dritt tar-revoka jew varjazzjoni, *settlor* jista' jitlob il-varjazzjoni tal-kondizzjonijiet tat-*trust* għar-raġunijiet speċifikati fl-artikolu 1787 u d-disposizzjonijiet ta' l-artikoli 1788 u 1790 ta' dan il-Kodiċi u dawk ta' l-artikolu 15 ta' l-Att dwar it-*Trusts* u t-*Trustees* għandhom japplikaw.

Applikazzjoni tar-regoli għal tqeghid ta' proprjetà fi *trust*. **958D.** Meta jkunu jeżistu kemm donazzjonijiet kif ukoll tqeghid ta' proprjetà fi *trust*, sabiex tkun stabbilita l-ordni tat-transazzjonijiet u hwejjeg ohra għall-fini ta' tnaqqis ta':—

(a) donazzjonijiet skond is-Subtitlu VI tat-Titlu XIV tat-Taqsima II tat-Tieni Ktieb, u

(b) it-tqeghid ta' proprjetà fi *trust* skond dan it-Titlu,

donazzjonijiet u tqeghid ta' proprjetà fi *trust* għandhom jitqiesu li jagħmlu parti mill-istess xorta ta' transazzjonijiet u jkunu soġġetti għal tnaqqis li jibda ma' l-ahhar fid-data kemm-il darba s-*settlor* jew id-donatur ma jkunx espressament għamel l-ordni li jkun jixtieq tiġi applikata għal dak l-ghan.

Proprjetà ta' *trust* soġġetta għall-kollazzjoni. **958E.** (1) Għall-finijiet tal-kalkolu tal-valur tal-wirt għal xi fini ta' dan il-Kodiċi, maghdud għall-benefiċċju ta' min jagħmel talba għal leġittima u ta' werriet għall-finijiet ta' kollazzjoni fost il-koeredi, kull tqeghid ta' proprjetà fi *trust* għandha wkoll tkun maghduda mal-wirt:

Iżda s-*settlor* ta' proprjetà li titqieghed fi *trust* jista' jeżenta dik il-proprjetà mill-kollazzjoni għall-fini ta' l-artikolu 914:

Iżda wkoll jekk il-proprjetà mqieghda fi *trust* għall-benefiċċju ta' werriet tkun giet kollazzjonata fl-interess tal-koeredi l-oħra, dik il-proprjetà li tkun is-suġġett tal-kollazzjoni għandha minn hemm 'il quddiem tinżamm mit-*trustee* taht *trust* separat taht dritt assolut għall-benefiċċju ta' dak il-werriet.

Trustees u
eżekutori
testamentarji.

958F. (1) *Trustee* mahtur skond *trust* testamentarju ma jitqiesx li jkun eżekutor testamentarju u d-disposizzjonijiet ta' l-artikolu minn 762 sa 778 ma għandhomx japplikaw għal *trustees* testamentarji.

(2) Meta persuna tinhatar bhala *trustee* kif ukoll bhala eżekutor, dik l-eżekutorija tkun regolata skond dan il-Kodiċi sa dak iż-żmien li l-eżekutorija tkun imwettqa mal-konsenja jew reġistrazzjoni ta' kull attiv rilevanti lil jew f' isem it-*trustee*.

Proprjetà
f' Malta,
trust Malti
jew barrani,
domiciljarju
barrani.

958G. (1) Meta proprjetà mobbli jew immobbli sitwata f' Malta tkun tqieghdet fi *trust*, taht il-liġijiet ta' Malta jew xort' oħra, minn persuna li ma tkunx domiciljata f' Malta fil-hin tat-tqieghid fi *trust*:—

(a) dik il-persuna titqies li kellha l-kapaċità li tagħmel hekk jekk fil-hin ta' dak it-trasferiment jew disposizzjoni tkun maġġorenni u mentalment kapaċi taht il-liġi tad-domicilju tagħha u l-liġi ta' Malta; u

(b) ebda disposizzjoni f'dan il-Kodiċi dwar wirt jew suċċessjoni għal dik il-proprjetà inkluża, iżda bla hsara għall-ġeneralità ta' dak hawn qabel imsemmi, drittijiet għall-leġittima jew drittijiet simili applikabbli taht dan il-Kodiċi ma għandhom japplikaw għal dik il-proprjetà tat-*trust*, f'dak il-waqt jew wara, u

(c) il-benefiċjarji għandhom jitqiesu li jkunu kapaċi li jibbenifikaw.

(2) La darba l-proprjetà tkun tqieghdet fi *trust*, din ma tkunx milquta b'tibdil tad-domicilju tas-*settlor*, ukoll jekk is-*settlor* wara jsir domiciljat f' Malta.

(3) Għall-finijiet ta' dan l-artikolu, "leġittima" tfisser ir-regola legali li tillimita d-dritt ta' persuna li tiddisponi mill-proprjetà tagħha matul hajjitha sabiex tikkonserva dik il-proprjetà għal tqassim ma' mewtha, jew li jkollha effett simili.

Dritt ta' fidi ma japplikax. **958H.** Id-dritt ta' fidi kif provdut fl-artikolu 912 ta' dan il-Kodiċi ma japplikax meta t-trasferiment tas-sehem individwi tal-wirt jikkonsisti fit-tqeghid ta' dak id-dritt fi *trust*, li l-benefiċjarji tiegħu jkunu s-*settlor* nnifsu, il-werrieta tiegħu jew il-werrieta l-oħra tal-wirt jew tqassim jew riverżjoni tiegħu lil dawk il-persuni.

Limitazzjoni fuq l-applikabilità tal-artikoli 1000 u 1001. **958I.** Id-disposizzjonijiet ta' l-artikoli 1000 u 1001 ma għandhomx ikunu mfissra bhala li jgħolqu xi limitazzjoni fuq is-setgħa ta' xi persuna li tqiegħed proprjetà fi *trust* jew li persuna taetta li tagħxi bhala *trustee* taht *trust* għall-benefiċċju tal-benefiċjarju jew fuq ix-xorta u l-effett tar-rabta ta' xi *trust* jew fuq l-eżegwibilità tal-jeddiġiet li jinqalghu taht *trust* minn benefiċjarju.

Id-dispożizzjonijiet tal-artikolu 1483 ma jghoddux. **958J.** Il-jedd ta' debitur dwar jedd litigjuż skond l-artikolu 1483 ta' dan il-Kodiċi ma jsehħx meta t-tqeghid fi *trust* jinvolvi ċ-ċessjoni ta' jedd litigjuż taht *trusts* għall-benefiċċju tal-kreditur jew kredituri li jkunu ċedew id-dejn.”.

40. Minnufih wara l-artikolu 1124 tal-Kodiċi, għandhom jiżdiedu s-subtitolu ġdid u l-artikoli 1124A u 1124B godda li ġejjin:-

Żieda ta' artikoli 1124A u 1124B godda mal-Kodiċi.

“VII. FUQ L-OBBLIGAZZJONIJIET FIDUĊJARJI

Obbligazzjonijiet fiduċjarji. **1124A.** (1) Obbligazzjonijiet fiduċjarji jinqalghu bis-sahħa tal-liġi, kuntratt, kważi kuntratt, *trust*, assunzjoni ta' kariga jew imġieba fejn persuna (il-“fiduċjarju”):-

(a) ikollha d-dmir li thares l-interessi ta' persuna oħra, jew

(b) iżżomm, teżerċita kontroll jew jkollha setgħat ta' disponiment fuq proprjetà għall-benefiċċju ta' persuna oħra, inkluż meta din tkun vestita bhala sid ta' dik il-proprjetà għal dan l-ghan, jew

(c) tirċievi tagħrif minghand persuna oħra marbuta bid-dmir tal-konfidenzjalità u dik il-persuna tkun taf, jew fiċ-ċirkostanzi kollha b'mod raġonevoli għandha tkun taf, li l-użu ta' dak it-tagħrif huwa ntiz li jkun ristrett.

(2) Persuna li tkun delegata xi funzjoni minn fiduċjarju u tkun taf, jew miċ-ċirkostanzi għandha tkun taf

bl-obbligazzjonijiet fiduċjarji ghandha wkoll titqies li hi soġġetta għall-obbligazzjonijiet fiduċjarji.

(3) Obbligazzjonijiet fiduċjarji jinqalghu minn imġieba meta persuna -

(a) minghajr ma jkollha dritt, tiehu u tagħmel użu minn proprjetà jew tagħrif li jkunu ta' haddiehor, sew għall-benefiċċju tagħha jew xort'ohra; jew

(b) meta tkun terza persuna, taġixxi meta tkun taf, jew meta tkun raġonevolment mistennija li tkun taf, miċ-ċirkostanzi, bil-ksur ta' obbligazzjonijiet fiduċjarji mill-fiduċjarju, u tirċievi jew xort'ohra takkwista proprjetà jew tagħmel qliegh iehor mill-għemil jew permezz ta' l-għemil tal-fiduċjarju.

(4) Minghajr preġudizzju għad-dmir ta' fiduċjarju li jwettaq l-obbligazzjonijiet tiegħu bl-ikbar *bona fide* u li jaġixxi b' mod onest fil-każijiet kollha, fiduċjarju jkun marbut, bla ħsara għad-disposizzjoni espressa ta' liġi jew kondizzjonijiet espressi ta' xi kuntratt bil-miktub li jeskludi jew jimmodifika dak id-dmir, skond il-każ:–

(a) li jeżerċita d-diligenza ta' *bonus pater familias* fit-twettiq ta' l-obbligazzjonijiet tiegħu;

(b) li jevita kull konflitt ta' interess;

(c) li ma jirċevix xi profitt mhux dikjarat jew mhux awtorizzat mill-kariga jew funzjonijiet tiegħu;

(d) li jaġixxi b' mod imparzjali meta d-dmirijiet ta' fiduċjarju jkunu lejn iktar minn persuna wahda;

(e) li jzomm kull proprjetà li tista' tkun akkwistata jew miżmuma bhala benefiċjarju, segregata mill-proprjetà personali tiegħu u minn dik ta' persuna ohra li favur tagħhom jista' jkollu obbligazzjonijiet simili;

(f) li jzomm *records* xierqa bil-miktub ta' l-interess tal-persuna li favur tagħha jkunu obligati l-obbligazzjonijiet fiduċjarji;

(g) li jagħti kont dwar il-proprjetà soġġetta għal dawk l-obbligazzjonijiet fiduċjarji;

(h) li jirritorna fuq talba li ssirlu kull proprjetà miżmuma taht obligazzjonijiet fiduċjarji lill-persuna li leġittimament ikollha jedd ghalha jew kif ordnat minnha jew kif xort'ohra mehtieġa mil-liġi applikabbli.

(5) B'zieda ma' kull rimedju ieħor skond il-liġi, persuna soġġetta għall-obbligazzjonijiet fiduċjarji li tikser dawk l-obbligazzjonijiet tkun marbuta li trodd lura kull proprjetà flimkien mal-benefiċċji l-oħra kollha miksuba minnha, sew direttament sew indirettament, lil min ikun dovut id-dmir.

(6) L-obbligu li tinghata lura proprjetà miksuba minn ksur ta' dmir fiduċjarju għandu japplika wkoll għall-proprjetà kollha li fiha il-proprjetà oriġinali kienet konvertita jew li biha kienet sostitwita.

Fiduċjarju
bħala
proprjetarju.

1124B. (1) Meta proprjetà tkun vestita f'persuna bħala proprjetarja li żżommha taht obligazzjonijiet fiduċjarji, terzi jistgħu jaġixxu ma' dik il-persuna daqslikieku l-persuna kienet is-sid assolut tagħha.

(2) Meta persuna żżomm proprjetà soġġetta għal obligazzjonijiet fiduċjarji, dik il-proprjetà ma tkunx soġġetta għat-talbiet jew drittijiet ta' azzjoni tal-kredituri personali tagħha jew tal-parti l-oħra tagħha fiż-żwieġ jew ta' werrieta tagħha skond il-liġi.

(3) Persuna li tkun qed tittratta ma' fiduċjarju dwar proprjetà soġġetta għal obligazzjonijiet fiduċjarji ma jkollhiex għalfejn -

(a) tistaqsi dwar il-kondizzjonijiet ta' l-awtorità tagħha; jew

(b) tikseb il-kunsens tal-persuna li lilha jkun dovuti d-dmirijiet ta' fiduċjarji jew ta' xi persuna oħra,

u kemm-il darba tkun *in bona fide*, ikollha dritt li toqghod fuq dikjarazzjonijiet magħmula mill-fiduċjarju dwar l-awtorità tiegħu.

(4) Il-fiduċjarju jista' jagħti lil kull persuna li tittratta miegħu ċertifikat li jkun fih it-tagħrif li ġej mingħajr ma jkun bi ksur ta' xi obligazzjoni ta' konfidenzjalità:

(a) li l-awtorità teżisti, id-data meta jkun ġie eżegwit id-dokument rilevanti u li l-awtorità ma tkunx ġiet revokata;

(b) dikjarazzjoni li jkun awtorizzat biex iwettaq it-transazzjonijiet li jkunu qed isiru; u

(c) l-identità u l-indirizz tal-fiduċjarju.

(5) Kull fiduċjarju li johroġ ċertifikat li jkun fih xi dikjarazzjoni li hu jkun jaf, jew li ghandu jkun jaf, li hu falz, ikun hati ta' reat u jehel meta jinsab hati l-piena ta' prigunerija ghal żmien ta' mhux aktar minn sentejn jew multa.”.

Emenda ta' l-artikolu 1322 tal-Kodiċi.

41. Is-subartikolu (3) ta' l-artikolu 1322 tal-Kodiċi ghandu jiġi emendat kif ġej:-

(a) fil-paragrafu (l) tiegħu, minflok il-kliem “l-artikolu 2010; u” ghandhom jidhlu l-kliem “l-artikolu 2010;”;

(b) fil-paragrafu (m) tiegħu, minflok il-kliem “beni immobbli.” ghandhom jidhlu l-kliem “beni immobbli; u ”; u

(c) minnufih wara l-paragrafu (m) tiegħu, ghandu jizdied il-paragrafu ġdid li ġej:-

“(n) it-tqeghid fi *trust* ta' beni li jkunu parti mill-komunjoni ta' l-akkwisti u l-varjazzjoni jew revoka tal-kondizzjonijiet ta' kull *trust* li fih ikunu tqeghdu xi beni bħal dawk.”.

Żieda ta' artikolu ġdid 1740A mal-Kodiċi.

42. Minnufih wara l-artikolu 1740 tal-Kodiċi ghandu jizdied l-artikolu 1740A li ġej:-

“Regoli ta' donazzjoni ma japplikawx għall-proprjetà mqieghda fi *trust*.”

1740A. Ir-regoli dwar id-donazzjonijiet ma japplikawx għall-proprjetà mqieghda fi *trusts* jew it-tqassim ta' proprjetà mqieghda fi *trust* hlief meta provdut espressament fid-disposizzjonijiet ta' dan il-Kodiċi.”.

Żieda ta' artikolu ġdid 1871A mal-Kodiċi.

42A. Minnufih wara l-artikolu 1871 tal-Kodiċi, ghandu jizdied l-artikolu ġdid 1871A li ġej:

“**1871A.** (1) Kull persuna li iżzomm proprjetà għal persuna ohra, iżzomm il-proprjetà soġġetta għal obligazzjonijiet fiduċjarji lejn il-persuna li tinkarigaha għal

dak l-ghan, u tkun regolata bid-disposizzjonijiet ta' dan il-Kodiċi dwar obbligazzjonijiet fiduċjarji.

(2) Meta dik il-persuna takkwista proprjetà f'isimha stess iżda għan-nom ta' mandant, il-mandant jkollu f'kull żmien il-jedd li jitlob mingħand il-mandatarju t-trasferiment tagħha immedjat u bla kondizzjoni. Il-mandatarju għandu ma' dik it-talba, jew, f'kull każ mat-tmiem taż-żmien li matulu kellu jkompli l-mandat, minnufih jagħti rendikont tal-mandat tiegħu skond l-artikolu 1875 ta' dan il-Kodiċi u jittrasferixxi l-proprjetà lill-mandant b'dak il-mod li jkun xieraq, soġġett għal xi kondizzjonijiet speċjali tal-mandat dwar drittijiet u spejjeż u jeddijiet ta' xi terzi *in bona fide*.

(3) Minkejja l-artikolu 1886 ta' dan il-Kodiċi, mandat favur persuna li tkun qed taġixxi skond dan l-artikolu ma jiskadix:–

(i) mal-mewt tal-mandant u jibqa' jorbot lill-mandatarju li jikkonserva l-proprjetà u l-jeddijiet kollha relatati miegħu sa dak iż-żmien li l-proprjetà tkun miżmuma minnu tkun trasferita validament lill-eredi jew legatarji tal-mandant; u

(ii) mal-falliment tal-mandant jew tal-mandatarju u jibqa' jorbot lill-mandatarju biex jikkonserva l-proprjetà u l-jeddijiet kollha relatati magħha sa dak iż-żmien li l-proprjetà miżmuma minnu tkun validament trasferita kif ordnat mill-qorti kompetenti għall-benefiċċju tal-mandant jew tal-kredituri tiegħu skond il-każ.

(4) Kondizzjoni tal-mandat li tkun tidher li torbot mandatarju kif intqal hawn fuq biex tkun trasferita l-proprjetà miżmuma minnu lil terzi wara l-mewt tal-mandant ma tkunx valida kemm-il darba dik id-disposizzjoni ma tkunx magħmula b'testment skond il-formalitajiet mehtieġa bil-liġi.

(5) Fil-każ tal-mewt tal-mandant, il-werrieta skond il-liġi jew l-eżekutor, jekk ikun hemm, tat-testment tal-mandatarju, jkunu marbutin bl-istess obbligazzjonijiet biex jikkonservaw il-proprjetà miżmuma għall-mandant u li minnufih jittrasferixxu l-proprjetà lill-mandant jew kif jista' jordnalhom, salvi dawk il-jeddijiet għall-hlas ta' drittijiet u spejjeż pendenti skond il-liġi.

(6) Minkejja d-disposizzjonijiet tas-subartikolu (1) ta' l-artikolu 1871 ta' dan il-Kodiċi, f'każijiet fejn mandatarju, kif imsemmi hawn qabel, iġib b'kull mezz għall-attenzjoni ta' terzi l-fatt li huwa jkun qed jaġixxi f'dik il-kapaċità, il-mandatarju ma jkunx personalment responsabbli għall-obbligazzjonijiet li jkunu saru hliet dwar u sal-limitu tal-proprjetà miżmuma minnu.”.

Żieda ta' titolu ġdid u artikoli 2095A sa 2095E godda mal-Kodiċi.

43. Minnufih wara l-artikolu 2095 tal-Kodiċi għandhom jiżiedu t-titolu ġdid u l-artikoli godda minn 2095A sa 2095E li ġejjin:

“TITOLU XXIII A FUQ *TRUSTS* U OBBLIGAZZJONIJIET

Subtitolu I Fuq l-effetti matrimonjali

Trusts u miżżewġin.

2095A. (1) Proprjetà li tkun is-sogġett ta' kuntratti matrimonjali tista' titqiegħed fi *trust* biss bil-mezz ta' dokument bil-miktub. *Trusts* bejn il-miżżewġin ma jinholqux bl-operat tal-liġi.

(2) Proprjetà li tagħmel parti mill-komunjoni ta' l-akkwisti jew li tkun regolata bis-sistema tal-komunjoni ta' residwu taħt amministrazzjoni separata tista' biss titqiegħed fi *trust* bil-kunsens taż-żewġ konjuġi. Proprjetà parafernali ta' parti mill-konjuġi tista' titqiegħed fit-*trust* minn dik il-parti li taġixxi waħedha.

(3) Proprjetà mqiegħda fi *trust* mill-partijiet miżżewġin flimkien tista' biss tkun varjata jew, jekk revokabbli, tista' biss tkun revokata miż-żewġ konjuġi li jaġixxu flimkien u wara l-mewt ta' waħda mill-partijiet dik it-*trust* tkun irrevokabbli minkejja kull waħda mill-kondizzjonijiet tiegħu, mingħajr l-awtorizzazzjoni tal-Qorti fil-ġurisdizzjoni volontarja tagħha.

(4) Interess benefiċjarju miżmum minn parti miżżewġa taħt *trust* ma jkunx parti mill-komunjoni ta' l-akkwisti, irrispettivament minn meta l-proprjetà tkun tqiegħdet favur il-parti jew meta l-parti tkun saret benefiċjarja, hliet fil-każ ta' interess benefiċjarju taħt *trust* li fih proprjetà tal-komunjoni tkun tqiegħdet miż-żewġ konjuġi u biss dwar dik il-proprjetà.

(5) Kull tqassim ta' dhul magħmul favur parti miżżewġa għandu, kemm-il darba ma jkunx provdut

espressament mod iehor fid-dokument tat-*trust*, jaghmel parti mill-komunjoni ta' l-akkwisti jew mill-komunjoni ta' residwu taht amministrazzjoni separata ta' dik il-parti, kif jista' jkun applikabbli, skond l-artikolu 1320 u s-subartikolu (2) ta' l-artikolu 1338 ta' dan il-Kodiċi rispettivament.

(6) Meta d-dar matrimonjali tkun is-soġġett ta' *trusts* ghall-benefiċċju tal-konjugi miżżewġa jew ta' wahda minnhom, ebda haġa fid-dokument tat-*trust* jew fil-liġi ma ghandha tisser li parti tgawdi inqas drittijiet ghad-dar u ghat-tgawdija tagħha taht l-artikolu 3A ta' dan il-Kodiċi, u l-kondizzjonijiet tat-*trust* ma ghandhomx jiġu revokati jew varjati, u lanqas ma jista' t-*trustee* jiddisponi mill-imsemmija proprjetà, mingħajr il-kunsens taż-żewġ partijiet miżżewġa jew, fin-nuqqas tal-kunsens, mingħajr l-awtorizzazzjoni tal-Qorti.

(7) Kull dejn, indennizz jew responsabbiltà ohra dovuta minn parti mill-konjugi li tkun qed taġixxi bhala *trustee* ma tkunx piż fuq il-beni tal-komunjoni ta' l-akkwisti skond l-artikolu 1327 hlief kif provdut fl-artikolu 1329 u ghall-finijiet ta' l-artikolu 1340 kull dejn bhal dak jitqies li jkun parafernali.

Parti
miżżewġa
benefiċċjarja
taht *trust*
istitwit mill-
parti l-ohra.

2095B. (1) Persuna tista' tqiegħed proprjetà taht *trusts* ghand il-parti l-ohra miżżewġa fil-kariga ta' *trustee* ghall-benefiċċju ta' benefiċċjarji li jistghu jinkludu wkoll dawk il-persuni bhala benefiċċjarji.

(2) Meta parti miżżewġa tkun benefiċċjarja, *trustee* ma jistax jaghmel kuntratt ta' bejgh ma' dik il-parti miżżewġa li tkun *settlor* hlief fil-każijiet speċifikati fis-subparagrafu (b) ta' l-artikolu 1366 ta' dan il-Kodiċi.

(3) Persuna ma tistax tkun benefiċċjarja taht *trust* li jkun istitwit mill-parti l-ohra miżżewġa għal iktar mill-proprjetà li tkun tista' tithalla jew tinghata b'donazzjoni lil dik il-parti skond dan il-Kodiċi. Minkejja l-kondizzjonijiet tat-*trust* u r-regoli tal-liġi xort'ohra applikabbli dwar l-eċċess, l-eċċess għandu jinżamm mit-*trustee* għall-użu u t-tgawdija ta' dik il-parti għal hajjitha u wara jinżamm fi *trust* għas-*settlor* jew għall-werrieta tieghu.

(4) Jekk parti miżżewġa benefiċċjarja jkollha dritt bil-liġi li tkun sid ta' xi proprjetà, il-proprjetà miżmuma fi *trust* sal-porzjon riżervata, meta jitqiesu d-disposizzjonijiet kollha l-ohra favur dik il-persuna, għandha bis-saħħa ta' din

id-disposizzjoni tinzamm fi *trust* separat għall-benefiċċju ta' dik il-parti miżżewġa biss, irrispettivament mill-kondizzjonijiet tat-*trust*. Kull proprjetà oħra li titqiegħed fi *trust* għall-benefiċċju tal-parti miżżewġa għandha, irrispettivament mill-kondizzjonijiet tat-*trust*, tinzamm taħt it-*trust* biss għall-użu u t-tgawdija tal-benefiċjarju għal tul hajtu u wara għall-benefiċċju tas-*settlor* jew tal-werrieta tiegħu. Id-disposizzjonijiet ta' hawn qabel ikunu bla hsara għad-dritt ta' xi leġittimarju li jitlob it-tnaqqis tat-*trust* meta dak li jitqiegħed fit-*trust* jolqot id-dritt tal-leġittima kif provdut b'dan il-Kodiċi.

Proprjetà ta' *trust* mhux parti mill-proprjetà matrimonjali.

2095C. Id-disposizzjonijiet tal-liġi dwar partijiet miżżewġa jew proprjetà matrimonjali ma għandhom japplikaw b'ebda mod għall-azzjonijiet ta' parti miżżewġa meta din tkun qed taġixxi bhala *trustee*.

Subtitolu II Fuq Renti

Disposizzjonijiet dwar renti ma jghoddux.

2095D. It-titolu XI tat-Tieni Ktieb “Fuq il-Kostituzzjoni ta' Renta” u d-disposizzjonijiet tas-subtitoli I u II tiegħu ma għandhomx jghoddu għal *annuities* stabbiliti bi *trust* jew f'dokument ta' *trust* jew f'testament u d-dmirijiet ta' *trustee* u d-drittijiet tal-benefiċjarji għandhom jiġu regolati esklużivament mill-pattijiet tat-*trusts* u l-liġijiet speċjali dwar *trusts*.

Subtitolu III *Trusts* ta' Garanzija

Trusts ta' garanzija.

2095E. (1) Garanzija tista' tinholoq favur *trustee*, imsejjah *trustee* tal-garanzija, għal benefiċċju ta' kreditur jew kredituri, prezenti jew futuri jew għal benefiċċju ta' klassi ta' kredituri.

Għall-finijiet ta' l-artikolu 2042 u disposizzjonijiet oħra taħt liġijiet speċjali li jistgħu jkun japplikaw għal garanziji, it-*trustee* għandu jitqies bhala kreditur u jkollu dritt li jkun reġistrat bhala d-detentur tal-garanzija, fejn tkun indikata l-pożizzjoni bhala *trustee*.

(2) It-*trustee* tal-garanzija jgawdi dawk id-drittijiet kollha u jkun soġġett għal dawk l-obbligazzjonijiet li jkun dikjarati fid-dokument bil-miktub li jirregola:–

(a) il-hatra tat-*trustee* tal-garanzija, u

(b) il-garanzija moghtija lit-*trustee* tal-garanzija għall-benefiċċju tal-kreditur jew kredituri.

(3) Garanzija, għall-finijiet ta' dan l-artikolu tfisser, kull arrangament li bih ikunu mharsa d-drittijiet ta' kreditur, inklużi kull obbligazzjoni, garanzija, mandat, rahan, ċessjoni, trasferiment, ghotja, privileġġ jew ipoteka jew it-tqegħid ta' proprjetà fil-pussess jew taht il-kontroll tat-*trustee* bi drittijiet ta' żamma u bejgh kif jista' jkun miftiehem.

(4) Meta tinholoq ipoteka favur *trustee* ta' garanzija li jkun bank jew entità oħra tkun awtorizzata skond l-Att dwar il-Kummerċ Bankarji, jew skond leġislazzjoni barranija ekwivalenti, dik l-ipoteka tista', minkejja kull disposizzjoni oħra tal-liġi, tinghata biex tiggarantixxi djun futuri mill-istess debitur lit-*trustee* tal-garanzija jew lil benefiċjarji tat-*trust* ta' garanzija, prezenti u futuri, kif jista' jkun imfisser fid-dokument tat-*trust*. L-ipoteka tkun valida jekk l-att li jikkostitwixxi l-ipoteka espressament jipprovdi li jkun jiggarantixxi djun futuri ta' l-istess debitur u jillimita l-effetti ta' l-ipoteka għal somma massima stabbilita. Dak it-tagħrif għandu jagħmel parti min-nota ta' reġistrazzjoni relattiva għar-reġistrazzjoni skond l-artikolu 2042 ta' dan il-Kodiċi.

(5) Meta l-garanzija tinghata lil *trustee* ta' garanzija, dak it-*trustee* ikollu s-setgha u l-interess legali li jippreżenta kull proċediment legali sabiex tiġi inforzata dik il-garanzija wkoll meta skond il-kondizzjonijiet tad-dokument tat-*trust* u l-garanzija:–

(a) it-*trustee* ma jkunx kreditur tad-dejn jew obbligazzjoni prinċipali; jew

(b) il-kredituri kollha jkollhom d-dritt *in solidum* li jharrku biex ikun inforzat dak id-dejn:

Iżda l-hlas mid-debitur jew lit-*trustee* tal-garanzija jew lill-benefiċjarju, jekk dawn ikunu wkoll kredituri, jissodisfa l-obbligazzjonijiet tad-debitur sal-limitu tal-hlas magħmul.

(6) Bla hsara għas-subartikolu li jahbat minnufih qabel dan, ebda haġa fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili ma ttellef l-azzjoni ta' *trustee* ta' garanzija għall-benefiċċju tal-benefiċjarji taht *trust* abbażi ta' xi azzjoni

gudizzjarja jew ohra li tittiehed fl-istess hin minn xi benefiċjarju taht *it-trust*.

(7) *Trustee* ta' garanzija ma jkun sugġett ghal ebda obligazzjoni tal-kredituri li għall-benefiċċju tagħhom jista' jzomm garanzija hlief sal-limitu li jkun ftiehem espressament bil-miktub.

(8) *Trustee* ta' garanzija jista' jirriżenja, jirtira jew ikun sostitwit skond il-kondizzjonijiet tat-*trust* u f'dak il-każ *it-trustee* tal-garanzija oriġinali għandu jċedi l-garanzija miżmuma minnu lit-*trustee* tal-garanzija sostitut, fil-forma mehtieġa bil-liġi għall-garanzija partikolari miżmuma.

(9) Benefiċjarji ta' *trust* ta' garanzija li jistgħu jkunu vestiti bid-dejn, jistgħu jċedu d-dejn lil terzi u d-disposizzjonijiet ta' l-artikolu 1475 għandhom japplikaw għall-garanzija ta' dak id-dejn ukoll jekk miżmuma minn *trustee* ta' garanzija u f'dan il-każ lil min jiġi ċedut dak id-dejn igawdi d-drittijiet tal-benefiċjarju taht *it-trust* ta' garanzija ma' l-avviż jew mar-rikonoxximent mit-*trustee* mingħajr il-htieġa ta' ċessjoni separata tad-drittijiet benefiċjarji taht id-dokument tat-*trust*.

(10) Il-hatra ta' *trustee* ta' garanzija biex iżomm garanzija, it-tnehhija tiegħu jew is-sostituzzjoni tiegħu minn *trustee* ieħor u kull transazzjoni relatata ma għandhomx joperaw bhala novazzjoni lanqas ma għandhom jolqtu l-garanzija kostitwita validament bl-ebda mod.

(11) *Trustee* ta' garanzija jista' wkoll jaġixxi bhala aġent jew mandatorju għall-benefiċjarji tat-*trust* tal-garanzija u jista' jaqdi funzjonijiet taht dak il-kuntratt skond il-kondizzjonijiet tiegħu.

(12) Fl-eżerċizzju ta' xi dritt dwar l-eżekuzzjoni ta' xi garanzija, *it-trustee* ta' garanzija jkun marbut bid-disposizzjonijiet tal-liġi li jirreferu ghax-xorta partikolari ta' garanzija u f'każijiet ohra fejn garanzija mhix regolata b'regoli tal-liġi partikolari dwar l-esekuzzjoni tagħha, t-*trustee* ta' garanzija għandu jaġixxi b'mod ġust u xieraq fil-konfront tad-debitur.

TAQSIMA III
EMENDI TA' L-ATT DWAR IL-PROFESSJONI NUTARILI U
ARKIVJI NUTARILI, KAP. 55

44. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa wahda ma' l-Att dwar il-Professjoni Nutarili u Arkivji Nutarili, hawnhekk iżjed 'il quddiem f'din it-Taqsima, imsejjah "l-Att prinċipali".

Emendi ta' l-Att
dwar il-Professjoni
Nutarili u Arkivji
Nutarili, Kap. 55.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-affarijiet nutarili jista' jistabilixxi b'avviż fil-Gazzetta u dati differenti jistghu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għanijiet differenti tagħha.

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

Emenda ta' l-
artikolu 28 ta' l-
Att prinċipali.

(a) minnufih wara s-subparagrafu (iii) tal-paragrafu (c) tas-subartikolu (1) tiegħu għandu jidhol is-subparagrafu ġdid li ġej:-

“(iv) meta l-partijiet li jkunu qed jidhru personalment jiddikjaraw li qed jaġixxu bhala *trustees* dwar il-haġa li għaliha jsir l-att, l-indikazzjoni li huma jkunu qed jidhru bhala *trustees* dwar dik il-haġa;” u

(b) minnufih wara s-subartikolu (2) tiegħu għandu jizjed is-subartikolu ġdid li ġej:-

“(3) Il-htigiet ta' hawn fuq, barra minn dawk imsemmija fis-subparagrafi (a), (b), (c), (h), (i), (j) u (k) tas-subartikolu (1) ta' dan l-artikolu, ma japplikawx għal att nutarili meta *trust* jkun mahluq skond l-artikolu 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*, hlief fil-każ li jinvolvi xi ghemil fejn titqiegħed taht *trust* jew issir dikjarazzjoni unilaterali ta' *trust* ta' proprjetà immobbli jew drittijiet reali fuq dik il-proprjetà, jew kull vestiment jew żvestment ta' *trustee* dwar dik il-proprjetà jew dawk id-drittijiet.”

46. L-artikolu 50 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

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

(a) minnufih wara l-paragrafu (k) tas-subartikolu (1) tiegħu għandu jidhol il-paragrafu ġdid li ġej:-

“(1) kull att ta' tqegħid fi *trust* jew dikjarazzjoni unilaterali ta' *trust* ta' proprjetà immobbli jew drittijiet reali fuq dik il-proprjetà jew xi vestiment jew żvestment ta' *trustee* dwar dik il-proprjetà jew dawk id-drittijiet u kull att ta' tqegħid fi *trust* ta' xi proprjetà oħra magħmul skond l-artikolu 43A

ta' l-Att dwar it-*Trusts* u t-*Trustees*, meta *trustee* jkun *trustee* privat kif imfisser fl-imsemmi Att.” ; u

(b) minnufih wara s-subartikolu (8) tieghu ghandu jidhol is-subartikolu (9) ġdid li ġej:-

“(9) Fil-każ ta’ att ta’ tqeghid fi *trust* ta’ proprjetà li ma tkunx proprjetà immobbli, in-nota ghandu jkun fiha biss id-data u x-xorta ta’ l-att u d-desenjazzjoni tas-*settlor* skond il-paragrafu (c) tas-subartikolu (1) ta’ l-artikolu 28 ta’ dan l-Att; iżda n-nutar ma jkollu ebda obbligu u ma ghandux jirreġistra dik in-nota jekk is-*settlor* ikun eżentah milli hekk jagħmel fl-att tat-*trust* u t-*trustee* ikun persuna li hija awtorizzata jew li mhijiex mehtieġa li tkun awtorizzata biex taġixxi bhala *trustee* skond l-artikolu 43 ta’ l-Att dwar it-*Trusts* u t-*Trustees*.”.

Żieda ta’ artikolu ġdid 68A ma’ l-Att prinċipali.

47. Minnufih wara l-artikolu 68 ta’ l-Att prinċipali ghandu jżieded l-artikolu ġdid 68A li ġej:-

“Aċċessibilità għal dokument ta’ *trusts*.

68A. (1) Id-dokument ta’ *trusts* magħmula b’att nutarili skond l-artikolu 43A ta’ l-Att dwar it-*Trusts* u t-*Trustees*, hlief għal xi għemil ta’ *trust* jew dikjarazzjoni unilaterali ta’ *trust* ta’ proprjetà immobbli jew drittijiet reali fuq dik il-proprjetà, u kull vestiment jew żvestment ta’ *trustee* dwar dik il-proprjetà jew dawk id-drittijiet, ma jkunu aċċessibbli għal ebda persuna hlief is-*settlor*, it-*trustee* jew dik il-persuna l-oħra li tkun permessa aċċess bil-kondizzjonijiet tat-*trust*, bil-liġi applikabbli jew taht l-awtorità ta’ xi qorti.

(2) L-istess regoli għandhom japplikaw għad-dokumenti l-oħra kollha li għandhom x’jaqsmu ma’ *trust* miżmuma minn nutar depożitarju skond l-imsemmi Att.

(3) Fil-każ ta’ *trust* testamentarju, id-disposizzjonijiet ta’ dan l-Att li japplikaw għal testmenti għandhom japplikaw *mutatis mutandis*; iżda d-disposizzjonijiet ta’ dan l-artikolu ma għandhomx japplikaw għad-dokumenti kollha li sussegwentement ikunu depożitati għand nutar depożitarju skond l-artikolu 43A ta’ l-Att dwar it-*Trusts* u t-*Trustees*.

(4) Għall-qadi ahjar tal-funzjonijiet tagħha taht l-Att dwar it-*Trusts* u t-*Trustees*, l-Awtorità kif definita f'dak l-Att ikollha l-jedd u s-setgħa li titlob tagħrif minghand kull nutar depożitarju dwar kull dokumenti ta' *trust* fil-pussess tiegħu u f'kaz bħal dan id-depożitarju għandu jipprovdi dak it-tagħrif u dawk id-dokumenti li jistgħu jkunu mitluba minkejja d-dmir tas-segretezza professjonali.”.

48. Minnufih wara l-artikolu 84 ta' l-Att prinċipali għandha tidhol it-Taqsima IIIA ġdida u l-artikolu ġdid 84A li ġejjin:-

Żieda ta' Taqsima ġdida IIIA u artikolu 84A ġdid ma l-Att prinċipali.

“Taqsima IIIA – Dwar Atti ta' *Trust* Nutarili

Formalitajiet
dwar atti ta'
trust
nutarili.

84A. (1) Il-formalitajiet għal atti nutarili dwar it-tqegħid tal-proprjetà fi *trusts*, inklużi dikjarazzjonijiet unilaterali ta' *trusts* u l-vestment u l-iżvestment ta' *trustee* dwar il-proprjetà tat-*trust* meta *settlor* ikun jixtieq johloq *trust* bil-mezz ta' att ta' *trust* nutarili jew meta dan ikun obbligatorju li jsir skond l-artikolu 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*, għandhom ikunu stabbiliti minn żmien għal żmien mill-Awtorità msemmija fl-Att dwar it-*Trusts* u t-*Trustees*:

Iżda meta l-att jinvolvi t-trasferiment, il-vestment jew l-iżvestment ta' xi proprjetà immobbli jew drittijiet reali fuq dik il-proprjetà, għandu jsir att nutarili skond it-Taqsima III ta' dan l-Att.

(2) Il-kustodja ta' atti ta' *trust* nutarili u dokumenti ta' *trust* ohra relattivi għall-istess *trust* u r-registrazzjoni tagħhom min-nutar, l-aċċess għalihom u l-hruġ ta' kopji u estratti minnhom jistgħu wkoll ikunu regolati b'dawk ir-regoli.

(3) F'dan l-artikolu “att ta' *trust* nutarili” tinkludi dak l-att nutarili li bih *trustee* jiddikjara inventarju ta' assi li jitqieghdu taht *trust* skond l-artikolu 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*.

TAQSIMA IV EMENDI TA' L-ATT DWAR IT-TAXXA FUQ L-*INCOME*, KAP. 123

49. (1) Din it-Taqsima temenda l-Att dwar it-Taxxa fuq l-*Income* u għandha tinqara u tiftiehem bħala haġa waħda ma' l-Att dwar it-Taxxa fuq l-*Income*, hawnhekk iżjed 'il quddiem f'din it-Taqsima imsejjah “l-Att prinċipali”.

Emendi ta' l-Att
dwar it-Taxxa fuq
l-*Income*, Kap.123

(2) Din it-Taqsima ghandha tibda ssehħ f’ dik id-data li l-Ministru responsabbli għall-finanzi jista’ jistabbilixxi b’avviż fil-Gazzetta u dati differenti jistghu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew ghanijiet differenti tagħha.

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

50. L-artikolu 5 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) minnufih wara s-subparagrafu (ii) tal-paragrafu (a) tas-subartikolu (1) tiegħu għandu jidhol dan is-subparagrafu ġdid li ġej:-

“(iii) qliegħ jew profitt li jinqala’ mit-trasferiment ta’ l-interess benefiċjarju fi *trust* skond id-disposizzjonijiet tas-subartikolu (18) ta’ dan l-artikolu. Għall-finijiet ta’ dan is-subparagrafu, “trasferiment ta’ l-interess benefiċjarju fi *trust*” tinkludi trasferiment ta’ interess benefiċjarju shiħ jew parzjali fi *trust* u kull trasferiment ta’ kull interess shiħ jew parzjali bħal dak bħala riżultat ta’ rinunzja għal dak l-interess jew riżultat ta’ persuna li ma tibqax benefiċjarja ta’ dak it-*trust*;”;

(b) fil-paragrafu (b) tas-subartikolu (1) tiegħu, minflok il-kliem “donazzjoni, bejgħ bi hlas gradwali” li hemm fit-tifsira ta’ “trasferiment” għandhom jidhlu l-kliem “donazzjoni, tqegħid ta’ proprjetà fi *trust*, tqassim u riverżjoni ta’ proprjetà mqieghda fi *trust*, bejgħ bi hlas gradwali”;

(c) minflok il-paragrafu (g) tas-subartikolu (2) tiegħu, għandu jidhol dan il-paragrafu ġdid li ġej:-

“(g) qliegħ u profitti li għandhom x’jaqsmu ma’ trasferiment b’ donazzjoni jew tqegħid fi *trust* fil-każ fejn is-*settlor* ta’ dak it-*trust* ikun ukoll it-*trustee* ta’ l-istess *trust* ifisser id-differenza fil-valur kummerċjali tal-proprjetà fiż-żmien tad-donazzjoni jew tqegħid fit-*trust* u l-ammont ta’ l-akkwist tal-proprjetà fiż-żmien ta’ l-akkwist mid-donatur jew mis-*settlor* skond il-każ.”;

(d) minnufih wara s-subartikolu (17) tiegħu għandhom jidhlu s-subartikoli minn (18) sa (26) ġodda li ġejjin:-

“Tqegħid ta’
proprjetà fi
trust.”

(18) Mat-tqegħid ta’ proprjetà fi *trust*, meta t-*trust* ikun stabbilit jew muri b’mezz ta’ dokument bil-miktub għandu jitqies li, għall-finijiet ta’ dan l-artikolu li:-

(a) ebda trasferiment ma jkun sar meta l-uniku *settlor* ikun ukoll l-uniku beneficijarju ta' dak *it-trust*;

(b) dik il-proprjetà tkun inghatat b'donazzjoni direttament mis-*settlor* ta' dak *it-trust* lill-benefiċjarji li jkunu persuni differenti mis-*settlor* innifsu:

Sakemm -

(i) id-dokument tat-*trust* rilevanti jipprovdi speċifikament li l-benefiċjarji ghandhom dritt vestit irrevokabbli li jirċievu l-proprjetà kollha mqieghda fit-*trust* kif speċifikat fl-imsemmi dokument bil-miktub; u

(ii) id-dokument tat-*trust* rilevanti jipprovdi speċifikament li l-benefiċjarji huma, relattivament għal kull *settlor*, persuni msemija fis-subparagrafu (i) tal-paragrafu (e) tas-subartikolu (2) ta' dan l-artikolu kemm jekk huma eżistenti fi żmien it-tqeghid fit-*trust*, jew le, jew huma persuni msemija fis-subparagrafu (ii) ta' l-imsemmi paragrafu f'kull każ, dawk il-persuni jkunu jew wahedhom jew mas-*settlor* innifsu; u

(iii) il-benefiċjarji jkunu jinkludu persuni eżistenti fiż-żmien li dik il-proprjetà titqieghed fit-*trust*;

(c) ebda telf jew qliegh ma jkun sar:

Sakemm -

(i) id-dokument tat-*trust* rilevanti jipprovdi speċifikament li l-benefiċjarji ta' dak *it-trust* jinkludu biss persuni msemija fis-sub-paragrafu (i) tal-paragrafu (e) tas-subartikolu (2) ta' dan l-artikolu, kemm jekk huma eżistenti fi żmien it-tqeghid fit-*trust*, jew le, fir-rigward ta' kull *settlor* u jistgħu ukoll jinkludu l-imsemmi *settlor* innifsu; u

(ii) il-benefiċjarji ta' dak *it-trust* jinkludu fi żmien it-tqeghid persuna li minhabba interdizzjoni, inkapaċità, jew minhabba nuqqas fiżiku jew mentali, jew minhabba li tkun tghix b'mod irregolari jew dissolut tkun limitata b'mod sostanzjali fil-kapaċità tagħha li tamministra jew timmaniġġa l-proprjetà mqieghda fi *trust* jew jinkludu fiż-żmien li l-proprjetà titqieghed fit-*trust*

persuna li minhabba nuqqas fiżiku jew mentali tkun jew tista' ssir inabbli li tipprovdi għall-manteniment tagħha stess, u meta t-*trustee* ta' dak it-*trust* jipprovdi lill-Kummissarju l-prova mehtieġa ta' dik l-interdizzjoni, inkapacità, nuqqas jew inabbiltà permezz ta' ċertifikati mediċi, ordnijiet tal-qorti jew xi dokumenti ohra rilevanti li l-Kummissarju jidhirlu xierqa; u

(iii) il-benefiċjarji ta' dak it-*trust* jinkludu persuni eżistenti fiż-żmien li l-proprjetà titqieghed fit-*trust*.

Trasferiment ta' interess benefiċjarju.

(19) (a) Għall-finijiet tad-disposizzjonijiet tas-subparagrafu (iii) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu, qliegħ jew profitti għandhom jitqiesu li jinqalghu fid-data ta' l-eżekuzzjoni tad-dokument miktub (hawnhekk iżjed 'il quddiem f'dan is-subartikolu msejjah "dokument tat-trasferiment") li bis-saħħa tiegħu jkun hemm trasferiment ta' interess benefiċjarju fi *trust* li jkun jinkludi proprjetà ta' *trust* taxxabli. Għall-finijiet ta' dan is-subartikolu "proprjetà ta' *trust* taxxabli" tfisser proprjetà msemmija fis-subparagrafi (i) u (ii) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu: iżda din il-frazi tinkludi biss dik il-proprjetà, li t-trasferiment tagħha, kieku kien sar direttament mill-benefiċjarju rilevanti, kien johloq qliegħ jew profitti li jkunu taxxabli skond id-disposizzjonijiet ta' dan l-Att.

Kap. 16.

(b) Il-qliegħ jew profitt li jinqala' mit-trasferiment ta' l-interess benefiċjarju fi *trust* li jkollu proprjetà ta' *trust* taxxabli jkun daqs il-konsiderazzjoni għall-imsemmi interess benefiċjarju kif dikjarat fid-dokument tat-trasferiment rilevanti. Ebda tnaqqis ma jinghata kontra l-konsiderazzjoni li tithallas lil min jagħmel it-trasferiment.

(c) Il-qliegħ jew profitt li jkun stabbilit skond il-paragrafu (b) ta' dan is-subartikolu jkun taxxabli bir-rata speċifikata fis-subartikolu (6) ta' l-artikolu 56 ta' dan l-Att. Ebda helsien, tnaqqis, kreditu jew tpaċija ta' liema xorta tkun ma għandhom jinghataw dwar dik it-taxxa.

Kap. 16.

(d) B'żieda mal-htigiet stabbiliti fis-subtitlu VII tat-*Titlu VI* tat-*Taqsim* II tat-*Tieni Ktieb* tal-*Kodiċi Ċivili*, kull persuna li tittrasferixxi l-interess benefiċjarju

fi *trust* li jkun jinkludi proprjetà ta' *trust* taxxabli ghandha, fi żmien hamsa u erbghin jum mid-data li fiha jkun eżegwit id-dokument tat-trasferiment, tipprovdi lit-*trustee* ta' dak it-*trust* b'kopja awtentikata ta' l-imsemmi dokument tat-trasferiment u ghandha titlob lit-*trustee* biex jiġbor ammont ta' taxxa li jkun daqs it-taxxa stabbilita skond id-disposizzjonijiet tal-paragrafu (c) biex jithallas lill-Kummissarju.

(e) It-taxxa hekk miġbura mit-*trustee* minghand min jagħmel it-trasferiment skond id-disposizzjonijiet tal-paragrafu (d) tkun dejn mit-*trustee* dovut lill-Kummissarju li jithallas mhux iktar tard mill-erbatax-il jum wara l-aħhar tax-xahar li fih it-*trustee* ikun ġabar it-taxxa. Flimkien ma' dan il-hlas, it-*trustee* ghandu jipprovdi lill-Kummissarju:—

(i) kont tal-qliegh jew profitt flimkien ma' lista ta' l-attiv kollu li jikkostitwixxi l-proprjetà tat-*trust* taxxabli fid-data li fiha jkun eżegwit id-dokument tat-trasferiment f'dik il-forma li tista' tiġi preskritta;

(ii) kopja awtentikata tad-dokument tat-trasferiment rilevanti; u

(iii) kopja ta' l-aħhar kontijiet finanzjarji tat-*trust*.

(f) It-*trustee* tat-*trust* rilevanti ghandu, mhux iktar tard minn hmistax-il jum mid-data li fiha jirċievi rikonoxximent minghand il-Kummissarju li jkun irċieva t-taxxa u d-dokumenti msemmija fil-paragrafu (e), jagħti lill-partijiet imsemmija fid-dokument tat-trasferiment ċertifikat li jkun juri li t-taxxa tkun thallset u li l-obbligazzjonijiet tieghu taht il-paragrafu (e) jkunu ġew mwettqa.

(g) Minkejja d-disposizzjonijiet tas-Subtitlu VII tat-Titlu VI tat-Taqsima II tat-Tieni Ktieb tal-Kodiċi Ċivili, kull trasferiment ta' interess benefiċjarju fi *trust* li jinkludi proprjetà fi *trust* taxxabli ma jsirx u ma jkollu ebda effett għall-finijiet ta' kull liġi kemm-il darba l-imsemmi trasferiment ma jsirx permezz ta' dokument ta' trasferiment u kemm-il darba min jagħmel it-trasferiment u t-*trustee* ma jkunux wettqu l-obbligazzjonijiet tagħhom skond id-disposizzjonijiet tal-paragrafi (d) u (e) ta' dan is-subartikolu.

(h) Bla hsara ghad-disposizzjonijiet ta' l-artikolu 10A ta' l-Att dwar l-Amministrazzjoni tat-Taxxa, il-persuna li tittrasferixxi l-interess benefiċjarju fi *trust* li jinkludi proprjetà ta' *trust* taxxabli ma tkunx obbligata li tikxef l-eżistenza ta' dak il-qliegħ jew profitti f'xi prospett magħmul skond id-disposizzjonijiet ta' l-Att dwar it-Taxxa fuq l-*Income* u ma tithallas ebda aktar taxxa fuq dak il-qliegħ jew profitti.

(i) Id-disposizzjonijiet ta' dan l-artikolu ma japplikawx:–

(i) meta l-Kummissarju jkun sodisfatt li *disclaimer* irrevokabbli ta' interess benefiċjarju ma jkunx sar bil-ghan wahdini jew ewlieni biex jevita, inaqqas jew jipposponi l-hlas tat-taxxa li għandha tithallas u meta hu, fid-diskrezzjoni tiegħu, ikun ordna bil-miktub li d-disposizzjonijiet ta' dan l-artikolu ma jkunux applikabbli għal dak id-*disclaimer*;

(ii) għal xi trasferiment ta' interess benefiċjarju fi *trust* meta *trustee* iżomm proprjetà biss għall-fini ta' transazzjoni kummerċjali msemmija kif imfisser fis-subartikolu (24) ta' dan l-artikolu.

Trasferiment ta' proprjetà fil-amministrazzjoni ta' trusts.

(20) (a) Meta fl-amministrazzjoni ta' *trust* it-*trustee* jittrasferixxi proprjetà f'dak it-*trust*, il-qliegħ għandu jiġi a“ertat skond id-disposizzjonijiet ta' dan l-artikolu u l-kost ta' l-akkwist għandu jiġi stabbilit skond id-disposizzjonijiet tal-paragrafi (b) u (c) ta' dan is-subartikolu.

(b) Fil-każ li dik il-proprjetà tkun tqieghdet fi *trust* fiċ-ċirkostanzi deskritti fis-subartikoli (18) u (24) ta' dan l-artikolu, fejn *settlor* huwa wkoll benefiċjarju tat-*trust* kemm jiswa l-akkwist għandu jkun daqs il-kost ta' l-akkwist ta' dik il-proprjetà fiż-żmien meta tkun giet akkwistata oriġinarjament mis-*settlor* ta' dak it-*trust*. Meta l-proprjetà tkun tqieghdet fit-*trust* fiċ-ċirkostanzi deskritti fil-paragrafu (a) tas-subartikolu (18) jew fil-paragrafu (a) tas-subartikolu (24) ta' dan l-artikolu, ikun meqjus għall-finijiet ta' dan l-artikolu li s-*settlor* ikun ittrasferixxa dik il-proprjetà direttament.

(ċ) Bla hsara għad-disposizzjonijiet tal-paragrafu (b) ta' dan is-subartikolu, in-nefqa ta' l-akkwist għandha tkun in-nefqa ta' l-akkwist li bih tkun giet oriġinarjament

akkwistata l-proprjetà bhala l-proprjetà tat-*trust*, sew jekk dik il-proprjetà tkun tqieghdet fit-*trust* jew b'xi mod iehor.

Tqassim ta' proprjetà mqieghda fi *trust*.

(21) (a) Ghall-finijiet ta' dan l-artikolu, proprjetà titqassam lil benefiċjarji ta' *trust* meta t-*trustee* jittrasferixxi proprjetà ta' *trust* lil xi benefiċjarju ta' dak it-*trust* kemm-il darba dak it-trasferiment ma jikkostitwix reverżjoni ta' proprjetà mqieghda fi *trust* kif imfisser fil-paragrafu (a) tas-subartikolu (22) ta' dan l-artikolu.

(b) Meta l-proprjetà li tkun tqieghdet fi *trust* titqassam lil benefiċjarji ghandu jkun meqjus li ghall-fini ta' dan l-artikolu:–

(i) ma jkun sar ebda trasferiment fil-każ li dik il-proprjetà tkun tqieghdet fit-*trust* fiċ-ċirkostanzi deskritti fil-paragrafu (b) tas-subartikolu (18) ta' dan l-artikolu, kemm-il darba dik il-proprjetà kienet tqassmet lill-benefiċjarji li ma kienux *settlers* tat-*trust*;

(ii) proprjetà mqassma lil persuni msemija fis-subparagrafu (i) tal-paragrafu (e) tas-subartikolu (2) ta' dan l-artikolu fir-rigward tas-*settlor*, tkun inghatat b'donazzjoni direttament mis-*settlor* lil dawk il-benefiċjarji meta dik il-proprjetà tkun tqieghdet fi *trust* fiċ-ċirkostanzi deskritti fil-paragrafu (c) tas-subartikolu (18) ta' dan l-artikolu;

(iii) minkejja d-disposizzjonijiet rilevanti ta' x'ghandu jitqies fis-subartikolu (18) ta' dan l-artikolu din il-proprjetà kienet inghatat b'donazzjoni direttament mis-*settlor* oriġinali ta' dik il-proprjetà lil dawk il-benefiċjarji meta dik il-proprjetà tkun tqieghdet fi *trust* fiċ-ċirkostanzi deskritti fil-paragrafi (b) u (c) tas-subartikolu (18) ta' dan l-artikolu u kienet sussegwentement imqassma lil benefiċjarju li kien *settlor* ta' dak it-*trust*:

Iżda l-imsemmi benefiċjarju ghandha tkun persuna msemija fis-subparagrafu (i) tal-paragrafu (e) tas-subartikolu (2) ta' dan l-artikolu fir-rigward ta' l-imsemmi *settlor* oriġinali li kien proprjetarju ta' dik il-proprjetà qabel ma tkun tqieghdet fi *trust*.

(c) Id-disposizzjonijiet tas-subartikolu (20) ta' dan l-artikolu ghandhom japplikaw *mutatis mutandis* fiċ-ċirkostanzi ta' tqassim ta' proprjeta' kif japplikaw ghat-trasferiment ta' proprjeta' fl-amministrazzjoni ta' proprjeta' ta' *trust*.

Reverżjoni ta' proprjeta' lil *settlor*.

(22) (a) Ghall-finijiet ta' dan l-artikolu, proprjeta' mqieghda fi *trust* tiġi rivertita meta jkun hemm trasferiment lil persuna li tkun *settlor* ta' *trust* (ukoll meta dik il-persuna tkun benefiċjarja ta' l-istess *trust*) ta' proprjeta' li kienet minnufih qabel ma tqieghdet f'dak it-*trust*, proprjeta' ta' l-istess *settlor*.

(b) Meta proprjeta' li tkun tqieghdet fi *trust* fiċ-ċirkostanzi deskritti fis-subartikolu (18) ta' dan l-artikolu tiġi rivertita lura lis-*settlor*, minkejja x'ghandu jitqies fid-disposizzjonijiet rilevanti tas-subartikolu (18) ta' dan l-artikolu, ikun meqjus ghall-finijiet ta' dan l-artikolu li dik il-proprjeta' qatt ma tkun tqieghdet f'dak it-*trust*.

(c) Meta proprjeta' tkun tqieghdet fi *trust* f'ċirkostanzi li ma jkunux dawk deskritti fil-paragrafu (b) ta' dan is-subartikolu, u meta dik il-proprjeta' tirreverti ghand is-*settlor* ghar-raġunijiet imsemmija fl-artikolu 16 ta' l-Att dwar it-*Trusts* u t-*Trustees*, ikun meqjus ghall-fini ta' dan l-artikolu li ma jkun sar ebda telf jew qliegh fil-każ ta' dik ir-reverżjoni.

(d) Id-disposizzjonijiet tas-subartikolu (20) ta' dan l-artikolu ghandhom japplikaw *mutatis mutandis* fiċ-ċirkostanzi ta' reverżjoni ta' proprjeta' li tqieghdet fi *trust* kif japplikaw ghat-trasferiment ta' proprjeta' fl-amministrazzjoni ta' proprjeta' ta' *trust*.

Trasferimenti sussegwenti minn *settlor* jew benefiċjarji.

(23) Fil-każ ta' trasferiment sussegwenti ta' proprjeta' minn *settlor* jew benefiċjarju, skond il-każ:–

(a) meta dik il-proprjeta' tkun ġiet rivertita lura lil dak is-*settlor*; jew

(b) meta dik il-proprjeta' tkun tqassmet lill-benefiċjarju, u meta:–

(i) dak it-tqassim kien meqjus, skond id-disposizzjonijiet ta' dan l-artikolu, li kien

donazzjoni diretta minghand is-*settlor* tat-*trust* lill-imsemmija beneficijarji ta' dak it-*trust*; u

(ii) dik il-proprjeta kienet trasferita minn dawk il-beneficjarji fiz-żmien imsemmi fil-paragrafu (f) tas-subartikolu (2) ta' dan l-artikolu mid-data ta' dik id-donazzjoni meqjusa;

il-qliegħ kapitali jkun aċċertat skond id-disposizzjonijiet ta' dan l-artikolu billi jittiehed kont tal-kost ta' l-akkwist ta' dik il-proprjeta meta kienet originarjament akkwistata mis-*settlor* tat-*trust* qabel it-tqegħid rilevanti fit-*trust*.

Trasferimenti li jinvolvu bdil ta' *trustees* u raġunijiet kummerċjali partikolari.

(24) (a) Ebda trasferiment ta' proprjeta ma għandu jittqies li jkun sar:-

(i) mat-tqegħid fi *trust* ta' proprjeta li tikkonsisti f'azzjonijiet f'kumpannija waħda meta s-*settlor* li kien proprjetarju ta' l-imsemmija azzjonijiet qabel ma kienu tqegħdu fit-*trust* ikun ukoll l-uniku beneficijarju tat-*trust*;

(ii) mat-tqegħid fi *trust* ta' proprjeta li tikkonsisti f'azzjonijiet f'kumpannija waħda meta t-tqegħid isir minn iktar minn *settlor* wiehed u l-imsemmija *settlors* huma l-uniċi beneficijarji tat-*trust*, u l-beneficjarji jkollhom jedd għall-beneficċju skond il-kondizzjonijiet tat-*trust* bl-istess proporzjon daqs li kieku bhala *settlors*;

(iii) mar-reverżjoni lis-*settlors* ta' l-azzjonijiet imsemmija fis-subparagrafi (i) u (ii) ta' dan il-paragrafu bl-istess proporzjon li s-*settlors* kien ikollhom jedd għalih meta l-proprjeta kienet tagħhom bhala *settlors* minnufih qabel it-tqegħid fit-*trust*;

(iv) mat-trasferiment ta' azzjonijiet f'kumpannija waħda mixtrija minn *trustee* bi flus imqiegħda fi *trust* minn *settlor* bil-għan li jakkwista, jixtri jew jissottoskrivi għal dawk l-azzjonijiet, meta l-imsemmi trasferiment isir għall-uniku beneficijarju tat-*trust* li jkun ukoll is-*settlor* oriġinali;

u f'kull każ, it-*trustee* tkun persuna awtorizzata jew li ma tkunx meħtieġa li tkun hekk awtorizzata biex

taġixxi bhala *trustee* skond l-artikoli 43 u 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*.

(b) Ebda trasferiment tal-proprjetà ta' *trust* ma ghandu jitqies li jkun sar fejn it-*trustee* ta' dik it-*trust* jittrasferixxi l-proprjetà kollha ta' dak it-*trust*, liema trasferiment jinvolvi biss tibdil ta' *trustee* ta' dak it-*trust* u fejn ma jkun hemm ebda tibdil fil-benefiċjarji jew fl-interess benefiċjarju.

(c) Ebda telf jew qlieġ ma ghandu jitqies li jkun sar meta l-proprjetà titqieghed fi *trust* u meta t-*trustee* iżomm dik il-proprjetà għall-fini ta' transazzjonijiet kummerċjali msemija jew meta dik il-proprjetà hekk imqieghda fi *trust* tirreverti għand is-*settlor*. Meta dik il-proprjetà tkun trasferita mit-*trustee* ta' dak it-*trust* lill-benefiċjarji tagħha (jew lil xi persuna permezz ta' bejgħ ġudizzjarju jew xort'ohra), in-nefqa ta' l-akkwist għandu jkun il-kost li bih is-*settlor* ta' dak it-*trust* ikun akkwista l-imsemmija proprjetà. F'każ bhal dan, id-disposizzjonijiet tas-subartikolu (10) ta' dan l-artikolu jistgħu jkunu applikati mis-*settlor* bl-istess mod daqslikieku t-trasferiment tal-proprjetà mit-*trustee* ikun sar direttament mis-*settlor* innifsu. Meta l-imsemmija proprjetà ma tkunx hekk trasferita iżda tirreverti għand is-*settlor*, jew meta s-*settlor* iċedi l-jedd tiegħu għal reverżjoni tal-proprjetà, u wara jkun hemm trasferiment ta' dik il-proprjetà, in-nefqa ta' l-akkwist tkun in-nefqa li bih is-*settlor* ikun akkwista l-imsemmija proprjetà qabel ma tkun tqieghdet fl-imsemmija *trust*. Fejn il-Kummissarju japprova, id-disposizzjonijiet ta' dan is-subparagrafu għandhom ukoll japplikaw meta proprjetà titqieghed fi *trust* għall-fini ta' transazzjoni kummerċjali li ma tkunx transazzjoni kummerċjali msemija. Għall-finijiet ta' dan is-subparagrafu, “transazzjonijiet kummerċjali msemija” tfisser il-kustodja ta' dokumenti ta' investiment, l-istabbiliment jew iż-żamma ta' interessi ta' sigurtà reali jew personali (magħduda ipoteki, privileġġi, plegġijiet u garanziji) u kull transazzjoni kummerċjali ohra li tista' tiġi preskritta, fil-waqt li “transazzjoni kummerċjali” għandu jkollha l-istess tifsir kif mogħti lilha bl-artikolu 2 ta' l-Att dwar it-*Trusts* u t-*Trustees*.

Trasferiment ta' azzjonijiet li jinvolve relazzjonijiet fiduċjarji.

25 (a) Meta persuna li tkun awtorizzata jew li ma tkunx mehtieġa li tkun hekk awtorizzata biex taġixxi bhala *trustee* skond l-artikoli 43 u 43A ta' l-Att dwar it-*Trusts* u t-*Trustees* iżżomm f' ismha stess azzjonijiet ghan-nom tas-sid benefiċjarju ta' dawk l-azzjonijiet, u meta dik il-persuna titrasferixxi jew xort'ohra tiddisponi mill-proprjetà benefiċjarja ta' dawk l-azzjonijiet lil terzi, dik it-transazzjoni ghandha titqies li tikkostitwixxi trasferiment ta' azzjonijiet ghall-finijiet ta' dan l-artikolu.

(b) Meta tibdil fid-detentur reġistrat ta' azzjonijiet f'kumpannija ma jkunx jinvolve tibdil fil-proprjetà benefiċjarja taghha, dak it-tibdil ma ghandux jitqies li jikkostitwixxi trasferiment ta' azzjonijiet ghall-finijiet ta' dan l-artikolu, kemm-il darba d-detentur reġistrat ta' dawk l-azzjonijiet jibqa' persuna awtorizzata jew li ma tkunx mehtieġa li tkun hekk awtorizzata biex taġixxi bhala *trustee* skond l-artikoli 43 u 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*.

(c) Ghall-finijiet ta' dan is-subartikolu, "sid benefiċjarju" tfisser persuna li tkun is-sid reali ta', jew li xort'ohra jkollha dritt benefiċjarjament ghal, l-azzjonijiet li jkunu sottoskritti jew miżmuma ghan-nom tieghu u fl-interess tieghu minn persuna awtorizzata jew li ma tkunx mehtieġa li tkun hekk awtorizzata biex taġixxi bhala *trustee* skond l-artikoli 43 u 43A ta' l-Att dwar it-*Trusts* u t-*Trustees* u "proprjetà benefiċjarja" ghandha tfisser fl-istess sens.

(d) Meta l-azzjonijiet imsemmija f'dan is-subartikolu jkunu trasferiti jew mit-*trustee* lil persuna li ma tkunx is-*settlor* jew mis-*settlor* lil terza persuna wara li l-azzjonijiet ikunu rivertiti ghand is-*settlor*, in-nefqa tal-akkwist ghandha titqies li tkun in-nefqa ta' l-akkwist ta' l-azzjonijiet mis-*settlor* meta l-azzjonijiet ikun nextraw jew kienu sottiskritti oriġinarjament mis-*settlor* qabel ma l-azzjonijiet ikunu tqegħdu fit-*trust*.

Setgħa għall-ghemil ta' regoli.

(26) Il-Ministru jista' jagħmel regoli li jiddeterminaw il-metodu ta' kalkulazzjoni ta' qliegh kapitali fir-rigward ta' trasferimenti li jinvolve *trusts* u li jippreskrivu kull haġa li tista' tiġi preskritta fir-rigward ta' dawn it-trasferimenti.”.

Żieda ta' artikoli
għodda 27B sa 27D
ma' l-Att
prinċipali.

51. Minnufih wara l-artikolu 27A ta' l-Att prinċipali għandhom jidhlu l-artikoli għodda 27B sa 27D li ġejjin:-

“Tassazzjoni
ta' trusts”.

27B. (1) Meta mill-inqas wiehed mit-*trustees* ta' *trust* ikun persuna residenti f'Malta, taxxa fuq kull *income* attribwibbli lil *trust* li jkun dovut jew derivat fis-sena minnufih qabel is-sena ta' stima li tibda f' dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabilixxi b'avviż fil-Gazzetta u għal kull sena sussegwenti għandha tithallas skond dan l-artikolu.

(2) Għall-finijiet ta' dan l-artikolu “*income* attribwibbli lil *trust*” tfisser it-total ta' kull *income* rilevanti msemmi fl-artikolu 4 ta' dan l-Att li jkun dovut lil jew derivat minn *trustee* jew *trustees* ta' *trust* minn proprjetà li tkun tqiegħdet f'dak it-*trust* u minn proprjetà li tkun ġiet akkwistata fl-amministrazzjoni ta' dak it-*trust* magħdud kull *income* mit-thaddim ta' dik il-proprjetà.

Trustees.

27C. It-*trustee* ta' *trust* ikun responsabbli biex jagħmel il-hwejjeġ u l-oġġetti kollha li għandhom isiru taht l-Att dwar it-Taxxa fuq l-*Income* biex tkun stabbilita, stmata u mħallsa taxxa dwar l-*income* attribwibbli lil *trust*. Meta żewġ persuni jew iżjed jaġixxu fil-kapaċità ta' *trustees* ta' l-istess *trust*, dawn ikunu solidament responsabbli.

Trusts
meqjusa
bħala
kumpanniji.

27D. (1) (a) *Trustee* ta' *trust* li jkun ingħata awtorizzazzjoni taht is-subartikolu (3) ta' l-artikolu 43 ta' l-Att dwar it-*Trusts* u t-*Trustees*, meta dak it-*trustee* ikun persuna residenti f'Malta (hawnhekk iżjed 'il quddiem imsejjah *trustee* residenti), jista' jagħżel, skond id-disposizzjonijiet ta' dan is-subartikolu, li jkollu l-*income* attribwibbli lil *trust* meqjus bil-mod provdut fil-paragrafu (c) ta' dan is-subartikolu. Dik l-għażla, li tkun irrevokabbli, għandha ssir fid-data li fiha jkun stabbilit dak it-*trust* jew fid-data li l-imsemmi *trustee* residenti jiġi mahtur, liema data tiġi l-aħħar, u għandha ssir fuq dik il-formula u taht daww il-kondizzjonijiet li jistgħu jiġu preskritti. L-imsemmi *trustee* għandu jissottometti dik il-formula lill-Kummissarju mhux iktar tard minn 30 jum mid-data li fiha jkun stabbilit it-*trust* jew mill-hatra ta' *trustee* residenti, skond liema tkun l-aħħar data.

(b) Għażla kif provdut f'dan is-subartikolu tista' ssir biss meta t-*trust* tkun stabbilita b'dokument bil-miktub li b'mod speċifiku jipprovdi li

l-income attribwibbli ghal dak *it-trust* ikun jinkudi biss *income* fil-forma ta' *royalties*, dividendi, qliegh kapitali, mgħax, kera jew xi *income* iehor minn investimenti. Għall-finijiet tal-paragrafu (c) ta' dan is-subartikolu, dak *l-income* ma jikkostitwix *income* minn xi sengħa, negozju, professjoni jew vokazzjoni.

(c) Meta tkun saret għażla skond id-disposizzjonijiet ta' dan is-subartikolu, *it-trustee* ta' dak *it-trust* għandu jikkalkula *l-income* taxxabbli fir-rigward ta' *income* attribwibbli lil *trust* għas-sena ta' stima rilevanti bħallikieku dak *l-income* kien miksub minn kumpannija ordinarjament residenti u domiciljata f'Malta. It-taxxa fuqu tkun bir-rata speċifikata fis-subartikolu (6) ta' l-artikolu 56 ta' dan l-Att u tithallas bl-istess mod applikabbli għal dawk il-kumpanniji. Profitti li jistghu jitqassmu għandhom ikunu allokatu bl-istess mod applikabbli għal dawk il-kumpanniji u t-tqassim ta' dawk il-profitti hekk allokatu lil benefiċjarji ta' dak *it-trust* għandhom jitqiesu bħallikieku kienu dividendi mqasma lil azzjonisti ta' dik il-kumpannija. Għall-finijiet ta' dan is-subartikolu, profitti li jistghu jitqassmu ta' *trust* tfisser il-profitti totali li jkunu disponibbli għal tqassim lill-benefiċjarji li jirriżultaw mill-*income* attribwibbli għal *trust*. *It-trustee* għandu jżomm ir-*records* kollha u għandu jippreżenta l-prospetti u d-dokumenti kollha lill-Kummissarju kif mehtieġ fil-każ ta' dawk il-kumpanniji. Meta l-Att dwar it-Taxxa fuq *l-Income* jehtieġu dokumenti li jkunu jharsu l-Att dwar il-Kumpanniji, *it-trustee* għandu jissottometti dokumenti simili, ċertifikati minn uditur pubbliku ċertifikat, u li jkunu, jew provdut għalihom taht l-Att dwar it-*Trusts* u t-*Trustees*, jew, fin-nuqqas ta' disposizzjonijiet bħal dik, ikunu jharsu kemm jista' jkun l-Att dwar il-Kumpanniji.

Trusts ta' xorta temporanja.

(2) *It-trustee* ta' *trust* meta dak *it-trustee* ikun persuna li jkollha fil-pussess tagħha liċenza valida mahruġa skond l-Att dwar il-Kummerċ Bankarju, jew l-Att dwar l-Istituzzjonijiet Finanzjarji, jista' japplika għand il-Kummissarju għal determinazzjoni li proprjetà tkun tqieghdet f'dak *it-trust* bħala riżultat jew konsegwenza ta' transazzjoni jew sensiela ta' transazzjonijiet, u li l-hajja ta' dak *it-trust* tkun ta' xorta temporanja li ddum biss għal dak iż-żmien li hu mehtieġ biex l-imsemmija transazzjoni jew transazzjonijiet

jistgħu jkunu effettivament mitmuma. Dik l-applikazzjoni tista' ssir fuq dik il-formula u taht dawk il-kondizzjonijiet li jistgħu jkunu preskritti. Meta l-Kummissarju, fid-deskrizzjoni tiegħu, jagħmel dik id-determinazzjoni:–

(i) ebda tnaqqis jew eżenzjoni maħsuba b'dan l-Att ma jkunu permessi jew mogħtija dwar l-*income* attribwibbli lil *trust*; u

(ii) l-imsemmi *income* ikun taxxabli bir-rata speċifikata fis-subartikolu (6) ta' l-artikolu 56 ta' dan l-Att; u

(iii) it-taxxa li għandha tithallas kif provdut f'dan is-subartikolu ma għandhiex titnaqqas jew bħala ħelsien minn taxxa doppja jew xort'ohra, u ebda tpaċija jew kreditu ma jingħata jew ikun permess dwar dik it-taxxa. It-taxxa riżultanti jkollha tithallas sa dak iż-żmien kif jista' jiġi preskritt; u

(iv) it-*trustee* ta' dak it-*trust* għandu jiddikjara dak l-*income* u proprjetà li titqiegħed fit-*trust* fuq dik il-formula kif jista' jiġi preskritt u ebda dikjarazzjoni ohra ta' dak l-*income* ma tkun meħtieġa li ssir mill-benefiċjarji tat-*trust*; u

(v) ebda taxxa ohra ma għandha tithallas dwar dak l-*income*.

Trusts ohra.

(3) (a) Meta ma la tkun saret għażla skond is-subartikolu (1) u lanqas determinazzjoni skond is-subartikolu (2) għandhom japplikaw id-disposizzjonijiet tal-paragrafi (b), (c), (d) u (e) ta' dan is-subartikolu.

(b) Fil-każ li:–

(i) l-*income* kollu attribwibbli lil *trust* jikkonsisti jew f'*income* li jinqala' barra minn Malta jew *income* imsemmi fil-paragrafu (c) tas-subartikolu (1) ta' l-artikolu 12 ta' dan l-Att; u

(ii) il-benefiċjarji kollha tat-*trust* ikunu persuni li jew ma jkunux ordinarjament residenti f'Malta jew mhux domiciljati f'Malta, jew ikunu persuni li l-*income* tagħhom ikun totalment eżentat mit-taxxa taht id-disposizzjonijiet ta' l-artikolu 12 ta' dan l-Att;

għandu jitqies li dak *l-income* ma jkunx *income* attribwibbli lil *trust* iżda jkun *income* derivat direttament minn dawk il-benefiċjarji, u meta *l-income* li jinqala' barra minn Malta jkun riċevut f'Malta mit-*trustee* tat-*trust*, jitqies li jkun riċevut f'Malta minn dawk il-benefiċjarji. It-*trustee* għandu jinnotifika lill-benefiċjarju b'dan *l-income* u jinfurmah bidmirijiet tiegħu taht l-Atti dwar it-Taxxi fuq *l-Income*.

(c) Fil-każ li *l-income* attribwibbli lil *trust* jinkludi biss dividendi li jitqassmu minn profitti allokat li kont ta' *income* barrani jew mill-profitti ta' kumpannija ta' negozju b'kummerċ internazzjonali, li jkunu nkisbu minn din il-kumpannija waqt li kienet kumpannija b'kummerċ internazzjonali u l-benefiċjarji kollha ta' dik it-*trust* huma persuni mhux residenti f'Malta, u t-*trustee* ta' dak it-*trust* jipprovdi lill-Kummissarju b'ċertifikat imsemmi fis-subartikolu (2) ta' l-artikolu 5 ta' l-Att dwar l-Amministrazzjoni tat-Taxxa, għandu jitqies li dawk id-dividendi ma jikkostitwux *income* attribwibbli lil *trust*.

(d) Qliegħ kapitali li jinkiseb skond id-disposizzjonijiet ta' l-artikolu 5 ta' dan l-Att mit-trasferiment ta' proprjetà li titqieghed fi *trust* fl-amministrazzjoni ta' dik it-*trust* jew fit-tqassim jew reverżjoni ta' dik il-proprjetà għandu jagħmel parti mill-*income* attribwibbli għal *trust*.

(e) *L-income* taxxabli dwar *l-income* attribwibbli lil *trust* għandu jkun kalkolat bħallikieku t-*trust* kienet persuna li hi ordinarjament residenti u domiciljata f'Malta iżda jeskludi ammonti ta' *income* attribwibbli lil *trust* allokat li benefiċjarji kif stabbilit skond id-disposizzjonijiet tas-subartikolu (4) ta' dan l-artikolu.

Income
attribwibbli
għal *trust*
allokat li
benefiċjarji.

(4) Għall-fini tal-paragrafu (e) tas-subartikolu (3) ta' dan l-artikolu:—

(a) ammonti ta' *income* attribwibbli lil *trust* allokat li benefiċjarji għandhom ikunu jikkonsistu:—

(i) f'ammonti li fuqhom il-benefiċjarji kellhom dritt vestit fis-sena minnufih qabel is-sena ta' stima;
u

(ii) ammonti li fuqhom ikun inghata jedd lill-benefiċjarji barra milli bil-mod imsemmi fis-subparagrafu (i) ta' dan il-paragrafu, u meta dak il-jedd ikun inghata sa l-ahhar tas-sena, minnufih qabel is-sena ta' stima; u

(iii) ammonti li jirrapprezentaw *income* attriwbli lil *trust* ghas-sena ta' stima li jkunu ġew distribwiti lill-benefiċjarji sa l-ahhar tas-sena minnufih qabel is-sena ta' stima, u liema ammonti ma jkunux parti mill-ammonti msemmija fis-subparagrafi (i) u (ii) ta' dan il-paragrafu.

(b) Sabiex l-ammonti msemmija fil-paragrafu (a) ta' dan is-subartikolu jkunu jistgħu jiġu esklużi skond il-paragrafu (e) tas-subartikolu (3) ta' dan l-artikolu, it-*trustee* ghandu jiżgura li:–

(i) il-prospett imsemmi fl-artikolu 24A ta' l-Att dwar l-Amministrazzjoni tat-Taxxa, jkun ġie ipprezentat skond id-disposizzjonijiet ta' l-istess artikolu;u

(ii) ikun ta lill-benefiċjarji rilevanti ċertifikat li juri, ghas-sena ta' stima relattiva u meta applikabbli, l-ammonti rilevanti msemmija fil-paragrafu (a) ta' dan l-artikolu fuq dik il-formula u li jagħti dawk id-dettalji kif jista' jkun preskritt;u

(iii) meta l-ammonti msemmija fis-subparagrafi (i) u (ii) tal-paragrafu (a) ta' dan is-subartikolu ma jkunux tqassmu lill-benefiċjarji sal-31 ta' Marzu li jiġi wara l-ahhar tas-sena li taħbat minnufih qabel is-sena ta' stima rilevanti, ikun sar hla ta' taxxa għan-nom tal-benefiċjarji li tkun daqs it-taxxa li tirriżulta li kieku l-imsemmija ammonti kienu intaxxati bir-rata speċifikata fis-subartikolu (6) ta' l-artikolu 56 ta' dan l-Att. Meta dak it-tqassim ma jsirx sa l-imsemmija data, din it-taxxa ssir dejn dovut mit-*trustee* rilevanti lill-Kummissarju u jkollha tithallas sa mhux iktar tard mit-30 ta' Ġunju li jiġi wara l-ahhar ta' s-sena imsemmija. It-taxxa hekk imhallsa tkun disponibbli bhala kreditu kontra t-taxxa li jkollha tithallas mill-benefiċjarju, jew bhala hla lura skond il-każ, ghas-sena ta' stima rilevanti.

Rata ta' tassazzjoni

(5) Hlief kif provdut fis-subartikolu (4) ta' l-artikolu 56 ta' dan l-Att, it-taxxa ghandha tithallas fuq l-*income* taxxabbli dwar l-*income* attribwibbli lil *trust* bir-rata speċifikata fis-subartikolu (6) ta' l-artikolu 56 ta' dan l-Att.

Taxxa barranija titqies li tithallas mit-*trust*.

(6) (a) Meta taxxa barranija tkun thallset fuq l-*income* attribwibbli ghal *trust*, dik it-taxxa ghandha titqies li tkun thallset minn *trustee* ta' dak it-*trust*, sew jekk tkun thallset minn *trustee* sew jekk minn benefiċjarju ta' dak it-*trust*.

(b) Talba ghal helsien minn taxxa doppja dwar it-taxxa msemija fil-paragrafu (a) ta' dan il-paragrafu, tista' ssir biss bil-mezz tad-disposizzjonijiet ta' l-artikoli minn 79 sa 88 ta' dan l-Att. Kull riferenza f'dawn l-artikoli ghal persuna, ghandha, ghall-finijiet ta' dan is-subartikolu, titqies li hi riferenza ghal *trustee* ta' *trust* filwaqt li kull riferenza ghal *income* jew *income* ta' persuna, ghandha titqies bhala riferenza ghall-*income* attribwibbli ghal *trust*.

Taxxa fuq l-*income* attribwibbli ghal *trust* tkun finali.

(7) Kemm-il darba ma jkunx provdut xort' ohra f'dan l-artikolu, ebda persuna ma titwahhal iktar taxxa taht dan l-Att dwar *income* attribwibbli lil *trust* li dwaru tkun hallset taxxa skond id-disposizzjonijiet tas-subartikoli (1), (2) u (3) ta' dan l-artikolu.

Tassazzjoni ta' benefiċjarji.

(8) (a) Ammonti allokati lil benefiċjarji msemija fil-paragrafu (a) tas-subartikolu (4) ta' dan l-artikolu ghandhom ikunu aggregati ma' *income* iehor ta' l-imsemmija benefiċjarji ghall-finijiet ta' l-artikolu 4 ta' dan l-Att u t-taxxa ghandha hekk tithallas ghas-sena ta' stima li tibda f'dik id-data li l-Ministru responsabbli ghall-finanzi jista' jstabilixxi b'avviz fil-gazzetta u ghal kull sena ta' stima sussegwenti.

(b) Ammonti allokati lil benefiċjarji msemija fil-paragrafu (a) tas-subartikolu (4) ta' dan l-artikolu ghandhom jitqiesu bhala *income* derivat mill-benefiċjarju fiż-żmien li jkun vestit fih, jew li l-benefiċjarju jinghata l-jedd ghalih, jew meta jkun imqassam, skond il-każ.

(c) *Income* mqassam lill-benefiċjarji ghandu jżomm il-karattru tieghu dwar xorta u pajjiż ta' origini. Talba ghal helsien minn taxxa doppja dwar dak l-*income* tista' ssir skond id-disposizzjonijiet msemija fl-artikolu 74 ta' dan l-Att minkejja li taxxa barranija setghet thallset mit-*trustee* jew mill-benefiċjarju nnifsu.

Tifsir.

(9) (a) Ghall-finijiet ta' dan l-artikolu, il-frazzjiet “benefiċjarju”, “*settlor*”, “*trust*” u “*trustee*” għandu jkollhom l-istess tifsir kif mogħti lilhom bl-artikolu 2 ta' l-Att dwar it-*Trusts* u t-*Trustees*.

(b) Kliem u frazjiet użati f'dan l-artikolu u f'partijiet ohra ta' l-Att dwar it-Taxxa fuq l-*Income* li jirreferu għal *income* attribwibbli għal *trust*, għandu jkollhom safejn dawn ma jkunux mogħtija tifsir bl-Att dwar it-Taxxa fuq l-*Income*, l-istess tifsir mogħti lilhom bl-Att dwar it-*Trusts* u t-*Trustees* u kull regoli u regolamenti magħmula bis-sahħa tieghu.

Biex ma tkunx evitata taxxa.

(10) (a) Meta fil-fehma tal-Kummissarju, transazzjonijiet li jinvolvu *trust* isiru bl-għan wahdieni jew ewlieni li jitnaqqas l-ammont tat-taxxa li jkollu jithallas minn persuna, il-Kummissarju għandu jinjora dak it-*trust* u l-*income* ta' dik il-persuna jkun stabbilit daqslikieku jkun miksub minghajr l-involviment ta' dak it-*trust*.

(b) L-artikolu 57 ta' l-Att dwar l-Amministrazzjoni tat-Taxxa għandu japplika *mutatis mutandis* fiċ-ċirkostanzi li jirrelataw għal *trustees*. Riferenza f'dak l-artikolu għal:-

(i) “detentur ta' *warrant*” għandha tiftiehem bhala riferenza għal kull persuna li taġixxi bhala *trustee* kif provdut taht l-Att dwar it-*Trusts* u t-*Trustees*;

(ii) “Bord” għandha tiftiehem bhala riferenza għall-Awtorità għas-Servizzi Finanzjarji ta' Malta;

(iii) “artikolu 14 (1)(a)(i) ta' l-Att dwar Professjoni ta' l-*Accountancy*” għandha tiftiehem bhala riferenza għall-artikolu 51 ta' l-Att dwar it-*Trusts* u t-*Trustees*;

(iv) “dokumenti” għandha tiftiehem bhala riferenza għal kull dokument meħtieġ li jkun prodott minn *trustee* dwar *trust* taht il-liġi ta' Malta;

(v) “1 ta' Jannar 1998” għandha tiftiehem bhala riferenza għad-data li fiha jiġi fis-seħħ l-Att dwar *Trusts* u *Trustees*.”

52. Fis-subartikolu (2) ta' l-artikolu 30 ta' l-Att prinċipali, minflok il-kliem “istituzzjoni, *trust*, fondazzjoni” għandhom jidhlu l-kliem “istituzzjoni, fondazzjoni”.

Emenda ta' l-artikolu 30 ta' l-Att prinċipali.

53. Fis-subartikolu (10) ta' l-artikolu 56 ta' l-Att prinċipali:

Emenda ta' l-artikolu 56 ta' l-Att prinċipali

(a) Il-paragrafu (b) tiegħu, minnflok il-kliem “15-il ċenteżimu fuq kull lira.” għandhom jidhlu l-kliem “15-il ċenteżimu fuq kull lira;”;

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

“(c) Meta *income* jitqies li jkun miksub direttament taht id-disposizzjonijiet tal-paragrafu (b) tas-subartikolu (3) ta' l-artikolu 27D ta' dan l-Att minn individwu li jkun inghata permess ta' residenza taht l-artikolu 7 ta' l-Att dwar l-Immigrazzjoni, dak l-*income* għandu jitwahaħhal taxxa bir-rati stabbiliti fil-paragrafu (a) jew (b) tas-subartikolu (1) ta' dan l-artikolu li jibdew bir-rata ta' 15 -il ċenteżmu fuq kull lira daqsliekeku dak l-*income* jikkostitwixxi *income* taxabbli separat.”

54. Artikolu 61 ta' l-Att prinċipali għandu jiġi emendat kif ġej:–

Emenda ta' l-artikolu 61 ta' l-Att prinċipali.

(a) fit-test Malti biss, paragrafi (i) u (ii) għandhom jiġu enumerati mill-ġdid bħala (a) u (b), filwaqt li s-subparagrafi (a) u (b) għandhom jiġu enumerati mill-ġdid bħala (i) u (ii);

(b) fis-subparagrafu (ii) tal-paragrafu (a) tiegħu, minflok il-kliem “u domiciljata f'Malta;” għandhom jidhlu l-kliem “u domiciljata f'Malta; jew”;u

(c) minnufih wara s-sub-paragrafu (ii) tal-paragrafu (a) tiegħu għandu jidhol is-subparagrafu ġdid li ġej:-

“(iii) *trustee* ta' *trust* meta l-benefiċjarji ta' dak it-*trust* ikunu persuni msemmija fil-paragrafi (i) u (ii) ta' dan is-subartikolu;”.

55. L-artikolu 70 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 70 ta' l-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kelma “fiduċjarju” kull fejn tinsab għandha tidhol f'kull każ il-kelma “amministratur”;u

(b) fis-subartikolu (2) tieghu, il-kelma “*trust*,” ghandha tithassar; u minflok il-kelma “fiduċjarju” ghandha tidhol il-kelma “amministratur”.

Thassir ta’ l-artikolu 72 ta’ l-Att prinċipali.

56. L-artikolu 72 ta’ l-Att prinċipali għandu jithassar.

TAQSIMA V

EMENDI GHALL-ATT DWAR IT-TRANSAZZJONIJIET ESTERNI, KAP. 233

Emendi ta’ l-Att dwar it-Transazzjonijiet Esterni.

57. (1) Din it-Taqsima temenda u ghandha tinqara u tiftiehem haġa wahda ma’ l-Att dwar it-Transazzjonijiet Esterni, hawnhekk iżjed ’il quddiem f’ din it-taqsima imsejjah “l-Att prinċipali”.

(2) Din it-Taqsima ghandha tibda ssehh f’dik id-data li l-Ministru responsabbli għall-finanzi jista jstabbilixxi b’avviz fil-Gazzetta.

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

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

(a) minflok it-tifsira ta’ “persuna mhux residenti” ghandha tidhol it-tifsira li ġejja:

“ “persuna mhux residenti” tfisser:

(a) persuna, korp magħqud jew entità oħra li ma tkunx persuna residenti;

(b) xi *trustee* residenti skond *trust* meta xi hadd mill-benefiċjarji ma jkunx residenti u fil-każ ta’ *trust* diskrezzjonarju, meta s-setgħa tal-hatra jew xi diskrezzjoni tkun tista’ tiġi eżerċitata favur xi persuna mhux residenti.”;

(b) minflok it-tifsira ta’ “persuna residenti” ghandha tidhol it-tifsira ġdida li ġejja:

“ “persuna residenti” tfisser:

(a) persuna naturali minkejja ta’ liema nazzjonalita’ tkun, li tkun ordinarjament toqghod f’Malta jew fi Stat Membru jew li kienet toqghod jew ikollha l-hsieb li toqghod f’Malta jew fi Stat Membru għal żmien kontinwu ta’ sena;

(b) korp magħqud fi jew taht il-liġijiet ta' Malta jew ta' Stat Membru jew entità li topera jew li tkun xort'ohra reġistrata f'Malta jew fi Stat Membru;

(c) kull *trustee* skond *trust* li l-post tar-residenza ordinarja tiegħu jkun barra minn Malta jew xi Stat Membru iżda meta l-benefiċjarji kollha tat-*trust* ikunu determinati u jkunu residenti u fil-każ ta' *trust* diskrezzjonarju meta s-setgħa tal-hatra jew xi diskrezzjoni tkun tista' tiġi eżerċitata biss favur persuni residenti.”.

TAQSIMA VI

EMENDI TA' L-ATT DWAR IL-BASTIMENTI MERKANTILI, KAP. 234

59. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar il-Bastimenti Merkantili, hawnhekk iżjed 'il quddiem f'din it-Taqsima, imsejjah “l-Att prinċipali”.

Emenda ta' l-Att dwar il-Bastimenti Merkantili, Kap. 234.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għat-tbahhir merkantili jista' jistabbilixxi b'avviż fil-Gazzetta.

60. Fis-subartikolu (4) ta' l-artikolu 38 ta' l-Att prinċipali wara l-kliem “kull liġi ohra.” għandhom jidhlu l-kliem “Kull *trust* ta' garanzija bħal dak japplikaw għalih id-dispożizzjonijiet ta' l-artikolu 2095E tal-Kodiċi Ċivili meta l-liġi applikabbli hi l-liġi ta' Malta.”

Emenda tas-subartikolu (4) ta' l-artikolu 38 ta' l-Att prinċipali.

TAQSIMA VII

EMENDI TA' L-ATT DWAR L-AKKWIST TA' PROPRJETÀ IMMOBBLI MINN PERSUNI MHUX RESIDENTI, KAP. 246

61. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar l-Akkwist ta' Proprjetà minn Persuni mhux Residenti, hawnhekk iżjed 'il quddiem, f'din it-Taqsima imsejjah “l-Att prinċipali”.

Emendi ta' l-Att dwar l-Akkwist ta' Proprjetà Immobbli minn Persuni mhux Residenti, Kap. 246.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta.

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

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

(a) fil-paragrafu (c) tat-tifsira ta' "persuna mhux residenti" ghandha tithassar il-kelma "*trust*", u fis-subparagrafu (iii) tiegħu, minflok il-kliem "jew li jkun reġistrat f'isem kumpanija li jkollha liċenza biex taġixxi bhala kumpanija *nominee*" ghandhom jidhlu l-kliem "jew li jkun reġistrat f'isem *trustee* għall-benefiċċju ta' persuna mhux residenti";

(b) minnufih wara l-paragrafu (c) ghandu jiżdied il-paragrafu (d) ġdid li ġej:-

“(d) kull *trustee* skond *trust* li jkun:

(i) persuna mhux residenti kemm-il darba l-benefiċjarji kollha tat-*trust* ma jkunux determinati u residenti f'Malta u fil-kaz ta' *trust* diskrezzjonarju meta s-setgħa tal-hatra jew xi diskrezzjoni tista' tiġi eżerċitata favur persuni residenti f'Malta;

(ii) persuna residenti f'Malta meta xi whud mill-benefiċjarji jkunu persuni mhux residenti u fil-kaz ta' *trust* diskrezzjonarju, meta s-setgħa tal-hatra jew xi diskrezzjoni tkun tista' tiġi eżerċitata favur xi persuna mhux residenti;”.

TAQSIMA VIII

EMENDI TA' L-ATT DWAR IR-REĠISTRAZZJONI TA' ARTIJET, KAP. 296

Emendi ta' l-Att dwar ir-Registrazzjoni ta' Artijiet, Kap. 296.

63. (1) Din it-Taqsima temenda u ghandha tinqara u tiftiehem haġa wahda ma' l-Att dwar ir-Registrazzjoni ta' Artijiet, hawnhekk iżjed 'il qudeim imsejjah "l-Att prinċipali".

(2) Din it-Taqsima ghandha tibda ssehħ f'dik id-data li l-Ministru responsabbli għar-registrazzjoni ta' artijiet jista' jistabbilixxi b'avviż fil-Gazzetta u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew għanijiet differenti tagħhom.

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

64. Minflok is-subparagrafu (a) tas-subartikolu (1) ta' l-artikolu 12 ta' l-Att prinċipali, ghandu jidhol dan li ġej:-

“(a) kull kuntratt li jittrasferixxi l-proprjetà ta' beni immobbli, jew xi dritt reali fuq dik il-proprjetà, inklużi transazzjonijiet li ghandhom x'jaqsmu ma beni immobbli li jkunu taht *trust*, jew li bih xi att li jkollu l-effett li jittrasferixxi l-proprjetà ta' beni immobbli, jew xi dritt reali fuq dik il-proprjetà, jiġi xolt,

imhassar jew revokat, u kull kuntratt li johloq jew li jibdel xi dritt bhal dak jew li bih xi dritt bhal dak jinqaleb f'xi iehor minn dawk id-drittijiet jew issir rinunzja ghalih, u kull kuntratt li bih beni immobbli jiġu maqsuma, u kull att li jkollu effett dikjaratorju dwar il-proprjetà ta', jew xi dritt reali fuq, beni immobbli, (inkluż att magħmul għall-fini ta' l-Att ta' l-1993 dwar it-Taxxa tad-Dokumenti u Traferimenti, u inventarju magħmul minn *trustee* li jaċċetta *trust* testamentarju u dikjarazzjoni unilaterali ta' *trust* ta' proprjetà addizzjonali taht *trusts*, iżda eskluż kull att ta' inventarju iehor) u kull kuntratt ta' antikresi; u”.

65. Fl-artikolu 24 ta' l-Att prinċipali, minnufih wara l-kliem “biss għal perijodu limitat,” għandhom jidhlu l-kliem “jew ikun proprjetà taht *trust*.”.

Emenda ta' l-artikolu 24 ta' l-Att prinċipali.

66. Fil-paragrafu (a) ta' l-artikolu 25 ta' l-Att prinċipali, minnufih wara l-kliem “is-sid,” għandhom jidhlu l-kliem “*trustee*,”.

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

TAQSIMA IX

EMENDI GĦALL-ATT DWAR L-AWTORITÀ GĦAS-SERVIZZI FINANZJARJI TA' MALTA, KAP. 330

67. (1) Din it-Taqsima temenda u għandha tingara u tiftiehem haġa waħda ma' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, hawnhekk iżjed 'il quddiem f'din it-Taqsima msejjaħ “l-Att prinċipali”.

Emendi tal-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta, Kap. 330.

(2) Id-disposizzjonijiet ta' din it-Taqsima għandhom jibdwew isehhu f'dik id-data li l-Ministru resposabbli għall-finanzi jista' jstabbilixxi b'avviż fil-Gazzetta u dati differenti jistgħu jkunu hekk stabbiliti għal disposizzjonijiet differenti jew għanijiet differenti ta' din it-Taqsima.

68. L-artikolu 18 ta' l-Att prinċipali għandu jiġi emendat kif ġej:—

Emenda ta' l-artikolu 18 ta' l-Att prinċipali.

(a) id-disposizzjoni preżenti għandha tigi enumerata mill-ġdid bhala s-subartikolu (1) tiegħu; u

(b) minnufih wara s-subartikolu (1) tiegħu kif enumerat mill-ġdid, għandu jiżdied dan is-subartikolu (2) ġdid li ġej:—

“(2) Bla hsara ghal kull kundizzjoni li jidhrilha xieraq li timponi u ghal kull procedura applikabbli skond il-liġi, l-Awtorità tista’ tiżvela informazzjoni lil banek ċentrali barranin u lil awtoritajiet oħra responsabbli ghal *policy* monetarja u, fejn ikun xieraq, lil awtoritajiet pubbliċi barranin oħrajn li huma responsabbli għas-sorveljanza ta’ sistemi ta’ pagamenti, fejn dik l-informazzjoni jkollha x’taqsam u hija konnessa mal-funzjonijiet rispettivi tagħhom skond il-liġi.”.

Żieda ta’ artikoli
għodda 20B u 20C
ma’ l-Att
prinċipali.

69. Minnufih wara l-artikolu 20A ta’ l-Att prinċipali għandhom jiżdiedu l-artikoli għodda 20B u 20C li ġejjin:

“Konglomerati
finanzjarji.

20B. (1) Il-Ministru jista’, fuq il-parir ta’ l-Awtorità, jagħmel regolamenti għat-trasposizzjoni tad-Direttiva 2002/87/EC tal-Parlament Ewropew u tal-Kunsill tas-16 ta’ Diċembru 2002 u sabiex jipprovdi għas-sorveljanza supplementari ta’ istituzzjonijiet ta’ kreditu, istituzzjonijiet finanzjarji, impriži ta’ l-assigurazzjoni u ditti ta’ investiment f’konglomerat finanzjarju, u biex xort’oħra jirregola s-sorveljanza ta’ konglomerati finanzjarji u gruppi finanzjarji b’attivitajiet finanzjarji li jifirxu fuq varji setturi.

(2) Regolamenti magħmula mill-Ministru bis-saħħa tas-subartikolu (1) għandhom, b’mod partikolari iżda bla hsara għall-awtorità mogħtija lill-Ministru bl-imsemmi subartikolu:

(a) jipprovdu għall-hatra ta’ kordinatur resposabbli għall-kordinazzjoni u l-eżami ta’ sorveljanza supplementari, għall-valutazzjoni tal-qagħda finanzjarja ta’ grupp, inklużi htigijiet ta’ solvibbiltà, konċentrazzjoni ta’ riskju u transazzjonijiet *intra-group*, u l-mezzi biex jinkiseb minghand l-entitajiet fi grupp finanzjarju u minghand awtoritajiet kompetenti oħra, it-tagħrif meħtieġ għat-twettiq ta’ din is-sorveljanza supplementari u jista jipprovdi għal konsultazzjoni u għal qsim u tibdil ta’ informazzjoni ma’ awtoritajiet kompetenti ta’ barra minn Malta, skond il-bżonn;

(b) jipprovdu għat-twaqqif u għall-imposizzjoni ta’ pieni amministrattivi jew miżuri oħra għall-kontravvenzjoni ta’ kull regolament, u sabiex jipprovdi għall-appelli minnhom lit-Tribunal għas-Servizzi Finanzjarji.

Lingwa tar-regolamenti

20C. Regolamenti li jistghu jsiru mill-Ministru bil-parir ta' l-Awtorità jew wara konsultazzjoni magħha taht xi Att li bis-saħħa tiegħu l-Awtorità tkun inhatret bhala l-awtorità kompetenti, jistghu jsiru bil-lingwa Ingliża biss.”.

TAQSIMA X

EMENDI TA' L-ATT DWAR IT-TAXXA FUQ DOKUMENTI U TRASFERIMENTI, KAP. 364

70. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa wahda ma' l-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti, hawnhekk iżjed 'il quddiem imsejjah “l-Att prinċipali”.

Emendi ta' l-Att dwar it-Taxxa fuq Dokumenti u Trasferiment, Kap. 364.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta u dati differenti jistghu jiġu stabbiliti għal dispożizzjonijiet u għanijiet differenti tagħha.

71. Minnufih wara l-artikolu 32A ta' l-Att prinċipali għandu jżied l-artikolu ġdid 32B li ġej:-

Żieda ta' artikolu Ġdid 32B ma' l-Att prinċipali.

“Regoli speċjali applikabbli għal trusts.”

32B. (1) Minkejja kull disposizzjoni oħra ta' dan l-Att, ebda taxxa ma jkollha tithallas fuq xi trasferiment ta' proprjetà immobbli jew fuq xi dritt reali fuq proprjetà immobbli:

(a) *mis-settlor lit-trustees* ta' *trust* li tagħha *s-settlor* ikun l-uniku benefiċjarju u meta *s-settlor* ikollu vestit dritt irrevokabbli li jirċievi l-proprjetà taht *trust*;

(b) *mis-settlor lit-trustees* ta' *trust* mahluqa għall-fini ta' transazzjoni kummerċjali msemija;

(c) *mis-settlor lit-trustees* ta' *trust* mahluqa għall-fini ta' transazzjoni kummerċjali li ma tkunx transazzjoni kummerċjali msemija iżda li tkun ġiet approvata mill-Kummissarju għall-fini ta' dan il-paragrafu;

(d) bejn *Trustees* b'konsegwenza ta' tibdil fit-*Trustees* (sew jekk b'żieda, sostituzzjoni jew xort'oħra) li jkunu qed iżommu l-proprjetà immobbli fi *trust* kemm il darba ebda interess benefiċjarju fit-*trust* ma jkun ukoll trasferit ma' dak it-tibdil fit-*Trustees*;

(e) mit-*trustees* lis-*settlor* meta l-proprjetà tat-*trust* tirriverti għal għand is-*settlor*; u

(f) mit-*trustees* lil-benefiċjarju tat-*trust* meta t-taxxa tkun qabel thallset mat-trasferiment inizjali mis-*settlor* lit-*trustees* skond is-subartikolu (1) ta' l-artikolu 32 iżda t-taxxa jkollha tithallas dwar kull żieda fil-valur bejn id-data tat-trasferiment inizjali lit-*trustees* u t-tqassim sussegwenti lill-benefiċjarji:

Iżda fil-każijiet kollha t-*trust* għandha tkun stabbilita jew tingieb prova dwarha bil-mezz ta' dokument bil-miktub.

Għall-finijiet ta' dan is-subartikolu “transazzjoni kummerċjali msemmija” tfisser il-kustodja ta' strumenti ta' investment, l-istabbiliment jew iż-żamma ta' interessi ta' sigurtà reali jew personali (maghduda ipoteki, privileggi, pleġġijiet u garanziji), u kull transazzjoni kummerċjali oħra li tista' tiġi preskritta, fil-waqt li “transazzjoni kummerċjali” għandu jkollha l-istess tifsir kif mogħti lilha bl-artikolu 2 ta' l-Att dwar it-*Trusts* u t-*Trustees*.

(2) Meta benefiċjarju taht *trust* għal proprjetà immobbli jassenja jew xort'oħra jittrasferixxi *inter vivos* lil terza persuna l-interess benefiċjarju tiegħu f'dak it-*trust*, dak it-trasferiment għandu jittqies li jikkostitwixxi trasferiment għall-finijiet ta' dan l-Att, u l-valur tat-trasferiment għandu jittqies li jkun l-ammont limitat għal dik il-parti tal-valur tal-proprjetà immobbli li tkun proporzjonata għall-valur ta' l-interess benefiċjarju trasferit minn dak il-benefiċjarju.

(3) Id-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu għandhom japplikaw *mutatis mutandis* f'dawk il-każijiet meta jkun hemm xi tibdil fil-benefiċjarju, maghduda ċahda jew rinuzja sew għal kollox jew f'parti tad-dritt tal-benefiċjarju taht *trust*:

Iżda meta l-Kummissarju jkun sodisfatt li rinuzja irrevokabbli ta' interess benefiċjarju ma tkunx saret bil-għan wahdieni jew ewlieni biex tiġi evitata, imnaqqa jew posposta r-responsabbiltà għat-taxxa, dan jista' fid-diskrezzjoni tiegħu jordna bil-miktub li d-disposizzjonijiet ta' dan is-subartikolu ma jkunux japplikaw għal dik ir-rinuzja u ma jkollha tithallas ebda taxxa.”.

72. Fis-subartikolu (6) ta' l-artikolu 33 ta' l-Att prinċipali, minnufih wara l-kliem "l-eżekutori testamentarji" għandhom jidhlu l-kliem "u *Trustees*".

Emenda ta' l-artikolu 33 ta' l-Att prinċipali.

73. Fl-artikolu 34 ta' l-Att prinċipali minnufih wara l-kliem "jiġi preskritt" għandu jidhol il-paragrafu ġdid li ġej:-

Emenda ta' l-artikolu 34 ta' l-Att prinċipali.

"Sabiex tkun stabbilita l-applikabbiltà tal-benefiċċju ta' dan l-artikolu, kull meta l-proprjetà immobbli jew id-drittijiet reali fuqha jkunu miżmuma fi *trust*, għandha ssir riferenza għall-benefiċjarji tat-*trust* kif indikat fid-dikjarazzjoni, u t-*trustee* ikun injorat għal dan l-għan."

74. L-artikolu 35 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

Emenda ta' l-artikolu 35 ta' l-Att prinċipali.

(a) is-subartikoli minn (3) sa (6) tiegħu għandhom jiġu enumerati mill-ġdid bħala (4) sa (7) rispettivament;

(b) minnufih wara s-subartikolu (2) tiegħu għandu jidhol is-subartikolu (3) ġdid li ġej:-

"(3) Sabiex tkun stabbilita l-applikabbiltà tal-benefiċċju msemmija fis-subartikoli (1)(a) u (2) ta' dan l-artikolu kull meta dar ta' abitazzjoni tiġi trasferita *causa mortis* lil *trustee*, riferenza għandha ssir għall-benefiċjarji tat-*trust* kif indikat fid-dikjarazzjoni, u t-*trustee* ikun injorat għal dan l-għan. Ebda riferenza għall-benefiċjarji ta' *trust* ma għandha ssir għall-fini tas-subartikolu (1)(b) ta' dan l-artikolu."; u

(c) fis-subartikolu (6) tiegħu kif enumerat mill-ġdid, minnufih wara l-kliem "li mhijiex biss wahda potestattiva" għandhom jidhlu l-kliem "jew ta' trasferiment *causa mortis* ma' *trust*".

75. Minnufih wara l-artikolu 42 ta' l-Att prinċipali għandu jidhol l-artikolu ġdid 42A li ġej:-

Żieda ta' artikolu ġdid 42A ma l-Att prinċipali.

"Regoli speċjali applikabbli għal *trusts*."

42A. Id-disposizzjonijiet ta' l-artikolu 32B ta' dan l-Att għandhom japplikaw *mutatis mutandis* għal kull trasferimenti ta' sigurtajiet negozjabbli, u riferenza għal "proprjetà immobbli" fl-artikolu 32B għandha tiftiehem bħala riferenza għal "sigurtajiet negozjabbli" għall-finijiet ta' dan l-artikolu."

TAQSIMA XI

EMENDI TA' L-ATT DWAR IS-SERVIZZI TA' L-INVESTIMENT, KAP. 370

Emendi ta' l-Att
dwar is-Servizzi
ta' l-Investment.
Kap 370.

76. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa waħda ma' l-Att dwar is-Servizzi ta' l-Investment, hawnhekk iżjed 'il quddiem f'din it-Taqsima, imsejjah "l-Att prinċipali".

(2) Din it-Taqsima ghandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew ghanijiet differenti tagħha.

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

77. L-artikolu 12 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) il-paragrafi (j) u (k) tas-subartikolu (1) tiegħu għandhom jiġu enumerati mill-ġdid bhala (l) u (m) rispettivament; u

(b) minnufih wara l-paragrafu (i) tas-subartikolu (1) tiegħu, ghandu jiżdied il-paragrafu (j) ġdid li ġej:

“(j) jittrasponi l-htigijiet tad-Direttiva 2002/87/EC tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Diċembru 2002 dwar is-sorveljanza ta' istituzzjonijiet ta' krediti, impriżi ta' l-assigurazzjoni u impriżi ta' investment f'*conglomerate* finanzjarja, kif applikabbli għal detentur ta' liċenza;”.

Emenda ta' l-
Ewwel Skeda li
tinsab ma' l-Att
prinċipali.

78. Il-paragrafu 4 ta' l-Ewwel Skeda li tinsab ma' l-Att prinċipali ghandha tiġi emendata kif ġej:-

(a) fis-subparagrafu (a) tiegħu, minflok il-kliem “din l-Iskeda; jew” għandhom jidhlu l-kliem “din l-Iskeda;”;

(b) minnufih wara s-subparagrafu (a) tiegħu ghandu jidhol il-proviso li ġej:-

“Izda għall-finijiet ta' dan is-subparagrafu kull persuna li tkun awtorizzata jew xort'ohra eżentata mill-awtorizzazzjoni skond l-artikolu 43 jew 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*, ma tkunx tehtieg, għax tkun qed iżzomm dak l-attiv, li jkollha liċenza skond dan is-subparagrafu jekk dik il-persuna ma tkunx tipprovdi servizz ta' investment u tiddelega l-attivitajiet kollha li huma servizzi ta' investment skond dan l-Att lil persuna li jkollha liċenza li tipprovdi dawk is-servizzi; jew”;

(c) fis-subparagrafu (b) tiegħu, minflok il-kliem “is-servizz ta’ investiment; jew” għandhom jidhlu l-kliem “is-servizz ta’ investiment.”; u

(d) minnufih wara s-subparagrafu (b) tiegħu għandu jidhol il-proviso li ġej:-

“Izda għall-finijiet ta’ dan is-subparagrafu, kull persuna li tkun awtorizzata jew xort’ohra eżentata minn awtorizzazzjoni skond l-artikolu 43 jew 43A ta’ l-Att dwar it-Trusts u t-Trustees ma tkunx tehtieg, għax tkun qed iżzomm dak l-attiv, li jkollha liċenza skond dan l-Att; jew”.

TAQSIMA XII

EMENDI GHALL-ATT DWAR IL-KUMMERĊ BANKARJU, KAP. 371

79. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma’ l-Att dwar il-Kummerċ Bankarju, hawnhekk iżjed ‘il quddiem f’din it-Taqsima msejjah l-Att prinċipali.

Emendi għall-Att
dwar il-Kummerċ
Bankarju,
Kap. 377.

(2) Din it-Taqsima għandha tibda ssehh f’dik id-data li l-Ministru responsabbli għall-finanzi jista’ jstabbilixxi b’avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti u għanijiet differenti tiegħu.

80. Fis-subartikolu (1) ta’ l-artikolu 2 ta’ l-Att prinċipali, fit-tifsira ta’ “awtorità kompetenti” minflok il-kliem “fl-artikolu 3(2)” għandhom jidhlu l-kliem “fl-artikolu 3(1)”.

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

81. Fis-subartikolu (3) ta’ l-artikolu 13 ta’ l-Att prinċipali, minflok il-kliem “imnizzla borża liċenzjata taht l-Att dwar is-Swieq Finanzjarji” għandhom jidhlu l-kliem “imnizzla f’kambju ta’ investiment rikonoxxut skond l-Att dwar is-Swieq Finanzjarji.”.

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

82. Minnufih wara l-artikolu 29A ta’ l-Att prinċipali, għandhom jżiedu l-artikoli 29B u 29C godda li ġejjin:-

Żieda ta’ artikoli
għodda 29B u 29C
ma’ l-Att
prinċipali.

“Konglo-
merati
finanzjarji.

29B. Il-Ministru jista’, wara konsultazzjoni ma’ l-awtorità kompetenti, jagħmel regolamenti għat-trasposizzjoni tad-Direttiva 2002/87/EC tal-Parlament Ewropew u tal-Kunsill ta’ l-Unjoni Ewropea tas-16 ta’ Diċembru 2002 fuq is-sorveljanza supplementari ta’ istituzzjonijiet ta’ kreditu, impriži ta’ l-assigurazzjoni u ditti ta’ investiment

f'konglomerat finanzjarju, kif jista' jkun applikabbli ghal istituzzjonijiet ta' kreditu.

Lingwa tar-regolamenti.

29C. Regolamenti maghmula taht dan l-Att u kull emenda jew revoka ta' dawk ir-regolamenti, jistghu jsiru bil-lingwa Ingliża biss.”.

TAQSIMA XIII

EMENDI TA' L-ATT DWAR L-AMMINISTRAZZJONI TAT-TAXXA, KAP. 372

Emendi ta' l-Att dwar l-Amministrazzjoni tat-Taxxa, Kap. 372.

83. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa waħda ma' l-Att dwar l-Amministrazzjoni tat-Taxxa, hawnhekk iżjed 'il quddiem f'din it-Taqsima, imsejjah “l-Att prinċipali”.

(2) Din it-Taqsima ghandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jstabbilixxi b'avviż fil-Gazzetta u dati differenti jistghu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew għanijiet differenti tagħha.

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

84. L-artikolu 5 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) fis-subartikolu (3) tiegħu, minflok il-kliem “huwa liċenzjat taht l-artikolu 51A ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta” għandhom jidhlu l-kliem “li kellu liċenza taht l-artikolu 51A ta' l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta u sakemm jibqa' jkollu dik il-liċenza jew ikun awtorizzat jew b'xi mod iehor jingħata permess li jaġixxi bhala *trustee* taht l-artikoli 43 jew 43A ta' l-Att dwar it-*Trusts* u t-*Trustees*”; u

(b) fis-subartikolu (4) tiegħu, minflok il-kliem “Azzjonista *nominee* liċenzjat li johroġ” għandhom jidhlu l-kliem “Persuni msemmija fis-subartikolu (3) ta' dan l-artikolu li tohroġ”.

Emenda ta' l-artikolu 24 ta' l-Att prinċipali.

85. Fis-subartikolu (1) ta' l-artikolu 24 ta' l-Att prinċipali, minflok il-kliem “Meta xi persuna f'kull kwalità li tkun” għandhom jidhlu l-kliem “Meta xi persuna f'kull kwalità li tkun, iżda mhux fil-kwalità ta' *trustee* ta' *trust*”.

Żieda ta' artikoli godda 24A u 24B ma' l-Att prinċipali.

86. Minnufih wara l-artikolu 24 ta' l-Att prinċipali għandhom jiżdiedu l-artikoli godda 24A u 24B li ġejjin:-

“Prospetti li għandhom jinghataw mit-*trustees*.

24A. (1) Il-Kummissarju jista' jagħti avviż lil *trustee* ta' *trust* fejn jeħtieġu jagħtih, fiż-żmien limitat b'dak l-avviż, li ma jkunx ta' inqas minn tletin jum mid-data tan-notifika ta' dak l-avviż, prospett li jkun fih:–

(a) dikjarazzjoni vera u korretta, ċertifikata minn detentur ta' *warrant* imsemmi fl-artikolu 57 ta' dan l-Att, ta' *l-income* attribwibbli għal dik it-*trust* kif imsemmi fl-artikolu 27B ta' l-Att dwar it-Taxxa fuq *l-Income*; u

(b) (i) l-ismijiet u l-indirizzi ta' dawk il-benefiċjarji li lilhom ikun ġie allokati *income* kif provdut fis-subartikolu (4) ta' l-artikolu 27D ta' l-Att dwar it-Taxxa fuq *l-Income*, flimkien ma' l-ammonti relattivi hekk allokati; u

(ii) l-ammont, id-data ta' l-allokkazzjoni, ix-xorta u l-pajjiż ta' l-oriġini ta' *l-income* hekk allokati għal kull benefiċjarju msemmi fis-subparagrafu (i) ta' dan il-paragrafu.

(2) (a) Prospett taht id-disposizzjonijiet ta' dan l-artikolu għandu jitqies li hu prospett meħtieġ li jinghata taht id-disposizzjonijiet ta' l-artikolu 10 ta' dan l-Att.

(b) *Trustee* li johroġ ċertifikat falz lill-Kummissarju jkun hati li għamel dikjarazzjoni falza kif imfisser fil-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 52 ta' dan l-Att.

Prospetti li jinghataw minn *settlers*.

24B. Meta:–

(a) is-*settlor* ta' *trust* ikun persuna residenti f'Malta; u

(b) ebda wiehed mit-*trustees* ta' dak it-*trust* ma jkun persuna residenti f'Malta; u

(c) il-proprjetà tkun tqieghdet f'dik it-*trust* wara dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviż fil-Gazzetta;

l-imsemmi *settlor* għandu jgħarraf lill-Kummissarju bil-proprjetà hekk mqieghda fit-*trust* flimkien ma kopja, fejn

applikabbli, tad-dokument tat-*trust* rilevanti jew ta' xi dokument iehor li jipprova l-eżistenza ta' dak it-*trust*. Dan it-taghrif ghandu jinghata lill-Kummissarju mhux iktar tard minn 30 jum mid-data rilevanti tat-tqieghid tal-proprjetà fit-*trust*. Kull *settlor* li jonqos li jhares id-disposizzjonijiet ta' dan l-artikolu jkun hati ta' reat u jehel, meta jinsab hati multa ta' mhux inqas minn 50 lira Maltin u mhux iżjed minn 500 lira Maltin u multa ohra ta' mhux inqas minn 2 liri u mhux iżjed minn 10 liri Maltin għal kull jum li matulu jkompli r-reat wara li jghaddu l-imsemmija 30 jum.”.

Zieda ta' l-artikolu ġdid 42A ma' l-Att prinċipali.

87. Minnufih wara l-artikolu 42 ta' l-Att prinċipali ghandu jizdied l-artikolu ġdid 42A li ġejj:-

“Żmien li fih ghandu jsir il-hlas mit-*trustees*.”

42A. Minkejja kull haġa li tinsab fl-artikolu 42 ta' dan l-Att, taxxa li ghandha tithallas fuq l-*income* attribwibbli lil *trust* kif imfisser fl-artikolu 27B ta' l-Att dwar it-Taxxa fuq l-*Income* għal xi sena ta' stima, ghandha tithallas mhux iktar tard mid-dati stabbiliti għall-hlas tat-taxxa kif imfisser fl-Att dwar it-Taxxa fuq l-*Income*.”.

TAQSIMA XIV

THASSIR TA' L-ATT LI JIRRIKONOXXI TRUSTS , KAP. 374

Thassir ta' l-Att li jirrikonoxxi *Trusts*, Kap. 374.

88. Minn dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabilixxi b'avviż fil-Gazzetta, l-Att li jirrikonoxxi t-*Trusts* ghandu jithassar.

TAQSIMA XV

EMENDI GHALL-ATT DWAR ISTITUZZJONIJIET FINANZJARJI, KAP. 376

Emendi għall-Att dwar Istituzzjonijiet Finanzjarji, Kap. 376.

89. (1) Din it-Taqsima temenda u ghandha tinqara u tiftiehem haġa wahda ma' l-Att dwar Istituzzjonijiet Finanzjarji, hawnhekk iżjed 'il quddiem f'din it-Taqsima msejjah “l-Att prinċipali”.

(2) Din it-Taqsima ghandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabilixxi b'avviż fil-Gazzetta, u dati differenti jistghu jiġu hekk stabbiliti għal disposizzjonijiet differenti u ghanijiet differenti tiegħu.

Zieda ta' artikoli godda 12A u 12B ma' l-Att prinċipali.

90. Minnufih wara s-subartikolu (2) ta' l-artikolu 12 ta' l-Att prinċipali, ghandhom jizdiedu l-artikoli 12A u 12B godda li ġejjin:-

“Konglomerati
finanzjarji.

12A. Il-Ministru jista', wara konsultazzjoni ma' l-awtorità kompetenti, jagħmel regolamenti għat-trasposizzjoni tad-Direttiva 2002/87/EC tal-Parlament Ewropew tas-16 ta' Diċembru 2002 u sabiex jipprovdi għas-sorveljanza supplimentari ta' istituzzjonijiet finanzjarji f'konglomerat finanzjarju.

Lingwa tar-
regolamenti.

12B. Regolamenti magħmula taħt dan l-Att u kull emenda jew revoka ta' dawġ ir-regolamenti, jistgħu jsiru bil-lingwa Ingliża biss.”.

TAQSIMA XV

EMENDI TA' L-ATT DWAR IL-KUMPANNIJI, KAP. 386

91. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa waħda ma' l-Att dwar il-Kumpanniji, hawnhekk iżjed 'il quddiem imsejjah “l-Att prinċipali”.

Emendi ta' l-Att
dwar il-
Kumpanniji,
Kap. 386.

(2) Din it-Taqsima għandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixxi b'avviz fil-Gazzetta u dati differenti jistgħu jkunu hekk stabbiliti għal dispożizzjonijiet differenti u għal skopijiet differenti tagħha.

92. Minnufih wara s-subartikolu (2) ta' l-artikolu 16 ta' l-Att prinċipali, għandu jidhol is-subartikolu (3) ġdid li ġej:—

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

“(3) Ir-registrazzjoni ta' soċjeta' mir-Registatur taħt dan l-artikolu tkun bla hsara għal kull liċenza oħra jew awtorizzazzjoni oħra li tista' tkun meħtieġa dwar l-attivitajiet li għandhom jitmexxew mis-soċjetà taħt xi liġi oħra.”.

93. L-artikolu 70 ta' l-Att prinċipali għandu jiġi emendat kif ġej:—

Emenda ta' l-
artikolu 70 ta' l-
Att prinċipali.

(a) minflok is-subartikolu (5) tiegħu għandu jidhol dan li ġej:—

“(5) Kumpannija ma tkunx registrata b'isem li fih ikun jinkludi l-kelma fiduċjarju, *nominee* jew *trustee*, jew xi abbrevjazzjoni, taqsir jew derivat ta' dawġ il-kliem, kemm-il darba dik il-kumpannija ma tkunx awtorizzata li taġixxi bhala *trustee* skond il-liġi applikabbli ta' Malta jew ma jkollhiex il-permess li tagħmel hekk mill-awtorità kompetenti rilevanti.”; u

(b) minflok il-paragrafu (b) tas-subartikolu (6) tiegħu għandu jidhol dan li ġej:-

“(b) taht isem jew titolu li jkun fih l-isem fiduċjarju, *nominee* jew *trustee*, jew xi abbrevjazzjoni, taqsis jew derivat ta’ dawk il-kliem, li ma jkunx isem ta’ kumpannija li tkun awtorizzata biex tuża dak l-isem kif provdut fis-subartikolu (5) ta’ dan l-artikolu; jew”.

Emendi ta’ l-artikolu 77 ta’ l-Att prinċipali.

94. Minnufih wara s-subartikolu (2) ta’ l-artikolu 77 ta’ l-Att prinċipali, għandu jidhol is-subartikolu (3) ġdid li ġej:-

“(3) Ir-registrazzjoni ta’ kumpannija mir-Registatur taht dan l-artikolu tkun bla hsara għal kull liċenza ohra jew awtorizzazzjoni ohra li tista’ tkun mehtieġa dwar l-attivitajiet li għandhom isiru mill-kumpannija taht xi liġi ohra.”.

Emenda ta’ l-artikolu 88 ta’ l-Att prinċipali.

95. Fis-subartikolu (4) ta’ l-artikolu 88 ta’ l-Att prinċipali, minflok il-kliem “l-offerta fil-Gazzetta” għandhom jidhlu l-kliem “l-offerta fil-Gazzetta jew fuq *website* miżmuma mir-Registatur”.

Emenda ta’ l-artikolu 127 ta’ l-Att prinċipali.

96. L-artikolu 127 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) is-subartikoli (2), (4), (5), u (10) tiegħu għandhom jithassru;

(b) is-subartikoli (3), (6), (7), (8) u (9) tiegħu għandhom jiġu enumerati mill-ġdid bħala subartikoli (2), (3), (4), (5) u (6) rispettivament;

(c) fis-subartikolu (2) tiegħu kif enumerat mill-ġdid, minnufih wara l-kliem “ta’ *nominee*” għandhom jidhlu l-kliem “jew *trust*”:

Iżda l-kumpannija ma jkollhiex l-obbligu li tikseb jew tirreġistra xi tagħrif dwar in-numru ta’ beneficijarji u tkun biss ir-responsabbiltà tat-*trustee* li jgħarraf lill-kumpannija bil-ghadd ta’ beneficijarji jekk ikun jidher lit-*trustee* li, meta jitqies l-ghadd ta’ beneficijarji, jista’ jirriżulta li l-ghadd aggregat tal-persuni interessati jeċċedi l-hamsin. Ir-Registatur jista’ f’kull żmien jordna kull *trustee* biex jiddikjara bil-miktub lill-kumpannija l-ghadd ta’ beneficijarji u f’każ bhal dan għandha ssir riferenza biss għal beneficijarji li għandhom interess fiss fl-azzjonijiet taht it-*trust*.”.

(d) minflok is-subartikolu (3) kif enumerat mill-ġdid ghandu jidhol dan li ġej:-

“(3) Meta *trustee* iżomm azzjonijiet f’kumpannija f’isem u għall-benefiċju ta’ benefiċjarji:-

(a) il-memorandum u l-istatut ta’ l-assoċjazzjoni, jekk ikun il-każ, għandhom jitqiesu li saru b’mod validu għall-finijiet ta’ l-artikoli 68 u 75 ta’ dan l-Att jekk ikunu ffirmati biss mit-*trustee* meta l-azzjonijiet kollha fil-kumpannija jkunu sottoskritti mit-*trustee*;

(b) il-memorandum ta’ l-assoċjazzjoni, ir-reġistru tal-membri, iċ-ċertifikati ta’ l-azzjonijiet, il-prospetti dwar l-ghoti ta’ azzjonijiet u kull prospett annwali tal-kumpannija jista’ jispeċifika n-numru ta’ azzjonijiet miżmuma mit-*trustee* akkont tiegħu stess, jekk il-każ, u l-ammont ta’ azzjonijiet miżmuma taht *trust* jew taht kull *trust* jekk iżjed minn wiehed, u d-disposizzjonijiet tal-paragrafi (a), (b) u (ċ) tas-subartikolu (1) ta’ l-artikolu 123 ta’ dan l-Att għandhom jiftiehm u f’dan is-sens;

(c) riżoluzzjoni bil-miktub skond l-artikolu 210 ta’ dan l-Att għandha titqies li tkun valida u effettiva jekk tkun iffirmata biss mit-*trustee* meta l-azzjonijiet kollha fil-kumpannija jkunu sottoskritti mit-*trustee*.”;

(e) is-subartikolu (4) tiegħu kif enumerat mill-ġdid ghandu jiġi emendat kif ġej:-

(a) minflok il-paragrafu (a) tiegħu ghandu jidhol dan li ġej:

“(a) Meta sid benefiċjarju ta’ azzjonijiet ta’ kumpannija li jkunu miżmuma minn *trustee*, jittrasferixxi jew xort’ohra jiddisponi mit-titolu tiegħu bhala sid benefiċjarju ta’ dawn l-azzjonijiet *inter vivos* lil terzi, dik it-transazzjoni titqies li tikkostitwixxi trasferiment ta’ azzjonijiet għall-finijiet ta’ l-Att ta’ l-1993 dwar it-Taxxa fuq Dokumenti u Trasferimenti u għall-finijiet tas-subartikolu (1) ta’ l-artikolu 5 ta’ l-Att dwar it-Taxxa fuq l-*Income*.”;

(b) fil-paragrafu (c) tiegħu, minflok il-kliem “*nominee* liċenzjat” għandhom jidhlu l-kliem “*trustee*”.

(f) fis-subartikolu (5) tieghu kif enumerat mill-ġdid,

(i) it-tifsira ta' "*nominee* liċenazjat" ghandha tithassar;

(ii) minflok it-tifsira ta' "sid benefiċjarju" ghandha tidhol din li ġejja:-

"sid benefiċjarju" tfisser il-persuna li benefiċjarjament jkollha dritt għall-azzjonijiet taht *trust* jew ftehim għal fiduċjarju;" u

(iii) minnufih wara t-tifsira ta' "sid benefiċjarju" ghandha tidhol it-tifsira ġdida li ġejja:-

"*trustee*" tfisser persuna li tista' taġixxi bhala *trustee* skond l-Att dwar it-*Trusts* u t-*Trustees*, u tinkludi kull fiduċjarju li jżomm ishma f'isem persuna ohra."

Emenda ta' l-artikolu 324 ta' l-Att prinċipali.

97. Fis-subartikolu (1) ta' l-artikolu 324 ta' l-Att prinċipali, minflok il-kliem "avviż dwar dan fil-Gazzetta" ghandhom jidhlu l-kliem "avviż dwar dan fil-Gazzetta jew fuq *website* miżmuma mir-Registratur".

Emenda ta' l-artikolu 325 ta' l-Att prinċipali.

98. L-artikolu 325 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) fis-subartikolu (2) tieghu, minflok il-kliem "avviż fil-Gazzetta" ghandhom jidhlu l-kliem "avviż fil-Gazzetta jew fuq *website* miżmuma mir-Registratur";

(b) fis-subartikolu (3) tieghu, minflok il-kliem "jippubblika fil-Gazzetta" ghandhom jidhlu l-kliem "jippubblika fil-Gazzetta jew fuq *website* miżmuma mir-Registratur"; u

(c) fis-subartikolu (4) tieghu minflok il-kliem "jippubblika avviż fil-Gazzetta" ghandhom jidhlu l-kliem "jippubblika avviż fil-Gazzetta jew fuq *website* miżmuma mir-Registratur.";

Emenda ta' l-artikolu 356 ta' l-Att prinċipali.

99. L-artikolu 356 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:-

(a) fil-paragrafu (a) tieghu, minflok il-kliem "mir-Registratur fil-Gazzetta" ghandhom jidhlu l-kliem "mir-Registratur fil-Gazzetta jew fuq *website* miżmuma mir-Registratur"; u

(b) fil-paragrafu (ċ) tiegħu, minflok il-kliem “pubblikat mir-Registratur fil-Gazzetta” ghandhom jidhlu l-kliem “pubblikat mir-Registratur fil-Gazzetta jew fuq *website* miżmuma mir-Registratur”;

100. L-artikolu 401 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:- Emenda ta’ l-artikolu 401 ta’ l-Att prinċipali.

(a) fil-paragrafu (e) tas-subartikolu (1) tiegħu, minflok il-kliem “fil-Gazzetta” kull fejn jinsabu, ghandhom jidhlu f’kull każ il-kliem “fil-Gazzetta jew fuq *website* miżmuma mir-Registratur”; u

(b) fil-paragrafu (g) tas-subartikolu (1) tiegħu, minflok il-kliem “dikjarazzjoni pubblikata fil-Gazzetta” ghandhom jidhlu l-kliem “dikjarazzjoni pubblikata fil-Gazzetta jew fuq *website* miżmuma mir-Registratur”.

101. Fis-subartikolu (6) ta’ l-artikolu 402 ta’ l-Att prinċipali minflok il-kliem minn “u *nominee* licenzjat kif imfisser fl-artikolu 127, li jkollu f’ismu azzjonijiet fil-kumpannija għan-nom ta’ u fl-interessi ta’ persuna oħra li beneficjarjament ikollha jedd għalihom.” ghandhom jidhlu l-kliem “u *trustee* kif imfisser fl-artikolu 127 li jkollu azzjonijiet fil-kumpannija.”. Emenda ta’ l-artikolu 402 ta’ l-Att prinċipali.

102. Minnufih wara s-subartikolu (5) ta’ l-artikolu 425 ta’ l-Att prinċipali għandu jidhol is-subartikolu (6) ġdid li ġej:- Emenda ta’ l-artikolu 425 ta’ l-Att prinċipali.

“(6) Regolamenti maghmula taht xi wahda mid-disposizzjonijiet ta’ dan l-Att jistgħu jsiru bil-lingwa Inġliża biss.”.

103. Fil-paragrafu (b) tas-subartikolu (1) tal-artikolu 431 ta’ l-Att prinċipali, minflok il-kliem “mil-liema data, id-dispożizzjonijiet ta’ dan l-Att” ghandhom jidhlu l-kliem “mil-liema data, id-disposizzjonijiet ta’ dan l-Att jew ta’ xi liġi oħra”. Emenda ta’ l-artikolu 431 ta’ l-Att prinċipali.

104. L-Għaxar Skeda ta’ l-Att prinċipali għandha tiġi emendata kif ġej:- Emenda ta’ l-Għaxar Skeda ta’ l-Att prinċipali.

(a) is-subparagrafu (a) tal-paragrafu 1 tiegħu għandu jithassar;

(b) is-subparagrafu (b) tal-paragrafu 1 tagħha għandha tiġi enumerata mill-ġdid bhala paragrafu 1;

(c) fis-subparagrafu (1) (a) tal-paragrafu 3 tagħha, minflok il-kliem “li għall-inqas wiehed minnhom ikun detentur ta’ liċenza li jkun licenzjat bhala *manager* ta’ skema ta’ investment kollettiv

skond kif mfisser fl-Att dwar Servizzi ta' l-Investment" ghandhom jidhlu il-kliem li gej "u kull wiehed minnhom ghandu jissodisfa lill-awtorità kompetenti skond kif imfisser fl-Att dwar Servizzi ta' l-Investment li hu persuna idonea u addattata biex taghmel it-tali attivitajiet u funzjonijiet u ghandu wkoll jissodisfa l-htigijiet tas-subartikolu (7) ta' l-artikolu 6 ta' l-Att dwar Servizzi ta' l-Investment u kull htigijiet ohra li jistghu jkunu stabbiliti permezz ta' linji ta' gwida mahruġa mill-awtorità kompetenti taht u skond kif imfisser fl-Att dwar Servizzi ta' l-Investment"; u

(d) fis-subparagrafu (8) tal-paragrafu (22) taghha, minflok il-kliem "pubblikat fil-Gazzetta" ghandhom jidhlu l-kliem "pubblikat fil-Gazzetta jew fuq *website* miżmuma mir-Registratur".

TAQSIMA XVII

EMENDI TA' L-ATT DWAR L-ARBITRAĠĠ, KAP. 387

Emendi ta' l-Att
dwar l-Arbitraġġ,
Kap. 387.

105. (1) Din it-Taqsima temenda u tinqara u tiftiehem haġa waħda ma' l-Att dwar l-Arbitraġġ, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

(2) Din it-Taqsima ghandha tibda ssehħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' jistabbilixxi b'avviż fil-Gazzetta.

Żieda ta' l-artikolu
15A ta' l-Att
prinċipali.

106. Minnufih wara l-artikolu 15 ta' l-Att prinċipali ghandu jidhol l-artikolu ġdid 15A li ġej:-

"Klawżola
ta'
arbitraġġ
f'testmenti
u fi *trusts*."

"15A(1) Testatur ikun jista' jdahhal klawżola ta' arbitraġġ f'testment. F'każ bħal dan dik il-klawżola tkun torbot lill-persuni kollha li jaghmlu talba taht dak it-testment dwar il-kwistjonijiet kollha dwar l-interpretazzjoni ta' dak it-testment, inkluża kull talba li dak it-testment ma jkunx validu.

(2) *Settlor* ta' *trust* ikun jista' jdahhal klawżola ta' arbitraġġ f'dokument ta' *trust* u dik il-klawżola tkun torbot lit-*trustees* kollha, u kull protettur u kull beneficijarju taht it-*trust* dwar hwejjeġ li jinqalghu taht jew b'relazzjoni mat-*trust*.

(3) Fil-każijiet imsemmija fis-subartikoli ta' qabel dan, id-dritt ta' parti li titlob direzzjonijiet mill-Qorti ta' ġurisdizzjoni volontarja skond l-Att dwar *Trusts* u *Trustees* ma jkunx limitat b'xi klawżola bħal dik u minkejja d-disposizzjonijiet ta' dan l-Att, din il-Qorti ma tkunx marbuta li twaqqaf il-proċedimenti skond is-subartikolu (3) ta' l-

artikolu 15 jew xort'ohra, iżda jkollha diskrezzjoni li hekk tagħmel sa dak iż-żmien li tiddeċiedi li l-kwistjoni hija ta' xorta kontenzjuża, f'liema każ għandha twaqqaf il-proċedimenti u tirreferi l-partijiet għall-arbitraġġ.”.

TAQSIMA XVIII

EMENDI GHALL-ATT DWAR IL-KUMMERĊ TA' L-ASSIGURAZZJONI, KAP. 403

107. (1) Din it-Taqsima temenda l-Att dwar il- Kummerċ ta' l- Assigurazzjoni, hawnhekk iżjed 'il quddiem f'din it-Taqsima msejjjah “l-Att prinċipali” u għandha tinqara u tiftiehem haġa waħda ma' l-Att prinċipali.

Emendi ta' l-Att
dwar il-Kummerċ
ta' l-
Assigurazzjoni,
Kap. 403.

(2) Id-disposizzjonijiet ta' din it-Taqsima għandhom jibdeu isehhu f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jkunu hekk stabbiliti għal disposizzjonijiet differenti jew għanijiet differenti ta' din it-Taqsima.

108. Minflok il-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 10 ta' l-Att prinċipali, għandu jidhol dan li ġej:-

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

“(b) meta l-awtorizzazzjoni mitluba jew miżmuma tkun waħda li mhux ristretta għal rijassigurazzjoni, il-kumpannija għandha ġġib prova li l-inqas fond ta' garanzija jinhamm skond l-artikolu 16 ta' l-Att.”.

109. L-artikolu 12 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

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

(a) l-artikolu 12 preżenti għandu jiġi enumerat mill-ġdid bhala subartikolu (1) tiegħu; u

(b) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid għandu jidhol is-subartikolu ġdid li ġej:-

“(2) Mingħajr preġudizzju għad-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, ir-rapprezentant ġenerali ma jkunx responsabbli personalment għad-djun u obbligazzjonijiet tal-kumpannija msemmija fl-artikolu 11.”.

110. Minflok il-paragrafu (b) tas-subartikolu (5) ta' l-artikoli 14 ta' l-Att prinċipali, għandu jidhol dan li ġej:-

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

“(b) il-marġini ta’ solvibbiltà ta’ Malta hu l-marġini ta’ solvibbiltà ta’ kumpannija awtorizzata maħdum b’riferenza għall-attiv u l-passiv tal-kummerċ li jitmexxa minn dik il-kumpannija f’Malta.”.

Emenda ta’ l-
artikolu 28 ta’ l-
Att prinċipali.

111. Is-subartikolu (1) ta’ l-artikolu 28 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) il-paragrafu (h) tiegħu għandu jiġi enumerat mill-ġdid bhala paragrafu (i) tiegħu; u

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

“(h) tehtieg li kumpannija tippreżenta pjan ta’ rkupru finanzjarju jekk jidhrilha li l-interessi ta’ l-assigurati, tad-detenturi tal-polza, kredituri jew persuni oħra interessati x’aktarx ikunu preġudikati minhabba deterjorazzjoni fil-qagħda finanzjarja tal-kumpannija;”.

Emenda ta’ l-
artikolu 38 ta’ l-
Att prinċipali.

112. L-artikolu 38 ta’ l-Att prinċipali, għandu jiġi emendat kif ġej:-

(a) minnufih wara subartikolu (1) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:-

“(2) Jekk il-persuna li takkwista *holding* kwalifikativ ta’ azzjonijiet tkun entità ta’ l-assigurazzjoni, istituzzjoni ta’ kreditu jew impriza ta’ investment li hija awtorizzata fi Stat Membru jew Stat ŻEE, jew l-impriza prinċipali ta’ dik l-entità, jew persuna naturali jew ġuridika li tikkontrolla dik l-entità, u jekk, bhala riżultat ta’ dak l-akkwist, l-entità li fiha l-akkwistur qed jipproponi li jkollu sehem għandha ssir sussidjarja jew tkun suġġetta għal kontroll tal-persuna li takkwista dak il-*holding*, il-valutazzjoni ta’ dan l-akkwist irid ikun soġġett għal konsultazzjoni minn qabel skond l-Artikolu 12a tad-Direttiva tal-Kunsill 73/239/EEC ta’ l-24 ta’ Lulju 1973 fuq il-koordinazzjoni ta’ liġijiet, regolamenti u provvedimenti amministrattivi li għandhom x’jaqsmu ma’ l-għemil u twettiq tal-kummerċ ta’ l-assigurazzjoni dirett barra minn kummerċ fit-tul u skond l-Artikolu 12a tad-Direttiva tal-Kunsill 73/267/EEC tal-5 ta’ Marzu, 1979, fuq il-koordinazzjoni ta’ liġijiet, regolamenti u provvedimenti amministrattivi li għandhom x’jaqsmu ma’ l-għemil u twettiq tal-kummerċ ta’ l-assigurazzjoni dirett fit-tul, kif dawn jiġu emendati minn żmien għal żmien.”;

(b) Fis-subartikolu (3) tiegħu, minflok il-kliem “imniżżla f’xi Borża” għandhom jidhlu l-kliem “imniżżla f’xi *exchange* ta’ investiment rikonoxxuta”; u

(c) minnufih wara subartikolu (11) tiegħu, għandu jżied dan is-subartikolu ġdid li ġej:

“(12) F’dan l-artikolu, l-espressjonijiet “Stat Membru” u “Stat ŻEE” għandu jkollhom din it-tifsira:—

A.L. 89 ta’ l-2004.

(a) “Stat Membru” tfisser Stat Membru tal-Komunitajiet Ewropej; u

(b) “Stat ŻEE” tfisser Stat li jkun parti kontraenti fil-ftehim fuq iż-Żona Ekonomika Ewropea ffirmat f’Oporto fit-2 ta’ Mejju, 1992 kif emendat bil-Protokol iffirmit fi Brussel fis-17 ta’ Marzu 1993 u kif emendat minn żmien għal żmien.”.

113. Minflok il-paragrafu (a) tas-subartikolu (1) ta’ l-artikolu 41 ta’ l-Att prinċipali għandu jidhol dan li ġej:—

Emenda ta’ l-artikolu 41 ta’ l-Att prinċipali.

“(a) fil-każ ta’ kumpannija li l-uffiċċju prinċipali tagħha jkun f’Malta, ixkolji u konsegwenzjalment tistralċja taht u skond regolamenti magħmula għall-fini ta’ dan l-artikolu; u”.

114. L-artikolu 58 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:—

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

(a) minflok il-paragrafu (ċ) tas-subartikolu (1) tiegħu għandu jidhol dan li ġej:—

“(ċ) li tissospendi jew tirrevoka awtorizzazzjoni taht l-artikolu 26, jew taht xi regolament magħmul taht dan l-Att;”;
u

(b) minflok is-subartikolu (3) tiegħu għandu jidhol dan li ġej:—

“(3) Appell magħmul taht dan l-artikolu ma jissospendix l-eżekuzzjoni ta’ xi deċiżjoni li minnha jsir l-appell:

Iżda deċiżjoni biex tirrevoka awtorizzazzjoni ma tibdiex taħdem sakemm jgħaddi ż-żmien li fih jista’ jsir appell skond dan l-artikolu u, jekk isir appell f’dak iż-żmien, id-deċiżjoni

tibda taħdem fid-data li fiha t-Tribunal jiċhad l-appell jew li fiha l-appell ikun abbandunat.”.

Emenda ta' l-
artikolu 62 ta' l-
Att prinċipali.

115. L-artiklu 62 ta' l-att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartiklu (1) tiegħu, minflok il-kliem “Minkejja d-dispożizzjonijiet ta' l-Att dwar il-Kumpanniji, jistgħu jsiru regolamenti” għandhom jidhlu l-kliem “Regolamenti”, u

(b) minnufih wara s-subartikolu (3) tiegħu għandu jidhol subartiklu (4) ġdid kif ġej:

“Id-disposizzjonijiet ta' dan l-artiklu u ta' kull regolamenti magħmula bis-saħha tiegħu għandhom jipprevalu fuq kull haġa li tkun kuntrarja li tinsab fl-Att dwar il-Kumpanniji, jew regolamenti magħmula bis-saħha tiegħu, dwar il-kontinwazzjoni ta' kumpanniji.”.

Emenda ta' l-
artikolu 64 ta' l-
Att prinċipali.

116. L-artikolu 64 ta' l-Att prinċipali għandu jiġi emendat kif ġej:-

(a) minflok il-paragrafu (ċ) tas-subartikolu (1) tiegħu għandu jidhol dan li ġej:-

“(ċ) jipprovdu għal u jirregolaw il-hlas minn xi persuna, korp jew ċellula maħluqa minn kumpannija ċellula, skond il-każ ta' kull drittijiet, ammonti jew hlasijiet oħra pagabbli lill-awtorità kompetenti dwar kull haġa provdut għaliha, b'dan l-Att jew tahtu jew kull regolamenti magħmula taht dan l-artikolu;” u

(b) is-subartikolu (3) tiegħu, għandu jiġi enumerat mill-ġdid bħala subartikolu (4); u

(ċ) minnufih wara s-subartikolu (2) għandu jizjed is-subartikolu ġdid li ġej:-

“(3) Il-Ministru jista', wara konsultazzjoni ma' l-awtorità kompetenti, jagħmel regolamenti għat-trasposizzjoni tad-Direttiva 2002/87/EC tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Diċembru 2002 dwar is-sorveljanza ta' istituzzjonijiet ta' kreditu, imprizi ta' l-assigurazzjoni u imprizi

ta' investiment f'*conglomerate* finanzjarja, kif tista' tkun applikabbli għal-imprizi ta' l-assigurazzjoni.”.

117. Minnufih wara l-paragrafu 4.3 tal-Ewwel Skeda li tinsab ma' l-Att prinċipali, għandu jidhol il-paragrafu ġdid li ġejj:-

Emendi ta' l-Ewwel Skeda li tinsab ma' l-Att prinċipali.

“4.4 Bla hsara għad-disposizzjonijiet l-oħra ta' dan il-paragrafu, ir-rappreżentant ġenerali ma jkunx personalment responsabbli għall-djun u obligazzjonijiet ta' Lloyd's jew ta' xi wiehed mill-membri tagħha.”.

118. Ir-Raba' Skeda li tinsab ma' l-Att prinċipali għandha tiġi emendata kif ġejj:

Emenda tar-Raba' Skeda li tinsab ma' l-Att prinċipali.

(a) it-Taqsima I tagħha għandha tiġi emendata kif ġejj:-

(i) fil-paragrafu 3.8 tagħha, minflok il-kliem “iffirmata minn uffiċjal anzjan tal-kumpannija”, għandhom jidhlu l-kliem “iffirmata minn uffiċjal anzjan ta' assiguratatur jew ta' *broker* ta' l-assigurazzjoni, skond il-każ,”;

(b) fil-paragrafu 3.9 tagħha, minflok il-kliem “ma taġixxix għal xi kumpannija” għandhom jidhlu l-kliem “ma taġixxix għal assiguratatur jew *broker* fl-assigurazzjoni, skond il-każ,”; u

(c) fil-partita (ii) tas-subparagrafu (b) tal-paragrafu 5.5 taqsimi III tagħha, minflok il-kliem “li jirranġa kuntratt ta' assiguratatur ma' kumpannija awtorizzata” għandhom jidhlu l-kliem “li jirranġa kuntratt ta' assiguratatur ma' kumpannija”.

TAQSIMA XIX

EMENDA TA' L-ATT DWAR IT-TAXXA FUQ VALUR MIŻJUD, KAP. 406

119. (1) Din it-Taqsima temenda u għandha tinqara u tiftiehem haġa waħda ma' l-Att dwar it-Taxxa fuq Valur miżjud, hawnhekk iżjed 'il quddiem imsejjah “l-Att prinċipali”.

Emendi ta' l-Att dwar it-taxxa fuq Valur Miżjud, Kap. 406.

(2) Din it-Taqsima għandha tibda ssehh f' dik id-data li l-Ministru responsabbli għall-finanzi jista' jstabbilixxi b'avviz fil-Gazzetta.

120. Fis-subparagrafu (c) tal-paragrafu 6 ta' T-1 Skeda li tinsab ma' l-Att prinċipali, minnufih wara l-kliem “konsulenti finanzjarji,” għandha tidhol il-kelma “*trustees*”.

Emenda ta' T-1 Skeda li tinsab ma' l-Att prinċipali.

TAQSIMA XX

**EMENDA TA' L-ATT DWAR IR-RATIFIKA TA'
KONVENZJONIJIET DWAR PROĊEDURI LEGALI,
KAP. 443**

Emenda ta' l-Att
dwar ir-Ratifika
ta'
Konvenzjonijiet
dwar Proċeduri
Legali, Kap. 443

121. (1) Din it-Taqsima temenda u ghandha tingara u tiftiehem haġa waħda ma' l-Att dwar ir-Ratifika ta' Konvenzjoni dwar Proċeduri Legali, hawnhekk iżjed 'il quddiem msejjah "l-Att prinċipali".

(2) Din it-Taqsima ghandha tibda ssehh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista', jistabbilixxi b'avviż fil-Gazzetta.

Emenda ta' l-
artikolu 40 ta' l-
Att prinċipali.

122. Minflok l-artikolu 40 ta' l-Att prinċipali ghandu jidhol dan li ġej:-

“40. Għall-finijiet ta' din it-Taqsima ta' dan l-Att, *trust* ghandu jittqies li jkun domiciljat f'Malta jekk ikun jeżisti wiehed mill-fatturi msemmija fis-subartikolu (1) ta' l-artikolu 8 ta' l-Att dwar it-*Trusts* u t-*Trustees*, bla hsara għad-disposizzjonijiet tas-subartikolu (2) tiegħu.”.

SKEDA

(Artikolu 34)

“SKEDA
(Artikoli 2 u 5A)

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

KAPITOLU I - SKOP**Artikolu 1**

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

Artikolu 2

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

Trust ghandu dawn il-karatteristiċi:

(a) l-assi jikkostitwixxu fond separat u mhumiex parti mil-patrimonju tat-*trustee* innifsu;

(b) it-titolu ta' l-assi tat-*trust* huma f'isem it-*trustee* jew f'isem persuna oħra ghan-nom tat-*trustee*;

(ċ) it-*trustee* ghandu s-setgħa u d-dmir li, għar-rigward ta' dak li għalih hu responsabbli, jamministra, juża, jew jiddisponi mill-assi skond il-kundizzjonijiet tat-*trust* u l-obligazzjonijiet speċjali imposti fuqu mil-liġi.

Sewwa jekk is-*settlor* iżomm xi drittijiet jew poteri, u sew jekk it-*trustee* nnifsu jkollu drittijiet bħala benefiċjarju, mhumiex neċessarjament inkonsistenti ma' l-eżistenza ta' *trust*.

Artikolu 3

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

Artikolu 4

Il-Konvenzjoni ma tapplikax ghal kwistjoni preliminari li jirrelataw mal-validità ta' testamenti jew ta' atti ohra li bis-sahha taghom l-assi jigu trasferiti lit-*trustee*.

Artikolu 5

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

KAPITOLU II - LIĠI APPLIKABBLI

Artikolu 6

Trust ghandu jkun regolat mil-liġi magħzula mis-*settlor*.

L-ghażla ghandha tkun espressa jew implicita kif provdut fid-dokument tat-*trust* jew fil-kitba li turi l-eżistenza ta' *trust* interpretati, jekk hemm bżonn, fid-dawl ta' ċirkostanzi tal-każ.

Meta l-liġi magħzula skond id-disposizzjonijiet tal-paragrafu ta' qabel ma tipprovdux ghal *trusts* jew ghal kategorija ta' *trust* in kwistjoni, l-ghażla ma jkollhiex effett u l-liġi speċifikata fl-Artikolu 7 ghandha tapplika.

Artikolu 7

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

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

- (a) għall-post ta' l-amministrazzjoni tat-*trust* msemmi mis-*settlor*;
- (b) għas-*situs* ta' l-assi tat-*trust*;
- (c) għall-post tar-residenza jew tax-xoghol tat-*trustee*;
- (d) għall-ghanijiet tat-*trust* u l-postijiet fejn dawn ghandhom jigu esegwiti.

Artikolu 8

Il-liġi speċifikata mill-Artikolu 6 jew 7 għandha tirregola l-validità ta' *tat-trust*, l-interpretazzjoni tiegħu, l-effett tiegħu u l-amministrazzjoni ta' *tat-trust*.

B'mod partikolari dik il-liġi għandha tirregola -

(a) il-hatra, rizenja u tnehhija ta' *Trustees*, il-kapaċità li taġixxi bhala *trustee*, u l-passaġġ ta' l-uffiċċju ta' *trustee* minn wiehed għall-iehor;

(b) id-drittijiet u d-dmirijiet ta' *trustees* bejniethom;

(c) id-dritt ta' *trustees* li jiddelegaw fl-intier jew in parti, t-twettiq tad-dmirijiet tagħhom jew l-eżercizzju tas-setgħat tagħhom;

(d) is-setgħa ta' *trustee* li jamministra jew jiddisponi minn assi ta' *tat-trust*, li jikkrea drittijiet ipotekarji jew ta' garanzija fuqhom, jew li jakkwista assi godda;

(e) is-setgħa ta' *trustees* li jinvestu;

(f) restrizzjonijiet fuq it-tul ta' żmien ta' *trust*, u fuq is-setgħa li dhul ta' *trust* jiġi akkumulat;

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

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

(i) id-distribuzzjoni ta' l-assi ta' *tat-trust*;

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

Artikolu 9

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

Artikolu 10

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

KAPITOLU III - GĦARFIEN

Artikolu 11

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

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

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

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

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

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

(d) illi l-assi tat-*trust* jistgħu jiġu rkuprati meta t-*trustee* bi ksur tat-*trust*, ikun hallat l-assi tat-*trust* ma' l-assi tiegħu jew ikun aljena assi tat-*trust*.

B'danakollu id-drittijiet u obligazzjonijiet ta' terza persuna li jkollha f'idejha dawk l-assi għandhom jibqgħu regolati bil-liġi determinata skond ir-regoli ta' għażla ta' liġi tal-forum.

Artikolu 12

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

Artikolu 14

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

KAPITOLU IV - KLAWŻOLI ĠENERALI

Artikolu 15

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

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

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

Artikolu 16

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

Artikolu 17

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

Artikolu 18

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

Artikolu 22

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

Għanijiet u Raġunijiet

L-għan ewlieni ta' dan l-Abbozz huwa biex jemenda l-Att dwar it-*trusts* sabiex jipprovdi għal liġi konsolidata dwar *trusts* u *trustees*.

L-Abbozz jipprovdi wkoll biex isiru emendi konsegwenzjali għal liġijiet oħra diversi.

A BILL

entitled

AN ACT to amend the Trusts Act, Cap. 331

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:-

PART 1

1. (1) The short title of this Act may be cited as the Trusts (Amendment) Act, 2004 and this Part shall be read and construed as one with the Trusts Act, hereinafter referred to as “the principal Act”. Short title and commencement.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

2. Article 1 of the principal Act shall be deleted and substituted by the following new Article: Substitution of article 1 of the principal Act.

“1. This Act may be cited as the Trusts and Trustees Act.”.

3. Article 2 of the principal Act shall be amended as follows:- Amendment of article 2 of the principal Act.

(a) in subarticle (1) thereof:

(i) in the definition of “the Act” and wherever it appears in the English text of the principal Act, the words “Malta Financial Services Centre” shall be substituted by the words “Malta Financial Services Authority” wherever they occur;

(ii) immediately after the definition of “the Act” the following new definition shall be inserted:-

“ “approved jurisdiction” means a jurisdiction which has been approved by the Authority for the purposes of this Act;”;

(iii) immediately after the definition of “approved jurisdiction” the following new definition shall be inserted:-

“ “approved person” means a person of good reputation possessing experience and qualifications in financial, fiduciary, accounting or legal services and approved by the Authority as being fit and proper to carry out the duties of a trustee;”;

(iv) immediately after the definition of “approved person” the following new definition shall be inserted:-

“ “the Authority” means the Malta Financial Services Authority;”;

(v) the definition of “the Centre” in the English text shall be deleted;

(vi) immediately after the definition of “breach of trust” there shall be added the following new definition:-

“ “charitable purpose” means any charitable and philanthropic purpose, and without prejudice to the generality of the aforesaid, includes in particular:

- (a) the advancement of education, including physical education and sports;
- (b) the advancement of religion;
- (c) the advancement of health;
- (d) social and community advancement;
- (e) the advancement of culture, arts and national heritage;

(f) the advancement of environmental protection and improvement;

(g) the promotion of human rights, conflict resolution and reconciliation;

but does not include a political purpose;

For the purposes of this definition “political purpose” means the promotion of the interests of a political party or a political candidate, whether at local, national or international level, or to seek or oppose changes in the law or government policy or decisions except when such law or government policies or decisions directly concern the achievement of charitable purposes;”;

(vii) immediately after the definition of “charitable purpose” the following new definition shall be inserted:

“ “commercial transaction” means the following transactions and any transactions connected or ancillary thereto:

(a) securities offerings, whether to the public or for private placement, portfolio management and custody of investment instruments;

(b) the securitisation of assets;

(c) the grant of real or personal security interests including hypothecs, mortgages, privileges, pledges and guarantees;

(d) collective investment schemes;

(e) employee benefit or retirement schemes or arrangements;

(f) syndicated loan agreements and other multi-creditor banking facilities;

(g) insurance policies and the payment of proceeds thereunder;

(h) timeshare and multi-property structures, and

(i) such other commercial transactions as may be prescribed in a Notice issued by the Minister;”;

(viii) for the definition of “the Convention” there shall be substituted the following new definition:-

“ “the Convention” means the Hague Convention on the law applicable to trusts and on their recognition, which was adopted by the Hague Conference on Private International Law on the 20 October 1984, and which came into force on the 1 January 1992 set out in all material parts in the Schedule to this Act;”;

(ix) immediately after the definition of “the Convention” the following new definition shall be inserted:

“ “corporate trustee” means a trustee which is a legal person wherever incorporated;”;

(x) for the definition of “the Court” there shall be substituted the following new definition:

“ “Court” means the Civil Court in its voluntary jurisdiction unless otherwise indicated or unless the context refers to any court seized of a matter in which case it is the court where the matter arises;”;

(xi) the definition of “immovable property situated in Malta” shall be deleted;

(xii) immediately after the definition of “foreign trust” the following new definition shall be inserted:

“ “Malta’s international commitments” means Malta’s commitments, responsibilities and obligations arising out of 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 agreement, however called, whether bilateral or multilateral, to which Malta is a party;”;

(xiii) immediately after the definition of “Malta’s international commitments” the following new definition shall be inserted:

“ “Maltese trust” means a trust whose proper law is the law of Malta;”;

(xiv) the definition of “nominee company” shall be deleted;

(xv) immediately after the definition of “Minister” the following new definition shall be inserted:

“ “operating in Malta” means the existence of an office, branch, or other centre of professional or commercial activities of a regular nature in Malta and does not include one or more unconnected and sporadic acts;”;

(xvi) the definition of “qualified person” shall be deleted;

(xvii) immediately after the definition of “property” there shall be inserted the following new definition:-

“ “recognised investment exchange” shall have the same meaning assigned to it by the Financial Markets Act;”;

(xviii) immediately after the definition of “recognised investment exchange” there shall be inserted the following new definition:-

“ “remuneration” means any compensation or reward for acting as a trustee to be paid out of trust property in accordance with the terms of trust, or otherwise, other than the reimbursement of expenses of the trustee or the indemnification in favour of the trustee for expenses, liabilities and other claims;”;

(xix) for the definition of “resident in Malta” there shall be substituted the following new definition:

“ “resident in Malta” shall mean, in case of an individual, a person whose habitual residence is in Malta and in case of a company, a company registered in Malta;”;

(xx) immediately after the definition of “settlor” the following new definition shall be inserted:

“ “terms of a trust” means the written or oral terms of a trust, expressed or implied, and any other terms made applicable by the proper law;”;

(xxi) for the definition of “trustee” there shall be substituted the following new definition:-

““trustee” in relation to property, means the person or persons holding or in whom the property is vested on terms of trust in accordance with the provisions of this Act or is otherwise deemed to be a trustee under this Act;”;

(xxii) immediately after the definition of “unilateral declaration of trust” the following new definition shall be inserted:

““unit trust” means any trust established for the purpose of, or having the effect, or providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever, being a collective investment scheme as defined in the Investment Services Act, 1994.”;

(b) subarticle (4) thereof shall be deleted; and

(c) subarticle (5) thereof shall be re-numbered as subarticle (4).

Amendment of article 3 of the principal Act.

4. Article 3 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof, for the words “holds or” there shall be substituted the words “holds, as owner or” and for the words “or for a purpose which is not for the benefit of the trustee” there shall be substituted the words “or for a charitable purpose which is not for the benefit only of the trustee”; and

(b) subarticle (2) shall be substituted by the following new subarticle (2) :

“(2) The trust property shall constitute a separate fund owned by the trustee, distinct and separate from the personal property of the trustee and from other property held by the trustee under any other trust.”;

(c) immediately after subarticle (3) the following new subarticles (4) to (6) shall be inserted;

“(4) The holding of property under trusts shall have the following legal effects:

(a) that personal creditors of the trustee shall have no recourse against the trust property;

(b) that the trust property shall not form part of the trustee’s personal estate upon his insolvency or bankruptcy; and

(c) that the trust property shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee’s estate upon his death.

(5) A trustee shall be entitled to appear or act in his capacity as trustee before any court, any notary or any person acting in an official capacity. Where the trustee desires to register property, movable or immovable, or documents of title to them, he shall be entitled to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

(6) Trusts create fiduciary obligations upon the trustee in favour of the beneficiary of the trusts. The settlor of trusts shall have no rights in relation to trust property except as provided by this Act.”.

5. Article 5 of the principal Act shall be amended as follows:- Amendment of article 5 of the principal Act.

(a) in subarticle (2) by the deletion of the words “the Convention” and the insertion of the words “this Act” in their stead;

(b) in subarticle (3) by the deletion of the words “from the law of Malta”.

6. Immediately after article 5 of the principal Act, there shall be inserted a new article 5A as follows:- Addition of new article 5A to the principal Act.

“Applicability of Convention. **5A.** (1) The provisions of articles 1 to 12, 14, 15, 16 (the first paragraph only), 17, 18 and 22 (the first paragraph only) of the Convention as set out in the Schedule to this Act shall have the force of law in Malta.

(2) Those provisions shall, so far as applicable, have effect not only in relation to the trusts described in article 2 and 3 of the Convention but also in relation to any other trusts of property arising under the law of another country.

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

Cap. 374

(4) Article 22 of the Convention shall not be construed as affecting the law to be applied in relation to anything done or omitted before the coming into force of the Recognition of Trusts Act, 1994.

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

Substitution of article 6 of the principal Act.

7. Article 6 of the principal Act shall be deleted and substituted by the following new articles 6, 6A and 6B:

“Validity and recognition of trusts.

6. (1) When the proper law of a trust is the law of Malta as the chosen applicable law of the trust or as determined in accordance with Article 7 of the Convention, notwithstanding the provisions of any other law, the validity of the trust, its construction, its effects and the administration of the trust shall be governed by this Act and other provisions of Maltese law on trusts.

(2) When the proper law of a trust is a foreign law as the chosen applicable law of the trust or as determined in accordance with Article 7 of the Convention, notwithstanding the provisions of any other law, the validity of the trust, its construction, its effects and the administration of the trust shall be governed by such foreign law and shall be recognised and given effect to in Malta in accordance with the Convention and this Act.

(3) The administration of a trust may be regulated by a law different from the proper law of the trust.

(4) Trusts created or recognised in accordance with this Act are not prohibited by articles 331, 757 to 761 and 1776 of the Civil Code.

(5) Article 586 of the Civil Code shall not affect any term of a trust because it relates to the inheritance of the settlor or because a disposition relating to property under trusts is to take effect after the death of the settlor.

(6) Subject to the provisions of article 11 and subarticle (7) of article 21 of this Act, when a commercial transaction includes the appointment of a trustee to hold property under trusts in relation to such transaction, the trust shall operate in accordance with the express terms of the trust instrument.

Mandatory
Rules to
prevail

6A. (1) Subject to the provisions of subarticle (2) of this article, in the case of a trust governed by Maltese law, where the law of Malta contains provisions with regard to the following matters:-

(i) the protection of minors or incapable parties;

(ii) the personal and proprietary effects of marriage;

(iii) succession rights, testate and intestate, especially the indefeasible shares of spouses, ascendants and descendants;

(iv) the transfer of title to property and security interests in property;

(v) the protection of creditors in matters of insolvency;

(vi) the protection, in other respects, of third parties acting in good faith;

which cannot be derogated from by voluntary act, such laws shall prevail over the terms of the trust unless otherwise expressly provided in this Act or in other provisions of applicable law relating to trusts and related matters.

(2) To the extent that there exist rules of mandatory application the courts shall apply such mandatory rules subject to the provisions of article 6B.

(3) When a trust is governed by Maltese law and has no connection to Malta by reason of the domicile of the settlor at the time of settlement of the property on trust or the situs of the property, when immovable, the trust shall be governed by the provisions of this Act except that the provisions of subarticle (1) above shall not apply in any manner. In such cases no regard shall be had to:–

(i) the domicile, habitual residence, registration, authorisation or place of business in Malta of the trustee or any protector or any person rendering administration, accounting or other services to the trustee, or

(ii) the fact that the proper law of the trust is Maltese Law; or

(iii) the situs of property in Malta, when movable; or

(iv) the place of execution of the deed of trust, any documents relating to the trusts or the trust property or other transaction documents is Malta.

(4) In the case of a foreign trust, the provisions of subarticle (1) of this article shall only apply to such trust when the settlor is domiciled in Malta at the time of creation of the trust, subject always to the rules stated in article 6B of this Act.

(5) In the case of a foreign trust, when the settlor of such a trust is not domiciled in Malta at the time of the creation of the trust, the provisions of this Act shall apply only in so far as they regulate the recognition or otherwise in Malta of the effects of such trust.

(6) To the extent that there exist rules of mandatory application in the law applicable in the circumstances in terms of Maltese private international law, the courts of Malta may apply such mandatory rules subject to the provisions of article 6B of this Act.

(7) When a court is requested to recognise a foreign judgement which enforces any rules of mandatory application as referred to in subarticle (6), the court may accede to such request subject to the provisions of article 6B of this Act.

Management
of conflict
provisions

6B. (1) In order to ensure that the provisions of applicable law which cannot be derogated from by voluntary act are applied in a manner which preserves the trust relationship as far as possible, the following rules shall apply:-

(a) the application of the mandatory rules shall not produce the failure or invalidity of the trust, and where possible, the trust shall continue under the same terms in relation to property which is unaffected by such mandatory laws. Subject to any order of the court, the affected property shall be held by the trustee in trust for the settlor absolutely, or if he is dead, for his heirs;

(b) the trustee shall be empowered to -

(i) vary the terms of the trust in so far as relates to the nature or the extent of benefit, or

(ii) do such acts as are necessary and legally permissible,

so that the beneficiary derives the benefits in accordance with the intentions expressed by the settlor in the trust instrument in a manner compatible with the mandatory rules and any property which becomes free from trusts for any reason shall be held by the trustee in trust for the settlor absolutely, or if he is dead, for his heirs;

(c) for the purposes of resolving conflicts between the trust relationship and any mandatory provisions and to enable the continuance of the trust as specified in paragraphs (a) and (b) above, the terms of the trust, where silent, shall be deemed to include:-

(i) the power, without any obligation to do so, of the trustee to reduce the trust assets and return all or part of them to the settlor or the estate of the settlor so as to achieve compliance with such provisions of law;

(ii) the power of the trustee to enter into arbitration and mediation agreements and to reach a compromise to disputes and claims by third parties; and

(iii) the power to seek directions from the Court on such matters;

such powers being exercisable notwithstanding any contrary provisions of the trust and, provided the trustee acts honestly, in good faith and reasonably, such acts shall not constitute a breach of trust.

(d) the property of the settlor which is not settled in trust should first be utilised, to the extent possible, to meet the claims of any person seeking to invalidate or reduce a trust;

(e) notwithstanding any other applicable law, the trustee may meet a valid claim being made against the trust property, whether voluntarily or as a result of a court direction, order or judgement, by a payment of value in money and shall not be obliged to return property settled in trust in kind;

(f) any person who succeeds in reducing the property under trusts or obtains a court order to invalidate a trust in part or who enjoys the benefits of an arrangement with the trustee as provided in paragraph (c) above, shall forfeit the benefits under the trusts, unless the terms of the trust expressly state otherwise or the trustee considers it unreasonable in the circumstances and obtains the consent of the Court to maintain in force trusts in favour of such person subject to such conditions as the Court may consider appropriate;

(g) in any event and notwithstanding any provision of law, a trustee shall not be subject to an obligation to pay or return more than the trust property held by him under trust, after deducting any fees and costs, and he shall not be subject to any obligation to account for any distributions made by him in good faith prior to having written notice of any claim.”.

Substitution of article 7 of the principal Act.

8. Article 7 of the principal Act shall be deleted and substituted by a new article as follows:-

“Creation of trust.

7. (1) Within the meaning of article 3 of this Act, a trust may come into existence in any manner.

(2) Without prejudice to the generality of subarticle (1), a trust may come into existence unilaterally or otherwise by oral declaration, or by an instrument in writing including by a will, by operation of law or by a judicial decision:

Provided that where assets are held, acquired or received by a person for another on the basis of oral arrangements of a fiduciary nature, express or implied, there shall be presumed to be a mandate regulated by Title XVIII of Book Second of the Civil Code or a deposit regulated by Title XIX of Book Second of the Civil Code, as the case may be, unless there is evidence of an intention to create an oral trust.

(3) A unilateral declaration of trust is a declaration in writing made by a trustee stating that it is the trustee of a trust, containing all the terms of the trust as well as the names or the information enabling the identification of all the beneficiaries.

(4) A unit trust shall be created by a written instrument.”.

9. Article 8 of the principal Act shall be deleted and substituted by a new article as follows:-

Substitution of article 8 of the principal Act.

“Jurisdiction of the Maltese Courts.

8. (1) The Courts of Malta shall have jurisdiction where:-

- (a) the trust is a Maltese trust; or
- (b) the trustee is resident in Malta or is a trustee authorised by the Authority, or is otherwise constituted in terms of Maltese law; or
- (c) any trust property is situated in Malta; or
- (d) administration of any trust property is carried on in Malta.

(2) Notwithstanding the provisions of the Code of Organization and Civil Procedure, when the trust instrument contains a provision granting jurisdiction to the courts of the country the law of which expressly governs the trust, the Courts in Malta shall, on demand of any party to the proceedings, provided it is made *in limine litis*, stay

proceedings which may be instituted in Malta in favour of the chosen forum:

Provided that the court may in any case issue such interim orders for the protection of any interested party as it considers appropriate, and provided further that the court shall enjoy a discretion on whether to stay the proceedings if the trust property consists of immovable property in Malta or the settlor or the beneficiaries are domiciled and resident in Malta.

(3) Subject to the above, the provisions of Sub-title III of Title II of Book Third of the Code of Organization and Civil Procedure (“Of Pleas to the Jurisdiction”) shall apply.”.

Substitution of article 9 of the principal Act.

10. Article 9 of the principal Act shall be deleted and substituted by the following new article 9:-

“Rights of Beneficiaries

9. (1) A beneficiary has an entitlement, called a beneficial interest, in or to the trust property, as the case may be. The beneficiary may enjoy the beneficial interest subject to the terms of the trust and the provisions of this Act and any other provisions of law applicable to trusts.

(2) Rights of a beneficiary are personal to him and, subject to any applicable laws and only as stated in the terms of the trust, creditors, spouses, heirs or legatees of the beneficiary may have rights only to the extent of the beneficiary’s entitlements under the trusts and have no other rights in relation to the trust property or the trustee.

(3) The interest of a beneficiary under a trust shall be deemed to be movable property, even if the trust property includes immovable property.

(4) A person shall not be entitled to benefit under a trust unless he is:-

(a) identifiable by name; or

(b) ascertainable by reference to a class or to a relationship to some person, whether or not living at the time which under the terms of the trust is the time by reference to which members of a class are to be determined;

and if there are no beneficiaries identifiable or ascertainable as aforesaid the trust shall, unless the purpose of the trust is a charitable purpose, fail.

(5) Persons who are not yet conceived at the time of the settlement of property under trusts may be named as beneficiaries or form part of a class of beneficiaries but their rights arise only once they are born viable.

(6) A settlor of a trust may also be a beneficiary under the trust.

(7) The terms of the trust may provide for the addition of a person as a beneficiary, the exclusion of a beneficiary from benefit, or the imposition on a beneficiary of an obligation as a condition for benefit.

(8) When the trustee is granted the power to add a person as a beneficiary such power shall be valid on condition that such person is identifiable by name or forms part of a class of persons the members of which are reasonably individually identifiable, such identification to be given either in the trust instrument or in any other written instrument, signed by the settlor, whether binding or not on the trustee.

(9) A person who may be added as a beneficiary in terms of a power granted to the trustee shall not enjoy any rights in relation to the trust property or against the trustee and shall not be considered a beneficiary in any manner until appointed as a beneficiary by the trustee.

(10) It shall be lawful for a trustee to be granted the discretion as to which beneficiaries are to benefit, the quantity of any benefit, at what time and in what manner beneficiaries are to benefit and such other powers relating to the appointment, application or advancement of trust property.

(11) A beneficiary in whose favour a discretion to appoint or advance property may be exercised shall have no rights in or to specific trust property until such time as such discretion is exercised by the appointment, application or advancement of such trust property in favour of such beneficiary:

Provided that nothing in this subarticle shall be construed as excluding the duty of the trustee to properly and fairly consider all such beneficiaries in the exercise of his discretion.

(12) A beneficiary may, by instrument in writing, disclaim his whole interest and such a disclaimer shall be irrevocable.

(13) Subject to the terms of the trust, a beneficiary may disclaim part of his interest, whether or not he has received some benefit from his interest; in any such case, but subject to the terms of the trust, a disclaimer may, by the instrument by which the interest is disclaimed, be made revocable, and shall then be capable of revocation in the manner and under the circumstances therein mentioned or referred to.

(14) Subject to the terms of the trust, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

(15) The provisions of this article shall apply to testamentary trusts notwithstanding the provisions of articles 688, 693 and 695 and any other provisions of the Civil Code.”.

Substitution of article 10 of the principal Act.

11. Article 10 of the principal Act shall be deleted and substituted by the following new article:-

“Additional Trust Property

10. (1) Subject to the terms of the trust, a trustee may accept the settlement of any additional property under the same terms of the trust.

(2) The trust property shall be such property as is settled in trust by the settlor, that subsequently added, all fruits therefrom and property which represents the original or added property.”.

Amendment of article 11 of the principal Act.

12. Article 11 of the principal Act shall be amended as follows :-

(a) for the marginal note thereof, there shall be substituted the following “Failure of a trust.”;

(b) in subarticle (1) for the words “be invalid and unenforceable in Malta” there shall be substituted the word “fail”;

(c) by the deletion of subarticle (2) and its substitution by a new subarticle (2) as follows:-

“(2) Trusts shall fail if any court declares that their purpose or the terms of trust are not possible, or illegal, immoral or contrary to public policy, or otherwise tainted by

error, fraud or violence, or any other reason which invalidates legal acts according to the laws of Malta.”;

(d) by the deletion of subarticle (3) and its substitution by a new subarticle as follows:-

“(3) The Court may declare the failure of all or of only one or more purposes or terms of the trust and shall have the power to direct that the purposes or terms which can be properly separated from the failed purposes or terms continue to be valid and enforceable subject to any directive it may give.”;

(e) Immediately after subarticle (5) there shall be added a new subarticle (6) as follows:-

“(6) Property as to which a trust has wholly or partially failed shall, subject to any order of any court or a direction issued in terms of article 38C, be held by the trustee in trust for the settlor absolutely, or if he is dead, for his heirs.”.

13. Subarticle (2) of article 12 of the principal Act shall be amended by the addition of “or to a unit trust” after the words “for a charitable purpose”. Amendment of article 12 of the principal Act.

14. Article 13 of the principal Act shall be amended as follows:- Amendment of article 13 of the principal Act.

(a) the current article should be re-numbered as subarticle (1);

(b) in sub-paragraph (c) of subarticle (1) as renumbered, the words “of his creditors.” shall be substituted by the words “of his creditors; or”;

(c) immediately following sub-paragraph (c) there shall be added a new sub-paragraph (d) as follows :-

“(d) not liable to attachment under a garnishee order issued against the trustee or to termination without the prior consent of the Court, when the interest is expressed to be for the maintenance of the beneficiary or as a pension.”; and

(d) immediately after subarticle (1) as re-numbered there shall be added a new subarticle (2) as follows :

“(2) In the case of a testamentary trust and where the benefit to the beneficiary consists in an annuity or pension or

the use and enjoyment of property and the enjoyment of fruits therefrom, the terms of the trust may make the interests of the beneficiary:-

(a) subject to restriction on alienation or dealing;

(b) not liable to attachment under a garnishee order served on the trustee as garnishee; or

(c) not liable to termination without the prior consent of the Court.”.

Amendment of article 15 of the principal Act.

15. Immediately after subarticle (3) of article 15 of the principal Act there shall be added new subarticles (4) and (5) as follows:-

“(4) Where trusts have been settled by more than one settlor and are expressed to be revocable, such trusts may only be revoked with the express consent of all settlors.

(5) Unless the terms of a trust expressly provide that the trust is revocable or capable of variation, the settlor may not revoke or amend the trust instrument.”.

Amendment of article 16 of the principal Act.

16. The marginal note to article 16 of the principal Act shall be substituted by the following:-

“Lapse of interest or termination.”.

Amendment of article 18 of the principal Act.

17. Article 18 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof, after the words “as may be so provided.” there shall be added the following additional paragraph:-

“The fact that there may not be a trustee in office at any time shall not operate as a cause of invalidity or termination of any trusts and in such cases the matter shall be determined by the terms of the trust and the provisions of this article.”;

(b) subarticle (2) shall be substituted by the following new subarticle (2) as follows:-

“(2) A trustee may be a natural person provided he is of full age and legal capacity and not under any legal

impediment to so act. A trustee may also be a juridical person the objects of which include acting as a trustee.”;

(c) immediately after subarticle (6) there shall be added the following new subarticle (7):-

“(7) In the case of death of a trustee, his heirs or testamentary executor shall be bound to immediately transfer all trust property to a successor trustee appointed in terms of the trust instrument or by the Court. In the case of the insolvency, dissolution or winding up of a corporate trustee, such obligation shall be performed by any person having authority to bind the corporate trustee being, a director, liquidator, provisional administrator or similar functionary and this irrespective of any proceedings or formalities applicable upon such events. Until such time as such obligation is performed, all persons in control of trust property shall be obliged to preserve the trust assets and shall be bound by fiduciary obligations towards the beneficiaries.”.

18. Article 19 of the principal Act shall be amended as follows:- Amendment of article 19 of the principal Act.

(a) subarticle (1) shall be deleted and substituted by the following:-

“(1) No one is obliged to accept an appointment as trustee, but if any person who is so appointed does any act or thing in relation to the trust property consistent with the status of a trustee of that property, such person shall be deemed to have accepted the appointment as trustee.”; and

(b) in subarticle (2) for the words “nominee company which” there shall be substituted the words “trustee who”.

19. Article 20 of the principal Act shall be amended as follows:- Amendment of article 20 of the principal Act.

(a) subarticle (1) shall be deleted and substituted by the following:-

“(1) Subject to the provisions of subarticle (2) of this article, a trustee may resign as trustee by notice in writing to his co-trustees and in the case of there being no other trustee, to the beneficiaries or, if impracticable, to at least one beneficiary, or if there are none to whom notice can be given, to the settlor or to the trustee’s duly appointed successor and the resignation shall take effect on delivery of the aforesaid notice.”; and

(b) paragraph (c) of subarticle (3) shall be deleted and substituted by the following:-

“(c) steps are taken for the winding up of, or declaration of bankruptcy, of the person acting as trustee.”.

Amendment of article 21 of the principal Act.

20. Article 21 of the principal Act shall be amended as follows:-

(a) by the substitution of subarticle (2) with the following :-

“(2) Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall ensure that the trust property is vested in them or is under their control and shall, so far as reasonable and subject to the terms of the trust, safeguard the trust property from loss or damage:

Provided that the granting of security by assignment or pledge as authorised by the terms of the trust is permitted:

Provided further that the transfer by the trustee of trust property to a legal entity wholly owned or controlled, directly or indirectly, by the trustee or to another trust of which he is the sole trustee or to another trustee under trusts for the sole benefit of the trustee, shall be permitted and in such case the duties and liabilities of the trustee under this Act or the deed of trust shall not be diminished or otherwise affected in any manner whatsoever.”;

(b) paragraph (c) of subarticle (3) shall be substituted by the following:

“(c) on his own account, with a person related to him by affinity or consanguinity in the direct line or up to the third degree in the collateral line or with a partner in any partnership, enter into any transaction related to trust property.”;

(c) subarticle (4) shall be substituted by the following:

“(4) Trustees shall keep accurate accounts and records of their trusteeship and shall, upon a request by any beneficiary, disclose such accounts and records to such beneficiary and shall, subject to the terms of the trust, provide a copy of such accounts within a reasonable time of a request:

Provided that it shall be lawful for a beneficiary to suspend such rights in favour of an independent third party in cases where the beneficiary is required to do so by any agreement or by law as

a result of any existing or potential conflict of interest, and this for such time as the said conflict of interest subsists and under such conditions as may be agreed or are otherwise applicable.”; and

(d) subarticle (5) shall be amended by the substitution of the words “identifiable therefrom.” with “identifiable therefrom:” and the insertion of a new proviso as follows:

“Provided that trustees may, if expressly permitted by the terms of the trust, or in any case where the trust property consists of fungible things, place and keep trust property in a common pool of identical assets or in a clients’ or common account.”;

(e) immediately after subarticle (5) there shall be added new subarticles (6) and (7) as follows:-

“(6) Trustees shall not enjoy any benefits under any trust of which they are the sole trustee without the prior authority of:-

(a) the Authority, in case of a trustee authorised in terms of article 43 or not required to be authorised in terms of subarticle (6) of article 43 of this Act; or

(b) the Court, in any other case:

Provided that in case of an express fixed trust in favour of the trustee, only prior notification in writing to the Authority shall be required:

Provided further that a transfer of property by the trustee to another trust of which he is the sole trustee or sole beneficiary, shall not be deemed to be a benefit under this subarticle:

Provided further that remuneration for acting as a trustee or indemnification for expenses, liabilities and other claims shall not be treated as a benefit under a trust:

Provided further that this subarticle shall not apply to a trustee holding property in relation to a commercial transaction.

(7) Notwithstanding the provisions of this Act and other provisions which cannot be derogated from by voluntary act, when a commercial transaction includes the appointment of a trustee to hold property in relation to such transaction, the duties and liabilities of trustees as stated in this Act may

be varied by the terms of the trust and shall be regulated exclusively by the express terms of the trust or any applicable legislation:

Provided that nothing in this subarticle shall permit a trustee to be exonerated from the effects of, or be indemnified for, his own fraud, wilful misconduct or gross negligence.”.

Amendment of article 22 of the principal Act.

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

- (a) the current provision shall be re-numbered as subarticle (1);
- (b) the words “to be recorded in writing:” shall be amended to read “to be recorded in writing.”;
- (c) the proviso to subarticle (1) shall be deleted; and
- (d) immediately after new subarticle (1) as renumbered there shall be inserted a new subarticle (2) as follows:-

“(2) Trust property shall at all times vest in the co-trustees in possession between them *pro indiviso*.”.

Amendment of article 29 of the principal Act.

22. Article 29 of the principal Act shall be amended as follows:

- (a) subarticles (2) and (3) shall be deleted;
- (b) subarticle (1) shall be renumbered as subarticle (2);
- (c) subarticle (2) as renumbered shall be amended as follows:-
 - (i) the words “of such duty:” shall be substituted by the words “of such duty.”; and
 - (ii) sub-paragraph (d) and the proviso thereto shall be deleted;
- (d) a new subarticle (1) shall be inserted immediately before subarticle (2) as renumbered:-

“(1) A trustee shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property, including the accounts of the trust, and subject to subarticle (2) hereof, the conduct of the trust administration to:-

- (a) the Court;

(b) subject to the terms of the trust, the settlor;

(c) the protector of the trust;

(d) subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity, or if a minor, to his lawful guardian or representative;

(e) subject to the terms of the trust, any charity referred to by name for the benefit of which the trust was established; and

(f) in case of a trust established for a charitable purpose, the Attorney General or the relevant authority under applicable law.”;

(e) immediately after subarticle (2) as re-numbered, there shall be added the following new subarticles (3) to (12):-

“ (3) Unless the terms of the trusts expressly determine the time when and the method how beneficiaries are to be informed of their entitlement under a trust, the trustee shall be obliged to inform any beneficiary of his entitlement, in writing, within a reasonable time of his accepting to act.

(4) When the terms of the trust grant a discretion in terms of subarticle (10) of article 9 of the Act, the terms of the trust may suspend until such time as a discretion is exercised in their favour the duty of the trustee to inform such beneficiaries that they may benefit under the trust or that they form part of a class of beneficiaries which may so benefit. The terms of the trust may also indicate the time when and the method of how such beneficiaries are to be informed.

(5) If the trust instrument expressly prohibits notification of information to beneficiaries or to those persons that form part of a class from among which beneficiaries may be appointed, without reference to any point in time, ascertained or ascertainable, such term shall be construed as implying a duty of the trustee to inform such beneficiaries within a reasonable time after the death of the settlor.

(6) Should the trustee consider providing information as required by the preceding subarticles to be prejudicial to the beneficiaries of the trust or any of them, the trustee may apply to the Court and the Court may release the trustee from the obligation to inform under such conditions as it may consider appropriate.

(7) The duty to inform as above provided shall not arise if the trustee is in possession of information which reasonably

demonstrates that those entitled to such information have already been informed or are already aware of such information.

(8) In the case of a trust established for charitable purposes, the duty to inform either unnamed beneficiaries forming part of a class or persons forming part of a class of persons who may be appointed as beneficiaries in terms of a power of the trustee, shall not arise notwithstanding the terms of the trust unless, in case of the unnamed beneficiaries the trustee establishes that there exist less than ten beneficiaries appertaining to such class of beneficiaries. Furthermore, in the absence of any indication to the contrary, the unnamed beneficiaries or persons who may be added as beneficiaries in terms of a power shall be assumed to be persons who carry on relevant charitable activities principally in Malta.

(9) The trustee shall carry out the duty to inform to the best of his abilities and at the expense of the trust and in the event it appears to the trustee that such exercise will be too costly or burdensome, the trustee may apply to the Court for directions and the Court shall be empowered to release the trustee from such duty under such conditions as it considers appropriate.

(10) The suspension of the duty of a trustee to inform beneficiaries as provided in this article shall not reduce the rights of beneficiaries or the duties and liability of the trustee towards such beneficiaries in terms of this Act.

(11) Persons who may be added as beneficiaries in terms of a power referred to in subarticle (7) of article 9 of this Act shall have no right of information until such time as they are appointed beneficiaries by the trustee pursuant to such power.

(12) In the case of a trust to hold property in relation to a commercial transaction, the duties of the trustee relating to the provision of information and the rights of beneficiaries to such information may be determined by the terms of trust, in which case the preceding subarticles of this article shall not apply.”;

(f) The marginal note to the article shall be deleted and shall be substituted by the following new marginal note:-

“Duty of trustee to provide information.”.

23. Article 37 of the principal Act shall be amended as follows :- Amendment of article 37 of the principal Act.

(a) paragraph (b) of subarticle (2) shall be deleted and substituted by a new paragraph (b) as follows:-

“(b) make any declaration as to the validity or enforcement of a trust, the existence of any resulting or constructive trust, breach of trust or failure of a trust;”

(b) in subarticle (3) thereof for the words “Attorney General.” there shall be substituted the words “Attorney General or by any other person having a lawful interest.”;

(c) immediately after subarticle (3) thereof there shall be inserted the following new proviso:

“Provided that in cases where the duty to inform a beneficiary of his interest in a trust has been suspended in terms of article 29 of this Act and until such suspension is in force, and in the absence of a protector of a trust, the settlor of a trust may also make an application to the Court in terms of this subarticle. Whilst dealing with such application the Court may determine whether the suspension of rights to information as aforesaid be maintained in force in full or in part for all or some of the beneficiaries.”.

24. Immediately after article 37 of the principal Act there shall be inserted the following new article 37A: Insertion of new article 37A of the principal Act.

“**37A.** (1) Where any court makes an order on the demand of a beneficiary who has been prejudiced as a result of bad faith on the part of the trustee in the operation of a trust relationship or in relation to trust property, the court shall have the power to restore the position to what it was had the action complained of not been taken or otherwise to protect his interests.

(2) When a person domiciled in Malta is obliged to pay maintenance in terms of the Civil Code and is a beneficiary under a discretionary trust, the court shall have such powers as are necessary to review the exercise of discretion by the trustee and give due consideration to the rights of persons entitled to claim maintenance.”.

25. Article 38 of the principal Act shall be amended as follows:- Amendment of article 38 of the principal Act.

(a) subarticle (1) thereof shall be substituted by the following new subarticle (1) as follows:-

“(1) There shall be no appeal from any decree, order, declaration or direction of the Civil Court in its voluntary jurisdiction given under the provisions of this Act.”;

(b) subarticle (2) thereof shall be re-numbered as subarticle (6);

(c) immediately after subarticle (1) thereof there shall be inserted the following new subarticles (2) to (5):-

“(2) Such decrees, orders, declarations or directions shall remain in force until they are substituted or varied by the Civil Court in either its voluntary or contentious jurisdiction.

(3) During the hearing of an application before the Court the trustee or applicant shall at the earliest opportunity disclose to the Court all material facts known to him which may be relevant to the application including the existence of any “res judicata” or pending judicial action given or commenced in Malta or before a foreign court.

(4) All applications to the Court shall be notified to the trustee and the applicant shall furthermore notify all persons who he considers having an interest in the subject matter of the application. The Court shall have the power to order notification to all other persons who it considers may have an interest as it deems fit.

(5) The Court shall hear the trustee and any interested parties as it considers appropriate.”.

(d) the marginal note to the article shall be substituted by the following new marginal note:-

“Applications, enforcement and hearings.”.

Addition of new articles 38A, 38B and 38C to the principal Act.

26. Immediately after article 38 of the principal Act there shall be inserted the following new articles 38A, 38B and 38C:-

“Confidentiality.

38A. (1) All proceedings under these sections shall be held in camera and only the parties to the proceedings, the trustees, the beneficiaries, if they prove they have an interest in the proceedings to the satisfaction of the Court, and their respective advocates and legal procurators shall be allowed in court during the hearings.

(2) Any decree or judgement of the Court shall preserve the confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties and the trustees.

(3) All applications, responses, affidavits, opinions, statements and other documents or evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except with the written consent of the Court.

(4) The Court may order the notification of any order to the depository notary as is referred to in article 43A of this Act if it considers it appropriate in the circumstances.

Rules of Court.

38B. The Board established under article 29 of the Code of Organisation and Civil Procedure may make Rules of Court concerning applications made under or in terms of this Act.

Directions from the Authority.

38C. Without prejudice to any other obligations arising under any other law, a trustee may apply to the Authority for directions concerning the manner in which he may or should act in connection with any matter concerning the trust or its property when such matter relates to the fulfillment of his obligations relating to the prevention of money laundering. Any *bona fide* communication or disclosure made in terms of this article shall not be treated as a breach of the duty of professional secrecy or any other restriction, whether imposed by statute or otherwise, upon the disclosure of information and any information disclosed in terms of this Article shall be used only in connection with investigations of money laundering.”.

27. Immediately after subarticle (2) of article 40 of the principal Act there shall be added new subarticles (3) to (6) as follows:-

Amendment of article 40 of the principal Act.

“(3) A person dealing with a trustee in relation to trust property need not -

(a) enquire into the terms of the trust; or

(b) obtain the consent of the beneficiaries or any other person;

and shall, subject to being in good faith, be entitled to rely on declarations made by the trustee with regard to any matters therein stated.

(4) The trustee may furnish to any person a certificate containing the following information without being in breach of any confidentiality obligations:-

(a) that the trust exists and the date the trust instrument was executed;

(b) the identity and address of the current trustee;

(c) that the trustee is duly authorised and empowered to carry out the relevant transaction and has obtained all necessary consents, if any;

(d) the revocability or irrevocability of the trust and, if revocable, that the trust has not been revoked.

(5) When there is more than one trustee, a certificate may be signed and authenticated by any trustee.

(6) Any trustee who issues any certificate containing any statement which he knows or ought to know is false shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*).”.

Amendment of article 40A of the principal Act.

28. Article 40A of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, instead of the words “in breach of trusts.” there shall be substituted the words “in breach of trusts.”; and

(b) immediately after subarticle (1) of the said article there shall be added the following new proviso:-

“Provided that an alienation of immovable property by the trustee as provided by article 958A of the Civil Code shall not give rise to the rights provided in this article in favour of any person claiming a right of legitim.”.

Substitution of articles 42 till 48 of the principal Act.

29. For article 42, the heading “Registration of Trusts”, articles 43 and 43A following it, the heading “Fiscal and other Exemptions”, articles 44 and 46A following it, the heading “Nominee Companies” and articles 47 and 48 following it, of the principal Act there shall be substituted the following:-

“REGULATION OF TRUSTEES

Trustees. **42.** Persons may carry on the activities as trustees either in a professional or in a private capacity and, as the case may be, shall be subject to the provisions of articles 43 and 43A of this Act.

Requirements for Authorisation of Trustees. **43.** (1) Except as provided in terms of subarticles (6) and (7) of this article, any person, resident or operating in Malta, or a corporate trustee, who receives property upon trusts or accepts to act as a trustee or co-trustee of a trust and who:-

- (a) receives or is entitled to remuneration for so acting, or
- (b) does so on a regular and habitual basis, or
- (c) holds himself out to be a trustee;

shall require authorisation by the Authority in terms of this Act irrespective of the proper law of the trusts they hold and whether or not all or part of the trust property is in Malta:

Provided that in the event of reasonable doubt as to what constitutes acting as a trustee on a regular and habitual basis, the matter shall be conclusively determined by the Authority.

(2) The Authority may issue Rules to establish when trustees are considered as receiving remuneration, when activity is done on a regular or habitual basis and when a person holds himself out as a trustee.

(3) Any person, whether an individual or a company may apply in writing to the Authority to be authorised as a trustee and the Authority may grant authorisation upon being satisfied that the conditions laid down in this article have been met and such authorisation may be general or may be restricted to particular specified activities.

(4) The conditions referred to in the preceding subarticle are that:-

- (i) in the case an applicant is a company:-

(a) its objects include acting as trustee and carrying on activities ancillary or incidental thereto, and does not include objects which are not compatible with the services of a trustee; and

(b) its actual activities are compatible and connected with the services of a trustee; and

(c) the directors of the company are not less than three in number and are individuals who are approved persons; and

(d) the company has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, the dealings and the assets in connection with trusts and compliance with applicable law; and

(e) every person who has a direct or indirect interest in the company, is an approved person; and

(f) the name of the company is not inconsistent with its trustee activity;

(ii) in the case of an applicant who is an individual that such individual -

(a) is resident in Malta or operating in Malta;

(b) is an approved person; and

(c) has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, and of the dealings and the assets of trusts and compliance with applicable law.

(5) A trustee shall notify the Authority of any change or circumstance which would have a bearing upon his status as an authorised person and in the case of a corporate trustee, of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, directors or members, and in case of companies registered in Malta such changes shall not be registered unless and until they are so notified to and approved by the Authority.

(6) (a) The following persons shall not be required to obtain authorisation in terms of this Act to act as a trustee in the course of carrying on the activities for which they are licenced:-

(i) a person who is in possession of a valid licence issued in terms of the Banking Act; or

(ii) a person who is licenced in terms of the Investment Services Act to hold clients' monies or assets; or

(iii) a person who is authorised in terms of the Insurance Business Act or enrolled in the Brokers List under the Insurance Brokers and Other Intermediaries Act to hold clients' monies or assets; or

(iv) a person with an equivalent licence to (i) to (iii) issued by the relevant regulatory authority in an approved jurisdiction.

(b) A person approved by the Malta Maritime Authority to act as a trustee of a shipping trust or a shipping foundation as defined in article 84Z of the Merchant Shipping Act shall not require any further authorisation in terms of this Act.

(7) Without prejudice to the obligation of any person to obtain authorisation in terms of any other law which may be applicable, the provisions of this article and article 43A shall not apply:-

(a) to a person when acting as a trustee under trusts created for the purpose of holding security in the form of hypothecs, pledges, assignments, mandates or otherwise, granted in relation to any financial transaction for the benefit of lenders or other creditors in such transaction;

(b) to a person when acting as trustee of any movable property held as security and for the benefit of persons whose entitlement is conditional or determinable in terms of the trust or the contract in relation to which the holding was created;

(c) to a liquidator, curator in bankruptcy or court appointed administrator acting in the course of the liquidation, bankruptcy or administration;

(d) to a person in possession of a warrant to carry out the profession of an advocate, notary public, legal procurator or certified public accountant but only if acting as a trustee is limited to what is necessary and incidental in the course of carrying out his profession and does not otherwise hold himself out as a trustee to the public; provided he shall be obliged to maintain proper records of clients' assets for a period of not less than five years or longer period as established by any other law governing his profession;

(e) to persons when acting as trustees of a unit trust which is a collective investment scheme which is recognised in terms of the Investment Services Act or which is exempt from licensing in terms of the said Act and the establishment of which is notified to the Authority;

(f) to an individual acting as a trustee under charitable trusts provided he is not remunerated and does not hold himself out as providing such services;

(g) any person acting as a co-trustee when another trustee or, if more than one, the majority of the trustees are authorised in terms of this article;

(h) to companies or other legal entities, established in an approved jurisdiction, the directors of which must be approved persons, and which are wholly owned, including as trustees, and controlled by authorised trustees in terms of this article and which are established solely for the purpose of holding trust property and ancillary acts, the details of which are notified in writing to the Authority by an authorised trustee;

(i) to a party to a contract who agrees to receive or hold property as trustee in the context of or ancillary to the performance of a contract provided that the trustee does not otherwise hold himself out as a trustee to the public and is not remunerated therefor;

(j) to a person holding one or more shares in a company registered in Malta when such shares do not have any special voting rights and their individual nominal value does not exceed one Maltese lira or its equivalent in any other currency.

(8) A person herein referred to may apply to the Authority and the Authority shall authorise in terms of this article:

(i) a person with a licence or authorisation equivalent to sub-paragraph (i) to (iii) of paragraph (a) of subarticle (6) issued by the Authority or the relevant regulatory authority in an approved jurisdiction and who will be acting as trustee not in the course of its ordinary business for which they are licensed; or

(ii) a person having a licence or authorisation to act as a trustee issued by the relevant regulatory authority in an approved jurisdiction:

Provided such person whether Maltese or foreign notifies the Authority, in writing, of its intention to act as a trustee in Malta at least forty-five days prior to commencing activities in Malta, and who receives a confirmation from the Authority that it does not object thereto.

A notification under this subarticle shall outline the proposed activities and shall be accompanied by such information as may be required by the Authority from time to time.

To the extent that the Authority lays down any restrictions or conditions for such activities, on initial response to a notification or at any other time, such restrictions and conditions shall come into effect as stated in the response or by subsequent notice of the Authority.

(9) (a) The holding upon trust of :

(i) securities or interests in or issued by a Maltese legal entity, other than securities which are listed on the Malta Stock Exchange or other recognised investment exchange; or

(ii) immovable property in Malta

(hereafter referred to as “relevant property”) by trustees who are not authorised shall be permitted only if a person:-

(aa) authorised in terms of sub articles (3) and (8) of this article, or

(bb) not required to be authorised under subarticle (6) (a) and (7) (e), (g) and (h) of this article,

(hereafter referred to as a “qualified person”) is engaged in writing by the trustee to carry out the compliance functions referred to in paragraph (b) of this subarticle on an indefinite basis with specific reference to such relevant property and such agreement is notified to the Authority prior to any acquisition of such relevant property taking place and shall be accompanied by such information as may be required by the Authority from time to time.

(b) The qualified person shall ensure due compliance with all fiscal, prevention of money laundering and other legal obligations in connection with relevant property and shall notify the Authority in the event that he resigns, has his engagement terminated or is otherwise hindered in performing his duties hereunder.

(c) Paragraphs (a) and (b) of this subarticle shall also apply to the holding of relevant property by a mandatory for another person.

(d) If at any time there is no qualified person to carry out the functions as required by this subarticle, the Court may appoint a qualified person on the application of the Authority or any interested person.

(e) The Authority may issue rules from time to time prescribing the form and conditions of such notification and functions of qualified persons.

(10) No transactions in relation to relevant property, including assignments of beneficial interests in a trust, shall take place without the prior written consent of a qualified person:

Provided that nothing in this section shall imply that a qualified person is himself a trustee or that he is jointly and severally liable for the performance of obligations of the trustee in relation to relevant property or related transactions.

(11) The requirement for a qualified person shall not apply :-

(a) to the holding of one or more shares in a company when they do not have any special voting rights and their individual nominal value does not exceed one Maltese Liri or its equivalent in any other foreign currency; or

(b) to the holding by trustees named and appointed by a will creating the trust in respect of the initial period of six months from the date of acceptance by the trustee in respect of the estate of the testator unless it is necessary to enter into any transaction in relation to relevant property, other than the initial transfers or declarations by the trustee to assume ownership and control of the trust property, in which case a qualified person shall be appointed prior thereto.

(12) Without prejudice to the nature of the legal relationship in any particular case, for the purposes of this article, any person who:-

(a) acts as a mandatory in the holding of property for another person; or

(b) acts as an administrator, a trustee, director or similar functionary, exercising control over the assets, by whatever name he may be called, of a private foundation,

shall, not being a person referred to in subarticle (6) of this article, require authorisation in terms of this article, irrespective of the extent of his activities, whether remuneration is payable therefor or whether he holds himself out as providing such services or not.

For the purposes of this subarticle a “private foundation” is a foundation established or operating in Malta for the benefit of a private interest or purpose which is not charitable.

(13) Nothing in this article shall imply that a person held to be a trustee under a constructive or resulting trust or as a result of any statutory provision or judicial declaration has acted in breach of this Act during any period prior to his becoming aware of such trusts and in such a case it shall be a defence against prosecution under this Act to prove that the said person was unaware of his duties hereunder.

Private
Trustees and
Notarial
Procedure.
Cap. 50.

43A. (1) In this article the term “Notarial Law” means the Notarial Profession and Notarial Archives Act.

(2) An individual who agrees to act as a trustee because:-

(a) he is related to the settlor, by consanguinity or affinity in the direct line up to any degree or in the collateral line up to the fourth degree inclusively, or

(b) he has known the settlor for at least ten years and, in both cases,

(i) is not remunerated, even indirectly, except as permitted by any rules issued by the Authority;

(ii) does not hold himself out as a trustee to the public, and

(iii) does not act habitually as trustee, in any case in relation to more than five settlors at any time,

(hereafter referred to as a “private trustee”) may act as a trustee without the need for authorisation in terms of the preceding article, subject to the conditions stated in subarticle (3) of this article.

(3) A private trustee shall be permitted to act as trustee under the following conditions which shall apply as the case may be:

(i) in the case of a testamentary trust, that within six months of accepting to act as trustee, he shall draw up an inventory by notarial deed in terms of Part IIIA of the Notarial Law and shall declare in the deed that the inventory includes all the property under the trust and an extract of the will containing all the terms of the said trust shall be annexed to the said notarial deed;

(ii) in the case of an inter vivos trust, the trust must be created by a notarial trust deed;

(iii) where property, other than immovable property, is added to the trust by a settlor or any other person, in terms of article 10 of this Act or by declaration of the trustee, such addition shall be recorded by a notarial trust deed on delivery of the additional property to the trustee, if practicable, but in any case not later than 14 working days of receipt of such property by the trustee. In the case of immovable property the addition of property shall be carried out by a notarial act, an authenticated copy of which shall be delivered to the depository notary for safekeeping and registration with the trust documents within such time.

(iv) records of meetings with beneficiaries, advisors or protectors, the exercise of discretion by the trustee in appointing or removing a beneficiary, in reducing, distributing or advancing trust property, in the termination of the trust for any reason, or other material events shall be rendered in writing and shall, together with any annual accounts and Court decrees, orders, declarations or directions which may be issued in relation to trust property, be delivered to the depository notary;

(v) in all cases, the trustee shall declare the facts applicable to himself to show that he does not require authorisation to act as a trustee in terms of this Act and is not disqualified in terms of article 53 of this Act, after the notary has warned him as to the importance of the truthfulness of such declarations;

(vi) in the case of a trust relating to relevant property for the purposes of subarticle (9) of article 43 of this Act, the depository notary shall ascertain that the provisions of article 43 are observed by the trustee.

(4) Where the trustee is a private trustee, the notary public who publishes a will containing a testamentary trust or receives a notarial trust deed inter vivos shall be the sole depository of all acts referred to in the preceding subarticle and such notary shall be known as the depository notary:

Provided that if such notary public is appointed as a trustee in the deed creating the trust and accepts to so act, such notary shall ensure that the deed of trust names another notary public to carry out the functions of the depository notary.

(5) Notwithstanding any other law relating to the profession of notaries public, a notary who receives a will or notarial trust deed shall not be precluded from being appointed as the trustee in such deed but if a notary is a trustee he may not act as the depository notary or the notary keeper:

Provided that should the depository notary be appointed trustee subsequent to the creation of a trust, his acceptance to act shall be conditional on such notary delivering all trust documents to another depository notary to the satisfaction of the Authority and as provided in subarticle (9).

(6) All documents relative to a trust shall be submitted to the depository notary within 15 days of coming into existence or of coming into possession of the trustee or of the date of relevant event to which the document refers, as the case may be. On receipt of any such document the notary shall declare in writing on the document the date, time, and place of receipt. Such declaration shall, until the contrary is proved, be evidence of its content. All such documents shall be held for safekeeping and registration in the manner as may be laid down by the Authority from time to time.

(7) The trust deed and all documents relative to a trust filed with a depository notary shall be confidential. The depository notary shall not be obliged to provide information on the trust deed or any other document relative thereto except as provided by this Act and with the written consent of the trustee or upon an order of the Court.

(8) Where in terms of Notarial Law a notary keeper has been appointed instead of the depository notary, the notary keeper shall be the depository notary relative to the trust and a reference to the depository notary in this or any other law shall be construed accordingly.

(9) The trustee may, by notice in writing to the notary and to the Authority, substitute the depository notary or the notary keeper in his capacity as the depository notary and the latter shall deliver to the substitute depository notary all documents in his possession in the preceding subarticles

and, in case of public deeds, authenticated copies thereof and this within 30 days from the date of the receipt of such notice, unless otherwise ordered not to do so by the Authority. The substituted notary may request a written receipt and keep copies of the documents delivered to the appointed depository notary but shall keep such copies secure and in strict confidence and shall not provide access to any person other than the serving depository notary, the trustee or the Authority.

(10) A notary who fails to observe the provisions of this article shall be guilty of an offence and shall on conviction be liable to a fine (*ammenda*) of not less than LM50 and not more than LM100:

Provided that no proceedings shall be instituted where the notary, upon a notice in writing by the Authority admits liability to pay such fine at its maximum amount.

(11) When a trust is created in accordance with the provisions of this article, the trustee shall remain subject to the requirements set out in relation to the depository notary until the termination of the trust even if the trustee becomes authorised or is substituted by a trustee authorised or not required to be authorised in terms of article 43 of this Act.

(12) When a trust is not created in accordance with the provisions of this article and a private trustee is subsequently appointed to office, it shall be a condition to his acceptance to act that a notarial deed of acceptance be executed in such manner that the provisions of this article are observed as far as possible at that stage, reference being made to the settlor for the purposes of the note of enrollment and a full inventory, of the trust property being transferred to the trustee, being attached.

(13) If any person wishes to create a trust and appoints a trustee other than a private trustee and also wishes that the provisions of this article apply, such person may choose to do so by notifying the notary public that it is his wish that the provisions of this article apply and that the notary act as depository notary under the provisions of this article. In such case the notary shall request the trustee to declare, in lieu of the declaration in sub-paragraph (v) of subarticle (3) above, that he is authorised, or not required to be authorised, in terms of article 43 and is aware of his obligations under this article. In such cases the requirement of article 50 of the Notarial Law to the effect that the Notary registers a Note of

enrollment relating to the creation of the trust shall not apply if the settlor expressly exempts him from such duty.

(14) In all cases the Court may exercise the power to appoint, remove, substitute and give directions to a depositary notary on the application of the depositary notary, any interested person or the Authority.

APPLICATION, GRANT, REVOCATION, ETC. OF AUTHORISATION

Application for authorisation. **44.** An application for authorisation in terms of article 43 shall be made in the form and manner required by the Authority and shall furthermore:-

(a) contain or be accompanied by such information and particulars, in addition to those required by this article, as the Authority may require or as may be prescribed;

(b) be verified in the manner and to the extent required by the Authority, or as may be prescribed;

(c) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on him by or under this Act;

(d) be accompanied by such fee as may be prescribed in respect of the authorisation applied for.

Power to refuse or grant authorisation. **45.** (1) The Authority may grant or refuse to grant authorisation applied for under this Act.

(2) In granting authorisation the Authority may subject it to such conditions as it may deem appropriate, and having granted authorisation it may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(3) When considering whether to grant or refuse authorisation the Authority shall, in particular, have regard to:-

(a) the protection of settlors and beneficiaries; and

(b) the protection of the reputation of Malta taking into account Malta's international commitments; and

(c) the promotion of competition and choice.

(4) Without prejudice to the provisions of subarticle (8) of article 43, the Authority shall notify any applicant of its decision whether to grant or refuse to grant the licence applied for within three months from the receipt of a complete application made in compliance with the applicable provisions of this Act.

(5) Any requirement in this Act that a person be an approved person to carry out certain activities or functions shall be interpreted as a requirement that, in the case of a legal entity, any director or officer of such person, and, in the case of a trust, each one of its trustees, be an approved person to carry out such activities or functions.

Power to
cancel or
suspend
authorisation.

46. The Authority may at any time cancel or suspend an authorisation in accordance with the provisions of this Act:-

(a) if it considers that the holder thereof is not or is no longer an approved person to act as a trustee; or

(b) if it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any rules or regulations made thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the authorisation is subject by virtue of or under this Act; or

(c) if the Authority has been furnished by or on behalf of the authorised trustee with information which is false, inaccurate or misleading; or

(d) if the authorised trustee has not commenced activities within the term which may be provided for in the authorisation or has ceased to provide such service; or

(e) if it considers it desirable to cancel or suspend the authorisation for the protection of the general public or the reputation of Malta taking into account Malta's international commitments; or

(f) at the request of the authorised trustee; or

(g) in any other circumstances under which the Authority would have been precluded from issuing an authorisation under this Act or where it would have been entitled to refuse the grant of such authorisation.

Notification of proposed refusal, variation, cancellation or suspension of an authorisation.

46A. (1) Where the Authority proposes-

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

(b) to refuse an application for an authorisation or to cancel or suspend an authorisation;

it shall give the applicant or, as the case may be, the authorised trustee notice in writing of its intention to do so, setting out the reasons for the decision it proposes to take.

(2) Every notice given under subarticle (1) of this article shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice, being a period of not less than forty-eight hours and not longer than thirty days, make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

(3) The Authority shall as soon as practicable notify its final decision in writing to the applicant or the authorised trustee, as the case may be.

REGULATORY AND INVESTIGATORY POWERS

Power to require information.

47. (1) Notwithstanding any other provision of this Act, the Authority may, by notice in writing, require any person who is or was acting, or who appears to be or to have been acting as trustee, or who was providing services which require authorisation according to this Act, and any other person who appears to be in possession of relevant information to do all or any of the following:-

(a) to furnish to the Authority, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such activities as aforesaid;

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

(c) to attend before the Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such activities as aforesaid.

(2) The Authority may take copies of any documents furnished or provided under this article.

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

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

(5) Except as provided for in article 642(1) of the Criminal Code and of article 588(1) of the Code of Organization and Civil Procedure, the provisions of this article shall apply to all information or documentation notwithstanding the provisions of the Professional Secrecy Act. Cap. 377
Cap. 9
Cap. 12

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the Authority has appointed a person under paragraph (c) of subarticle (1) of this article, such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the Authority.

48. (1) Without prejudice to any of the powers conferred on it by this Act, the Authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may:-

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any person having functions of a trustee be removed or replaced by another person acceptable to the Authority;

(c) require a trustee to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the authorised trustee.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the Authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.”.

30. Article 49 of the principal Act shall be amended as follows:-

(a) it shall be re-numbered as article 56 and shall be transposed in the principal Act in its proper numerical sequence in accordance with its renumeration;

(b) in sub-paragraph (b) of subarticle (1) thereof, the words “nominee companies” and “companies” wherever they appear, shall be deleted and substituted by the word “trustees”;

(c) sub-paragraph (e) of subarticle (1) thereof shall be re-numbered as sub-paragraph (o);

(d) immediately after sub-paragraph (d) of subarticle (1) thereof there shall be added the new sub-paragraphs (e) to (n) as follows:-

“(e) to further regulate the activities of trustees as well as the services provided and activities carried on or in conjunction therewith or in relation thereto, providing for any matter he may deem expedient including the creation and exercise of rights by or for the benefit of the beneficiaries or settlors and the imposition of duties and obligations on persons authorised to act as trustees;

(f) to establish the requirements relating to the books of account to be maintained by trustees, the form and content of accounts which trustees are obliged to prepare, which accounts have to give a true and fair view of the assets under trusts, the requirements of review or audit on such accounts, the duties of auditors who may be engaged and related matters;

(g) to exempt any activities or classes of persons from the requirements of articles 43 and 43A of this Act and to impose conditions he may deem fit for eligibility for exemption;

(h) without prejudice to any rules which may apply in terms of the Investment Services Act, to establish rules applicable to the responsibilities of trustees of unit trusts under this Act, the issue of units, the rights and responsibilities of unit holders and any other matters which may need to be regulated relating to unit trusts;

(i) to regulate any matters in connection with the use of trusts in commercial transactions, to establish conditions for such use including the prohibition of such use, and to amend the definition of commercial transactions in the Act;

(j) to regulate any matter in relation to security trustees and security trusts, including the definition of what constitutes fair and reasonable actions in relation to enforcement of security trustees;

(k) to regulate trusts which provide for maintenance of persons or for the provision of annuities or pensions;

(l) to regulate the accumulation of income and distribution of income and capital by trustees and ancillary matters;

(m) to regulate the duties of private trustees and the duties and functions of depository notaries, procedures to be adopted for the safekeeping and registration of all documents filed with such notary in relation to a trust and all ancillary matters;

(n) to regulate matters in relation to trusts created by holders of public office and such other persons as may be prescribed, including the qualifications of the trustees, the powers of appointment of such trustees, the powers and duties of such trustees, the rights of beneficiaries and third parties in such cases and all ancillary matters;” and

(e) in subarticle (2) thereof, for the words “Regulations and rules” there shall be substituted the words “Regulations”.

Insertion of new article 49 of the principal Act.

31. Immediately after article 48 there shall be inserted a new article 49 as follows:

“Exchange of information and collaboration. Cap. 330

49. (1) In relation to trustees, the provisions of article 17 of the Malta Financial Services Authority Act shall apply *mutatis mutandis*.

(2) The Authority may exercise the powers granted to it by virtue of this Act at the request of or for the purposes of assisting an overseas regulatory authority:

(a) where the assistance is required by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta’s international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request under a memorandum of understanding concluded with the Authority.”.

32. Articles 50, 51, 52 and 53 of the principal Act shall be deleted and substituted by the following new articles 50 to 53:-

Substitution of articles 50, 51, 52 and 53 of the principal Act with new articles 50 to 53.

“Right of entry. **50.** (1) Any officer, employee or agent of the Authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under this Act for the purpose of obtaining the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred upon it.

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

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

SANCTIONS

Offences. **51.** (1) Any person who contravenes or fails to comply with any of the provisions of this Act, or contravenes or fails to comply with any authorisation, condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any rules or regulations made thereunder, or any condition, obligation, requirement, directive or order made or given as aforesaid, furnishes information or makes a statement or declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who with intent to avoid detection of the commission of an offence under this Act, removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(4) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

(5) Any person who acts or purports to act as a trustee in Malta without being authorised to do so by the Authority, when so required in terms of this Act, shall be guilty of an offence.

(6) Any person who is guilty of an offence under subarticles (1), (2), (3), (4) and (5) of this article and, saving any higher punishment which may be provided under any other law, shall be liable, on conviction, to a fine (*multa*) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

(7) Where a trustee contravenes or fails to comply with any of the conditions imposed in an authorisation issued under article 43, or the conditions imposed in article 43A, or contravenes or fails to comply with any directive, obligations or other requirement made or given by the Authority, the Authority may impose an administrative penalty which may not exceed forty thousand Maltese liri.

(8) A breach or non-observance by any person of any provision of this Act relating to the authorisation of such person to act as a trustee or otherwise shall not in any manner prejudice the validity or enforceability of a trust or affect the duties and responsibilities of such person in terms of this Act.

RULES

Power to issue rules.

52. The Authority may issue Rules governing trustees, whether authorised or not required to obtain authorisation in terms of this Act, the operations of trustees in Malta, and on the qualifications to act as trustees. The Rules shall be binding on the trustees and other persons as may be specified therein. The Rules may lay down additional requirements and conditions in relation to the activities of trustees, their

responsibilities to the Authority, a code of conduct, and any other matters as the Authority may consider appropriate, including the form and content of accounting records to be kept by trustees.

Disqualification orders.

53. (1) The court, upon the application of the Authority, may make a disqualification order against any person who is found guilty of an offence under this Act or any other law, other than an offence punishable only with a fine, or who has infringed any requirement of this Act.

(2) The court, upon the application of the Authority or any interested person, may also make a disqualification order against any person if it is satisfied that his conduct as a trustee of a trust, either taken alone or taken together with his conduct as a trustee of any other trust or trusts, makes him unfit to be a trustee.

(3) A disqualification order made under this article may be for a minimum period of one year and a maximum period of fifteen years.

(4) For the purposes of this article, a disqualification order is an order whereby a person shall not, without leave of the court -

(a) be a trustee of a trust or a private foundation; or

(b) be delegated any functions, duties or powers of a trustee; or

(c) perform or exercise any functions or otherwise act in a fiduciary capacity in relation to a mandate, trust or a private foundation.

(5) A notice of a disqualification order made under this article shall:-

(a) be delivered by the Registrar of Courts to the Authority;

(b) be furthermore recorded in a register to be kept for this purpose by the Authority and which shall be open for public inspection.

(6) Any person who, while being subject to a disqualification order, acts in contravention thereof, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than twenty thousand liri or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(7) The provisions of this article shall be without prejudice to any other offences or remedies which may exist under any other law.”.

Insertion of new articles 54 to 56 of the principal Act.

33. Immediately after article 53 there shall be inserted the following new articles 54 to 56:-

“Persons not qualified to act as trustees.

54. A person shall not be qualified for appointment or to hold office as trustee if:-

(a) he is interdicted or incapacitated or is an undischarged bankrupt;

(b) he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;

(c) he is a minor; or

(d) he is subject to a disqualification order under article 53.

APPEALS

Appeals.

55. (1) In this article, the “Financial Services Tribunal” means the Tribunal established in terms of article 21 of the Malta Financial Services Authority Act, and the term “Tribunal” shall be construed accordingly; and the provisions of the said article 21 shall, except in so far as any of them is incompatible with the provisions of this article, apply to appeals made to the Financial Services Tribunal under this Act.

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

(a) to refuse the issue of an authorisation;

(b) to impose or vary any condition of an authorisation;

- (c) to impose or vary any restriction;
- (d) to revoke an authorisation;
- (e) to make any order under this Act,

may appeal against the decision to the Financial Services Tribunal within such period and under such conditions as are established under the Malta Financial Services Authority Act.

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

Meaning of term trustee.

56. For the purpose of articles 44 till 55 of this Act the term ‘trustee’ shall be construed as including those persons referred to in subarticle (12) of article 43.”.

34. Instead of the Schedule to the Act there shall be substituted the Schedule to this Act.

Substitution of Schedule to the principal Act.

35. (1) The following provisions in this Part shall apply in relation to registered trusts, trustees of unregistered trusts, licensed nominees and nominee companies as referred to in the principal Act as in force immediately before the coming into force of this Part and the Malta Financial Services Centre Act as retained in force by Act XVII of 2002 (hereinafter referred to as “the applicable law”).

Transitory Provisions.

(2) Upon the coming into force of this Part no further trusts shall be registered in terms of the principal Act as in force immediately before the coming into force of this Part.

Registered Trusts.

(3) All trusts registered prior to the coming into force of this Part shall continue to be regulated by the principal Act as in force immediately before the coming into force of this Part for a maximum period of ten years from the date of their registration and they shall continue to enjoy the rights and exemptions and other privileges due as provided by the principal Act as in force immediately before the coming into force of this Part.

(4) A trustee of a registered trust in relation to which the period of ten years has expired prior to the coming into force of this Part shall amend the trust deed in consultation with the settlor, any protector or other interested parties so as to achieve compliance with the principal Act as amended by this Part within a maximum period of two years from the coming into force of this Part.

(5) A trustee of a registered trust in relation to which the said period of ten years is due to expire on or after the coming into force of this Part shall amend the trust deed in consultation with the settlor, any protector or other interested party so as to achieve compliance with the principal Act as amended by this Part within a maximum period of two years from the expiry of the said period of ten years.

(6) Notwithstanding the provisions of subarticles (4) and (5) hereof, a trustee of a registered trust may at any time prior to the lapse of said period of ten years amend the trust deed as aforesaid to achieve compliance with the principal Act as amended by this Part and such amendment shall imply a waiver of all rights and exemptions and other privileges contemplated by the provisions of the principal Act as in force immediately before the coming into force of this Part.

Trustees of
unregistered
trusts.

(7) The trustee of any trust, other than a registered trust, which is in existence on the date of the coming into force of this Part, and to which the provisions of subarticle (1) of article 43 of the principal Act as amended by this Part applies, shall, within two years of such date, do all such acts as may be necessary to comply with the provisions of the principal Act including:-

(a) applying for and obtaining authorisation as a trustee in terms of article 43 of the principal Act as amended by this Part; or

(b) making the relevant declarations and preparing such inventory of trust assets as required by article 43A of the principal Act as amended by this Part; or

(c) notifying the Authority of his activities to the extent necessary;
or

(d) cease to act as a trustee in Malta unless he obtains authorisation as required by the principal Act as amended by this Part.

(8) Nothing validly done in relation to a trust prior to the coming into effect of this Part shall be affected hereby and no action carried out prior to the coming into force of this Part and, without prejudice to any trust regulated by a foreign law and the provisions of the Recognition of Trusts Act, no relationship in existence prior to the coming into force of this Part shall be treated as a trust relationship unless it unambiguously appears from the relationship that it was intended to create a trust relationship.

Licensed Nominees.

(9) On the coming into force of this Part, no further licences to act as a licensed nominee shall be issued in terms of the applicable law and all existing valid licences issued up to such date shall expire upon the lapse of two years from the coming into force of this Part.

(10) (a) Upon the lapse of six months from the coming into force of this Part and until the expiry date referred to in subarticle (9) hereof, no licensed nominee shall undertake any new nominee activities and licensed nominees shall only continue to service existing arrangements;

(b) A licensed nominee shall, prior to the lapse of two years from the coming into force of this Part:-

(i) either apply for authorisation under article 43 of the principal Act as amended by this Part;

(ii) or cease its business activities: Provided that if such licensed nominee does not obtain authorisation to act as a trustee under Article 43, such licensed nominee shall be obliged to ensure that all rights of property held under trusts or other arrangements are transferred in the form required by law to a person who is duly authorised to act as trustee in terms of Article 43 or that the provisions of article 43A are fully complied with, as the case may be.

(11) Notwithstanding any limitation in any memorandum and articles of association of any licensed nominee company in terms of the applicable law, any such company may at any time apply for and may be granted authorisation to act as a trustee in terms of the principal Act as amended by this Part.

(12) Upon the issue, in terms of Article 43 of the principal Act as amended by this Part, of authorisation to any such company to act as a trustee in terms of Article 43 of the said Act, any licence issued pursuant to the applicable law shall expire and be cancelled and shall be surrendered to the Authority.

(13) Upon the coming into force of this Part no further warrants to act as a nominee company shall be issued in terms of the applicable law.

Nominee
Companies.

(14) (a) Where upon the coming into force of this Part, a nominee company is solely performing the functions of liquidator of offshore companies, it shall immediately submit its warrant to the Authority for modification and such warrant shall continue to be renewed only in relation to the functions of liquidator and until such time as the nominee company completes the winding up of such offshore companies, whereupon the nominee company shall immediately surrender its modified warrant to the Authority for cancellation.

(b) A nominee company solely performing the functions of liquidator as aforesaid shall not act as trustee in any manner

and shall not be entitled to apply for authorisation to act as trustee in terms of the principal Act as amended by this Part.

(15) (a) Where upon the coming into force of this Part, a nominee company is solely performing the functions of trustee of registered trusts, the warrant of such nominee company shall be renewable for a maximum period of two years from the coming into force of this Part and such nominee company shall, during the said period, continue to be regulated by the principal Act as in force prior to the coming into force of this Part and by the relevant provisions of the applicable law.

(b) A nominee company solely performing the functions of trustee as aforesaid shall, prior to the lapse of the period of two years from the coming into force of this Part:

(i) either apply for authorisation to act as trustee under article 43 of the principal Act as amended by this Part,

(ii) or cease to act as trustee:

Provided that where such nominee company does not obtain authorisation to act as trustee under article 43, it shall be bound to ensure that all the rights of property under trusts and all other arrangements are transferred in the form required by law to a person authorised to act as trustee in terms of article 43 or that the provisions of article 43A are fully complied with, as the case may be.

(16) Where upon the coming into force of this Part, a nominee company is performing both the functions of liquidator of offshore companies and also the functions of trustee of registered trusts, the provisions of subarticle (12) shall *mutatis mutandis* apply to such nominee company in respect of its functions of trustee and the provisions of paragraph (a) of subarticle (11) shall *mutatis mutandis* apply to such nominee company in respect of its functions of liquidator, and the modification of its warrant as provided for in paragraph (a) of subarticle (11) shall be required only in respect of any period following the lapse of two years from the coming into force of this Part, during which the nominee company continues to act as liquidator of offshore companies.

(17) The Authority shall have the power to require such changes to the memorandum and articles of association of any licensed nominee or any nominee company applying for authorisation, including a change in name to the extent considered necessary, so as to more suitably reflect its status, provided that any such changes shall not affect the authorisation of the company to act as a trustee in terms of the principal Act as amended by this Part or the functions as liquidator of a nominee company under the applicable law.

Part II
AMENDMENTS TO THE CIVIL CODE, CAP. 16

36. (1) This Part amends and shall be read and construed as one with the Civil Code, hereinafter in this Part referred to as “the Code”. Amendments to the Civil Code, Cap. 16.

(2) This Part shall come into force on such date as the Minister responsible for justice may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

37. Article 20 of the Code shall be amended as follows:-

Amendment of article 20 of the Code.

(a) in subarticle (3) thereof, immediately following the words “property” there shall be added the words “and any income accruing under a trust”; and

(b) in subarticle (5) thereof, immediately after the word “him” the following words shall be added “as well as to any beneficial interest under a trust.”.

38. Article 163 of the Code shall be amended as follows :-

Amendment of article 163 of the Code.

(a) in sub-paragraph (f) thereof, for the words “or negligent.” there shall be substituted the words “or negligent;”; and

(b) immediately after sub-paragraph (f) thereof there shall be inserted the new sub-paragraph (g) as follows:-

“(g) persons who are trustees of property for the benefit of the minor.”.

39. Immediately after article 958 of the Code there shall be added a new Title IIIA and the additional new articles 958A to 958J as follows:- Addition of new articles 958A to 958J to the Code.

“Title IIIA

Of Trusts and their Effects

Trusts and applicable rules.

958A. (1) Property under trusts shall be regulated by the special law on trusts and to the extent applicable, the rules of this Code relating to trusts.

Transactions relating to property in trusts.

(2) (a) Transactions relating to property including:

(i) the settlement of property under trusts, even when effected by unilateral declaration or resulting from a judgement or order of a court;

(ii) the distribution, application, or advancement of property by a trustee to a beneficiary;

(iii) the reversion of property to a settlor or his estate when a trust fails or is terminated;

(iv) the assignment, vesting or transfer of property under trusts from a trustee to another trustee under the same trusts,

shall be subject to the special laws relating to trusts and their effects when such transactions arise by operation of law or are carried out in the form and manner required by applicable law.

(b) When such transactions are intended to transfer the ownership or other rights to or in property from one person to another, such transactions shall comply with all applicable requirements for the transfer of ownership of such property, including the provisions of article 996 when applicable, and when so carried out shall:

(i) be effective modes of transfer of ownership or other rights to or in such property;

(ii) result in the creation or termination of legally enforceable interests in or to such property in favour of such persons as provided by the special laws relating to trusts; and

(iii) be operative against third parties.

Disposition by trustees of property.

(c) The sole consideration for the validity of such transactions may be the imposition or assumption, the performance, or the termination, as the case may be, of legally enforceable obligations on or by a trustee in relation to such property.

Statutory Trust in favour of legitimary making claim.

(3) A trustee may validly dispose of and transfer trust property to third parties notwithstanding any right of legitim arising out of the application of Articles 615 to 653 and the other provisions of this Code relating to reduction of trust property.

(4) In any case where, after the death of the settlor, the trustee is formally notified of a claim for legitim in circumstances where trust property is to be sold, the trustee shall hold on trust for the benefit of any claimant of such

right a sum in money based on the net transfer value of the property at the time of transfer until the claim for legitim is determined or otherwise lapses.

(5) If trust property subject to a claim for legitim or, where it has been sold, the proceeds thereof, have already been distributed to any beneficiary, the legitimacy claim may be made against such beneficiary as though he were an heir, legatee or donee as the case may be, and if there remains any property under such trusts, proportionately between the trust property and the beneficiary.

Trustee to hold for legitimacy for five years.

(6) The trustee's obligation to retain the value as stated in subarticle (4) shall operate for a peremptory period of five years from the date of death of the *de cujus*. This shall not prejudice the right of any claimant with respect to other property forming part of the inheritance but not settled in trust.

Limitation on rights of enjoyment of benefit.

958B (1) Trusts for the benefit of a person who is not capable of receiving property, whether by testamentary disposition or donation, under the provisions of this Code, absolutely or more than as permitted by this Code, are subject to reduction in full or for the excess in accordance with this article:

Provided that in case of members of monastic orders or religious corporations of regulars the provisions of article 611 shall apply to trusts in favour of such persons *mutatis mutandis*.

Reduction of settlements.

(2) Subject to the provisions of article 6B of the Trusts and Trustees Act, except in cases where the trustee exercises a power of variation or otherwise acts so as to be in conformity with the provisions of this Code, trust settlements shall be reduced to the portion permitted by law if at the time of the opening of succession of the settlor they are found to exceed the disposable portion of his estate:

Provided that when trust property is reduced, the excess property shall be held by the trustee absolutely for the heirs of the settlor or for the benefit of the person entitled thereto as the case may be.

(3) When the beneficiary entitled to property which is in excess of what is permissible at law is a spouse of the settlor, such excess property shall be held under separate trust for use and enjoyment of fruits for the lifetime of such

spouse and subject to the terms of the trust, thereafter for the heirs of the settlor absolutely.

(4) The rules laid down in article 621 and in articles 647 to 653, relating to the reduction of testamentary dispositions, shall be observed with regard to the reduction of trust settlements, subject to the provisions of this Title.

(5) The reduction of a settlement can only be demanded by those for whose benefit the law has reserved a portion of the property of the deceased, and by their heirs or other persons claiming under them and -

(a) saving article 1240, such persons cannot waive such right during the lifetime of the settlor, whether by an express declaration or by consenting to such settlements;

(b) donees, legatees or creditors of the deceased cannot demand the reduction of settlements or benefit by it;

(c) trusts forming part of a commercial transaction cannot be reduced in any manner until the completion of the commercial transaction, after which the residual property shall be subject to the rules stated in this article.

Benefit of
Discussion
of other
Property.

(6) No reduction of settlements can take place until the value of all the property disposed of under any will has been exhausted and when such reduction takes place, it shall be made commencing with the last settlement and so on successively, from the last to the previous settlements.

(7) The right arising upon a reduction of trust property is to receive value and there shall be no right to restitution of property in kind.

(8) To the extent not already distributed prior to notice of a claim, the trustee shall restore the fruits of such part of the settlement which exceeds the disposable portion from the day of the opening of succession of the settlor if the action for reduction has been brought within the year, otherwise from the day of the demand. In the case referred to in subarticle (4) of article 958A, the claimant shall be entitled to interest on the value retained for his benefit at the rate paid by banks on savings accounts from the date of the notification of his claim on the trustee or from the date of receipt of proceeds by the trustee whichever is the later.

Effects of
claim for
legitim.

(9) Saving the provisions of the Trusts and Trustees Act, unless the terms of the trust expressly exclude such effects:

(a) a person claiming the legitim from a trustee shall lose any benefit under the trust; and

(b) the provisions of subarticle (4) of article 620 of this Code shall apply in relation to any gains received under the terms of the trust.

(10) Where the benefit to the beneficiary consists in the use and enjoyment of property and the enjoyment of fruits therefrom or a life annuity and it appears that the value of the trust fund exceeds the disposable portion of the estate of the settlor, the persons entitled to the legitim may claim either :-

(a) the legitim and lose all benefits under the trust and any will, if any; or

(b) receive from the trustee after the death of the said beneficiary and notwithstanding any terms of the trust, an amount equal to the said legitim and interest at 5% per annum, without compounding, up to the value of the trust property remaining on such event and in such case shall not be entitled to any benefits under the will or the trust. Any further remainder of trust property shall thereafter be applied according to the terms of the trust; or

(c) opt not to claim and enjoy all benefits under any trust and any will.

(11) When, in the case contemplated in the preceding subarticle, the beneficiary is subject to a mental or physical disability which renders him incapable of sustaining himself, if it appears to the trustee that the trust property is not susceptible of division, sale or reduction to fulfil the claims of a legitimary in terms of paragraph (a) of subarticle (10) above without materially prejudicing the interests of the said beneficiary, the trustee may apply to the Court and the Court may order that the property not be sold, divided or reduced until the death of the said beneficiary. Furthermore, and in such case :-

(a) the beneficiary shall not be entitled to demand the reduction of the trust settled in his favour and claim the legitim, and

(b) any other legitimary shall be entitled to apply paragraph (b) of subarticle (10) at the time of death of the beneficiary unless he had opted as stated in sub-paragraph (c) thereof within five years of the death of the settlor.

(12) The legitimaries may choose any of the above options by notice in writing to the trustee and to the other heirs or executors of the estate.

Prescription. (13) The action for reduction, whether against trustees or against third parties, shall be barred by the prescription on the lapse of five years to be reckoned from the day of the opening of the succession. The aforesaid time shall also run against minors and persons interdicted and shall not be capable of suspension or interruption by judicial act or otherwise.

Persons unworthy of receiving under trusts. **958C.** (1) The provisions of article 605 shall apply to trusts in the same manner as it applies to wills, and on the events contemplated therein, trusts in favour of such a person shall be subject to termination on the demand of the trustee or any interested person.

(2) Notwithstanding that a trust may have been settled without the reservation of the right of revocation or variation, a settlor may demand the variation of the terms of trust on the grounds specified in article 1787 and the provisions of articles 1788 and 1790 of this Code and those of article 15 of the Trusts and Trustees Act shall apply.

Application of rules to donations and settlements. **958D.** When there exist both donations and settlements, for purposes of determining the order of transactions and other matters for the purpose of reduction of:-

(a) donations in terms of Sub-title VI of Title XIV of Part II of Book Second, and

(b) of settlements in terms of this Title,

donations and settlements shall be treated as forming part of the same type of transactions and they shall be subject to reduction commencing with the latest in date unless the settlor/donor has expressly stated an order he wishes to be applied for such purpose.

Trust
property
subject to
collation.

958E. (1) For the purposes of the calculation of the value of an estate for any purposes of this Code, including for the benefit of a claimant of a legitim and of an heir for the purposes of collation amongst co-heirs, any settlement of property under trust shall also be included in the estate:

Provided that the settlor of property in trust may exempt such settlement from collation in terms of article 914:

Provided further that if the property settled in trust for the benefit of an heir is collated in the interest of the other co-heirs, such property as has been collated shall thereafter be held by the trustee under separate trust absolutely for the benefit of such heir.

Trustees and
Testamentary
Executors.

958F. (1) A trustee appointed in terms of a testamentary trust shall not be considered to be a testamentary executor and the provisions of articles 762 to 778 shall not apply to testamentary trustees.

(2) When a person is appointed as trustee and also as an executor, such executorship shall be regulated in terms of this Code until such time as the executorship is fulfilled upon the delivery or registration of any relevant assets to or in the name of the trustee.

Property in
Malta,
Maltese or
foreign trust,
foreign
domiciliary.

958G. (1) Where movable or immovable property situated in Malta has been settled in trust, under the laws of Malta or otherwise, by a person who is not domiciled in Malta at the time of settlement -

(a) such person shall be deemed to have had capacity to do so if at the time of such transfer or disposition he was of full age and sound mind under the law of his domicile and the law of Malta; and

(b) no provision in this Code relating to inheritance or succession to such property including, but without prejudice to the generality of the foregoing, rights to legitim or similar rights applicable under this Code shall apply to such trust property, at such time or subsequently; and

(c) the beneficiaries shall be deemed to have capacity to benefit.

(2) Once property has been settled in trust it shall not be affected by a change of domicile of the settlor, even if the settlor subsequently becomes domiciled in Malta.

(3) For the purposes of this article “legitim” means the legal rule restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or having similar effect.

Non-applicability of right of redemption.

958H. The right of redemption as provided for in article 912 of this Code shall not apply when the transfer of the undivided share of an inheritance shall consist of a settlement of such right under trusts, the beneficiaries of which are the settlor himself, his heirs or the other heirs of the estate or a distribution or reversion thereof to such persons.

Limitation of applicability of articles 1000 and 1001.

958I. The provisions of articles 1000 and 1001 shall not be interpreted as creating any limitation on the power of any person to settle a trust or a person to accept to act as trustee under a trust for the benefit of a beneficiary, on the binding nature and effect of any trust or on the enforceability of such rights as arise under a trust by a beneficiary.

Non-applicability of article 1483.

958J. The right of a debtor of a litigious right in terms of article 1483 of this Code shall not arise when the settlement involves the assignment of a litigious right under trusts for the benefit of the creditor or creditors who have assigned the debt.”.

Addition of new articles 1124A and 1124B to the Code.

40. Immediately after article 1124 of the Code, there shall be added the new sub-title and the following new articles 1124A and 1124B:-

“VII. OF FIDUCIARY OBLIGATIONS

Fiduciary obligations.

1124A (1) Fiduciary obligations arise in virtue of law, contract, quasi-contract, trusts, assumption of office or behaviour whenever a person (the “fiduciary”):-

(a) owes a duty to protect the interests of another person; or

(b) holds, exercises control or powers of disposition over property for the benefit of other persons, including when he is vested with ownership of such property for such purpose; or

(c) receives information from another person subject to a duty of confidentiality and such person is aware or ought, in the circumstances, reasonably to have been aware, that the use of such information is intended to be restricted.

(2) A person who is delegated any function by a fiduciary and is aware, or should, from the circumstances, be aware, of the fiduciary obligations shall also be treated to be subject to fiduciary obligations.

(3) Fiduciary obligations arise from behaviour when a person:-

(a) without being entitled, appropriates or makes use of property or information belonging to another, whether for his benefit or otherwise; or

(b) being a third party, acts, being aware, or where he reasonably ought to be aware from the circumstances, of the breach of fiduciary obligations by a fiduciary, and receives or otherwise acquires property or makes other gains from or through the acts of the fiduciary.

(4) Without prejudice to the duty of a fiduciary to carry out his obligations with utmost good faith and to act honestly in all cases, a fiduciary is bound, subject to express provision of law or express terms of any instrument in writing excluding or modifying such duty, as the case may be :-

(a) to exercise the diligence of a *bonus pater familias* in the performance of his obligations;

(b) to avoid any conflict of interest;

(c) not to receive undisclosed or unauthorised profit from his position or functions;

(d) to act impartially when the fiduciary duties are owed to more than one person;

(e) to keep any property as may be acquired or held as a fiduciary segregated from his personal property and that of other persons towards whom he may have similar obligations;

(f) to maintain suitable records in writing of the interest of the person to whom such fiduciary obligations are owed;

(g) to render account in relation to the property subject to such fiduciary obligations; and

(h) to return on demand any property held under fiduciary obligations to the person lawfully entitled thereto or as instructed by him or as otherwise required by applicable law.

(5) In addition to any other remedy available under law, a person subject to a fiduciary obligation who acts in breach of such obligation shall be bound to return any property together with all other benefits derived by him, whether directly or indirectly, to the person to whom the duty is owed.

(6) The obligation to return property derived from a breach of a fiduciary duty shall apply also to all property into which the original property has been converted or for which it has been substituted.

Ownership
by a
Fiduciary.

1124B. (1) When the ownership of property is vested in a person who holds it subject to fiduciary obligations, third parties may act in relation to such person as though he were the absolute owner thereof.

(2) When a person holds property subject to fiduciary obligations, such property is not subject to the claims or rights of action of his personal creditors, nor of his spouse or heirs at law.

(3) A person dealing with a fiduciary in relation to property subject to fiduciary obligations need not:-

(a) enquire into the terms of his authority; or

(b) obtain the consent of the person to whom the fiduciary duties are owed or any other person,

and shall, subject to being in good faith, be entitled to rely on declarations made by the fiduciary with regard to his authority.

(4) The fiduciary may furnish to any person dealing with him a certificate containing the following information without being in breach of any confidentiality obligations:-

(a) that the authority exists, the date the relevant instrument was executed and that the authority has not been revoked;

(b) a declaration that he is authorised to carry out the transactions being entered into; and

(c) the identity and address of the fiduciary.

(5) Any fiduciary who issues any certificate containing any statement which he knows or ought to know is false shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*).”.

41. Subarticle (3) of article 1322 of the Code shall be amended as follows:-

Amendment of article 1322 of the Code.

(a) in paragraph (l) thereof, for the words “article 2010, and” there shall be substituted the words “article 2010;”;

(b) in paragraph (m) thereof, the words “immovable assets.” there shall be substituted the words “immovable assets; and”; and

(c) immediately after paragraph (m) there shall be added the new paragraph (n) as follows :-

“(n) the settlement in trust of property forming part of the community of acquests and the variation or revocation of the terms of any trust in which any such property has been settled.”

42. Immediately after article 1740 of the Code, there shall be added a new Article 1740A as follows:-

Addition of new article 1740A of the Code.

“Rules on donations not applicable to trust settlements.

1740A. The rules relating to donations shall not apply to the settlement or distribution of property under trusts except to the extent expressly stated by the provisions of this Code.”.

42A. Immediately after article 1871 of the Code, there shall be added a new Article 1871A as follows:-

Addition of
new article
1871A of the
Code.

1871A (1) Any person holding property for another holds property subject to fiduciary obligations to the person engaging him for such purpose and shall be regulated by the provisions of this title and by the provisions of this Code relating to fiduciary obligations.

(2) Where such person acquires property in his own name but on behalf of a mandator, the mandator shall at all times be entitled to demand the immediate and unconditional transfer thereof from the mandatory. The mandatory shall on such demand or, in any case, on the expiration of the time during which the mandate was to continue, immediately render account of his mandate in terms of article 1875 of this Code and transfer the property to the mandator by such means as may be appropriate, saving any special terms of the mandate relating to fees and expenses and rights of any third party in good faith.

(3) Notwithstanding article 1886 of this Code, a mandate in favour of a person acting in terms of this article shall not lapse:-

(i) on the death of the mandator and shall continue to bind the mandatory to preserve the property and all rights related thereto until such time as the property held by him is validly transferred to the heirs or legatees of the mandator; and

(ii) on the bankruptcy of the mandator or the mandatory and shall continue to bind the mandatory to preserve the property and all rights related thereto until such time as the property held by him is validly transferred as directed by the competent court for the benefit of the mandator or of the creditors of the mandator, as the case may be.

(4) A term of the mandate purporting to bind a mandatory as referred to above to transfer the property held by him to a third party after the death of the mandator shall not be valid unless such bequest be made by means of a will in accordance with the formalities required by law.

(5) In the event of the death of the mandatory, the heirs at law or the executor, if any, of the will of the mandatory shall be bound by the same obligations to preserve the property held for the mandator and to immediately transfer

it to him or as he may instruct, saving such rights to the payment of outstanding dues and expenses according to law.

(6) Notwithstanding the provisions of subarticle (1) of article 1871 of this Code, in cases where a mandatory, as referred to above, brings, by any means, to the attention of any third party the fact that he is acting in such capacity, the mandatory shall not be personally liable for the obligations entered into other than with and to the extent of the property held by him.”.

43. Immediately after article 2095 of the Code, there shall be added the new title and new articles from 2095A to 2095E as follows :-

Addition of title and new articles 2095A to 2095E to the Code.

“Title XXIII Of Trusts and Obligations

Sub-Title I Of matrimonial regimes

Trusts and married persons.

2095A. (1) Property being the subject of matrimonial contracts may be settled in trust only by means of a written instrument. Trusts between spouses are not created by operation of law.

(2) Property forming part of the community of acquets or governed by the system of community of residue under separate administration may only be settled in trust with the consent of both spouses. Paraphernal property of either spouse may be settled in trust by each spouse acting singly.

(3) A trust settled by both spouses jointly may only be varied or, if revocable, may only be revoked by both spouses acting jointly and after the death of one of the spouses such trust shall be irrevocable notwithstanding any of its terms, except with the authorisation of the Court in its voluntary jurisdiction.

(4) A beneficial interest held by a spouse under a trust shall not form part of the community of acquets irrespective of when it was settled in his favour or when he became a beneficiary, except in the case of a beneficial interest under a trust into which community property has been jointly settled by the spouses and only in relation to such property.

(5) Any distribution of income made under a trust in favour of a spouse shall, unless otherwise expressly

provided in the trust instrument, form part of the community of acquests or of the community of residue under separate administration of such spouse, as may be applicable, in terms of article 1320 and article 1338(2) of this Code respectively.

(6) When the matrimonial home is the subject of trusts for the benefit of the spouses or any one of them, nothing in the trust instrument or in the law shall imply that a spouse enjoys lesser rights to the home and its enjoyment than under article 3A of the Code, and the terms of the trust may not be revoked or varied, nor may the trustee dispose of the said property, without the consent in writing of both spouses or, in the absence of consent, without the authorisation of the Court.

(7) Any debt, indemnity or other liability due by either spouse as a trustee shall not be charged to the assets of the community of acquests in terms of article 1327 except as provided in article 1329 and, for the purposes of article 1341, any such debt shall be deemed to be a paraphernal debt.

Spouse as beneficiary under trust settled by other spouse.

2095B. (1) A person may settle property under trusts to his spouse acting as trustee for the benefit of beneficiaries including any such spouse as beneficiary.

(2) When a spouse is a beneficiary, a trustee may not enter into a contract of sale with the settlor spouse except in the cases specified in sub-paragraph (b) of article 1366 of the Code.

(3) A person cannot be a beneficiary under a trust settled by his or her spouse for more than the property that is allowed to be bequeathed or donated to such spouse in terms of this Code. Notwithstanding the terms of the trust and the rules at law otherwise applicable in relation to any excess, the excess shall be held by the trustee for the use and enjoyment of such spouse for his lifetime and thereafter shall be held on trust for the settlor or his heirs.

(4) If a beneficiary spouse is entitled at law to any property in ownership, the property held in trust up to the reserved portion, having regard to any other dispositions in such person's favour, shall in virtue of this provision be held on separate trust for the benefit of such spouse alone irrespective of the terms of the trust. Any further property settled in trust for the benefit of the spouse shall, irrespective of the terms of the trust, be held under trust only for the use

and enjoyment of the beneficiary for his lifetime and thereafter for the benefit of the settlor or his heirs. The above shall be without prejudice to the right of any legitimary to demand the reduction of the trust when the settlement impinges on right of legitim as provided by this Code.

Trust property which is not matrimonial property.

2095C The provisions of law relating to spouses or matrimonial property shall not apply in any manner to the actions of a spouse when acting as trustee.

*Sub-title II
Of Annuities*

Non-applicability of provisions on annuities.

2095D. Title XI of Book Second “Of the Constitution of Annuities” and the provisions of sub-titles I and II thereof shall not apply in relation to annuities constituted in a deed of trust or testamentary trusts and the obligations of trustees and the rights of the beneficiaries shall be regulated exclusively by the terms of the trust and the special laws relating to trusts.

*Sub-title III
Of Security Trusts*

Security Trusts.

2095E. (1) Security may be created in favour of a trustee, called a security trustee, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors.

For the purposes of article 2042 and other provisions under special laws which may be applicable to security, the trustee shall be treated as a creditor and shall be entitled to be registered as holder of the security, indicating his position as trustee.

(2) The security trustee shall enjoy all such rights and be subject to such obligations as may be stated in the instrument in writing regulating:-

- (a) the appointment of the security trustee, and
- (b) the security granted to the security trustee for the benefit of the creditor or creditors.

(3) Security, for the purposes of this article, means any arrangement whereby the rights of a creditor are legally protected including any undertaking, guarantee,

mandate, pledge, assignment, transfer, grant, privilege or hypothec or the placing of property in possession or control of the trustee with rights of retention and sale as may be agreed.

(4) When a hypothec is created in favour of a security trustee which is a bank or other entity which is authorised in terms of the Banking Act or in terms of equivalent legislation overseas, such hypothec may, notwithstanding any other provision of law, be granted to secure future debts by the same debtor to the security trustee or the beneficiaries of the security trusts, present or future, as may be defined in the trust instrument. Such a hypothec shall be valid on condition that the deed constituting the hypothec expressly states that it secures future debts of the same debtor and limits the effects of the hypothec to a stated maximum sum. Such information shall form part of the relative note of registration for the purposes of article 2042 of this Code.

(5) When security is granted to a security trustee, such trustee shall have the power and legal interest to file any legal proceedings for the enforcement thereof even where under the terms of the deed of trust and the security:-

(a) the trustee is not the creditor of the principal debt or obligation; or

(b) all creditors enjoy the right to sue, jointly and severally, for the enforcement of the debt:

Provided that payment by the debtor either to the security trustee or to the beneficiaries, if also creditors, shall discharge the obligations of the debtor to the extent of the payment made.

(6) Subject to the preceding article, nothing in the Code of Organization and Civil Procedure shall hinder the action of a security trustee for the benefit of the beneficiaries under a trust on the basis of any simultaneous judicial or other action by any beneficiary under the trust.

(7) A security trustee shall not be subject to any of the obligations of the creditors for whose benefit he may hold security except to the extent to which he has expressly agreed in writing.

(8) A security trustee may resign, retire or be substituted in accordance with the terms of the trust and in

such case the original security trustee shall assign any security held by him to the substitute security trustee in the form required by law for the particular security held.

(9) Beneficiaries of a security trust who may be vested with the debt, may assign the debt to third parties and the provisions of article 1475 shall apply to the security for such debt even when held by a security trustee and in such case the assignees of such debt shall enjoy the rights of beneficiaries under the security trust upon notice to or acknowledgement by the trustee without the need of a separate assignment of the beneficiary rights under the trust deed.

(10) The appointment of a security trustee to hold security, his removal or his substitution by another trustee and any related transactions shall not operate as a novation nor shall they affect the security validly constituted in any manner.

(11) A security trustee may also act as an agent or mandatory for the beneficiaries of the security trust and may carry out functions under such contract in accordance with its terms.

(12) In the exercise of any right relating to the enforcement of any security, the security trustee shall be bound by the legal provisions relating to the particular type of security and in any case where the security arrangements are not subject to rules as to its enforcement, the security trustee shall act in a fair and reasonable manner in relation to the debtor.

Part III

AMENDMENTS TO THE NOTARIAL PROFESSION AND NOTARIAL ARCHIVES ACT, CAP. 55

44. (1) This Part amends and shall be read and construed as one with the Notarial Profession and Notarial Archives Act, hereinafter in this Part referred to as “the principal Act”.

Amendments to the
Notarial Profession
and Notarial
Archives Act, Cap.
55.

(2) This Part shall come into force on such date as the Minister responsible for notarial affairs may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment to
article 28 of the
principal Act.

45. Article 28 of the principal Act shall be amended as follows:-

(a) immediately after sub-paragraph (iii) of paragraph (c) of subarticle (1) of the said article there shall be inserted a new sub-paragraph as follows :-

“(iv) where a party appearing declares to be acting as a trustee in respect of the subject-matter of the Act, the indication that the party appears as trustee in respect of that subject-matter;” and

(b) immediately after subarticle (2) of the said article there shall be added the following new subarticle:-

“(3) The above requirements, apart from those stated in sub-paragraphs (a), (b), (c), (h), (i), (j) and (k) of subarticle (1) of this article, shall not apply to a notarial deed whereby a trust is created in terms of article 43A of the Trusts and Trustees Act except in the case where it involves any act of settlement under trust or unilateral declaration of a trust of immovable property or real rights over such property or any vesting or divesting of a trustee in respect of such property or rights.”.

Amendment of
article 50 of the
principal Act.

46. Article 50 of the principal Act shall be amended as follows:-

(a) immediately after paragraph (k) of subarticle (1) of the said article there shall be inserted a new paragraph as follows : –

“(l) any act of settlement under trust or unilateral declaration of a trust of immovable property or real rights over such property or any vesting or divesting of a trustee in respect of such property or rights and any act of settlement under trust of any other property made in accordance with article 43A of the Trusts and Trustees Act when the trustee is a private trustee as defined in the said Act.”; and

(b) immediately after subarticle (8) there shall be inserted the following new subarticle (9) as follows :-

“(9) In the case of a deed of settlement under trust of property which is not immovable property, the note shall only contain the date and nature of the act and the designation of the settlor in accordance with paragraph (c) of subarticle (1) of article 28; provided that the notary shall have no obligation and shall not register such note if the settlor has exempted

him from so doing in the trust deed and the trustee is a person who is authorised or not required to be authorised to act as a trustee in terms of article 43 of the Trusts and Trustees Act.”.

47. Immediately after article 68 of the principal Act there shall be a new article 68A as follows:-

Addition of new article 68A to the principal Act.

“Accessibility of deeds of trust

68A. (1) All deeds of trusts done by notarial deed in terms of article 43A of the Trusts and Trustees Act, except any act of settlement under trust or unilateral declaration of a trust of immovable property or real rights over such property, and any vesting or divesting of a trustee in respect of such property or rights, shall not be accessible to any person other than the settlor, the trustee or such other person as may be permitted access by the terms of the trusts, the applicable law or under authority of any court.

(2) The same rules shall apply to all other documents relative to a trust held by the depository notary in terms of the said Act.

(3) In the case of a testamentary trust, the provisions of this Act which apply to wills shall apply *mutatis mutandis*; however, the provisions of this article shall not apply to all documents subsequently filed with the depository notary in accordance with article 43A of the Trusts and Trustees Act.

(4) For the better carrying out of its functions under the Trust and Trustees Act, the Authority, as defined in the said Act, shall have the right and power to demand information from any depository notary relating to any trust documents in his possession and in such a case the depository shall provide such information and documents as may be requested notwithstanding any duty of professional secrecy.”.

48. Immediately after article 84 of the principal Act, there shall be inserted a new Part IIIA and a new article 84A as follows :-

Addition of new Part IIIA and new article 84A to the principal Act.

“Part IIIA – Of Notarial Trust Deeds

Formalities relating to Notarial Trust Deeds

84A. (1) The formalities for notarial acts for the settlement of property under trusts, including unilateral declarations of trusts and the vesting and divesting of a trustee in respect of trust property applicable when a settlor wishes to create a trust by means of a notarial trust deed or when it is

mandatory to do so in terms of article 43A of the Trusts and Trustees Act, shall be laid down from time to time by the Authority referred to in the Trusts and Trustees Act:

Provided that where the deed involves the transfer, vesting or divesting of any immovable property or real rights over such property, a notarial act shall be drawn up in accordance with Part III of this Act.

(2) The custody of notarial trust deeds and other trust documents relative to the same trust and their registration by the notary, access thereto and the issue of copies and extracts therefrom may also be regulated by such rules.

(3) In this article “notarial trust deed” shall include such notarial deed whereby a trustee declares an inventory of assets placed under trust in terms of article 43A of the Trusts and Trustees Act.”.

PART IV

AMENDMENTS TO THE INCOME TAX ACT, CAP 123

Amendments to the
Income Tax Act,
Cap. 123.

49. (1) This Part amends the Income Tax Act and it shall be read and construed as one with the Income Tax Act hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of
article 5 of the
principal Act.

50. Article 5 of the principal Act shall be amended as follows : –

(a) immediately following sub-paragraph (ii) of paragraph (a) of subarticle (1) thereof, there shall be inserted the following new sub-paragraph:-

“(iii) gains or profits arising from a transfer of the beneficial interest in a trust in accordance with the provisions of subarticle (18) of this article. For the purposes of this sub-paragraph, “transfer of the beneficial interest in a trust” shall include a transfer of a full or partial beneficial interest in a trust and any alienation of any such full or partial interest as a result of a disclaimer of such interest or as a result of a person not remaining a beneficiary of such trust;”;

(b) in paragraph (b) of subarticle (1) thereof for the words “donation, sale by instalments” there shall be substituted the words “donation, settlement of property on trust, distribution and reversion of property settled on trust, sale by instalments”;

(c) paragraph (g) of subarticle (2) thereof shall be deleted and shall be substituted by the following new paragraph:–

“(g) gains and profits relating to a transfer by donation or to a settlement in trust where the settlor of such trust is also the trustee of the same trust means the difference in the market value of the property at the time of the donation or the settlement and the cost of acquisition of the property at the time of acquisition by the donor or the settlor as the case may be.”;

(d) immediately after subarticle (17) thereof there shall be inserted the following new subarticles (18) to (26) as follows:

“Settlement of property

(18) On the settlement of property on trust, where the trust is established or evidenced by means of a written instrument it shall be deemed, for the purposes of this article that:–

(a) no transfer had taken place where the sole settlor is also the sole beneficiary of such trust;

(b) such property had been donated directly by the settlor of such trust to the beneficiaries that are persons other than the settlor himself:

Provided that –

(i) the relevant trust instrument specifically provides that the beneficiaries have an irrevocable vested right to receive all the property settled in trust as specified in the said written instrument; and

(ii) the relevant trust instrument specifically provides that the beneficiaries are, in relation to each settlor, persons referred to in subparagraph (i) of paragraph (e) of subarticle (2) of this article, whether they are in existence or not at the time of such settlement, or are persons referred to in subparagraph (ii) of the said paragraph in each case, such persons being either alone or with the settlor himself; and

(iii) the beneficiaries include persons who are in existence at the time of the settlement of such property on trust;

(c) no loss or gain had arisen:

Provided that –

(i) the relevant trust instrument specifically provides that the beneficiaries of such trust comprise only persons referred to in sub-paragraph (i) of paragraph (e) of subarticle (2) of this article, whether they are in existence or not in the time of such settlement, in relation to each settlor and may also include the said settlor himself; and

(ii) the beneficiaries of such trust include at the time of such settlement a person who by reason of an interdiction, incapacitation, or of a physical or mental impairment, or by reason of an irregular or dissolute lifestyle is substantially limited in his ability to administer or manage the property settled in trust, or includes at the time of such settlement a person who by reason of a physical or mental impairment is or may become unable to fully provide for his own maintenance, and where the trustee of such trust provides the Commissioner with the necessary evidence proving such interdiction, incapacitation, impairment or inability in the form of medical certificates, court orders or any other relevant documents which the Commissioner may deem necessary; and

(iii) the beneficiaries of such trust include persons who are in existence at the time of the settlement of such property.

Transfers of
beneficial
interest.

(19) (a) For the purposes of the provisions of sub-paragraph (iii) of paragraph (a) of subarticle (1) of this article, gains or profits shall be deemed to arise on the date of the execution of a written instrument (hereinafter in this subarticle referred to as “transfer instrument”) whereby there is a transfer of the beneficial interest in a trust which includes taxable trust property. For the purposes of this subarticle “taxable trust property” means property referred to in sub-paragraphs (i) and (ii) of paragraph (a) of subarticle (1) of this article:

provided that this phrase includes only such property, the transfer of which, had it been carried out directly by the relevant beneficiary, would have given rise to gains or profits chargeable to tax in accordance with the provisions of this Act.

(b) The gain or profit arising from the transfer of the beneficial interest in a trust which has taxable trust property shall be equal to the consideration for the said beneficial interest as declared in the relevant transfer instrument. No deductions shall be allowable against the consideration payable to the transferor.

(c) The gain or profit that is determined in accordance with paragraph (b) of this subarticle shall be taxable at the rate specified in subarticle (6) of article 56 of this Act. No relief, reduction, credit or set-off of any kind shall be made in respect of such tax.

Cap. 16.

(d) In addition to the requirements laid down in Sub-Title VII of Title VI of Part II of Book Second of the Civil Code, any person transferring the beneficial interest in a trust which includes taxable trust property shall, within forty-five days of the date on which the transfer instrument was executed, provide the trustee of such trust with an authenticated copy of the said transfer instrument and shall require the trustee to collect an amount of tax equal to the tax determined in accordance with the provisions of paragraph (c) for onward payment to the Commissioner.

(e) The tax so collected by the trustee from the transferor in accordance with the provisions of paragraph (d) shall be a debt due from the trustee to the Commissioner payable by not later than the fourteenth day following the end of the month in which the trustee had collected the tax. Together with this payment, the trustee shall provide the Commissioner with:-

(i) an account of the gains or profits together with a list of all the assets making up the taxable trust property on the date the transfer instrument was executed on such form as may be prescribed;

(ii) an authenticated copy of the relevant transfer instrument; and

(iii) a copy of the last financial statements of the trust.

(f) The trustee of the relevant trust shall, by not later than fifteen days from the date when he receives acknowledgement from the Commissioner of receipt of the tax and documents referred to in paragraph (e), furnish the parties to the transfer instrument with a certificate evidencing that the tax has been paid and that his obligations under paragraph (e) have been fulfilled.

(g) Notwithstanding the provisions of Sub-Title VII of Title VI of Part II of Book Second of the Civil Code, any transfer of a beneficial interest in a trust which includes taxable trust property shall not take place and shall not have any effects for the purposes of any law unless the said transfer is made by means of a transfer instrument and unless the transferor and the trustee have fulfilled their obligations in accordance with the provisions of paragraphs (d) and (e) of this subarticle.

(h) Subject to the provisions of article 10A of the Income Tax Management Act, the person transferring the beneficial interest in a trust which includes taxable trust property shall not be obliged to disclose the existence of such gains or profits in any return made pursuant to the provisions of the Income Tax Acts and no further tax shall be payable on such gains or profits.

(i) The provisions of this article shall not apply -

(i) where the Commissioner is satisfied that an irrevocable disclaimer of a beneficial interest was not effected with the sole or main purpose of avoiding, reducing or postponing liability to tax and where he has, at his discretion, ordered in writing that the provisions of this article are not applicable to such a disclaimer;

(ii) to any transfer of beneficial interest in a trust where the trustee holds property solely for the purpose of a designated commercial transaction as defined in subarticle (24) of this article.

Transfers of property in the administration of trusts.

(20) (a) Where, in the administration of a trust, the trustee transfers property of such trust, gains shall be ascertained in accordance with the provisions of this article

and the cost of acquisition shall be determined in accordance with the provisions of paragraphs (b) and (c) of this subarticle.

(b) In the case where such property had been settled in trust in any of the circumstances described in subarticles (18) and (24) of this article where the settlor is also a beneficiary of the trust, the cost of acquisition shall be equal to the cost of acquisition of such property at the time it was originally acquired by the settlor of such trust. Where the property had been settled in the circumstances described in paragraph (a) of subarticle (18) or paragraph (a) of subarticle (24) of this article, it shall be deemed for the purposes of this article that the settlor has directly transferred such property.

(c) Subject to the provisions of paragraph (b) of this subarticle, the cost of acquisition shall be the cost of acquisition at the time when such property was first acquired as trust property of that trust whether by way of settlement or otherwise.

Distribution
of property
settled on
trust.

(21) (a) For the purposes of this article, property is distributed to beneficiaries of a trust when the trustee transfers property of a trust to any beneficiary of such trust provided that such transfer does not constitute a reversion of property settled on trust as defined in paragraph (a) of subarticle (22) of this article.

(b) Where property which had been settled on trust is distributed to the beneficiaries it shall be deemed that for the purpose of this article:-

(i) no transfer took place in the case where such property had been settled in the circumstances described in paragraph (b) of subarticle (18) of this article provided that the property was distributed to beneficiaries which were not settlors of the trust;

(ii) property distributed to persons referred to in sub-paragraph (i) of paragraph (e) of subarticle (2) of this article in relation to the settlor, was donated directly by the settlor to such beneficiaries where such property had been settled in the circumstances described in paragraph (c) of subarticle (18) of this article;

(iii) notwithstanding the relevant deeming provisions of subarticle (18) of this article, such property was donated directly by the original settlor of that property to such beneficiaries where such property had been settled in the circumstances described in paragraphs (b) and (c) of subarticle (18) of this article and was subsequently distributed to a beneficiary that was also a settlor of such trust:

Provided that the said beneficiary is a person referred to in sub-paragraph (i) of paragraph (e) of subarticle (2) of this article in relation to the said original settlor who had owned such property prior to its settlement in trust.

(c) The provisions of subarticle (20) of this article shall apply *mutatis mutandis* in the circumstances of a distribution of property as they apply to the transfer of property in the administration of a property of a trust.

Reversion of
property to
settlor.

(22) (a) For the purpose of this article, property settled on trust reverts where there is a transfer to a person who is the settlor of a trust (even where such person is a beneficiary of that same trust) of property which had, immediately before its settlement into such trust, been owned by that same settlor.

(b) Where property which had been settled in trust in the circumstances described in subarticle (18) of this article reverts back to the settlor, notwithstanding the relevant deeming provisions of subarticle (18) of this article, it shall be deemed for the purposes of this article that such property had never been settled into such trust.

(c) Where property had been settled into trust in circumstances other than those described in paragraph (b) of this subarticle, and where such property reverts back to the settlor for the reasons referred to in article 16 of the Trusts and Trustees Act, it shall be deemed for the purpose of this article that no loss or gain had arisen in the event of such reversion.

(d) The provisions of subarticle (20) of this article shall apply *mutatis mutandis* in the circumstances of a reversion of property settled on trust as they apply to the transfer of property in the administration of a property of a trust.

Subsequent transfers by settlors or beneficiaries.

(23) In the case of a subsequent transfer of property by a settlor or beneficiary, as the case may be:-

(a) where such property had reverted back to such settlor; or

(b) where such property was distributed to the beneficiaries, and where:-

(i) such distribution was deemed, in accordance with the provisions of this article, to be a direct donation from the settlor of the trust to the said beneficiaries of such trust; and

(ii) such property is transferred by such beneficiaries within the period of time referred to in paragraph (f) of subarticle (2) of this article from the date of such deemed donation;

capital gains shall be ascertained in accordance with the provisions of this article by taking into account the cost of acquisition of such property at the time it was originally acquired by the settlor of the trust before the relevant settlement.

Transfers involving changes in trustees and particular commercial reasons.

(24) (a) No transfer of the property shall be deemed to have taken place:-

(i) on the settlement of property consisting of shares in one company when the settlor who owned the said shares prior to the settlement thereof on trust is also the sole beneficiary of the trust;

(ii) on the settlement of property consisting of shares in one company when the settlement is made by more than one settlor, and the said settlors are the only beneficiaries of the trust, and the beneficiaries are entitled to benefit in accordance with the terms of the trust in the same proportion as they would have done as settlors;

(iii) on the reversion to the settlors of the shares referred to in sub-paragraphs (i) and (ii) of this paragraph in the same proportion which the settlors would have been entitled to when the property was owned by them as settlors immediately prior to the settlement;

(iv) upon the transfer of shares in one company purchased by a trustee with money settled in trust by a settlor for the purpose of acquiring, purchasing or subscribing to such shares, when the said transfer is made to the sole beneficiary of the trust who is also the original settlor;

and in each case, the trustee is a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act.

(b) No transfer of the property of a trust shall be deemed to have taken place where the trustee of such trust transfers all the property of such trust, which transfer involves only a change in the trustee of such trust and there is no change in the beneficiaries or in the beneficial interest.

(c) No loss or gain shall be deemed to have arisen where property is settled into a trust and where the trustee holds such property for the purpose of designated commercial transactions or where such property so settled reverts back to the settlor. Where such property is transferred by the trustee of such trust to its beneficiaries (or to any person through a judicial sale or otherwise), the cost of acquisition shall be the cost at which the settlor of such trust had acquired the said property. In such a case, the provisions of subarticle (10) of this article can be availed of by the settlor in the same manner as if the transfer of the property by the trustee had been made directly by the settlor himself. Where such property is not so transferred but reverts back to the settlor, or where the settlor waives his right to a reversion of the property, and there is a subsequent transfer of such property, the cost of acquisition shall be the cost at which the settlor had acquired the said property prior to its settlement into the said trust. Subject to the approval of the Commissioner, the provisions of this sub-paragraph shall also be applicable where a property is settled into a trust for the purpose of a commercial transaction not being a designated commercial transaction. For the purposes of this sub-paragraph, “designated commercial transactions” means the custody of investment instruments, the establishment or holding of real or personal security interests (including hypothecs, privileges, pledges and guarantees), and

any other commercial transaction which may be prescribed, while “commercial transaction” shall have the meaning assigned to it in article 2 of the Trusts and Trustees Act.

Transfers of shares involving fiduciary relationships.

(25) (a) Where a person that is authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act holds in its own name shares on behalf of the beneficial owner of such shares, and where such person transfers or otherwise disposes of the beneficial ownership of such shares to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of this article.

(b) Where a change in the registered holder of shares in a company does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of this article provided that the registered holder of such shares remains a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act.

(c) For the purposes of this subarticle “beneficial owner” means a person who is the real owner of, or who is otherwise beneficially entitled to, the shares which are subscribed or held on his behalf and in his interest by a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act and “beneficial ownership” shall be construed accordingly.

(d) When the shares referred to in this subarticle are transferred either by the trustee to a person other than the settlor or by the settlor to a third party after the shares have reverted to the settlor, the acquisition cost shall be deemed to be the cost of acquisition of the shares by the settlor when the shares were originally purchased or subscribed by the settlor prior to the shares being settled into the trust.

Power to make rules.

(26) The Minister may make regulations determining the method of calculation of capital gains in relation to transfers involving trusts and to prescribe any matter that may be prescribed in relation to such transfers.”.

Addition of new articles 27B to 27D to the principal Act.

51. Immediately after article 27A of the principal Act there shall be added the following new articles 27B to 27D:

“Taxation of trusts.

27B. (1) Where at least one of the trustees of a trust is a person resident in Malta, tax on any income attributable to a trust accruing or deriving in the year immediately preceding the year of assessment commencing on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint and for each subsequent year shall be payable in accordance with this article.

(2) For the purposes of this article, “income attributable to a trust” means the aggregate of any relevant income referred to in article 4 of this Act which has accrued to or is derived by a trustee or trustees of a trust from property which was settled in such trust and from property which was acquired in the administration of such trust including any income from the employment of such property.

Trustees.

27C. The trustee of a trust shall be answerable for doing all matters and things required to be done under the Income Tax Acts for the purposes of the determination, assessment and payment of tax in connection with the income attributable to a trust. Where two or more persons act in the capacity of trustees of the same trust, they shall be jointly and severally so answerable.

Trusts treated as companies.

27D. (1) (a) The trustee of a trust that has been granted authorisation under subarticle (3) of Article 43 of the Trusts and Trustees Act where such trustee is a person resident in Malta (hereinafter a resident trustee) may elect, in accordance with the provisions of this subarticle, to have the income attributable to a trust treated in the manner provided for in paragraph (c) of this subarticle. Such election, which shall be irrevocable, is to be effected on the date of the establishment of such trust, or the date of appointment of the said resident trustee, whichever is the later, and is to be made on such form and under such conditions as may be prescribed. The said trustee shall submit such form to the Commissioner not later than 30 days from the date of the establishment of such trust or the appointment of a resident trustee whichever is the later.

(b) An election as provided for in this subarticle may only be made where the trust is established by a written instrument which specifically provides that the income attributable to a trust shall comprise only of income in the form of royalties, dividends, capital gains, interest, rents or any other income from investments. For the purposes of paragraph (c) of this subarticle, such income shall not constitute income from a trade, business, profession or vocation.

(c) Where an election has been made in accordance with the provisions of this subarticle, the trustee of such trust shall compute the chargeable income in relation to the income attributable to a trust for the relevant year of assessment as if such income was derived by a company ordinarily resident and domiciled in Malta. Tax thereon shall be charged at the rate specified in subarticle (6) of article 56 of this Act and payable in the same manner applicable to such companies. Distributable profits shall be allocated in the same manner applicable to such companies and distributions of such allocated profits to beneficiaries of such trust shall be treated as if they were dividends distributed to shareholders of such a company. For the purposes of this subarticle, distributable profits of a trust shall mean the total profits which would be available for distribution to the beneficiaries resulting from the income attributable to a trust. The trustee shall keep all records and submit all returns and documents to the Commissioner as is required in the case of such companies. Where the Income Tax Acts require documents which are to comply with the Companies Act, the trustee shall submit similar documents, certified by a certified public auditor, and which are either provided for under the Trusts and Trustees Act or, in the absence of such provision, which comply as far as is possible, with the Companies Act.

Trusts of a temporary nature.

(2) The trustee of a trust where such trustee is a person in possession of a valid licence issued in terms of the Banking Act or the Financial Institutions Act may apply to the Commissioner for a determination that property has been settled into such trust as a result or consequence of another transaction or set of transactions, and that the duration of such trust is of a temporary nature lasting only until such time as is necessary so that the said transaction or transactions may be effectively concluded. Such an application may be made on

such form and under such conditions as may be prescribed. Where the Commissioner makes, at his discretion, such a determination:-

(i) no deduction or exemption contemplated by this Act shall be allowable or granted in relation to the income attributable to a trust; and

(ii) the said income shall be taxable at the rate specified in subarticle (6) of article 56 of this Act; and

(iii) the tax payable as provided for in this subarticle shall not be reduced whether by way of relief of double taxation or otherwise, and no set-off or credit shall be made or allowed in respect of such tax. The resulting tax shall be payable by such time as may be prescribed; and

(iv) the trustee of such trust shall declare such income and property settled in trust on such form as may be prescribed and no further disclosure of such income shall be required by the beneficiaries of such trust; and

(v) no further tax shall be payable on such income.

Other trusts.

(3) (a) Where neither an election in accordance with subarticle (1) nor a determination in accordance with subarticle (2) has been made the provisions of paragraphs (b), (c), (d) and (e) of this subarticle shall apply.

(b) In the case where –

(i) all the income attributable to a trust consists of income either arising outside Malta or income referred to in paragraph (c) of subarticle (1) of article 12 of this Act; and

(ii) all the beneficiaries of the trust are persons who are either not ordinarily resident in Malta or not domiciled in Malta, or are persons whose income is totally exempt from tax under the provisions of article 12 of this Act;

it shall be deemed that such income is not income attributable to a trust but is income derived directly by such beneficiaries, and that where the income arising outside Malta is received in Malta

by the trustee of the trust, it shall be deemed to be received in Malta by such beneficiaries. The trustee shall notify the beneficiary of such income and shall inform him of his duties under the Income Tax Acts.

(c) In the case where the income attributable to a trust comprises solely dividends distributed out of the profits allocated to the foreign income account or out of the profits of an international trading company, which were derived by such company while it was an international trading company, and all the beneficiaries of such trust are persons not resident in Malta, and the trustee of such trust provides the Commissioner with a certificate as referred to in subarticle (2) of article 5 of the Income Tax Management Act, it shall be deemed that such dividends do not constitute income attributable to a trust.

(d) Capital gains derived in accordance with the provisions of article 5 of this Act from the transfer of property settled in trust in the administration of such trust or in the distribution or reversion of such property shall form part of the income attributable to a trust.

(e) The chargeable income in relation to the income attributable to a trust shall be computed as if the trust was a person that is ordinarily resident and domiciled in Malta but shall exclude amounts of income attributable to a trust allocated to beneficiaries as determined in accordance with the provisions of subarticle (4) of this article.

Income
attributable
to a trust
allocated to
beneficiaries.

(4) For the purpose of paragraph (e) of subarticle (3) of this article:-

(a) amounts of income attributable to a trust allocated to beneficiaries shall consist of -

(i) amounts over which beneficiaries had a vested right in the year immediately preceding the year of assessment; and

(ii) amounts over which an entitlement had been bestowed to beneficiaries other than in

the manner referred to in subparagraph (i) of this paragraph, and where such entitlement had been so bestowed by the end of the year immediately preceding the year of assessment; and

(iii) amounts representing income attributable to a trust for the year of assessment which were distributed to beneficiaries by the end of the year immediately preceding the year of assessment, and which amounts do not form part of the amounts referred to in subparagraphs (i) and (ii) of this paragraph.

(b) In order that the amounts referred to in paragraph (a) of this subarticle may be excluded in terms of paragraph (e) of subarticle (3) of this article, the trustee must ensure that:-

(i) the return referred to in article 24A of the Income Tax Management Act has been submitted in accordance with the provisions of that same article; and

(ii) he has furnished the beneficiaries in question with a certificate indicating, for the relative year of assessment and where applicable, the relevant amounts referred to in paragraph (a) of this article on such form and giving such additional details as may be prescribed; and

(iii) where the amounts referred to in subparagraphs (i) and (ii) of paragraph (a) of this subarticle were not distributed to the beneficiaries by the 31st March following the end of the year immediately preceding the relevant year of assessment, a payment of tax has been made on behalf of the beneficiaries equivalent to the tax which would result were the said amounts charged to tax at the rate specified in subarticle (6) of article 56 of this Act. Where such distribution is not made by the said date, this tax becomes a debt due from the relevant trustee to the Commissioner payable by not later than the 30th June following the end of the said year. The tax so paid shall be available as a credit against the beneficiary's tax liability, or for a refund as the case may be, for the relevant year of assessment.

Rate of
Taxation.

(5) Except as provided in subarticle (4) of article 56 of this Act, tax shall be charged upon the chargeable income in relation to the income attributable to a trust at the rate specified in subarticle (6) of article 56 of this Act.

Foreign tax
deemed to
be paid by
trust.

(6) (a) Where foreign tax has been paid on the income attributable to a trust, such tax shall be deemed to have been paid by a trustee of such trust, whether it was paid by a trustee or a beneficiary of such trust.

(b) A claim for relief of double taxation with respect to the tax referred to in paragraph (a) of this paragraph, may only be made through the provisions of articles 79 to 88 of this Act. Any reference in these articles to a person, shall, for the purposes of this subarticle, be deemed to be a reference to a trustee of a trust while any reference to income or income of a person, shall be deemed to be a reference to the income attributable to a trust.

Tax on
income
attributable
to a trust is
final.

(7) Unless otherwise provided for in this article, no person shall be charged to further tax under this Act in respect of income attributable to a trust which has been charged to tax in accordance with the provisions of subarticles (1), (2) and (3) this article.

Taxation of
Beneficiaries.

(8) (a) Amounts allocated to beneficiaries referred to in paragraph (a) of subarticle (4) of this article shall be aggregated with other income of the said beneficiaries for the purposes of article 4 of this Act and tax shall be charged accordingly for the year of assessment commencing on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint and for each subsequent year of assessment.

(b) Amounts allocated to beneficiaries referred to in paragraph (a) of subarticle (4) of this article shall be treated as income derived by the beneficiary at the time it vests, or the beneficiary becomes entitled to it, or it is distributed, as the case may be.

(c) Income distributed to beneficiaries shall retain its character as to type and country of source. A claim for relief of double taxation with respect to such income may be made in accordance with the provisions referred to in article 74 of this Act notwithstanding that

foreign tax may have been paid by the trustee or the beneficiary himself.

Interpretation.

(9) (a) For the purposes of this article the terms “beneficiary”, “settlor”, “trust” and “trustee” shall have the meaning assigned to them by article 2 of the Trusts and Trustees Act.

(b) Words and expressions used in this article and in other parts of the Income Tax Acts which relate to the income attributable to a trust, shall, in so far as their meanings are not defined by the Income Tax Acts, have the meaning assigned to them in the Trusts and Trustees Act and any rules and regulations made thereunder.

Anti-avoidance.

(10) (a) Where in the opinion of the Commissioner, transactions involving a trust are carried out with the sole or main purpose of reducing the amount of tax payable by a person, the Commissioner shall disregard such trust and the income of such person shall be determined as if it had been derived without the involvement of such trust.

(b) Article 57 of the Income Tax Management Act shall apply *mutatis mutandis* in the circumstances relating to trustees. References in that article to:

(i) “warrant holder” shall be construed as references to any person acting as trustee as provided for under the Trusts and Trustees Act;

(ii) “Board” shall be construed as references to the Malta Financial Services Authority;

(iii) “article 14(1)(a)(i) of the Accountancy Profession Act” shall be construed as references to article 51 of the Trusts and Trustees Act;

(iv) “documents” shall be construed as references to any document required to be produced by a trustee in relation to a trust under Maltese law;

(v) “1st January, 1998” shall be construed as references to the date of the coming into force of the Trusts and Trustees Act.”

52. In subarticle (2) of article 30 of the principal Act, for the words “allied institution, trust, foundation” there shall be substituted the following words “allied institution, foundation”.

Amendment of article 30 of the principal Act.

53. In subarticle (10) of article 56 of the principal Act:

Amendment of article 56 of the principal Act.

(a) in paragraph (b) thereof, for the words “15c on every lira.” there shall be substituted the words “15c on every lira.”;

(b) immediately after paragraph (b) thereof, thereof shall be included the following new paragraph:“

(c) Where income has been deemed to be derived directly under the provisions of paragraph (b) of subarticle (3) of article 27D of this Act by an individual who has been granted a residence permit under article 7 of the Immigration Act, such income shall be charged to tax at the rates laid down in paragraphs (a) or (b) of subarticle (1) of this article starting at the rate of 15 cents on every lira as if such income constitutes separate chargeable income.”.

54. Article 61 of the principal Act shall be amended as follows:-

Amendment of article 61 of the principal Act.

(a) in the Maltese text only, paragraphs (i) and (ii) shall be renumbered as (a) and (b), while sub-paragraphs (a) and (b) shall be renumbered as (i) and (ii); and

(b) in subparagraph (ii) of paragraph (a) thereof, for the words “and domiciled in Malta;” there shall be substituted the words “and domiciled in Malta; or”;

(c) immediately after sub-paragraph (ii) of paragraph (a) thereof there shall be included the following new sub-paragraph:-

“(iii) a trustee of a trust where the beneficiaries of such trust are persons referred to in paragraphs (i) and (ii) of this subarticle;”;

55. Article 70 of the principal Act shall be amended as follows:-

Amendment of article 70 of the principal Act.

(a) In subarticle (1) thereof, for the word “trustee” wherever it occurs, there shall be substituted the word “administrator”; and

(b) In subarticle (2) thereof the word “trust,” shall be deleted; and for the words “a trustee” there shall be substituted the words “an administrator”.

Deletion of article 72 of the principal Act.

56. Article 72 of the principal Act shall be deleted.

**PART V
AMENDMENTS TO THE EXTERNAL
TRANSACTIONS ACT, CAP. 233**

Amendments to the External Transactions Act Cap. 233.

57. (1) This Part amends and shall be read and construed as one with the External Transactions Act, hereinafter referred to as “the principal Act”.

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

Amendment of article 2 of the principal Act.

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

(a) for the definition of “non-resident” there shall be substituted the following new definition:-

“ “non resident” means:

(a) any person, body corporate or other entity which is not a resident;

(b) any resident trustee in terms of a trust where any of the beneficiaries are non-resident and in the case of a discretionary trust, where the power of appointment or any discretion may be exercised in favour of any non-resident”;

(b) for the definition of “resident” there shall be substituted the following new definition:-

“ “resident” means:

(a) any natural person regardless of nationality whose place of business is ordinarily in Malta or in a Member State or who has resided in or has the intention to reside in Malta or in a Member State for a continuous period of one year;

(b) any body corporate incorporated in or under the laws of Malta or of a Member State, or any entity which operates from or is otherwise registered in Malta or in a Member State;

(c) any trustee in terms of a trust whose place of residence is ordinarily outside Malta or any Member State but where all the beneficiaries of the trust are determined and are residents and in case of a discretionary trust where the power of appointment or any discretion may be exercised only in favour of residents.”

PART VI
AMENDMENTS TO THE MERCHANT SHIPPING ACT,
CAP. 234

59. (1) This Part amends and shall be read and construed as one with the Merchant Shipping Act, hereinafter referred to as “the principal Act”.

Amendment to the Merchant Shipping Act, Cap. 234.

(2) This Part shall come into force on such date as the Minister responsible for merchant shipping may, by notice in the Government Gazette, appoint.

60. In subarticle (4) of article 38 of the principal Act after the words “any other enactment.” there shall be inserted the words “Any such security trust shall be governed by the provisions of article 2095E of the Civil Code when the applicable law is the law of Malta.”

Amendment of subarticle (4) of article 38 of the principal Act.

PART VII
AMENDMENTS TO THE IMMOVABLE PROPERTY
(ACQUISITION BY NON-RESIDENTS) ACT, CAP. 246

61. (1) This Part amends and shall be read and construed as one with the Immovable Property (Acquisition by Non-Residents) Act, hereinafter referred to as “the principal Act”.

Amendments to the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246.

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

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

Amendment of article 2 of the principal Act.

(a) in paragraph (c) of the definition of “non-resident person” there shall be deleted the word “trust,” and in sub-paragraph (iii) thereof, for the words “ or is registered in the name of a company licensed to act as a nominee company” there shall be inserted the words “or is registered in the name of a trustee for the benefit of a non-resident person”;

(b) immediately after paragraph (c) there shall be added a new paragraph (d) as follows:-

“(d) any trustee in terms of a trust who is:

(i) a non-resident person unless all the beneficiaries of the trust are determined and are residents of Malta and in case of a discretionary trust where the power of appointment or any discretion may be exercised in favour of residents of Malta;

(ii) a resident of Malta where any of the beneficiaries are non-resident persons and in case of a discretionary trust, where the power of appointment or any discretion may be exercised in favour of any non-resident person;”.

PART VIII
AMENDMENTS TO THE LAND REGISTRATION ACT,
CAP. 296

Amendments to the
Land Registration
Act, Cap. 296

63. (1) This Part amends and shall be read and construed as one with the Land Registration Act, hereinafter referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for land registration may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of
article 12 of the
principal Act.

64. Sub-paragraph (a) of subarticle (1) of Article 12 of the principal Act shall be deleted and substituted by the following:-

“(a) every contract conveying the ownership of immovable property, or any real right over such property including transactions relating to immovable property under trusts, or whereby any act having the effect of conveying the ownership of immovable property or any real right over such property, is dissolved, rescinded or revoked, and every contract creating or varying such right or whereby any such right is converted into any other of such rights or is waived, and every contract whereby immovable property is partitioned, and every act having a declaratory effect as to the ownership of, or any real right over, immovable property (including a deed made for a purpose of the Duty on Documents and Transfers Act, 1993 and an inventory drawn by a trustee accepting a testamentary trust and a unilateral declaration of trust with regard to additional trust property, but excluding any other deed of inventory), and every contract of antichresis; and”.

65. In Article 24 of the principal Act, immediately after the words “only for a limited period,” there shall be inserted the words “or is owned under trusts.”

Amendment of article 24 of the principal Act.

66. In paragraph (a) of Article 25 of the principal Act immediately after the word “the owner,” there shall be inserted the words “a trustee,”.

Amendment of article 25 of the principal Act.

PART IX

AMENDMENTS TO THE MALTA FINANCIAL SERVICES AUTHORITY ACT, CAP. 330

67. (1) This Part amends and shall be read and construed as one with the Malta Financial Services Authority Act, hereinafter in this Part referred to as “the principal Act”.

Amendments to the Malta Financial Services Authority Act, Cap. 330.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance, may by notice in the Gazette establish and different dates may be so established for different provisions or different purposes of this Part.

68. Article 18 of the principal Act shall be amended as follows:

Amendments of article 18 to the principal Act.

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered there shall be added the following new subarticle (2):-

“(2) The Authority may, subject to such conditions it may deem fit to impose and to such procedures as may be applicable according to law, disclose information to overseas central banks and other authorities responsible for monetary policy and, where appropriate to other overseas public authorities responsible for overseeing payment systems, where such information relates and is connected to their respective functions in terms of law.”.

69. Immediately after article 20A of the principal Act, there shall be added the following two new articles 20B and 20C:-

Addition of new articles 20B and 20C to the principal Act.

“Financial Conglomerates.

20B. (1) The Minister may, acting on the advice of the Authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 and to provide for the supplementary supervision of credit institutions, financial institutions, insurance undertakings and investment firms in a financial conglomerate, and to otherwise regulate the supervision of

financial conglomerates and financial groups with cross-sectoral financial activities.

(2) Regulations made by the Minister in virtue of subarticle (1) shall, in particular and without prejudice to the authority vested in the Minister by the said subarticle:

(a) provide for the appointment of a coordinator responsible for coordination and examination of supplementary supervision, for the assessment of the financial situation of a group, including solvency requirements, risk concentration and intra-group transactions, and the means for obtaining from the entities within a financial group and from other competent authorities, the information necessary for the performance of this supplementary supervision and may provide for consultation and the sharing and exchange of information with overseas competent authorities, as may be necessary;

(b) provide for the establishment and imposition of administrative penalties or other measures for the contravention of any of the regulations, and to provide for appeals therefrom to the Financial Services Tribunal.

Language of regulations

20C. Regulations which are required to be issued by the Minister upon the advice of the Authority or after consultation therewith under any Act in respect of which the Authority has been appointed as the competent authority, may be made in the English language only.”.

**PART X
AMENDMENTS TO DUTY ON DOCUMENTS AND
TRANSFERS ACT, CAP. 364**

Amendments to Duty on Documents and Transfers Act, Cap. 364.

70. (1) This Part amends and shall be read and construed as one with Duty on Documents and Transfers Act, hereinafter referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Addition of new article 32B to the principal Act.

71. Immediately after article 32A of the principal Act, a new article to be numbered 32B shall be inserted as follows:-

“Special rules
applicable to
Trusts

32B. (1) Notwithstanding any other provisions of this Act, no duty shall be chargeable on any transfer of immovable property or any real right over an immovable property:

(a) by a settlor to the trustees of a trust of which the settlor is the sole beneficiary and where the settlor has an irrevocable vested right to receive the trust property;

(b) by a settlor to the trustees of a trust created for the purpose of a designated commercial transaction;

(c) by a settlor to the trustees of a trust created for the purpose of a commercial transaction not being a designated commercial transaction but which has been approved by the Commissioner for the purposes of this paragraph;

(d) between trustees consequent to a change in the trustees (whether by addition, substitution or otherwise) holding the immovable property upon trust provided that no beneficial interest in the trust is also transferred upon such change in trustees;

(e) by trustees to the settlor where the trust property reverts back to the settlor; and

(f) by trustees to a beneficiary of the trust where duty has been previously charged on the initial transfer by the settlor to the trustees in accordance with subarticle (1) of article 32; provided that duty shall be chargeable in relation to any increase in value between the date of the initial transfer to the trustees and the subsequent distribution to the beneficiaries:

Provided that in all cases the trust must be established or evidenced by means of a written instrument.

For the purposes of this subarticle, “designated commercial transactions” means the custody of investment instruments, the establishment or holding of real or personal security interests (including hypothecs, privileges, pledges and guarantees), and any other commercial transaction which may be prescribed, while “commercial transaction” shall have the meaning assigned to it in article 2 of the Trusts and Trustees Act.

(2) Where a beneficiary under a trust for immovable property assigns or otherwise transfers *inter vivos* to a third party his beneficial interest in such trust, such a

transfer shall be deemed to constitute a transfer for the purposes of this Act, and the transfer value shall be deemed to be the amount limited to that part of the value of the immovable property which is proportionate to the value of the beneficial interest transferred by such beneficiary.

(3) The provisions of sub article (2) of this article shall apply *mutatis mutandis* in those cases when there is any change in beneficiary, including a disclaimer or renunciation whether in full or in part of a beneficiary's entitlement under a trust;

Provided that where the Commissioner is satisfied that an irrevocable disclaimer of a beneficial interest was not effected with the sole or main purpose of avoiding, reducing or postponing liability to duty, he may at his discretion order in writing that the provisions of this subarticle shall not apply to such a disclaimer and that no duty shall be chargeable.”.

Amendment of article 33 of the principal Act.

72. In article 33 of the principal Act subarticle (6) immediately after the words “testamentary executors” there shall be inserted the words “and trustees”.

Amendment of article 34 of the principal Act.

73. In article 34 of the principal Act immediately after the words “as may be prescribed.” there shall be inserted a new paragraph as follows:-

“For the purpose of determining the applicability of the benefits of this Article whenever the immovable property or real rights thereon are held on trust, reference shall be made to the beneficiaries of the trust as indicated in the declaration, and the trustee shall be ignored for such purpose.”.

Amendment of article 35 of the principal Act.

74. Article 35 of the principal Act shall be amended as follows:-

(a) subarticles (3) to (6) shall be renumbered as subarticles (4) to (7) respectively;

(b) immediately after subarticle (2) there shall be added a new subarticle (3) as follows:-

“(3) For the purpose of determining the applicability of the benefits referred to in subarticles (1)(a) and (2) of this Article whenever the dwelling house is transferred *causa mortis* to a trustee, reference shall be made to the beneficiaries of the trust as indicated in the declaration, and the trustee shall be ignored for such purpose. No reference to the beneficiaries of a trust shall be made for the purpose of subarticle (1)(b) of this Article.”; and

(c) in subarticle (6) as renumbered, immediately after the words “which is not merely potestative” there shall be inserted the words “or of a transfer *causa mortis* upon trust”.

75. Immediately after article 42 of the principal Act, a new article to be numbered 42A shall be inserted as follows:-

Addition of new article 42A to the principal Act.

“Special rules applicable to Trusts

42A. The provisions of Article 32B shall apply *mutatis mutandis* to any transfers of marketable securities, and references to “immovable property” in Article 32B shall be construed as references to “marketable securities” for the purposes of this Article.”.

PART XI AMENDMENTS TO THE INVESTMENT SERVICES ACT, CAP. 370

76. (1) This Part amends and shall be read and construed as one with the Investment Services Act, hereinafter referred to as “the principal Act”.

Amendments to the Investment Services Act, Cap. 370.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

77. Article 12 of the principal Act shall be amended as follows:

Amendment to article 12 of the principal Act.

(a) paragraphs (j) and (k) of subarticle (1) thereof shall be respectively re-numbered as (l) and (m);

(b) immediately after paragraph (i) of subarticle (1) thereof, there shall be added the following new paragraph (j):-

“(j) transpose the requirements of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as may be applicable to a licence holder;”.

78. Paragraph 4 of the First Schedule to the principal Act shall be amended as follows:-

Amendment of the First Schedule to the principal Act.

(a) in sub-paragraph (a) the words “this Schedule; or” shall be substituted by the words “this Schedule;”;

(b) immediately after sub-paragraph (a) there shall be added the following proviso:-

“Provided that for the purposes of this sub-paragraph any person who is authorised or otherwise exempt from authorisation in the terms of Article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this sub-paragraph if such person does not provide an investment service and delegates all activities which are investment services in terms of this Act to a person who is licenced to provide such services; or;

(c) in sub-paragraph (b) of the said paragraph the words “investment service; or” shall be substituted by the words “investment service.”; and

(d) immediately after sub-paragraph (b) thereof there shall be added the following proviso:-

“Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in the terms of Article 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this Act.”

PART XII AMENDMENTS TO THE BANKING ACT, CAP. 371

Amendments to the Banking Act, Cap. 371.

79. (1) This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment to article 2 of the principal Act.

80. In subarticle (1) of article 2 of the principal Act, in the definition of “competent authority” for the words “article 3(2)” there shall be substituted the words “article 3(1)”.

Amendment to article 13 of the principal Act.

81. In subarticle (3) of article 13 of the principal Act, for the words “ listed a stock exchange licensed under the Financial Markets Act” there shall be substituted the words “listed on a recognised investment exchange in terms of the Financial Markets Act”.

Addition of new articles 29B and 29C.

82. Immediately after article 29A of the principal Act, there shall be added the following new articles 29B and 29C:-

“29B. The Minister may, after consultation with the competent authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of the European Union of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as may be applicable to credit institutions.

“Financial
Conglomerates

29C. Regulations made under this Act and any amendment thereto or revocation thereof may be made in the English language only.”.

Language of
Regulations

PART XIII AMENDMENTS TO THE INCOME TAX MANAGEMENT ACT, CAP. 372

83. (1) This Part amends the Income Tax Management Act and it shall be read and construed as one with the Income Tax Management Act hereinafter in this Part referred to as “the principal Act”.

Amendments to the
Income Tax
Management Act,
Cap. 372

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

84. Article 5 of the principal Act shall be amended as follows:-

Amendment of
article 5 of the
principal Act.

(a) in subarticle (3) thereof, for the words “is licensed under article 51A of the Malta Financial Services Centre Act” there shall be substituted the words “had been licensed under article 51A of the Malta Financial Services Authority Act and until such time that he is so licensed or is authorised or otherwise permitted to act as a trustee under article 43 or 43A of the Trusts and Trustees Act”; and

(b) in subarticle (4) thereof, for the words “A licensed nominee shareholder who” there shall be substituted the words “A person referred to in subarticle (3) of this article who”.

85. In subarticle (1) of article 24 of the principal Act, for the words “Where any person in any capacity whatsoever” there shall be substituted the words “Where any person in any capacity whatsoever, but not in the capacity of a trustee of a trust”.

Amendment of
article 24 of the
principal Act.

86. Immediately after article 24 of the principal Act there shall be added the following new articles 24A and 24B:-

Addition of new
articles 24A and
24B to the principal
Act.

“Returns to be furnished by trustees.

“24A. (1) The Commissioner may give notice to a trustee of a trust requiring him to furnish, within the time limited by such notice, not being less than 30 days from the date of service of such notice, a return containing –

(a) a true and correct statement, certified by a warrant holder referred to in article 57 of this Act, of the income attributable to such trust as referred to in article 27B of the Income Tax Act; and

(b) (i) the names and addresses of those beneficiaries to whom income has been allocated as provided in subarticle (4) of article 27D of the Income Tax Act, together with the relative amounts so allocated; and

(ii) the amount, date of allocation, type and country of source of the income so allocated for each beneficiary referred to in subparagraph (i) of this paragraph.

(2) (a) A return under the provisions of this article shall be deemed to be a return required to be furnished under the provisions of article 10 of this Act.

(b) A trustee who issues a false certificate to the Commissioner shall be guilty of making a false statement within the meaning of paragraph (b) of subarticle (1) of article 52 of this Act.

Returns to be furnished by settlors.

24B. Where –

(a) the settlor of a trust is a person resident in Malta; and

(b) none of the trustees of such trust is a person resident in Malta; and

(c) property is settled into such trust after such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint;

the said settlor shall inform the Commissioner of the property so settled together with a copy, where applicable, of the relevant trust instrument or of any other document evidencing the existence of such trust. This

information shall be submitted to the Commissioner by not later than 30 days from the date of the relevant settlement. Any settlor who fails to comply with the provisions of this article shall be guilty of an offence and liable on conviction to a fine (*multa*) of not less than 50 liri and not exceeding 500 liri and to a further fine (*multa*) of not less than 2 liri but not exceeding 10 liri for every day during which the offence continues after the lapse of the said 30 days.”.

87. Immediately after article 42 of the principal Act there shall be inserted the following new article 42A:-

Addition of new article 42A to the principal Act.

“Time limit within which payment is to be made by trustees.

42A. Notwithstanding anything contained in article 42 of this Act, tax payable on the income attributable to a trust as defined in article 27B of the Income Tax Act for any year of assessment, shall be paid not later than the tax settlement date as defined in the Income Tax Acts.”.

PART XIV AMENDMENTS TO THE RECOGNITION OF TRUSTS ACT, CAP. 374

88. As from the date established by notice in the Gazette by the Minister responsible for finance the principal Act shall be repealed.

Amendment to the Recognition of Trusts Act, Cap. 374.

PART XV AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT, CAP. 376

89. (1) This Part amends and shall be read and construed as one with the Financial Institutions Act, hereinafter in this Part referred to as “the principal Act”.

Amendments to the Financial Institutions Act, Cap 376.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

90. Immediately after subarticle (2) of article 12 of the principal Act, there shall be added the following new articles 12A and 12B:-

Addition of new articles, 12A and 12B

“Financial Conglomerates.

12A. The Minister may, after consultation with the competent authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of the European Union of 16 December 2002

and to provide for the supplementary supervision of financial institutions in an financial conglomerate.

Language of Regulations.

12B. Regulations made under this Act and any amendment or revocation of such may be made in the English language only.”.

**PART XVI
AMENDMENTS TO THE COMPANIES ACT,
CAP. 386**

Amendments to the Companies Act, Cap. 386.

91. (1) This Part amends and shall be read and construed as one with the Companies Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article 16 of the principal Act.

92. Immediately after subarticle (2) of article 16 of the principal Act, there shall be inserted the following new subarticle (3):

“(3) The registration of a partnership by the Registrar under this article shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the partnership under any other law.”.

Amendment of article 70 of the principal Act.

93. Article 70 of the principal Act shall be amended as follows:-

(a) for subarticle (5) thereof, there shall be substituted the following:-

“(5) A company shall not be registered by a name which includes the word “fiduciary”, “nominee” or “trustee”, or any abbreviation, contraction or derivative thereof, unless such company is authorised to act as a trustee in terms of the applicable laws of Malta, or unless otherwise permitted to do so by the relevant competent authority.”; and

(b) for paragraph (b) of subarticle (6) thereof, there shall be substituted the following:-

“(b) under a name or title which contains the words “fiduciary”, “nominee” or “trustee”, or any abbreviation, contraction or derivative thereof, which is not the name of a

company which is authorised to use such name as provided in subarticle (5) of this article; or”.

94. Immediately after subarticle (2) of article 77 of the principal Act, there shall be inserted the following new subarticle (3):- Amendment of article 77 of the principal Act.

“(3) The registration of a company by the Registrar under this article shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the company under any other law.”.

95. In subarticle (4) of article 88 of the principal Act, for the words “the offer in the Gazette” there shall be substituted the words “the offer in the Gazette or on a website maintained by the Registrar”. Amendment of article 88 of the principal Act.

96. Article 127 of the principal Act shall be amended as follows:- Amendment of article 127 of the principal Act.

- (a) subarticles (2), (4), (5) and (10) thereof shall be deleted;
- (b) subarticle (3), (6), (7), (8) and (9) thereof shall be re-numbered as subarticles (2), (3), (4), (5) and (6) respectively;
- (c) in subarticle (2) as renumbered immediately after the words “any nominee” there shall be added the words “or any trust:

Provided that the company shall not be obliged to obtain or to record any information on the number of beneficiaries and it shall be the sole duty of the trustee to inform the company of the number of beneficiaries if it appears to the trustee that, paying regard to the number of beneficiaries, it may result in the aggregate number of persons interested exceeding fifty. The Registrar may at any time order any trustee to declare in writing to the company the number of beneficiaries and in such a case reference shall only be made to beneficiaries who enjoy a fixed interest in the shares under the trust.”

(d) Subarticle (3) as renumbered shall be substituted by the following new subarticle (3):-

“(3) Where a trustee holds shares in a company for the benefit of beneficiaries:

- (a) the memorandum of association and articles of association, if any, shall be deemed to be validly entered into for the purposes of articles 68 and 75 of this Act if

they are signed only by the trustee when all the shares in the company are subscribed by the trustee;

(b) the memorandum of association, the register of members, share certificates, returns of allotments and any annual return of a company may specify the number of shares held by the trustee on its own account, if any, and the amount of shares held under trusts or each trust if more than one, and the provisions of paragraphs (a), (b) and (c) of subarticle (1) of article 123 of this Act shall be construed accordingly;

(c) a resolution in writing pursuant to article 210 of this Act shall be deemed to be valid and effective if it is signed only by the trustee when all the shares in the company are subscribed by the trustee.”;

(e) subarticle (4) thereof as renumbered shall be amended as follows:

(a) paragraph (a) thereof shall be substituted by the following new paragraph (a):-

“(a) Where a beneficial owner of shares in a company which are held by a trustee, transfers or otherwise disposes of the beneficial ownership of such shares *inter vivos* to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfer Act, and for the purposes of article 5(1) of the Income Tax Act.”; and

(b) in paragraph (c) thereof, for the words “licensed nominee” there shall be substituted the words “trustee”;

(f) in subarticle (5) thereof as renumbered:-

(i) the definition of “beneficial owner” shall be substituted by the following new definition:-

“beneficial owner” means the person beneficially entitled to the shares under a trust or a fiduciary agreement;

(ii) the definition of “licensed nominee” shall be deleted; and

(iii) following the definition of “beneficial owner” there shall be inserted the following new definition:-

“trustee” shall mean a person who may act as a trustee in accordance with the Trusts and Trustees Act and shall include any fiduciary holding shares on behalf of another person”.

97. In subarticle (1) of article 324 of the principal Act, for the words “notice thereof in the Gazette” there shall be substituted the words “notice thereof in the Gazette or on a website maintained by the Registrar”. Amendment of article 324 of the principal Act.

98. Article 325 of the principal Act shall be amended as follows:- Amendment of article 325 of the principal Act.

(a) in subarticle (2) thereof, for the words “notice in the Gazette” there shall be substituted the words “notice in the Gazette or on a website maintained by the Registrar”;

(b) in subarticle (3) thereof, for the words “publish in the Gazette” there shall be substituted the words “publish in the Gazette or on a website maintained by the Registrar of Companies”; and

(c) in subarticle (4) thereof, for the words “publish a notice in the Gazette” there shall be substituted the words “publish a notice in the Gazette or on a website maintained by the Registrar”.

99. Article 356 of the principal Act shall be amended as follows: Amendment of article 356 of the principal Act.

(a) in paragraph (a) thereof, for the words “the Registrar in the Gazette” there shall be substituted the words “the Registrar in the Gazette or on a website maintained by the Registrar”; and

(b) in paragraph (c) thereof, for the words “published by the Registrar in the Gazette” there shall be substituted the words “published by the Registrar in the Gazette or on a website maintained by the Registrar”.

100. Article 401 of the principal Act shall be amended as follows:- Amendment of article 401 of the principal Act.

(a) in paragraph (e) of subarticle (1) thereof, for the words “in the Gazette” wherever they occur, there shall be substituted the words “in the Gazette or on a website maintained by the Registrar”; and

(b) in paragraph (g) of subarticle (1) thereof, for the words “statement published in the Gazette” there shall be substituted the words “statement published in the Gazette or on a website maintained by the Registrar”.

Amendment of article 402 of the principal Act.

101. In subarticle (6) of article 402 of the principal Act, for the words “a licensed nominee as defined in article 127, who holds in his name shares in the company on behalf of and for the interest of another person beneficially entitled thereto.” there shall be substituted the words “a trustee, as defined in article 127 of this Act, who holds shares in the company.”

Amendment of article 425 of the principal Act.

102. Immediately after subarticle (5) of article 425 of the principal Act, there shall be inserted the following new subarticle (6) thereof:

“(6) Regulations made under any of the provisions of this Act may be made in the English language only.”.

Amendment to article 431 of the principal Act.

103. In paragraph (b) of subarticle (1) of article 431 of the principal Act, for the words “from when the provisions of this Act” there shall be substituted the words “from when the provisions of this Act or of any other law”.

Amendment of the Tenth Schedule to the principal Act.

104. The Tenth Schedule to the principal Act shall be amended as follows:-

(a) sub-paragraph (a) of paragraph (1) thereof, shall be deleted;

(b) sub-paragraph (b) of paragraph (1) thereof, shall be renumbered as paragraph (1);

(c) in sub-paragraph (1)(a) of paragraph (3) thereof, for the words “and at least one of whom shall be a licence holder licensed as a manager of a collective investment scheme within the meaning of the Investment Services Act” there shall be substituted the words “and each of whom shall satisfy the competent authority within the meaning of the Investment Services Act that he is a fit and proper person to carry out such activities or functions and shall further satisfy the requirements of subarticle (7) of article 6 of the Investment Services Act and any other requirements as may be established by guidelines issued by the competent authority under and within the meaning of the Investment Services Act”; and

(d) in sub-paragraph (8) of paragraph (22) thereof, for the words “published in the Gazette” there shall be substituted the words “published in the Gazette or on a website maintained by the Registrar”.

PART XVII
AMENDMENTS TO THE ARBITRATION ACT, CAP. 387

105. (1) This Part amends and shall be read and construed as one with the Arbitration Act, hereinafter referred to as “the principal Act”. Amendments to the Arbitration Act, Cap. 387.

(2) This Part shall come into force on such date as the Minister for justice may by notice in the Government Gazette appoint.

106. Immediately after article 15 of the principal Act there shall be inserted the following new article 15A as follows: Addition of new article 15A to the principal Act.

“Arbitration clause in wills and trusts.

15A. (1) It shall be lawful for a testator to insert an arbitration clause in a will. In such event such clause shall be binding on all persons claiming under such will in relation to all disputes relating to the interpretation of such will, including any claim that such will is not valid.

(2) It shall be lawful for a settlor of a trust to insert an arbitration clause in a deed of trust and such clause shall be binding on all trustees, protectors and any beneficiaries under the trust in relation to matters arising under or in relation to the trust.

(3) In the cases referred to in the preceding subarticles, the right of a party to seek directions of the Court of voluntary jurisdiction in terms of the Trusts and Trustees Act shall not be limited by any such clause and notwithstanding the provisions of this Act, the said Court shall not be bound to stay proceedings in terms of subarticle (3) of article 15 or otherwise, but shall enjoy a discretion to do so until such time as it determines that the matter is of a contentious nature, in which case it shall stay the proceedings and shall refer the parties to arbitration.”.

PART XVIII
AMENDMENTS TO THE INSURANCE BUSINESS ACT,
CAP. 403

107. (1) This Part amends the Insurance Business Act, hereinafter in this Part referred to as “the principal Act” and shall be read and construed as one with the principal Act. Amendments to the Insurance Business Act, Cap. 403.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance may, by notice in the Gazette, establish and different dates may be so established for different provisions or different purposes of this Part.

Amendment of article 10 of the principal Act.

108. For paragraph (b) of subarticle (1) of article 10 of the principal Act, there shall be substituted the following:

“(b) where the authorisation sought or held is one not restricted to reinsurance, the company submits proof that it maintains the minimum guarantee fund in accordance with article 16 of the Act.”.

Amendment of article 12 of the principal Act.

109. Article 12 of the principal Act, shall be amended as follows:

(a) the present article 12 shall be renumbered as subarticle (1) thereof; and

(b) immediately after the new renumbered sub-article (1) there shall be inserted the following new subarticle:

“(2) Without prejudice to the provisions of subarticle (1) of this article, the general representative shall not be personally liable for the debts and obligations of the company referred to in article 11.”.

Amendment of article 14 of the principal Act.

110. For paragraph (b) of subarticle (5) of article 14 of the principal Act, there shall be substituted the following:

“(b) the Malta margin of solvency is the margin of solvency of an authorised company computed by reference to the assets and liabilities of the business carried on by that company in Malta.”.

Amendment of article 28 of the principal Act.

111. Subarticle (1) of article 28 of the principal Act, shall be amended as follows:-

(a) the present paragraph (h) shall be re-numbered as paragraph (i) thereof; and

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

“(h) require the company to submit a financial recovery plan if it considers that the interest of insureds, policyholders, creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the company;”.

Amendment of article 38 of the principal Act.

112. Article 38 of the principal Act shall be amended as follows:-

(a) immediately after subarticle (1) thereof, there shall be inserted the following new subarticle:

“(2) If the person acquiring a qualifying shareholding is an insurance undertaking, a credit institution or an investment firm authorised in a Member State or an EEA State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the person acquiring such shareholding, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12a of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance and Article 12a of Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance, as amended from time to time.”;

(b) in subarticle (3) thereof, for the words “listed on any Stock Exchange” there shall be substituted the words “listed on any recognised investment exchange”; and

(c) immediately after subarticle (11) thereof, there shall be inserted the following new subarticle:-

“(12) In this article, the expressions “Member State” and “EEA State” have the following meanings:

(a) “Member State” means a Member State of the European Communities; and

(b) “EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on the 17 May, 1993 and as amended from time to time.”.

113. For paragraph (a) of subarticle (1) of article 41 of the principal Act, there shall be substituted the following:

Amendment of article 41 to the principal Act.

“(a) in the case of a company whose head office is in Malta, dissolve and consequentially wind up under and in accordance with regulations made under of this article; and”.

Amendment of article 58 of the principal Act.

114. Article 58 of the principal Act, shall be amended as follows:-

(a) paragraph (c) of subarticle (1) thereof, shall be substituted by the following:-

“(c) to suspend or revoke an authorisation under article 26, or under any regulation made under this Act;”; and

(b) subarticle (3) thereof, shall be substituted by the following:-

“(3) An appeal made under this article shall not suspend the operation of any decision from which the appeal is made:

Provided that, a decision to revoke an authorisation shall not become operative until the expiration of the period within which an appeal may be made under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.”.

Amendment of article 62 of the principal Act.

115. Article 62 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof for the words “Notwithstanding the provisions of the Companies Act, regulations”, there shall be substituted the words “Regulations”; and

(b) immediately after subarticle (3) thereof, there shall be added a new subarticle (4) as follows:-

“(4) The provisions of this article and of any regulations made thereunder shall prevail over anything to the contrary contained in the Companies Act, or regulations made thereunder, with respect to continuance of companies.”

Amendment of article 64 of the principal Act.

116. Article 64 of the principal Act, shall be amended as follows:

(a) Paragraph (c) of subarticle (1) thereof, shall be substituted by the following:-

“(c) provide for and regulate the payment by any person, body or cell created by a cell company, as the case may be, of any fees, duties and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article;”; and

(b) subarticle (3) thereof, shall be renumbered as subarticle (4); and

(c) immediately after sub-article (2) there shall be added the following new subarticle:-

“(3) The Minister may, after consultation with the competent authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investments firms in a financial conglomerate, as may be applicable to insurance undertakings.

117. Immediately after paragraph 4.3 of the First Schedule to the principal Act, there shall be inserted the following new paragraph:- Amendment of the First Schedule to the principal Act.

“4.4 Without prejudice to the other provisions of this paragraph, the general representative shall not be personally liable for the debts and obligations of Lloyd’s or any of its members.”.

118. The Fourth Schedule to the principal Act, shall be amended as follows:- Amendment of the Fourth Schedule to the principal Act.

(a) Part I thereof, shall be amended as follows:-

(i) in 3.8 thereof, for the words “signed by a senior manager of the company”, there shall be substituted the words “signed by a senior manager of an insurer or an insurance broker, as the case may be,”; and

(ii) in 3.9 thereof, for the words “shall not act for any company”, there shall be substituted the words “shall not act for an insurer or an insurance broker, as the case may be,”; and

(b) in item (ii) of sub-paragraph (b) of paragraph 5.5 of Part III thereof, for the words “arranging a contract of insurance with an authorised company” there shall be substituted the words “arranging a contract of insurance with a company”.

PART XIX
AMENDMENTS TO THE VALUE ADDED TAX ACT,
CAP. 406

Amendments to the Value Added Tax Act, Cap. 406.

119. (1) This Part amends and shall be read and construed as one with the Value Added Tax Act, hereinafter referred to as “the principal Act”;

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

Amendment of the Third Schedule of the principal Act.

120. Sub-paragraph (c) of paragraph 10 of the Third Schedule to the principal Act shall be amended by the insertion of the word “trustees,” after the word “financial advisors,”

PART XX
AMENDMENTS TO THE LEGAL PROCEDURES
(RATIFICATION OF CONVENTIONS) ACT, CAP. 443

Amendments to the Legal Procedures (Ratification of Conventions) Act, Cap. 443.

121. (1) This Part amends and shall be read and construed as one with the Legal Procedures (Ratification of Conventions) Act, hereinafter referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister for justice may, by notice in the Government Gazette, appoint.

Amendment of article 40 of the principal Act.

122. Article 40 of the principal Act shall be substituted by the following:

“40. For the purposes of this Part of the Act, a trust shall be deemed to be domiciled in Malta if any of the factors stated in subarticle (1) of article 8 of the Trusts and Trustees Act exist, subject to the provisions of subarticle (2) thereof.”.

SCHEDULE

(Article 34)

“SCHEDULE

(Articles 2 and 5A)

CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION

CHAPTER 1- SCOPE

Article 1

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

Article 2

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

A trust has the following characteristics:

(a) the assets constitute a separate fund and are not a part of the trustee’s own estate;

(b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;

(c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

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

Article 4

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

Article 5

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

CHAPTER II - APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case. Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected. In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:-

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

Article 8

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

In particular that law shall govern -

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;

(d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;

(e) the powers of investment of trustees;

(f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;

(g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;

(h) the variation or termination of the trust;

(i) the distribution of the trust assets;

(j) the duty of trustees to account for their administration.

Article 9

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

Article 10

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

CHAPTER III – RECOGNITION

Article 11

A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust. Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity. In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular –

(a) that personal creditors of the trustee shall have no recourse against the trust assets;

(b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;

(c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;

(d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

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

Article 14

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

CHAPTER IV - GENERAL CLAUSES

Article 15

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

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

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

Article 16

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

Article 17

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

Article 18

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

Article 22

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

Objects and Reasons

The main object of this Bill is to amend the Trusts Act so as to provide for a consolidated law about trusts and trustees.

The Bill also provides for consequential amendments to various other laws.

