

ABBOZZ TA' LIĠI
msejjah

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

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

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2013 li jemenda l-Att dwar *Trusts* u *Trustees*, u dan l-Att għandu jinqara' u jiftiehem haġa waħda mal-Att dwar *Trusts* u *Trustees*, hawn iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor.

Kap. 331.

2. L-artikolu 1 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 1 tal-Att prinċipali.

(a) in-nota marginali tiegħu għandha tiġi sostitwita b'din li ġejja:

"Titolu fil-qosor u applikabilità.";

(b) l-imsemmi artikolu 1 għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1) tal-istess artikolu; u

(ċ) minnufih wara s-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jiżdied is-subartikolu ġdid li ġej:

"(2) Id-dispożizzjonijiet ta' dan l-Att, hliet kif provdut xort'ohra f'dan l-Att, għandhom ikunu japplikaw għat-*trustees* kollha, sew jekk daww it-*trustees* ikunu awtorizzati, jew ma jkunux meħtieġa li jiksbu awtorizzazzjoni skont l-artikolu 43 u l-artikolu 43A."

3. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) it-tifsira "l-Att" fis-subartikolu (1) tiegħu għandha tithassar;

(b) minflok it-tifsira "l-Awtorità" fis-subartikolu (1) tiegħu għandu jidhol dan li ġejj:

Kap. 330. " "l-Awtorità" tfisser l-Awtorità għas-Servizzi Finanzjarji ta' Malta mwaqqfa skont l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;"

(ċ) minflok it-tifsira "dikjarazzjoni unilaterali ta' *trust*" fis-subartikolu (1) tiegħu għandu jidhol dan li ġejj:

" "dikjarazzjoni unilaterali ta' *trust*" għandha t-tifsira mogħtija lilha skont l-artikolu 7(3);"

(d) fit-tifsira "għan ta' karità" fis-subartikolu (1) tiegħu, minflok il-kliem "kull għan ta' karità jew filantropiku", għandhom jidhlu l-kliem "kull għan ta' karità, soċjali jew filantropiku";

(e) minnufih wara it-tifsira "għan ta' karità" fis-subartikolu (1) tiegħu, għandha tiżdied din it-tifsira ġdida li ġejja:

" "kapital azzjonarju kwalifikanti" tfisser il-partecipazzjoni diretta jew indiretta f'kumpannija li tirrappreżenta għaxra fil-mija jew aktar tal-kapital azzjonarju jew tal-jeddijiet tal-voti jew li biha tkun haġa possibbli li tiġi eżerċitata influwenza sinifikanti fuq il-manigġ tal-kumpannija li fiha jkun hemm dik il-partecipazzjoni, u "azzjonista kwalifikanti" għandha tiftiehem bl-istess mod;"

(f) minnufih wara it-tifsira "kondizzjonijiet ta' *trust*" fis-subartikolu (1) tiegħu għandha tiżdied din it-tifsira ġdida li ġejja:

" "korp magħqud" tfisser kull entità li jkollha personalità ġuridika distinta minn dik tal-membri tagħha;"

(g) it-tifsira "korp ta' persuni" fis-subartikolu (1) tiegħu għandha tithassar;

(h) minnufih wara it-tifsira "kumpannija" fis-subartikolu (1) tiegħu għandha tiżdied din it-tifsira ġdida li ġejja:

" "kunflitt ta' interess" tfisser kull sitwazzjoni li fiha l-interess personali tat-*trustee* jew l-interessi li t-*trustee* jkollu dovuti lejn xi persuna oħra, jistgħu jwasslu għal jew jinftiehm u bħala li jkunu qegħdin iwasslu għal sitwazzjoni fejn dawk l-interessi jkunu konfliggenti madmirijiet fiduċjarji li t-*trustee* jkollu dovut lejn il-benefiċjarju;"

(i) minnufih wara it-tifsira "Ministru" fis-subartikolu (1) tiegħu għandha tiżdied din it-tifsira ġdida li ġejja:

Kap. 55. " "Nutar konservatur" tfisser min ikollu fdat f'idejh il-kustodja tal-atti ta' nutara skont l-Att dwar il-Professjoni Nutarili u l-Arkivji Nutarili;"

(j) fit-tifsira "operazzjoni kummerċjali" fis-subartikolu (1) tiegħu:

(i) fil-paragrafu (h) tagħha, minflok il-kliem "multipla; u", għandhom jidhlu l-kliem "multipla;"

(ii) il-paragrafu (i) tagħha għandu jiġi enumerat mill-ġdid bħala l-paragrafu (j); u

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

"(i) it-tqegħid ta' xi attiv fi *trust* bħala sigurtà għal xi self miksub għal għanijiet kummerċjali; u";

(k) minflok it-tifsira "persuna" fis-subartikolu (1) tiegħu għandu jidhol dan li ġej:

" "persuna" tfisser individwu jew korp magħqud;"

(l) minnufih wara it-tifsira "Qorti" fis-subartikolu (1) tiegħu, għandha tiżdied din it-tifsira ġdida li ġejja:

" "rabtiet mill-qrib" tfisser sitwazzjoni li fiha żewġ persuni jew aktar ikunu marbutin b'xi mod minn dawn li ġejjin:

(a) bis-sehem tagħhom, bħala sidien diretti jew għax jikkontrollaw għoxrin fil-mija jew aktar tal-jeddijiet ta' voti jew tal-kapital ta' korp magħqud;

(b) bil-kontroll, permezz tar-relazzjoni bejn kumpannija *parent* u impriża sussidjarja kif imfissra fl-artikolu 2(2) tal-Att dwar il-Kumpanniji, jew xi relazzjoni bħal dik bejn persuna fiżika jew ġuridika u impriża; jew

(ċ) ma' terza parti waħda u unika meta:

(i) dik il-persuna tkun membru tal-familja tat-*trustee* li jkun individwu, inklużi, iżda mhux ristrett għal, il-konjuġi jew sieheb jew siehba tat-*trustee*, bin it-*trustee* jew wild haddiehor li l-armla tiegħu jew l-armel tagħha jkunu żżewġu lit-*trustee*, il-ġenituri tat-*trustee* u dipendenti tat-*trustee*;

(ii) dik il-persuna tkun qegħda taġixxi fil-kapaċità ta' *trustee* ta' xi *trust*, li l-benefiċjarji tagħha jkunu jinkludu (a) lit-*trustee*, lid-dipendenti tat-*trustee*, inklużi, iżda mhux ristrett għal, il-konjuġi, ulied it-*trustee* jew ulied haddiehor li l-armla tiegħu jew l-armel tagħha jkunu żżewġu lit-*trustee*; jew (b) korp magħqud li persuna tkun assoċjata miegħu skont il-paragrafi (a) u (b) hawn qabel;

(iii) dik il-persuna tkun qegħda taġixxi bħala soċju kummerċjali tat-*trustee* jew ta' xi persuna li, bis-saħħa tas-subparagrafi (i) jew (ii) hawn qabel ikollha x'taqsam mat-*trustee*;"

(m) minflok it-tifsira "residenti f'Malta" fis-subartikolu (1) tiegħu, għandu jidhol dan li ġej:

" "residenti f'Malta" tfisser, f'każ ta' individwu, persuna li soltu tkun toqgħod f'Malta u f'każ ta' korp magħqud, korp magħqud li jkollu l-indirizz ta' reġistrazzjoni tiegħu f'Malta;"

(n) minnufih wara it-tifsira "*settlor*" fis-subartikolu (1) tiegħu, għandha tiżdied din it-tifsira ġdida li ġejja:

" "sigurtajiet" tinkludi ishma, obligazzjonijiet, interess f'fondi ta' investiment jew jew kull strument ieħor bħal dawk minn xi kumpannija jew soċjetà kummerċjali oħra;"

(o) minflok it-tifsira "topera f'Malta" fis-subartikolu (1) tiegħu, għandu jidhol dan li ġej:

" "topera f'Malta jew minnha" tfisser li jkun hemm uffiċċju, fergħa, jew xi ċentru ieħor ta' attivitajiet professjonali jew kummerċjali ta' xorta regolari f'Malta u ma tinkludix xi għemil jew għemejjel sporadiċi u li ma jkunux konnessi;"

(p) minflok it-tifsira "trustee" fis-subartikolu (1) tiegħu, għandu jidhol dan li ġej:

" "trustee", dwar il-proprjetà, tfisser il-persuna jew il-persuni li f'idejhom ikollhom il-proprjetà jew li l-proprjetà tkun vestita fihom bil-kondizzjonijiet ta' *trust* skont id-dispożizzjonijiet ta' dan l-Att, jew persuna li xort'ohra titqies bħala *trustee* taht dan l-Att;" u

(q) fil-verżjoni bl-Ingliż tas-subartikolu (3) tiegħu, minflok il-kliem "to which they are used in the Act" għandhom jidhlu l-kliem "to which they are used in this Act".

4. L-artikolu 9 tal-Att prinċipali għandu jigi emendat kif ġej:

Emenda tal-artikolu 9 tal-Att prinċipali

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

"(2) Id-drittijiet ta' benefiċjarju huma personali għalih u ma jistgħux jitwasslu lil haddieħor b'wirt hlief kif provdut skont it-*trust*. Bla hsara għal kull liġi li tapplika u kif biss dikjarat skont it-*trust*, il-kredituri, konjuġi, werrieta jew legatarji tal-benefiċjarju jista' biss ikollhom drittijiet sal-limitu tad-drittijiet tal-benefiċjarju taht it-*trust* u ma jkollhom ebda drittijiet oħra dwar il-proprjetà tat-*trust* jew it-*trustee*."; u

(b) fis-subartikolu (12) tiegħu, minflok il-kliem, "u dik ir-rinunzja tkun waħda irrevokabbli", għandhom jidhlu l-kliem "u dik ir-rinunzja tkun waħda irrevokabbli, sew jekk ikun irċieva sew ma rċevix xi benefiċċji mill-interess tiegħu".

5. Fis-subartikolu (1) tal-artikolu 12 tal-Att prinċipali, minflok il-kliem "sal-mitt", għandhom jidhlu l-kliem "sal-mija ħamsa u għoxrin".

Emenda tal-artikolu 12 tal-Att prinċipali.

6. Minnufih wara l-artikolu 14 tal-Att prinċipali, għandu jżidded l-artikolu 14A ġdid li ġej:

Żieda tal-artikolu 14A ġdid mal-Att prinċipali.

"Setgħat
riżervati mis-
settlor."

14A. (1) Iż-żamma jew l-ghoti mis-
settlor ta' xi interess benefiċjarju fil-proprjetà
tat-*trust* jew ta' xi setgħa minn dawn li ġejjin,
m'għandux jolqot il-validità tat-*trust*, lanqas
idewwem lit-*trust* milli tibda ssehh:

(a) kull setgħa li jahtar, iżid jew
inehhi *trustees*, protetturi jew
benefiċjarji;

(b) kull setgħa li jahtar
konsulent dwar l-investment jew
manager dwar l-investment:

Iżda ż-żamma ta' setgħat
imsemmija fil-paragrafi (a) u (b) għandha ssir
mingħajr preġudizzju għal setgħat oħra li
jistgħu jinżammu mis-*settlor* skont id-
dispożizzjonijiet l-oħra ta' dan l-Att.

(2) Meta setgħa bħal dik imsemmija
fis-subartikolu (1) tkun inżammet jew
ingħatat mis-*settlor*, *trustee* li jaġixxi għax
ikun qiegħed iwettaq is-setgħa m'għandux
jitqies li jkun qed jaġixxi bi ksur tat-*trust*."

Emenda tal-
artikolu 16 tal-
Att prinċipali.

7. L-artikolu 16 tal-Att prinċipali għandu jiġi emendat kif
ġej:

(a) minflok in-nota marginali tiegħu, għandu jidhol dan
li ġej:

"Terminazzjoni ta' *trust* għax l-interess jintemm
jew ma jkunx hemm benefiċjarju.";

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

"(1) Bla ħsara għall-kondizzjonijiet ta' *trust* u għal
kull ordni tal-qorti, meta *trust* tiġi terminata għaliex -

(a) jintemm l-interess taht *trust* ; jew

(b) billi ma jkun hemm ebda benefiċjarju u
ebda persuna li tkun tista' ssir benefiċjarju skont il-
kondizzjonijiet tat-*trust*,

l-interess tal-proprjetà affettwata minn dak it-tmiem, jew
nuqqas ta' benefiċjarju, għandu jinżamm mit-*trustee*

f'kustodja għas-*settlor* b'mod assolut jew, jekk ikun mejjet, għall-werrieta tiegħu."; u

(ċ) fil-verżjoni bl-Ingliż tas-subartikolu (3) tiegħu, minflok il-kelma "section", u kull fejn din tinsab fl-Att, għandha tidhol il-kelma "article".

8. L-artikolu 17 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 17 tal-Att prinċipali.

(a) fil-verżjoni bl-Ingliż tas-subartikolu (3) tiegħu, minflok il-kliem "no one", għandha tidhol il-kelma "none", u minflok il-kliem "u jqassam il-proprjetà tat-*trust* fosthom.", għandhom jidhlu l-kliem "u jqassam il-proprjetà tat-*trust* fosthom:", u minnufih wara għandu jizdied il-proviso ġdid li ġej:

"Izda dan is-subartikolu m'għandux ikun japplika meta l-kondizzjonijiet tat-*trust* ikunu jipprovdu li l-interess ta' beneficijarju:

(a) ikun soġġett għal terminazzjoni; jew

(b) ikun bla ħsara għal xi restrizzjoni fuq trasferiment jew negozju; jew

(ċ) ikun bla ħsara għal xi tnaqqis jew terminazzjoni li kieku l-benefiċjarju kellu jfalli, jew isir insolventi, jew li kieku xi proprjetà tiegħu kellha ssir soġġetta għal mandat ta' qbid għall-benefiċċju tal-kredituri tiegħu; jew

(d) ma jkunx soġġett għal qbid taht mandat ta' sekwestru maħruġ kontra t-*trustee* jew għal terminazzjoni mingħajr il-kunsens mogħti minn qabel mill-Qorti, meta l-interess jingħad li jkun għaż-żamma tal-benefiċjarju jew bħala pensjoni.";

(b) minflok il-paragrafu (a) tas-subartikolu (4) tiegħu, għandu jidhol dan li ġej:

"(a) titlob lit-*trustee* biex iqassam proprjetà ta' *trust*; jew".

9. L-artikolu 18 tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 18 tal-Att prinċipali.

(a) minflok is-subartikolu (7) tiegħu, għandu jidhol dan li ġej:

"(7) Fil-każ tal-mewt ta' *trustee*, il-verrieta jew l-eżekutor testamentarju tiegħu jkunu marbutin li jittrasferixxu minnufih il-proprjeta kollha tat-*trust* lil *trustee* suċċessur li jinħatar skont l-istrument tat-*trust* jew mill-Qorti."; u

(b) minnufih wara s-subartikolu (7) tiegħu, għandhom jizdiedu dawn is-subartikoli ġodda li ġejjin:

"(8) Fil-każ ta' insolvenza, xoljiment jew stralè ta' *trustee* mwaqqaf bhala kumpannija, kull persuna li jkollha s-setgħa li torbot lit-*trustee* u li tkun direttur, stralċjarju, amministratur temporanju jew funzjonarju simili jkunu marbutin li jittrasferixxu minnufih il-proprjeta kollha tat-*trust* lil *trustee* suċċessur, u dan minkejja kull proċedura jew formalità li tkun tapplika meta jiġri dak imsemmi hawn qabel.

(9) Mingħajr preġudizzju għall-ġeneralità tas-subartikoli (7) u (8), sakemm dak l-obbligu jitwettaq, il-persuni kollha li jkollhom taht il-kontroll tagħhom proprjeta tat-*trust* ikunu obbligati li jikkonservaw l-attiv tat-*trust* u jkunu marbutin bl-obbligi fiduċjarji fir-relazzjoni tagħhom mal-benefiċjarji."

Emenda tal-artikolu 19 tal-Att prinċipali.

10. L-artikolu 19 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem, "wara li jsir taf biha permezz ta' avviż bil-miktub lis-*settlor* jew lit-*trustees* l-oħra", għandhom jidhlu l-kliem "wara li jsir jaf biha permezz ta' avviż bil-miktub lill-eżekutor testamentarju, protettur, *settlor* jew lit-*trustees* l-oħra";

(b) fis-subartikolu (3) tiegħu, minflok il-kliem, "u ma jkun hemm ebda *trustees* oħra, it-*trustee*", għandhom jidhlu l-kliem "u ma jkun hemm ebda *trustees* oħra, l-eżekutor testamentarju, protettur, jew it-*trustee*";

(ċ) fis-subartikolu (4) tiegħu:

(i) minflok il-kliem, "tal-mewt tas-*settlor*, l-eredi", għandhom jidhlu l-kliem "tal-mewt tas-*settlor*, l-eżekutor testamentarju, protettur jew il-verrieta"; u

(ii) minflok il-kliem "skont il-kondizzjonijiet tat-*trust* u ta' dan l-Att.", għandhom jidhlu l-kliem "skont il-kondizzjonijiet tat-*trust* u ta' dan l-Att.", u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda n-nutar li jkun ippubblika t-testment jew in-nutar konservatur tal-atti tiegħu m'għandux ikun responsabbli għal ksur ta' dmir taht dan is-subartikolu jekk huwa jgħib prova li ma kienx jaf bil-mewt tas-*settlor*."; u

(d) minnufih wara l-proviso ġdid għas-subartikolu (4), għandhom jidhlu dawn is-subartikoli ġodda li ġejjin:

"(5) Sa dakinhar meta tiġi aċċettata l-ħatra ta' *trustee*, il-persuni kollha li jkollhom taht il-kontroll tagħhom proprjetà tat-*trust* ikunu obbligati li jikkonservaw l-attiv tat-*trust* u jkunu marbuta bl-obbligi fiduċjarji fir-relazzjoni tagħhom mal-benefiċjarji.

(6) Mingħajr preġudizzju għas-subartikoli ta' qabel, l-obbligi tal-*trustee* taht dan l-Att għandhom jitqiesu li jibdeu isehħu għaladarba t-*trustee* jieħu kontroll tal-attiv tat-*trusts*."

11. Fis-subartikolu (1) tal-artikolu 20 tal-Att prinċipali, minflok il-kliem "avviż bil-miktub lit-*trustees* l-oħra", għandhom jidhlu l-kliem "avviż bil-miktub lit-*trustee* l-ieħor jew lit-*trustees* l-oħra".

Emenda tal-artikolu 20 tal-Att prinċipali.

12. L-artikolu 21 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 21 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "attenzjoni ta' *bonus paterfamilias* u josservaw il-bona fede bl-aktar mod.", għandhom jidhlu l-kliem "attenzjoni ta' *bonus paterfamilias*, josservaw il-bona fede bl-aktar mod xieraq u jevitaw kull kunflitt ta' interess.";

(b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) is-subartikolu kollu għandu jiġi enumerat mill-ġdid bhala l-paragrafu (a) tiegħu; u

(ii) minnufih wara l-paragrafu (a), kif enumerat mill-ġdid, għandu jiżdied dan il-paragrafu ġdid li ġej:

"(b) *It-trustees* għandhom, meta jkunu qeghdin jaċċettaw il-hatra tagħhom, jabbozzaw bil-miktub inventarju u għandhom jiddikjaraw li l-inventarju jkun jinkludi l-proprjetà kollha tat-*trust* u li *t-trustee* jkun jaf biha.";

(ċ) minflok is-subartikolu (3) tiegħu għandu jidhol dan li ġej:

"(3) Hlief kif permess b'dan l-Att jew kif espressament provdut bil-kondizzjonijiet tat-*trust*, *trustee* m'għandux, mingħajr l-Awtorità tal-qorti -

(a) direttament jew indirettament japprofitta ruhu mit-*trusteeship*; jew

(b) jikkaguna jew iħalli lil xi persuna oħra tapprofitta direttament jew indirettament mit-*trusteeship*; jew

(ċ) jagħmel xi operazzjoni li jkollha x'taqsam mal-proprjetà ta' *trust* in akkont tiegħu nnifsu; jew

(d) jagħmel xi operazzjoni li jkollha x'taqsam mal-proprjetà ta' *trust* ma' persuna li tkun relatata miegħu b'affinità jew konsangwinità fil-linja diretta jew sat-tielet grad fil-linja kollaterali jew ma' soċju f'xi soċjetà; jew

(e) b'mod ġenerali jagħmel xi operazzjoni li jkollha x'taqsam mal-proprjetà ta' *trust* li tista' tagħti lok għal kunflitt ta' interess.";

(d) is-subartikolu (4) tiegħu għandu jiġi emendat kif ġej:

(i) is-subartikolu kollu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (a) tiegħu; u

(ii) minnufih wara l-paragrafu (a), kif enumerat mill-ġdid, għandu jiżdied dan il-paragrafu (b) ġdid li ġej:

"(b) *It-trustees* ikunu marbutin li jzommu dawk il-kontijiet u registrazzjonijiet għal żmien mhux inqas minn għaxar snin mid-data tat-terminazzjoni tat-*trust* jew tat-*trusteeship*, kif jaħbat l-ewwel.";

(e) fis-subartikolu (7) tiegħu, minflok il-kliem "id-dmirijiet u responsabbilitajiet 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 skont dawk il-liġijiet li jkunu japplikaw:", għandhom jidhlu l-kliem "id-dmirijiet u r-responsabbilitajiet tat-*trustees* kif stipulati f'dan l-Att għandhom ikunu regolati bid-dispożizzjonijiet ta' dan l-Att jew skont dawk il-liġijiet li jkunu japplikaw kemm-il darba dawn ma jiġux varjati bil-kondizzjonijiet tat-*trust*"; u

(f) minnufih wara s-subartikolu (7) tiegħu, għandu jiżdied dan is-subartikolu (8) ġdid li ġej:

"(8) Fil-każ meta wiehed mill-benefiċjarji ta' *trust* ikun taht tutela jew kuratur, it-*trustee* għandu, kif ikun il-każ, jitlob għal direzzjoni mill-Qorti fl-eżekuzzjoni ta' dmirijietu u għandu wara dan ikun responsabbli lejn il-Qorti għal kemm iddum it-tutela jew il-kurazija."

13. Fil-verżjoni bl-Ingliż tal-paragrafu (ċ) tas-subartikolu (2) tal-artikolu 24A tal-Att prinċipali, minflok il-kliem "to require the *trustee* to obtain his discretion.", għandhom jidhlu l-kliem "to require the *trustee* to obtain his consent before exercising a discretion."

Emenda tal-artikolu 24A tal-Att prinċipali.

14. Minnufih wara l-artikolu 24A tal-Att prinċipali, għandhom jiżdiedu dawn l-artikoli ġodda li ġejjin:

Żieda tal-artikoli 24B u 24C ġodda mal-Att prinċipali.

"Garanti.

24B. (1) Il-kondizzjonijiet ta' *trust* stabbilit b'għan ta' karità jistgħu jkunu jipprovdu:

(a) għall-ħatra ta' garanti biex jissorvelja t-*trust*; u

(b) għall-ħatra ta' garanti ġdid kull meta l-garanti inkarigat ikun temm il-ħatra tiegħu.

(2) Id-dmir tal-garanti għandu jkun dak li jiżgura li t-*trustee* jamministra t-*trust* skont il-kondizzjonijiet tat-*trust* u li jgħib 'il quddiem l-għanijiet tat-*trust*:

Izda meta l-garanti jsir jaf li l-għanijiet ta' karità preskritti fil-kondizzjonijiet tat-*trust* ma jkunux qeghdin jitharsu, il-garanti għandu jieħu azzjoni kontra t-*trustee* għal ksur tat-*trust*.

(3) Il-garanti ta' *trust* huwa projbit milli jaġixxi wkoll bhala *trustee* tat-*trust*.

(4) Flief -

(a) bl-approvazzjoni tal-Qorti; jew

(b) meta jkun permess b'dan l-Att jew ikun hekk provdut b'mod espress mill-kondizzjonijiet tat-*trust*,

garanti m'għandux -

(i) direttament jew indirettament japprofitta mill-kariga tiegħu;

(ii) iġieghel jew jippermetti lil xi persuna oħra tapprofitta direttament jew indirettament mill-kariga tagħha; jew

(iii) għalih innifsu, jagħmel xi operazzjoni mat-*trustee* jew li jkollha x'taqsam mal-proprjetà ta' *trust* li tista' tagħti dak il-profit.

(5) Kemm-il darba ma jkunx awtorizzat bil-kondizzjonijiet tat-*trust* jew b'xi ordni tal-Qorti, garanti ma jkollu ebda jedd għal rimunerazzjoni għal servizzi li jkun ta.

Riżenja jew tnehhija tal-garanti.

24Ċ. (1) Bla ħsara għas-subartikolu (2), garanti jista' jirriżenja mill-kariga tiegħu billi jagħti avviż bil-miktub li jintbagħat lit-*trustee* u dik ir-riżenja tkun effettiva sa mid-data meta jasal l-avviż għand it-*trustee*:

Iżda meta riżenja tingħata biex tiffaċilita ksur tat-*trust* din m'għandu jkollha ebda effett.

(2) Garanti għandu jitlef il-ħatra tiegħu bhala garanti tat-*trust* stabbilta għal għan ta' karità minnufih malli -

(a) il-garanti jitneħħa mill-kariga mill-qorti;

(b) ir-riżenja tal-garanti jkollha effett;

(ċ) tibda ssehh xi dispozizzjoni fil-kondizzjonijiet tat-*trust* li tahtu l-garanti jitnehha mill-kariga jew xort'ohra jtemm milli jibqa' fil-kariga; jew

(d) il-garanti jinhatar bhala *trustee* tat-*trust*."

15. Is-subartikolu (1) tal-artikolu 29 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 29 tal-Att prinċipali.

(a) fil-paragrafu (d) tiegħu, minflok il-kliem "bla ħsara għall-kondizzjonijiet tat-*trust*", għandhom jidhlu l-kliem "minghajr preġudizzju għas-subartikolu (4) u s-subartikolu (5)"; u

(b) fil-paragrafu (f) tiegħu, minflok il-kliem "lill-Avukat Ġenerali jew lill-awtorità rilevanti", għandhom jidhlu l-kliem "lill-Avukat Ġenerali, lill-garanti jew lill-awtorità rilevanti".

16. Minnufih wara s-subartikolu (3) tal-artikolu 34 tal-Att prinċipali, għandu jidid dan is-subartikolu ġdid li ġej:

Emenda tal-artikolu 34 tal-Att prinċipali.

"(4) It-*trustee* il-ġdid ikollu jedd jingħata indennizz mill-proprjetà ta' *trust* rigward talbiet li jsiru kontra t-*trustee* ħiereġ mill-kariga, ħlief għal azzjonijiet li jirriżultaw mill-ksur tat-*trust*."

17. L-artikolu 36 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 36 tal-Att prinċipali.

(a) is-subartikolu (4) tiegħu għandu jiġi enumerat mill-ġdid bhala s-subartikolu (5);

(b) minnufih wara s-subartikolu (3) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

"(4) Meta proprjetà ta' *trust* tiġi stabbilita għal għan ta' karità u jkun japplikaw xi ċirkostanzi minn dawk imsemmija hawn iżjed 'l isfel, il-Qorti tista', fuq talba b'rikors tat-*trustee* jew tal-garanti, tiddikjara li l-proprjetà jew li jifdal mill-proprjetà, kif ikun il-każ, għandhom jinżammu għal kull għan ta' karità ieħor, kif ikun il-każ, hekk kif il-Qorti tqis li jkun konsistenti mal-intenzjoni oriġinali tas-*settlor*. Iċ-ċirkostanzi huma li:

(a) l-għan tat-*trust* ikun intemm għal liema

raġuni tkun milli jibqa' wieħed ta' karità; jew

(b) l-għan ta' karità jkun temm b'xi mod ieħor milli jipprovdi metodu adatt u effettiv ta' użu tal-proprjetà, fil-qies tal-ispirtu tal-għotja."; u

(ċ) fis-subartikolu (5), kif enumerat mill-ġdid, minflok il-kliem, "taħt dan l-artikolu", għandhom jidhlu l-kliem "taħt is-subartikolu (1)".

Emenda tal-artikolu 41 tal-Att prinċipali.

18. Fis-subartikolu (1) tal-artikolu 41 tal-Att prinċipali, minflok il-kliem "m'għandhiex taqa' bi preskrizzjoni hlief bl-egħluq ta' tletin sena.", għandhom jidhlu l-kliem "m'għandhiex taqa' bi preskrizzjoni."

Emenda tal-artikolu 42 tal-Att prinċipali.

19. L-artikolu 42 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "42. (1)", għandhom jidhlu l-kliem "42."; u

(b) minflok il-kliem "tal-artikoli 43 u 43A", għandhom jidhlu l-kliem "tal-artikoli 43, 43A u 43B".

Emenda tal-artikolu 43 tal-Att prinċipali.

20. L-artikolu 43 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem, "kull persuna, residenti jew li topera minn Malta, jew *trustee* korporat, li tirċievi proprjetà", għandhom jidhlu l-kliem "kull persuna, residenti jew li topera f'Malta jew minnha, li tirċievi proprjetà";

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "Kull persuna, sew jekk individwu jew kumpannija tista' tapplika", għandhom jidhlu l-kliem "Kull persuna tista' tapplika";

(ċ) fis-subartikolu (4) tiegħu:

(i) minflok il-kliem "Il-kondizzjonijiet imsemmija fis-subartikolu ta' qabel dan huma li:", għandhom jidhlu l-kliem "Il-kondizzjonijiet imsemmija fis-subartikolu (3) għandhom ikunu jikkonsistu f'dan li ġej u jibqgħu jitwettqu fuq bażi kontinwa:";

(ii) fil-paragrafu (i), minflok il-kliem "fil-każ li l-applikant ikun kumpannija:", għandhom jidhlu l-kliem "fil-każ li l-applikant ikun korp magħqud:";

(iii) fis-subparagrafu (ċ) tal-paragrafu (i), minflok il-kliem "id-diretturi tal-kumpannija ma jkunux", għandhom jidhlu l-kliem "id-diretturi tal-kumpannija jew, fil-każ ta' korp magħqud li ma jkunx kumpannija, kull persuna ohra fdata bil-manigġ u l-amministrazzjoni tiegħu, ma jkunux";

(iv) is-subparagrafi (d) sa (g) tal-paragrafu (i) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subparagrafi (f) sa (i) rispettivament, u minnufih wara s-subparagrafu (ċ) tiegħu għandhom jiżdiedu s-subparagrafi (d) u (e) li ġejjin:

"(d) il-korp magħqud għandu jkollu kapital ta' mill-inqas hmistax-il elf euro (€15,000), li għandu jibqa' jzomm għal kemm idum jopera; u

(e) il-korp magħqud għandu jkun kopert b'assigurazzjoni f'kull waqt u dik il-kopertura għandha tkun fi proporzjon max-xorta u l-volum tal-operazzjonijiet kummerċjali tat-*trustee*; u";

(v) fis-subparagrafu (f) tal-paragrafu (i), kif enumerat mill-ġdid, minflok il-kliem "il-kumpannija tkun stabbiliet sistemi xierqa biex iżzomm", għandhom jidhlu l-kliem "il-korp magħqud ikun stabbilixxa sistemi xierqa biex iżzomm";

(vi) minflok is-subparagrafu (g) tal-paragrafu (i), kif enumerat mill-ġdid, għandu jidhol dan li ġej:

"(g) kull persuna li jkollha interess dirett jew indirett fil-korp magħqud li jkun ta' għaxra fil-mija (10%) jew aktar tal-kapital jew fil-każ ta' kumpannija, kull persuna li jkollha kapital azzjonarju kwalifikanti, tkun persuna approvata mill-Awtorità bħala adatta u idonea; u";

(vii) fis-subparagrafu (h) tal-paragrafu (i), kif enumerat mill-ġdid, minflok il-kliem "l-isem tal-kumpannija", għandhom jidhlu l-kliem "l-isem tal-korp magħqud";

(viii) fis-subparagrafu (i) tal-paragrafu (i), kif enumerat mill-ġdid, minflok il-kliem "fil-każ li l-kumpannija mhux reġistrata", għandhom jidhlu l-kliem "fil-każ li l-korp magħqud mhux reġistrat", u minflok il-

kliem "dik il-kumpanija trid tkun kostitwita jew inkorporata", għandhom jidhlu l-kliem "dan għandu jkun kostitwit jew inkorporat";

(ix) minflok is-subparagrafu (a) tal-paragrafu (ii), għandu jidhol dan li ġejj:

"(a) residenti jew jopera f'Malta jew minnha,";

(x) fis-subparagrafu (ċ) tal-paragrafu (ii), minflok il-kliem "mal-liġi applikabbli.", għandhom jidhlu l-kliem "mal-liġi applikabbli; u"

(xi) minnufih wara s-subparagrafu (ċ) tal-paragrafu (ii), għandhom jidiedu s-subparagrafi (d) u (e) godda li ġejjin:

"(d) mill-inqas f'pozizzjoni li jkollu kapital ta' ħmistax-il elf euro (€15,000) li għandu jibqa' jzomm għal kemm idum awtorizzat; u

(e) kopert b'assigurazzjoni f'kull waqt u dik il-kopertura għandha tkun fi proporzjon max-xorta u l-volum tal-operazzjonijiet kummerċjali tat-*trustee*.";

(d) fis-subartikolu (5) tiegħu:

(i) minflok il-kliem "u fil-każ ta' *trustee* korporat", għandhom jidhlu l-kliem "u fil-każ ta' korp magħqud";

(ii) minflok il-kliem "li jikkositwixxi l-kumpanija," għandhom jidhlu l-kliem "li jikkositwixxi l-korp magħqud"; u

(iii) minflok il-kliem "u fil-każ ta' kumpaniji reġistrati", għandhom jidhlu l-kliem "u fil-każ ta' soċjetajiet kummerċjali";

(e) fis-subartikolu (6) tiegħu:

(i) fil-paragrafu (a) tiegħu, minflok il-kliem "li għalihom għandhom liċenza", għandhom jidhlu l-kliem "li għalihom għandhom liċenza, iżda l-għoti ta' servizzi ta' *trustee* għandu jkun inċidentali u ancillari għall-attivitajiet prinċipali li jkollhom liċenza għalihom";

(ii) fil-paragrafu (ċ) tiegħu, minflok il-kliem "limitati għal skemi għal min jirtira.", għandhom jidhlu l-kliem "limitati għal skemi għal min jirtira:", u minnufih wara għandu jizjed il-proviso ġdid li ġej:

"Izda meta persuna li jkollha liċenza skont il-paragrafi (a), (b) jew (ċ) ta' dan is-subartikolu, tkun bi ħsiebha tipprovdi servizzi ta' *trustee* bħala waħda mill-attivitajiet prinċipali tagħha, ikun meħtieġ li jkollha awtorizzazzjoni skont dan l-Att.";

(f) fis-subartikolu (7) tiegħu:

(i) minflok il-kliem "li tista' tkun applikabbli, id-disposizzjonijiet ta' dan l-artikolu u tal-artikolu 43A ma għandhomx japplikaw", għandhom jidhlu l-kliem "li tista' tkun tapplika, u għad-dispożizzjonijiet tal-artikolu 43A(11), id-dispożizzjonijiet ta' dan l-artikolu, l-artikolu 43A u l-artikolu 43B m'għandhomx japplikaw"; u

(ii) fil-paragrafu (d) tiegħu, minflok il-kliem "għal żmien ta' mhux inqas minn ħames snin jew żmien itwal kif", għandhom jidhlu l-kliem "għal żmien ta' mhux inqas minn għaxar snin mid-data ta' terminazzjoni tat-*trust* jew tat-*trusteeship*, kif jahbat l-ewwel, jew dak iż-żmien itwal kif jiġi";

(g) fis-subartikolu (9) tiegħu, minflok il-kliem minn "(a) Jistgħu jinżammu biss fi *trust* -" sal-kliem "Għall-finijiet ta' dan il-paragrafu:", għandu jidhol dan li ġej:

"(a) Jistgħu jinżammu biss fi *trust* -

(i) sigurtajiet jew interessi fi jew maħruġa minn soċjetà kummerċjali registrata f'Malta, ħlief għal sigurtajiet elenkati jew negozjati fuq suq regolat jew fuq sistema multilaterali stabbiliti f'Malta jew f'għurisdizzjoni rikonoxxuta, jew

(ii) proprjetà immobbli f'Malta,

(li sew waħda sew l-oħra qegħdin hawn iżjed 'il quddiem jissejhu "proprjetà rilevanti") minn *trustees* li ma jkunux awtorizzati skont dan l-Att jekk persuna awtorizzata skont is-subartikoli (3), (8), (12)(a) jew nutara awtorizzati jaġixxu bħala persuni kwalifikati skont xi regolamenti maħruġin konformement ma' dan l-Att, (hawn iżjed 'il

quddiem imsejha "persuna kwalifikata") titqabba bil-miktub mit-*trustee* biex taqdi l-funzjonijiet ta' tharis imsemmija fil-paragrafu (b) fuq bażi mhux definittiva b'riferenza speċifika għal dik il-proprjetà rilevanti, u dak il-ftehim jigi avżat lill-Awtorità qabel ma jsehh xi akkwist ta' dik il-proprjetà rilevanti u għandu jkollu miegħu dak it-tagħrif li l-Awtorità tista' tinhtieg minn żmien għal żmien.

Għall-finijiet ta' dan is-subartikolu:";

(h) fis-subartikolu (12) tiegħu:

(i) minflok il-kliem "kull persuna li ", għandhom jidhlu l-kliem "kull persuna li tkun residenti jew topera f'Malta jew minnha, li"; u

(ii) fil-paragrafu (a) tiegħu, minflok il-kliem, "bħala *nominee* għal xi persuna oħra", għandhom jidhlu l-kliem "bħala *nominee* ta' sigurtajiet u, jew proprjetà immobbli għal xi persuna oħra";

(i) is-subartikolu (13) tiegħu għandu jithassar;

(j) is-subartikolu (14) għandu jigi enumerat mill-ġdid bħala s-subartikolu (17); u

(k) minnufih wara s-subartikolu (12) tiegħu, għandhom jizdiedu dawn is-subartikoli (13), (14), (15) u (16) godda li ġejjin:

"(13) Kull persuna li tkun bi ħsiebha taġixxi bħala mandatarju skont is-subartikolu (12) għandha tapplika bil-miktub lill-Awtorità biex ikollha awtorizzazzjoni u l-Awtorità tista' taġtiha dik l-awtorizzazzjoni jekk tkun sodisfatta li l-kondizzjonijiet imnizzla hawn aktar 'l isfel ikunu tharsu, u dawk il-kondizzjonijiet jigu sodisfatti u jibqgħu jitwettqu:

(i) jekk l-applikant ikun korp magħqud:

(a) l-għanijiet tiegħu jkunu jinkludu li jaġixxi bħala mandatarju u jkun qed iwettaq attivitajiet anċillari jew incidentali għal dan, u ma jkunux inkluzi għanijiet li ma jkunux kompatibbli mas-servizzi ta' mandatarju; u

(b) l-attivitajiet attwali tiegħu jkunu kompatibbli u konnessi mas-servizzi ta'

mandatarju; u

(ċ) id-diretturi tal-kumpannija jew kull persuna oħra fdata bil-manigġ u amministrazzjoni tal-korp magħqud ma jkunux jgħoddu inqas minn tlieta u jkunu individwi li jkunu persuni approvati; u

(d) il-korp magħqud ikollu kapital ta' mill-inqas hmistax-il elf euro (€15,000) li għandu jibqa' jzomm għal kemm idum jopera; u

(e) il-korp magħqud ikun kopert b'assigurazzjoni f'kull waqt u dik il-kopertura għandha tkun fi proporzjon max-xorta u l-volum tal-operazzjonijiet kummerċjali tat-*trustee*; u

(f) il-korp magħqud ikun stabbilixxa sistemi adegwati biex iżomm reġistrazzjonijiet kif imiss tal-identità u r-residenza tas-sidien benefiċjarji aħharin, ta' xi operazzjonijiet li jkollhom x'jaqsmu mas-sigurtajiet u, jew mal-proprjetà immobbli bla ħsara għall-mandat u ta' konformità mal-liġi applikabbli; u

(g) kull persuna li jkollha interess dirett fil-korp magħqud li jeċċedi l-għaxra fil-mija (10%) jew aktar tal-kapital jew, fil-każ ta' kumpannija, kull persuna li jkollha kapital azzjonarju kwalifikanti, tkun approvata mill-Awtorità bħala idonea u adatta; u

(h) l-isem tal-korp magħqud ma jkunx wieħed inkonsistenti mal-attività tiegħu ta' mandatarju; u

(i) meta l-korp magħqud ma jkunx reġistrat f'Malta, dan għandu jkun kostitwit jew inkorporat f'gurisidizzjoni approvata;

(ii) jekk l-applikant ikun individwu, dak l-individwu:

(a) ikun residenti jew jopera f'Malta jew minnha; u

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(b) ikun persuna approvata; u

(c) ikollu kapital ta' mill-inqas hmistax-il elf euro (€15,000) li għandu jibqa' jżomm għal kemm idum awtorizzat; u

(d) ikun kopert b'assicurazzjoni f'kull waqt u dik il-kopertura għandha tkun fi proporzjon max-xorta u l-volum ta' operazzjonijiet kummerċjali tiegħu; u

(e) ikun stabbilixxa sistemi adegwati biex iżomm reġistrazzjonijiet kif imiss tal-identità u residenza tas-sidien benefiċjarji aħharin, ta' xi operazzjonijiet li jkollhom x'jaqsmu mas-sigurtajiet u, jew proprjetà immobbli bla hsara għall-mandat u ta' konformità mal-liġi applikabbli.

(14) Kull persuna awtorizzata skont is-subartikolu (12)(a) għandha tavża lill-Awtorità b'kull bidla jew ċirkostanza li tista' tinfluwixxi fuq l-istat tagħha bħala persuna awtorizzata u fil-każ ta' korp magħqud, b'kull bidla fil-karta, statut, memorandum jew statut ta' assoċjazzjoni jew strument ieħor li jkun iwaqqafha, diretturi jew membri. Fil-każ ta' soċjetajiet kummerċjali reġistrati f'Malta dawk il-bidliet m'għandhomx jiġu reġistrati kemm-il darba u sakemm dawn ma jiġux hekk avżati lill-Awtorità u approvati minnha.

(15) Kull persuna li tkun bi hsieba taġixxi bħala amministratur, *trustee*, direttur jew funzjonarju simili ikun kif ikun imsejjaħ, li jeżerċita kontroll fuq l-attiv ta' fondazzjoni privata għandha tapplika bil-miktub għand l-Awtorità għal awtorizzazzjoni u l-Awtorità tista' tagħti dik l-awtorizzazzjoni meta tkun sodisfatta li l-kondizzjonijiet hawn iżjed 'l isfel ikunu tħarsu:

(i) jekk applikant ikun korp magħqud:

(a) l-għanijiet tiegħu jinkludu li jaġixxi bħala amministratur, *trustee*, direttur jew funzjonarju simili, ikun kif ikun imsejjaħ, li jeżerċita kontroll fuq l-attiv ta' fondazzjoni privata u li jwettaq attivitajiet anċillari jew inċidentali għalihom, u ma tinkludix għanijiet li mhumiex kompatibbli ma' dik l-attività; u

(b) l-attivitajiet attwali tiegħu huma kompatibbli u konnessi mas-servizzi ta' amministratur, *trustee*, direttur jew funzjonarju simili, ikun kif ikun imsejjaħ, li jeżerċita kontroll fuq l-attiv ta' fondazzjoni privata; u

(ċ) id-diretturi tal-kumpannija jew kull persuna oħra fdata bil-manigġ u l-amministrazzjoni tal-korp magħqud ma jkunux jgħoddu inqas minn tlieta u jkunu individwi li jkunu persuni approvati; u

(d) il-korp magħqud ikun stabbilixxa sistemi adegwati biex jinżammu reġistrazzjonijiet kif imiss tal-identità u r-residenza ta' benefiċjarji, ta' xi operazzjonijiet li jkollhom x'jaqsmu mal-attiv tal-fondazzjonijiet u ta' konformità mal-liġi applikabli; u

(e) kull persuna li għandha interess dirett fil-korp magħqud li jkun jeċċedi l-għaxra fil-mija (10%) jew aktar tal-kapital jew fil-każ ta' kumpannija, kull persuna li jkollha kapital azzjonarju kwalifikanti, tkun approvata mill-Awtorità bhala waħda idonea u adatta; u

(f) l-isem tal-korp magħqud ma jkunx inkonsistenti mal-attività tiegħu ta' amministratur, *trustee*, direttur jew funzjonarju simili, ikun kif ikun imsejjaħ, li jeżerċita kontroll fuq l-attiv ta' fondazzjoni privata; u

(g) meta l-korp magħqud ma jkunx reġistrat f'Malta, dan għandu jkun kostitwit jew inkorporat f'gurdizzjoni approvata;

(ii) jekk l-applikant ikun individwu, li dak l-individwu -

(a) ikun residenti jew jopera f'Malta jew minnha; u

(b) ikun persuna approvata; u

(ċ) ikun stabbilixxa sistemi adegwati biex jinżammu reġistrazzjonijiet kif imiss tal-

identità u r-residenza ta' benefiċjarji, ta' xi operazzjonijiet li jkollhom x'jaqsmu mal-attiv tal-fondazzjonijiet u ta' konformità mal-liġi applikabbli.

(16) Kull persuna awtorizzata skont is-subartikolu (12)(b) ta' dan l-artikolu għandha tavża lill-Awtorità b'kull bidla jew ċirkostanza li tista' tinfluwixxi fuq l-istat tagħha bħala persuna awtorizzata, u fil-każ ta' kumpannija, b'kull bidla fil-karta, statut, memorandum jew statut ta' assoċjazzjoni jew strument ieħor li jkun iwaqqafha, diretturi jew membri, u fil-każ ta' soċjetajiet kummerċjali reġistrati f'Malta dawk il-bidliet m'għandhomx jiġu reġistrati kemm-il darba u sakemm dawn ma jiġux hekk avżati lill-Awtorità u approvati minnha."

Emenda tal-artikolu 43A tal-Att prinċipali.

21. L-artikolu 43A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (b) tas-subartikolu (2) tiegħu, minflok il-kliem, "jkun ilu jaf lis-*settlor* għal mill-inqas għaxar snin, u fil-każijiet kollha," għandhom jidhlu l-kliem "jkun ilu jaf lis-*settlor* għal mill-inqas għaxar snin,";

(b) minnufih qabel is-subparagrafu (i) tas-subartikolu (2) tiegħu, għandhom jiżdiedu l-kliem "u fil-każijiet imsemmija fil-paragrafi (a) u (b), l-individwu:";

(ċ) is-subartikolu (5) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem, "li jirċievi testment jew att ta' *trust* nutarili", għandhom jidhlu l-kliem "li jirċievi testment li jkun fih *trust*, jew att ta' *trust* nutarili";

(ii) minflok il-kliem "jinħatar bħala *t-trustee* f'dak l-att", għandhom jidhlu l-kliem "jinħatar bħala *t-trustee* f'dak it-testment jew att";

(iii) minflok il-kliem "ma jkunx jista' jaġixxi bħala n-nutar depożitarju jew in-nutar konservatur", għandhom jidhlu l-kliem, "ma jkunx jista' jaġixxi bħala n-nutar depożitarju, in-nutar konservatur jew persuna kwalifikata, skont ma jkun japplika" u

(iv) fil-proviso tiegħu, minflok il-kliem "għas-sodisfazzjon tal-Awtorità u kif provdut fis-subartikolu (9)", għandhom jidhlu l-kliem "għas-sodisfazzjon tal-Awtorità u

kif previst fis-subartikolu (9), u wkoll li jahtar persuna kwalifikata ġdida skont ma jkun japplika";

(d) fis-subartikolu (6) tiegħu:

(i) minflok il-kliem "Id-dokumenti kollha relattivi għal *trust* jingħataw lin-nutar depożitarju fi żmien hmistax-il jum minn meta jibdew jeżistu jew minn meta jiġu fil-pussess", għandhom jidhlu l-kliem "It-*trustee* jkollu d-dmir jippreżenta lin-nutar depożitarju d-dokumenti kollha relattivi għal *trust* fi żmien hmistax-il jum minn meta jibdew jeżistu jew minn meta jiġu fil-pussess"; u

(ii) minflok il-kliem "minn żmien għal żmien.", għandhom jidhlu l-kliem "minn żmien għal żmien:", u minnufih wara għandu jizdied il-proviso ġdid li ġej:

"Izda n-nutar depożitarju m'għandux jinżamm responsabbli meta t-*trustee* jonqos milli jikkunsinna d-dokumenti relattivi lit-*trust* kif stipulat f'dan is-subartikolu.";

(e) fis-subartikolu (7) tiegħu, minflok il-kliem "hlief kif provdut b'dan l-Att u", għandhom jidhlu l-kliem "hlief kif previst b'dan l-Att jew bl-artikolu 68A tal-Att dwar il-Professjoni Nutarili u l-Arkivji Nutarili u"; u

(f) fis-subartikolu (9) tiegħu, minflok il-kliem "barra min-nutar depożitarju li jkun qed iservi, lit-*trustee* jew lill-Awtorità", għandhom jidhlu l-kliem "barra min-nutar depożitarju li jkun qed iservi, lit-*trustee* jew lill-Awtorità. Nutar li jkun qed jippubblika li ma jkunx ukoll in-nutar depożitarju jista' wkoll jitlob irċevuta bil-miktub u jzomm kopji tad-dokumenti kunsinnati lin-nutar depożitarju mahtur, u f'dak il-każ in-nutar li jkun qed jippubblika jkun ukoll soġġett għall-istess dmirijiet ta' kunfidenzjalità kif inhuma msemija hawn qabel, dwar dawk id-dokumenti.".

22. Minnufih wara l-artikolu 43A tal-Att prinċipali, għandu jizdied l-artikolu 43B ġdid li ġej:

Żieda tal-artikolu 43B ġdid mal-Att prinċipali.

"*Trusts* tal-familja.

43B. Minkejja d-dispożizzjonijiet tal-artikolu 43A, *trustee* li jitwaqqaf bhala kumpannija -

(a) li l-ghan u l-attivitajiet tiegħu huma limitati għal aġir bħala *trustee* għal xi *settlor* jew *settlors* speċifiċi u li jipprovdi servizzi amministrattivi fir-rigward ta' xi *trust* jew *trusts* tal-familja speċifiċi; u

(b) li xort'oħra ma jurix ruħu bħala *trustee* mal-pubbliku; u

(ċ) li soltu ma jaġixxix bħala *trustee*, f'kull każ għal iżjed minn hames *settlors* f'kull waqt,

ma jkun jehtieg ebda awtorizzazzjoni skont dan l-Att imma jkun mehtieg li japplika għal reġistrazzjoni mill-Awtorità taħt dan l-artikolu, u ebda kumpannija m'għandha taġixxi bħala *trustee* għal *trust* tal-familja kemm-il darba din ma tkunx hekk reġistrata. Il-proċess ta' reġistrazzjoni għandu jiġi stabbilit b'regoli li jinħarġu mill-Awtorità taħt l-artikolu 52(3) ta' dan l-Att u t-*trustees* għandhom iħarsu kull hteiga u kondizzjoni ta' reġistrazzjoni imposti mill-Awtorità:

Iżda għall-finijiet ta' dan is-subartikolu, "*trust* tal-familja" tfisser *trust* maħluq biex fih ikun hemm proprjetà li tkun tqieghdet mis-*settlor* jew *settlors* għall-htigiet prezenti u futuri ta' membri tal-familja jew ta' dipendenti tal-familja li huma definittivi u li jistgħu jiġu aċċertati:

Iżda wkoll għall-finijiet ta' dan l-artikolu, regoli li jinħarġu mill-Awtorità skont l-artikolu 52 ta' dan l-Att jistgħu jiddefinixxu aħjar it-tifsira tal-frazzjiet "membri tal-familja" u "dipendenti tal-familja".

23. Minnufih wara l-artikolu 43B tal-Att prinċipali, għandhom jiżdiedu din l-intestatura u l-artikolu 43Ċ godda li ġejjin:

Żieda ta' intestatura u artikolu 43Ċ godda mal-Att prinċipali.

"DMIR LI GħANDHOM L-AWDITURI

Id-dmir li għandu l-awditur li jirrapporta.

43Ċ. (1) Awditur ta' *trustee* awtorizzat skont l-Att, ikollu d-dmir jirrapporta minnufih lill-Awtorità kull fatt jew deċiżjoni li jsir jaf bihom fil-kapaċità tiegħu ta' awditur ta' dak it-*trustee* li:

(a) x'aktarx iwasslu għal kwalifika serja jew ċhid tar-rapport tal-awditur fuq il-kontijiet ta' dak it-*trustee*; jew

(b) jikkostitwixxi jew li x'aktarx jikkostitwixxi ksur materjali tal-htigiet legali jew regolatorji li japplikaw għal *trustees* taht dan l-Att; jew

(c) ifixkel gravement il-kapaċità tat-*trustee* li jibqa' jeżerċita bhala azjenda kummerċjali; jew

(d) ikollha x'taqsam ma' kull haġ'ohra li tista' tigi preskritta:

Izda kull haġa preskritta f'dan il-paragrafu tista' tinkludi hwejjeg li jkollhom x'jaqsmu ma' persuna interessata li ma tkunx it-*trustee*.

(2) L-awditur ta' *trustee* korporat għandu jirrapporta lill-Awtorità kull fatt jew deċiżjoni, kif speċifikat fis-subartikolu (1), dwar kull persuna li jkollha rabtiet mill-qrib ma' dak it-*trustee* li jsir jaf bihom fil-kapaċità tiegħu ta' awditur tal-*trustee* jew tal-persuna li jkollha dawk ir-rabtiet mill-qrib.

(3) Ebda dmir (inkluż id-dmir ta' segretezza professjonali) li l-awditur tat-*trustee* jista' jkun marbut bih, m'għandu jitqies li jkun inkiser minhabba f'illi huwa jkun ikkomunika *bona fide* mal-Awtorità, sew jekk jew mhux bhala risposta għal talba magħmula minnu, xi informazzjoni jew opinjoni fuq xi haġa li l-awditur sar jaf biha fil-kapaċità tiegħu bhala awditur ta' dak it-*trustee* u li hija rilevanti għal kull funzjoni tal-Awtorità taht id-dispożizzjonijiet tal-Att jew li tkun meħtieġa li tigi komunikata bis-saħħa tas-subartikolu (1)."

24. L-artikolu 44 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 44 tal-Att prinċipali.

(a) l-artikolu sħiħ għandu jiġi enumerat mill-ġdid bhala s-subartikolu (1) tiegħu;

(b) il-paragrafu (d) tas-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jiġi enumerat mill-ġdid bhala l-

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paragrafu (e);

(ċ) minnufih wara l-paragrafu (ċ) tas-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jiżdied dan il-paragrafu (d) ġdid li ġej:

"(d) għandu jkollha magħha programm ta' operazzjonijiet li jistabbilixxi dawk il-hwejjeg li jistgħu jiġu preskritti mill-Awtorità minn żmien għal żmien;" u

(d) minnufih wara s-subartikolu (1) tiegħu, kif enumerat mill-ġdid, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(2) Meta jkunu jeżistu rabtiet mill-qrib bejn applikant u xi persuna oħra, l-Awtorità għandha:

(a) tagħti biss liċenza jekk din tqis li dawk ir-rabtiet mill-qrib ma jcaħħduhx milli jeżerċita l-funzjonijiet tiegħu ta' sorveljanza; u

(b) tiċhad milli tagħti liċenza bħal dik jekk tqis li l-liġijiet, regolamenti jew provvedimenti amministrattivi ta' xi pajjiż barra minn Malta li jirregolaw lil xi persuna waħda jew aktar li magħhom l-applikant ikollu rabtiet mill-qrib, jew l-infurzar tagħhom iżommu mill-eżerċizzju effettiv tal-funzjonijiet tiegħu ta' sorveljanza."

Emenda tal-artikolu 46 tal-Att prinċipali.

25. L-artikolu 46 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "46. (1)", għandhom jidhlu l-kliem "46."; u

(b) minflok il-paragrafu (d) tal-artikolu għandu jidhol dan li ġej:

"(d) jekk *it-trustee* awtorizzat ma jibdiex attivitajiet konformi mal-awtorizzazzjoni tiegħu fi żmien tnax-il xahar minn meta din tinhareg jew f'kull żmien ieħor bħal dak kif jista' jiġi speċifikat fl-awtorizzazzjoni jew ikun temm jipprovdidi dak is-servizz; jew".

Żieda tal-artikolu 46B ġdid mal-Att prinċipali.

26. Minnufih wara l-artikolu 46A tal-Att prinċipali, għandu jiżdied l-artikolu 46B ġdid li ġej:

"Setgħa tal-awtorità kompetenti li tħares l-interess pubbliku.

46B. (1) Mingħajr preġudizzju għas-setgħat mogħtija lill-awtorità kompetenti taht l-artikolu 46, l-awtorità kompetenti tista', meta tkun sodisfatta li jkun hemm bizżejjed ċirkostanzi, tgħaddi biex tieħu xi miżura waħda jew aktar minn dawn li ġejjin:

(a) teħtieġ lit-*trustee* li jieħu dawk il-passi minnufih li l-awtorità kompetenti tista' tqis li jkunu meħtieġa biex tisewwa jew tiġi rimedjata l-kwistjoni;

(b) taħtar persuna biex tagħti parir lit-*trustee* fit-tmexxija kif imiss tal-kummerċ tiegħu;

(ċ) taħtar persuna biex tinkariga ruħha mill-attiv tat-*trustee*, jew minn xi parti minnu, għall-finijiet li jitharsu l-interessi tal-partecipanti jew ta' xi kredituri tat-*trustee* kif ukoll ta' kull persuna interessata oħra;

(d) taħtar persuna biex tieħu l-kontroll tal-kummerċ tat-*trustee* jew biex imexxi dak il-kummerċ jew biex imexxi dik il-funzjoni jew dawk il-funzjonijiet fir-rigward ta' dak il-kummerċ jew parti minnu, hekk kif l-awtorità kompetenti tista' tordna;

(e) tistabbilixxi r-rimunerazzjoni li għandha tithallas mit-*trustee* lil persuna maħtura taht dan l-artikolu;

(f) teħtieġ lit-*trustee* jipprezenta pjan ta' rkupru finanzjarju hekk kif jista' jiġi stabbilit f'regoli maħruġin mill-Awtorità, jekk hija tqis li l-interessi tal-kredituri jew ta' persuni interessati oħra x'aktarx li jiġu preġudikati minhabba f'illi l-pożizzjoni finanzjarja tat-*trustee* tmur lura;

(g) tagħmel dak l-att ieħor jew teħtieġ li jsir kull att ieħor bħal dak skont ma tista' tqis adatt fiċ-ċirkostanzi;

u wara li tkun imxiet b'xi mod wiehed jew aktar mill-modi hawn qabel imsemmija, l-awtorità kompetenti tista' tibqa' miexja b'dak il-mod wiehed jew aktar mill-modi bħal dawk, sew b'żieda magħhom jew biex jidhlu minflokhom.

(2) Meta persuna tinħatar mill-awtorità kompetenti -

(a) taħt is-subartikolu (1)(b), it-*trustee* jkollu d-dmir li jaġixxi skont il-parir mogħti minn dik il-persuna kemm-il darba u sakemm l-awtorità kompetenti, wara li ssirilha talba, ma tordnax xort'oħra;

(b) taħt is-subartikolu (1)(ċ), it-*trustee* għandu jikkunsinna lil dik il-persuna l-attiv kollu li jkun inkarigat minnu, u s-setgħat, funzjonijiet u dmirijiet kollha tal-*trustee* fir-rigward ta' dak l-attiv, sew li jiġu eżerċitati mit-*trustee* sew xort'oħra, għandhom ikunu eżerċitati u jvestu fil-persuna maħtura taħt dak il-paragrafu b'eskluzjoni ta' xi persuna oħra;

(ċ) taħt is-subartikolu (1)(d), it-*trustee* għandu jqiegħed il-kummerċ tiegħu taħt il-kontroll ta' dik il-persuna u għandu jipprovdilha dawk il-faċilitajiet li tista' tinħtiegħ lit-*trustee* jipprovdilha biex tiġġestixxi dak il-kummerċ jew biex twettaq il-funzjonijiet mogħtijin lilu taħt dak il-paragrafu; u kull setgħa, funzjoni u dmir tal-*trustee*, għandhom jiġu eżerċitati minnu u jvestu fih b'eskluzjoni ta' kull persuna oħra.

(3) L-awtorità kompetenti tista', meta tifhem li jkun fl-aħjar interess pubbliku li hekk tagħmel, tagħmel jew toħroġ dikjarazzjonijiet pubbliċi jew avvizi li jkunu jaġhtu twissijiet jew informazzjoni dwar kull azzjoni meħuda skont l-artikolu 46, l-artikolu 46A u dan l-artikolu.

(4) L-awtorità kompetenti tista' tehtieg *lit-trustee* involut iħallas l-ispejjeż kollha ta', u dawk inċidentali għal, il-pubblikazzjoni jew hrug ta' dikjarazzjonijiet pubbliċi jew avvizi konsegwenti għal dan l-artikolu jew dik il-parti minnu skont ma tista' tqis li jkun adatt; u kull ammont hekk dovut għandu jkun jista' jingabar lura mill-awtorità kompetenti bl-istess mod bħal penali amministrattiva imposta taħt dan l-Att."

27. L-artikolu 51 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 51 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem, "awtorizzazzjoni, kondizzjoni, obbligu", għandhom jidhlu l-kliem "awtorizzazzjoni, reġistrazzjoni, kondizzjoni, obbligu";

(b) fis-subartikolu (5) tiegħu, minflok il-kliem "mingħajr ma tkun awtorizzata li hekk tagħmel", għandhom jidhlu l-kliem "mingħajr ma tkun awtorizzata jew reġistrata biex tagħmel hekk"; u

(ċ) fis-subartikolu (7) tiegħu, minflok il-kliem, "tal-artikolu 43A", għandhom jidhlu l-kliem "tal-artikolu 43A, jew il-kondizzjonijiet imposti mill-Awtorità meta ssir ir-reġistrazzjoni skont l-artikolu 43B ta' dan l-Att,".

28. Minnufih wara s-subartikolu (2) tal-artikolu 52, għandu jżidied dan is-subartikolu (3) ġdid li ġej:

Emenda tal-artikolu 52 tal-Att prinċipali.

"(3) L-Awtorità tista' wkoll tagħmel regoli li jirregolaw *trustees* li jkunu soġġetti għal proċedura ta' reġistrazzjoni skont l-artikolu 43B. Ir-regoli jistgħu jistipulaw ħtiġiet u kondizzjonijiet addizzjonali dwar l-attivitajiet ta' dawk it-*trustees*, ir-responsabbiltajiet tagħhom lejn l-Awtorità, adeżjoni għal kodiċi ta' kondotta, ħlas ta' drittijiet u kull haġa oħra skont ma l-Awtorità tista' tqis li jkun adatt."

29. Is-subartikolu (2) tal-artikolu 55 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 55 tal-Att prinċipali.

(a) fil-paragrafu (a) tiegħu, minflok il-kliem "toħroġ awtorizzazzjoni", għandhom jidhlu l-kliem "toħroġ awtorizzazzjoni jew reġistrazzjoni" u

(b) fil-paragrafu (b) tiegħu, minflok il-kliem "kondizzjoni ta' awtorizzazzjoni", għandhom jidhlu l-kliem

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"kondizzjoni ta' awtorizzazzjoni jew registrazzjoni".

Emenda tal-
artikolu 57 tal-
Att prinċipali.

gej:

30. L-artikolu 57 tal-Att prinċipali għandu jiġi emendat kif

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif
gej:

(i) fil-verżjoni bl-Ingliż tal-paragrafu (i) tiegħu, minflok il-kliem "the definition of commercial transactions in the Act", għandhom jidhlu l-kliem "the definition of commercial transaction in this Act";

(ii) il-paragrafu (o) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (t); u

(iii) minnufih wara paragrafu (n) tiegħu, għandhom jiżdiedu dawn il-paragrafi (o), (p), (q), (r) u (s) godda li ġejjin:

"(o) jirregola l-awtorizzazzjoni u r-regolament ta' *sub-trusts* li jintużaw f'dak li għandu x'jaqsam ma' skemi ta' investiment kollettiv u skemi ta' rtirar;

(p) jirregola r-registrazzjoni, konservazzjoni u aċċess tal-atti notarili ta' *trust* kif imsemmi fl-artikolu 43A ta' dan l-Att;

(q) jirregola kull haġa li għandha x'taqsam mar-registrazzjoni mill-Awtorità ta' nutara li jaġixxu bħala persuni kwalifikati, inklużi s-setgħat u d-dmirijiet ta' dawk il-persuni kwalifikati u kull informazzjoni li jistgħu jkunu meħtieġa jipprezentaw lill-Awtorità, u jistabbilixxi kull dritt li għandu jithallas lill-Awtorità għar-registrazzjoni u s-sorveljanza relattiva;

(r) jeżenta lil xi attivitajiet jew klassijiet ta' persuni mill-htigiet tal-artikolu 43(12) u jimponi kondizzjonijiet li jista' jqis xierqa biex tkun eligibbli għal eżenzjoni;

(s) jittrasponi, jimplimenta u jagħti seħħ lid-dispożizzjonijiet u l-htigiet ta' Direttivi, Regolamenti u kull miżura legiſlattiva oħra tal-Unjoni Ewropea li tkun trid tiġi trasposta u, jew implimentata, skont emendi li jsirulha minn żmien

għal żmien, inkluża kull miżura ta' implimentazzjoni li tkun inħarġet jew li tista' tinħareġ taħtha u li tkun tirrigwarda lid-detenturi ta' liċenza u oħrajn skont ma jista' jiġi hemm speċifikat jew kull haġ' oħra li taqa' taħt id-dispożizzjonijiet ta' dan l-Att, u għal dan l-għan jipprovdi li xi dispożizzjoni f'xi liġi oħra m'għandhiex tkun tapplika għal materji li jaqgħu taħt ir-regolamenti; u"; u

(iv) minnufih wara s-subartikolu (2) tiegħu, għandhom jizdiedu dawn is-subartikoli (3), (4) u (5) godda li ġejjin:

"(3) Regolamenti magħmulin taħt dan l-artikolu jistgħu jsiru bla ħsara għal eżenzjonijiet jew kondizzjonijiet bħal dawk li jistgħu jiġu speċifikati fihom, jistgħu jipprovdu b'mod differenti għal każijiet, ċirkostanzi jew għanijiet differenti u jistgħu jagħtu lill-Awtorità dawk is-setgħat ta' adattament tar-regolamenti hekk kif ukoll jista' jiġi hekk speċifikat.

(4) Meta jkunu inħarġu regolamenti taħt dan l-artikolu, l-Awtorità tista' toħroġ Regoli fil-kuntest tat-tifsir tal-artikolu 52 ta' dan l-Att biex ikunu jistgħu jitwettqu aħjar u jiġu implimentati aħjar id-dispożizzjonijiet tar-regolamenti.

(5) Regolamenti magħmulin taħt dan l-artikolu jistgħu jimponu pieni jew penaltajiet oħra għal xi ksur jew nuqqas ta' konformità li ma jkunux jeċċedu multa ta' mija u hamsin elf euro (€150,000) jew prigunerija għal żmien mhux iżjed minn sena, jew dik il-piena u prigunerija flimkien."

31. Minnufih wara l-artikolu 57 tal-Att prinċipali, għandhom jizdiedu din l-intestatura u dan l-artikolu 58 godda li ġejjin:

Żieda ta' intestatura u artikolu 58 godda mal-Att prinċipali.

"DISPOŻIZZJONIJIET TRANSITORJI

"Dispożizzjonijiet transitorji.

58. (1) Bla ħsara għad-dispożizzjonijiet tal-Att tal-2013 li jemenda l-Att dwar *Trusts* u *Trustees*, *trustees* u provdituri ta' servizzi fiduċjarji oħra li jkollhom awtorizzazzjoni qabel id-data tal-

bidu fis-seħħ tal-emendi li jinsabu fl-Att fuq imsemmi għandhom jadottaw il-miżuri kollha meħtieġa biex iħarsu d-dispożizzjonijiet tal-artikoli 43(4)(i)(e), 43(4)(ii)(e), 43(13)(i)(e), 43(13)(ii)(d) u tal-artikolu 43Ċ fi żmien sitt xhur minn dik id-data.

(2) *Trustees* li jkollhom awtorizzazzjoni qabel id-data tal-bidu fis-seħħ tal-emendi li jinsabu fl-Att fuq imsemmi għandhom iħarsu d-dispożizzjonijiet tal-artikoli 43(4)(i)(d), 43(4)(ii)(d) fi żmien sentejn minn dik id-data.

(3) Mandatarji li jkollhom awtorizzazzjoni qabel id-data tal-bidu fis-seħħ tal-emendi li jinsabu fl-Att fuq imsemmi għandhom iħarsu d-dispożizzjonijiet tal-artikolu 43(13)(i)(d) u tal-artikolu 43(13)(ii)(ċ), fi żmien sentejn minn dik id-data."

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz huma biex isahħu dejjem aktar ir-reġim regolatorju li diġà hemm għal *trusts* u *trustees* kif ukoll biex jiċċara xi dispożizzjonijiet tal-Att dwar *Trusts* u *Trustees* li taw lok għal interpretazzjonijiet mhux daqstant korretti.

**A BILL
entitled**

AN ACT to amend the Trusts and Trustees 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:-

- 1.** The short title of this Act is the Trusts and Trustees (Amendment) Act, 2013, and this Act shall be read and construed as one with the Trusts and Trustees Act, hereinafter referred to as "the principal Act". Short title.
Cap. 331.
- 2.** Article 1 of the principal act shall be amended as follows: Amendment of
article 1 of the
principal Act.
- (a) for the marginal note thereof, there shall be substituted the following:
- "Short title and applicability.";
- (b) the said article 1 shall be re-numbered as subarticle (1) of the same article; and
- (c) immediately after subarticle (1) thereof, as renumbered, there shall be added the following new subarticle:
- "(2) The provisions of this Act, except as otherwise provided in this Act, shall apply to all trustees, whether such trustees are authorised, or are not required to obtain authorisation in terms of article 43 and article 43A."
- 3.** Article 2 of the principal Act shall be amended as follows: Amendment of
article 2 of the
principal Act.

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(a) the definition "the Act" in subarticle (1) thereof shall be deleted;

(b) for the definition "the Authority" in subarticle (1) thereof, there shall be substituted the following:

Cap. 330. " "the Authority" means the Malta Financial Services Authority established in terms of the Malta Financial Services Authority Act;"

(c) immediately after the definition "beneficiary" in subarticle (1) thereof, there shall be added the following new definition:

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

(d) the definition "body of persons" in subarticle (1) thereof, shall be deleted;

(e) in the definition "charitable purpose" in subarticle (1) thereof, for the words "any charitable or philanthropic purpose", there shall be substituted the words "any charitable, social or philanthropic purpose";

(f) immediately after the definition "charitable purpose" in subarticle (1) thereof, there shall be inserted the following new definition:

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

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

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

(c) to one and the same third person when:

(i) such person is a member of the individual trustee's family, including, but not

limited to, the trustee's spouse or partner, the trustee's child or step-child, the trustee's parents and other dependants of the trustee;

(ii) such person is acting in the capacity of trustee of any trust, the beneficiaries of which include (a) the trustee, the trustee's dependants, including, but not limited to, the trustee's spouse, children or step-children; or (b) a body corporate with which one is associated in terms of (a) and (b) above;

(iii) such person is acting as business partner of the trustee or of any person who, by virtue of sub-paragraphs (i) or (ii) above is connected with the trustee;"

(g) in the definition "commercial transaction" in subarticle (1) thereof:

(i) in paragraph (h) thereof, for the words "structures, and", there shall be substituted the words "structures;"

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

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

"(i) settling an asset on trust as security for a loan obtained for commercial purposes; and";

(h) immediately after the definition "company" in subarticle (1) thereof, there shall be added the following new definition:

" "conflict of interest" means any situation in which the trustee's personal interest or the interests which the trustee owes to any other person, can lead to or can be perceived as leading to a situation where such interests conflict with the fiduciary duties which the trustee owes to the beneficiary;"

(i) immediately after the definition "Minister" in subarticle (1) thereof, there shall be added the following new definition:

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Cap. 55. " "Notary keeper" means the person entrusted to be a keeper of notarial acts in terms of the Notarial Profession and Notarial Archives Act;"

(j) for the definition "operating in Malta" in subarticle (1) thereof, there shall be substituted the following:

" "operating in or from 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;"

(k) for the definition "person" in subarticle (1) thereof, there shall be substituted the following:

" "person" means an individual or body corporate;"

(l) immediately after the definition "property" in subarticle (1) thereof, there shall be added the following new definition:

" "qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence on the management of the company in which that holding subsists, and "qualifying shareholder" shall be construed accordingly;"

(m) for the definition "resident in Malta" in subarticle (1) thereof, there shall be substituted the following:

" "resident in Malta" shall mean, in case of an individual, a person whose habitual residence is in Malta and in the case of a body corporate, a body corporate having its registered address in Malta;"

(n) immediately after the definition "resident in Malta" in subarticle (1) thereof, there shall be added the following new definition:

" "securities" includes shares, debentures, interest in investment funds or any other similar instrument issued by a company or other commercial partnership;"

(o) for the definition "trustee" in subarticle (1) thereof, there shall be substituted the following:

" "trustee", in relation to property, means the person or persons holding the property or in whom the property is vested on terms of trust in accordance with the provisions of this Act or, a person that is otherwise deemed to be a trustee under this Act;"

(p) for the definition "unilateral declaration of trust" in subarticle (1) thereof, there shall be substituted the following:

" "unilateral declaration of trust" has the meaning assigned to it in terms of article 7(3);" and

(q) in subarticle (3) thereof, for the words "to which they are used in the Act" there shall be substituted the words "to which they are used in this Act".

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

Amendment of article 9 of the principal Act.

(a) for subarticle (2) thereof, there shall be substituted the following:

"(2) Rights of a beneficiary are personal to him and cannot be transmitted by inheritance except as provided for in the terms of the trust. Subject to any applicable laws and only as stated in 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 trust and have no other rights in relation to the trust property or the trustee."; and

(b) in subarticle (12) thereof, for the words, "and such a disclaimer shall be irrevocable", there shall be substituted the words "and such a disclaimer shall be irrevocable, whether or not he has received any benefit from his interest".

5. In subarticle (1) of article 12 of the principal Act, for the words, "the one-hundredth", there shall be substituted the words, "the one hundred and twenty-fifth".

Amendment of article 12 of the principal Act.

6. Immediately after article 14 of the principal Act, there shall be added the following new article 14A:

Addition of new article 14A to the principal Act.

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"Powers reserved by the settlor.

14A. (1) The reservation or grant by the settlor of any beneficial interest in the trust property or of any of the following powers shall not affect the validity of the trust, nor delay the trust taking effect:

(a) any powers to appoint, add or remove any trustees, protectors or beneficiaries;

(b) any powers to appoint an investment adviser or investment manager:

Provided that the reservation of powers referred to in paragraphs (a) and (b) shall be without prejudice to other powers that can be reserved by the settlor in terms of the other provisions of the Act.

(2) Where a power mentioned in subarticle (1) has been reserved or granted by the settlor, a trustee who acts in accordance with the exercise of the power shall not be considered to be acting in breach of trust."

Amendment of article 16 of the principal Act.

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

(a) for the marginal note thereof, there shall be substituted the following:

"Termination of a trust due to lapse of interest or lack of beneficiary";

(b) for subarticle (1) thereof, there shall be substituted the following:

"(1) Subject to the terms of a trust and to any order of the court, where a trust terminates due to -

(a) a lapse of an interest under a trust; or

(b) there being no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust,

the interest of the property affected by such lapse, or lack of beneficiary, shall be held by the trustee in trust for the

settlor absolutely or, if he is deceased, for his heirs."; and

(c) in subarticle (3) thereof, for the word, "section", and wherever it appears throughout the Act, there shall be substituted the word "article".

8. Article 17 of the principal Act shall be amended as follows:

Amendment of article 17 of the principal Act.

(a) in subarticle (3) thereof, for the words "no one", there shall be substituted the word "none", and for the words "and distribute the trust property among them.", there shall be substituted the words, "and distribute the trust property among them:", and immediately thereafter there shall be added the following new proviso:

"Provided that this subarticle shall not apply where the terms of the trust provide that the interest of a beneficiary is:

(a) liable to termination; or

(b) subject to a restriction on alienation or dealing; or

(c) subject to diminution or termination in the event of the beneficiary becoming bankrupt, or insolvent, or any of his property becoming liable to seizure for the benefit of his creditors; or

(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

(b) in subarticle (4)(a) thereof, for the words, "require the trustee to distribute trust property;", there shall be substituted the words, "require the trustee to distribute trust property; or".

9. Article 18 of the principal Act shall be amended as follows:

Amendment of article 18 of the principal Act.

(a) for subarticle (7) thereof, there shall be substituted the following:

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"(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."; and

(b) immediately after subarticle (7) thereof, there shall be added the following new subarticles:

"(8) In the case of the insolvency, dissolution or winding up of a trustee set up as a company, any person having authority to bind the trustee being a director, liquidator, provisional administrator or similar functionary shall be bound to immediately transfer all trust property to a successor trustee, and this irrespective of any proceedings or formalities applicable upon such events.

(9) Without prejudice to the generality of subarticles (7) and (8), 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."

Amendment of
article 19 of the
principal Act.

10. Article 19 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words "after becoming aware of it by notice in writing to the settlor or to the other trustees", there shall be substituted the words "after becoming aware of it by notice in writing to the testamentary executor, protector, settlor or to the co-trustees";

(b) in subarticle (3) thereof, for the words "and there are no other trustees, the trustee", there shall be substituted the words "and there are no other trustees, the testamentary executor, protector, or the trustee";

(c) in subarticle (4) thereof:

(i) for the words "the death of the settlor, the heirs", there shall be substituted the words "the death of the settlor, the testamentary executor, the protector or the heirs"; and

(ii) for the words "in accordance with the terms of the trust and this Act.", there shall be substituted the words "in accordance with the terms of the trust and this Act:", and immediately thereafter there shall be added the following new proviso:

"Provided that the notary who published the will or the notary keeper of his deeds shall not be held liable for breach of duty under this subarticle if he proves that he was not aware of the death of the settlor."; and

(d) immediately after the new proviso to subarticle (4), there shall be added the following new subarticles:

"(5) Until such time as the appointment of a trustee is accepted, 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.

(6) Without prejudice to the forgoing subarticles, the obligations of the trustee under this Act shall be deemed to commence once the trustee obtains control of the trust assets."

11. In subarticle (1) of article 20 of the principal Act, for the words "by notice in writing to his co-trustees", there shall be substituted the words "by notice in writing to his co-trustee or co-trustees".

Amendment of article 20 of the principal Act.

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

Amendment of article 21 of the principal Act.

(a) in subarticle (1) thereof, for the words "attention of a *bonus paterfamilias* and observe the utmost good faith", there shall be substituted the words "attention of a *bonus paterfamilias*, observe the utmost good faith and avoid any conflict of interest"; and

(b) subarticle (2) thereof shall be amended as follows:

(i) the whole subarticle shall be renumbered as paragraph (a) thereof; and

(ii) immediately after paragraph (a), as renumbered, there shall be added the following new paragraph:

"(b) Trustees shall, when accepting their appointment, draw up in writing an inventory and shall declare that the inventory includes all the trust property and of which the incoming trustee is aware.";

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(c) for subarticle (3) thereof, there shall be substituted the following:

"(3) Except as permitted by this Act or as expressly provided by the terms of the trust, a trustee shall not, without the authority of the court -

(a) directly or indirectly profit from the trusteeship; or

(b) cause or permit any other person to profit directly or indirectly from the trusteeship; or

(c) enter into any transaction related to trust property on his own account; or

(d) enter into any transaction related to trust property 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; or

(e) generally enter into any transaction related to trust property that may give rise to a conflict of interest.";

(d) subarticle (4) thereof shall be amended as follows:

(i) the whole subarticle shall be renumbered as paragraph (a) thereof; and

(ii) immediately after paragraph (a), as renumbered, there shall be added the following new paragraph (b):

"(b) Trustees shall be obliged to keep such accounts and records for a period of not less than ten years from the date of the termination of the trust or the trusteeship, whichever event occurs earlier.";

(e) in subarticle (7) thereof, for the words "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", there shall be substituted the words "the duties and liabilities of trustees as stated in this Act shall be regulated by the provisions of this Act or any applicable legislation unless varied by the terms of the trust"; and

(f) immediately after subarticle (7) thereof, there shall be added the following new subarticle (8):

"(8) In the case where one of the beneficiaries of a trust is subject to tutorship or curatorship, the trustee shall, as the case may be, seek directions from the Court in the execution of his duties and shall thereafter be answerable to the Court for the duration of the tutorship or curatorship."

13. In paragraph (c) of subarticle (2) of article 24A of the principal Act, for the words "to require the trustee to obtain his discretion", there shall be substituted the words "to require the trustee to obtain his consent before exercising a discretion."

Amendment of article 24A of the principal Act.

14. Immediately after article 24A of the principal Act, there shall be inserted the following new articles:

Addition of new articles 24B and 24C to the principal Act.

"Enforcer. 24B. (1) The terms of a trust set up for a charitable purpose may provide:

(a) for the appointment of an enforcer in relation to the trust; and

(b) for the appointment of a new enforcer any time when the current enforcer in office has terminated his appointment.

(2) The duty of the enforcer shall be that of ensuring that the trustee administers the trust in accordance with the terms of the trust and to promote the purposes of the trust:

Provided that where the enforcer becomes aware that the charitable purposes prescribed in the terms of the trust are not being observed, the enforcer shall take action against the trustee for breach of trust.

(3) The enforcer of a trust is prohibited from also acting as trustee of the trust.

(4) Except -

(a) with the approval of the Court; or

(b) when permitted by this Act or when expressly provided by the terms of the trust,

an enforcer shall not -

(i) directly or indirectly profit from his office;

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(ii) cause or permit any other person to profit directly or indirectly from his office; or

(iii) on his own account, enter into any transaction with the trustee or relating to the trust property which may result in such profit.

(5) Unless authorised by the terms of the trust or by any order of the Court, an enforcer shall not be entitled to remuneration for services rendered.

Resignation or removal of the enforcer.

24C. (1) Subject to subarticle (2), an enforcer may resign from his office by notice in writing delivered to the trustee and such resignation shall be effective as from the date of delivery of the notice to the trustee:

Provided that a resignation given in order to facilitate a breach of trust shall be of no effect.

(2) An enforcer shall relinquish his appointment as enforcer of the trust set up for a charitable purpose immediately upon -

(a) the enforcer's removal from office by the court;

(b) the enforcer's resignation becoming effective;

(c) the coming into effect of a provision in the terms of a trust under which the enforcer is removed from office or otherwise ceases to hold office; or

(d) the enforcer's appointment as a trustee of the trust."

Amendment of article 29 of the principal Act.

15. Article 29 of the principal Act shall be amended as follows:

(a) in paragraph (d) of subarticle (1) thereof, for the words "subject to the terms of the trust," there shall be substituted the words "without prejudice to subarticle (4) and subarticle (5),"; and

(b) in paragraph (f) of subarticle (1) thereof, for the words, "the Attorney General or the relevant authority", there shall be substituted the words "the Attorney General, the

enforcer or the relevant authority".

16. Immediately after subarticle (3) of article 34 of the principal Act, there shall be added the following new subarticle: Amendment of article 34 of the principal Act.

"(4) The new trustee shall be entitled to be indemnified out of the trust property in respect of any claims against the outgoing trustee, except in respect of actions arising from breach of trust."

17. Article 36 of the principal Act shall be amended as follows: Amendment of article 36 of the principal Act.

(a) subarticle (4) thereof shall be renumbered as subarticle (5);

(b) immediately after subarticle (3) thereof, there shall be added the following new subarticle:

"(4) Where trust property is set up for a charitable purpose and any of the circumstances mentioned hereunder apply, the Court may, on application of the trustee or the enforcer, declare that the property or the remainder of the property, as the case may be, shall be held for such other charitable purpose, as the case may be, as the Court considers to be consistent with the original intention of the settlor. The circumstances are that:

(a) the purpose of the trust has ceased for whatever reason to be charitable; or

(b) the charitable purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift."; and

(c) in subarticle (5) thereof, as renumbered, for the words "under this section", there shall be substituted the words "under subarticle (1)".

18. In subarticle (1) of article 41 of the principal Act, for the words "shall not be barred by prescription except by lapse of thirty years", there shall be substituted the words "shall not be barred by prescription". Amendment of article 41 of the principal Act.

19. Article 42 of the principal Act shall be amended as follows: Amendment of article 42 of the principal Act.

(a) in the Maltese text of sub-article (1) thereof, for the

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words "42. (1)", there shall be substituted the words "42."; and

(b) for the words "articles 43 and 43A", there shall be substituted the words "articles 43, 43A and 43B".

Amendment of
article 43 of the
principal Act.

20. Article 43 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "any person, resident or operating in Malta, or a corporate trustee, who receives property", there shall be substituted the words "any person, resident or operating in or from Malta, who receives property";

(b) in subarticle (3) thereof, for the words "Any person, whether an individual or a company, may apply", there shall be substituted the words "Any person may apply";

(c) in subarticle (4) thereof:

(i) for the words "The conditions referred to in the preceding subarticle are that", there shall be substituted the words "The conditions referred to in subarticle (3) shall consist of the following and shall be satisfied on an ongoing basis";

(ii) in paragraph (i) thereof, for the words "in the case an applicant is a company", there shall be substituted the words "in the case an applicant is a body corporate:";

(iii) in sub-paragraph (c) of paragraph (i) thereof, for the words "the directors of the company are", there shall be substituted the words "the directors of the company or, in the case of a body corporate other than a company, any other persons entrusted with the management and administration thereof, are";

(iv) sub-paragraphs (d) to (g) of paragraph (i) thereof shall be renumbered as sub-paragraphs (f) to (i) respectively and immediately after sub-paragraph (c) thereof there shall be added the following sub-paragraphs (d) and (e):

"(d) the body corporate must have a minimum capital of fifteen thousand euro (€15,000), which it shall maintain throughout its duration; and

(e) the body corporate shall maintain

insurance cover at all times which cover shall be proportionate to the nature and size of the trustee's business operations; and";

(v) in sub-paragraph (f) of paragraph (i) thereof, as renumbered, for the words "the company", there shall be substituted the words "the body corporate";

(vi) for sub-paragraph (g) of paragraph (i) thereof, as renumbered, there shall be substituted the following:

"(g) any person who has a direct or indirect interest in the body corporate which represents ten percent (10%) or more of the capital or, in the case of a company, every person who has a qualifying shareholding, is approved by the Authority as being fit and proper; and";

(vii) in sub-paragraph (h) of paragraph (i) thereof, as renumbered, for the words "the name of the company", there shall be substituted the words "the name of the body corporate";

(viii) in sub-paragraph (i) of paragraph (i) thereof, as renumbered, for the words "where the company", there shall be substituted the words "where the body corporate", and for the words "that company must be constituted", there shall be substituted the words "it must be constituted";

(ix) for sub-paragraph (a) of paragraph (ii), there shall be substituted the following:

"(a) is resident or operates in or from Malta;";

(x) in sub-paragraph (c) of paragraph (ii) thereof, for the words "applicable law.", there shall be substituted the words "applicable law; and"

(xi) immediately after sub-paragraph (c) of paragraph (ii) thereof, there shall be added the following new sub-paragraphs (d) and (e):

"(d) has a minimum capital of fifteen thousand euro (€15,000) which the individual shall maintain for as long as he is authorised; and

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(e) shall maintain insurance cover at all times which cover shall be proportionate to the nature and size of the trustee's business operations.";

(d) in subarticle (5) thereof:

(i) for the words "and in the case of a corporate trustee", there shall be substituted the words, "and in the case of a body corporate",

(ii) for the words "constituting the company," there shall be substituted the words "constituting the body corporate", and

(iii) for the words "and in the case of companies registered", there shall be substituted the words "and in the case of commercial partnerships";

(e) in subarticle (6) thereof:

(i) in paragraph (a) thereof, for the words "for which they are licenced", there shall be substituted the words "for which they are licensed, provided that the provision of trustee services is incidental and ancillary to the main activities for which they are licensed";

(ii) in paragraph (c) thereof, for the words "are limited to retirement schemes.", there shall be substituted the words "are limited to retirement schemes:", and immediately thereafter there shall be added the following new proviso:

"Provided that where a person, who is in possession of a licence in terms of paragraphs (a), (b) or (c) of this subarticle, intends providing trustee services as one of its main activities, it shall require authorisation in terms of this Act.";

(f) in subarticle (7) thereof:

(i) for the words "which may be applicable, the provisions of this article and article 43A shall not apply", there shall be substituted the words "which may be applicable, and to the provisions of article 43A(11), the provisions of this article, article 43A and article 43B shall not apply";

(ii) in paragraph (d) thereof, for the words "for a

period of not less than five years or longer period", there shall be substituted the words "for a period of not less than ten years from the date of termination of the trust or the trusteeship, whichever event occurs earlier, or such longer period";

(g) in subarticle (9) thereof, for the words from "(a) The holding upon trust of -" to the words "For the purposes of this paragraph.", there shall be substituted the following:

"(a) The holding upon trust of:

(i) securities or interests in or issued by a commercial partnership registered in Malta, other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction, or

(ii) immovable property in Malta, (either of which is hereinafter referred to as "relevant property") by trustees who are not authorised in terms of this Act shall be permitted only if a person authorised in terms of subarticles (3), (8), (12)(a) or notaries authorised to act as qualified persons in terms of any regulations issued pursuant to this Act, (hereinafter referred to as a "qualified person") is engaged in writing by the trustee to carry out the compliance functions referred to in paragraph (b) 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;

For the purposes of this subarticle:";

(h) in subarticle (12) thereof:

(i) for the words, "any person who", there shall be substituted the words "any person resident or operating in or from Malta, who"; and

(ii) in paragraph (a) thereof, for the words "in the holding of property", there shall be substituted the words "in the holding of securities and, or immovable property";

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- (i) subarticle (13) thereof shall be deleted;
- (j) subarticle (14) thereof shall be renumbered as subarticle (17); and
- (k) immediately after subarticle (12) thereof, there shall be added the following new subarticles (13), (14), (15) and (16):

"(13) Any person which intends to act as a mandatory in terms of subarticle (12) shall apply in writing to the Authority for authorisation and the Authority may grant authorisation upon being satisfied that the conditions prescribed hereunder have been met, and which conditions shall be satisfied on an ongoing basis:

- (i) in the case an applicant is a body corporate:

- (a) its objects include acting as a mandatory and carrying on activities ancillary or incidental thereto, and does not include objects which are not compatible with the services of a mandatory; and

- (b) its actual activities are compatible and connected with the services of a mandatory; and

- (c) the directors of the company or any other person entrusted with the management and administration of the body corporate are not less than three in number and are individuals who are approved persons; and

- (d) the body corporate must have a minimum capital of fifteen thousand euro (€15,000) which it shall maintain throughout its duration; and

- (e) the body corporate shall maintain insurance cover at all times which cover shall be proportionate to the nature and size of the trustee's business operations; and

- (f) the body corporate has established adequate systems for maintaining proper records of the identity and residence of the ultimate beneficial owners, of any transactions

relating to the securities and, or immovable property subject to the mandate and of compliance with the applicable law; and

(g) any person who has a direct interest in the body corporate which exceeds ten percent (10%) or more of the capital or, in the case of a company, every person who has a qualifying shareholding, is approved by the Authority as being fit and proper; and

(h) the name of the body corporate is not inconsistent with its activity of mandatory; and

(i) where the body corporate is not registered in Malta, it must be constituted or incorporated in an approved jurisdiction;

(ii) in the case of an applicant who is an individual, that such individual:

(a) is resident or operating in or from Malta; and

(b) is an approved person; and

(c) has a minimum capital of fifteen thousand euro (€15,000) which the individual shall maintain for as long as he is authorised; and

(d) shall maintain insurance cover at all times which cover shall be proportionate to the nature and size of his business operations; and

(e) has established adequate systems for maintaining proper records of the identity and residence of the ultimate beneficial owners, of any transactions relating to the securities and, or immovable property subject to the mandate and of compliance with the applicable law.

(14) Any person authorised in terms of subarticle (12)(a) 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 body corporate,

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of any change in its charter, statute, memorandum or articles of association or other instrument constituting it, directors or members. In the case of commercial partnerships registered in Malta such changes shall not be registered unless and until they are so notified to and approved by the Authority.

(15) Any person who intends to act as an administrator, trustee, director or similar functionary by whatever name he may be called, exercising control over the assets of a private foundation shall apply in writing to the Authority for authorisation and the Authority may grant authorisation upon being satisfied that the conditions prescribed hereunder have been met:

(i) in the case where an applicant is a body corporate:

(a) its objects include acting as administrator, trustee, director or similar functionary by whatever name he may be called, exercising control over the assets of a private foundation and carrying on activities ancillary or incidental thereto, and does not include objects which are not compatible with such an activity; and

(b) its actual activities are compatible and connected with the services of an administrator, trustee, director or similar functionary by whatever name he may be called exercising control over the assets of a private foundation; and

(c) the directors of the company or any other person entrusted with the management and administration of the body corporate are not less than three in number and are individuals who are approved persons; and

(d) the body corporate has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, of any transactions relating to the assets of the foundations and of compliance with the applicable law; and

(e) any person who has a direct interest in the body corporate which exceeds ten percent (10%) or more of the capital or in the case of a company, every person who has a qualifying shareholding, is approved by the Authority as being fit and proper; and

(f) the name of the body corporate is not inconsistent with its activity of administrator, trustee, director or similar functionary, by whatever name he may be called, exercising control over the assets of a private foundation; and

(g) where the body corporate is not registered in Malta, it shall be constituted or incorporated in an approved jurisdiction;

(ii) in the case of an applicant who is an individual, that such individual -

(a) is resident or operating in or from Malta; and

(b) is an approved person; and

(c) has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, of any transactions relating to the assets of the foundations and of compliance with the applicable law.

(16) Any person authorised in terms of subarticle (12)(b) of this article 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 company, of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, directors or members, and in the case of commercial partnerships registered in Malta such changes shall not be registered unless and until they are so notified to and approved by the Authority."

21. Article 43A of the principal Act shall be amended as follows:

(a) in paragraph (b) of subarticle (2) thereof, for the

Amendment of
article 43A of
the principal
Act.

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words "he has known the settlor for at least ten years and, in both cases,", there shall be substituted the words "he has known the settlor for at least ten years,";

(b) immediately before sub-paragraph (i) in subarticle (2) thereof, there shall be added the words "and in the cases mentioned in paragraphs (a) and (b), the individual:";

(c) subarticle (5) thereof shall be amended as follows:

(i) for the words "who receives a will or notarial trust deed", there shall be substituted the words "who receives a will containing a trust, or a notarial trust deed";

(ii) for the words "appointed as the trustee in such deed", there shall be substituted the words "appointed as the trustee in such will or deed";

(iii) for the words "he may not act as the depository notary or the notary keeper", there shall be substituted the words "he may not act as the depository notary, the notary keeper or qualified person, as applicable" and

(iv) in the proviso thereof, for the words "to the satisfaction of the Authority and as provided in subarticle (9)", there shall be substituted the words "to the satisfaction of the Authority and as provided in subarticle (9), and also to appoint a new qualified person where applicable";

(d) in subarticle (6) thereof:

(i) for the words "All documents relative to a trust shall be submitted to the depository notary within fifteen days of coming into existence or of coming into possession", there shall be substituted the words "It shall be the duty of the trustee to submit to the depository notary all documents relative to the trust within fifteen days of coming into existence or of coming into existence or of coming into possession"; and

(ii) for the words "from time to time.", there shall be substituted the words "from time to time:", and immediately thereafter there shall be added the following new proviso:

"Provided that the depository notary shall not

be held responsible for the failure of the trustee to deliver the documents relative to the trust as laid down in this subarticle.";

(e) in subarticle (7) thereof, for the words "except as provided by this Act and", there shall be substituted the words "except as provided by this Act or article 68A of the the Notarial Profession and Notarial Archives Act and"; and

(f) in subarticle (9) thereof, for the words "any person other than the serving depository notary, the trustee or the Authority", there shall be substituted the words "any person other than the serving depository notary, the trustee or the Authority. A publishing notary who is not also the depository notary may also request a written receipt and keep copies of the documents delivered to the appointed depository notary, in which case the publishing notary shall also be subject to the same duties of confidentiality as set out above, with respect to such documents".

22. Immediately after article 43A of the principal Act, there shall be added the following new article 43B:

Addition of new article 43B to the principal Act.

"Family trusts. 43B. Notwithstanding the provisions of article 43A, a trustee set up as a company -

(a) whose object and activities are limited to acting as trustee in relation to a specific settlor or settlors and providing administrative services in respect of a specific family trust or trusts; and

(b) which does not otherwise hold itself out as a trustee to the public; and

(c) which does not act habitually as a trustee, in any case in relation to more than five settlors at a time,

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shall not require authorisation in terms of this Act but shall be required to apply for registration by the Authority under this article, and no company shall act as a trustee for a family trust unless it is so registered. The registration process shall be established by rules issued by the Authority under article 52(3) of this Act and trustees shall comply with any registration requirements and conditions imposed by the Authority:

Provided that for the purposes of this subarticle, a "family trust" shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family members or family dependants who are definite and can be ascertained:

Provided further that for the purposes of this article, rules issued by the Authority in terms of article 52 of this Act may further define the meaning of the terms "family members" and "family dependants".

Addition of new heading and new article 43C to the principal Act.

23. Immediately after article 43B of the principal Act, there shall be added the following new heading and new article 43C:

"DUTY OF AUDITORS

Auditor's duty to report.

43C. (1) An auditor of a trustee authorised in terms of the Act, shall have the duty to report immediately to the Authority any fact or decision of which he becomes aware in his capacity as auditor of such trustee which:

- (a) is likely to lead to a serious qualification or refusal of the auditor's report on the accounts of such trustee; or
- (b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to trustees under this Act; or
- (c) gravely impairs the trustee's ability to continue as a going concern; or
- (d) relates to any other matter which may be prescribed:

Provided that the matters prescribed in this paragraph may include matters related to any interested person other than the trustee.

(2) The auditor of a corporate trustee shall report to the Authority any facts or decision, as specified in subarticle (1), regarding any person having close links with such trustee of which he becomes aware in his capacity as auditor of the trustee or of the person having such close links.

(3) No duty (including the duty of professional secrecy) to which an auditor of the trustee may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that trustee and which is relevant to any function of the Authority under the provisions of the Act or is required to be communicated by virtue of subarticle (1)."

24. Article 44 of the principal Act shall be amended as follows:

Amendment of article 44 to the principal Act.

(a) the whole article shall be renumbered as sub-article (1) thereof;

(b) paragraph (d) of subarticle (1) thereof, as renumbered, shall be renumbered as paragraph (e);

(c) immediately after paragraph (c) of subarticle (1) thereof, as renumbered, there shall be added the following new paragraph (d):

"(d) be accompanied by a programme of operations setting out such matters as may be prescribed by the Authority from time to time;" and

(e) immediately after subarticle (1) thereof as renumbered, there shall be added the following new subarticle:

"(2) Where close links exist between an applicant and any other person, the Authority shall:

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(a) only grant a licence if it considers that such close links do not prevent it from exercising its supervisory functions; and

(b) refuse to grant such a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement prevent the effective exercise of its supervisory functions."

Amendment of article 46 to the principal Act.

25. Article 46 of the principal Act shall be amended as follows:

(a) in sub-article (1) of the Maltese version thereof, for the words "46. (1)", there shall be substituted the words "46."; and

(b) for paragraph (d) thereof, there shall be substituted the following:

"(d) if the authorised trustee does not commence activities pursuant to its authorisation within twelve months of its issue or within such other period as may be specified in the authorisation or has ceased to provide such service; or".

Addition of new article 46B to the principal Act.

26. Immediately after article 46A of the principal Act, there shall be added the following new article 46B:

"Power of the competent authority to protect the public interest.

46B. (1) Without prejudice to the powers conferred to the competent authority under article 46, the competent authority may, where it is satisfied that sufficient circumstances exist, proceed to take any one or more of the following measures:

(a) require the trustee to take forthwith such steps as the competent authority may consider necessary to rectify or remedy the matter;

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

(c) appoint a person to take charge of the assets of the trustee, or any portion thereof, for the purposes of safeguarding the interests of the shareholders or any creditors of the trustee as well as any other interested person;

(d) appoint a person to assume control of the business of the trustee either to carry on that business or to carry out such function or functions in respect of such business or part thereof, as the competent authority may direct;

(e) fix the remuneration to be paid by the trustee to any person appointed under this article;

(f) require the trustee to submit a financial recovery plan as may be determined in any rules issued by the Authority, if it considers that the interests of the creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the trustee;

(g) do such other act or require the doing of such other act as it may deem appropriate in the circumstances;

and having proceeded in any one or more of the manners aforesaid, the competent authority may further proceed in any one or more such manners, whether in addition thereto or in substitution therefor.

(2) Where a person is appointed by the competent authority -

(a) under subarticle (1)(b), it shall be the duty of the trustee to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;

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(b) under subarticle (1)(c), the trustee shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the trustee in respect of those assets, whether exercisable by the trustee or otherwise, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(c) under subarticle (1)(d), the trustee shall submit its business to the control of such person and shall provide him with such facilities as he may require the trustee to provide him to carry on that business or to carry out the functions assigned to him under the said paragraph; and all the powers, functions and duties of the trustee, shall be exercisable by and vest in him to the exclusion of any other person.

(3) The competent authority may, where it feels is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any action taken in terms of article 46, article 46A and this article.

(4) The competent authority may require the trustee concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act."

Amendment of
article 51 to the
principal Act.

27. Article 51 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words "authorisation, condition, obligation", there shall be substituted the words "authorisation, registration, condition, obligation";

(b) in subarticle (5) thereof, for the words "without

being authorised to do so", there shall be substituted the words "without being authorised or registered to do so"; and

(c) in subarticle (7) thereof, for the words "in article 43A", there shall be substituted the words "in article 43A, or the conditions imposed by the Authority upon registration in accordance with article 43B of this Act,".

28. Immediately after subarticle (2) of article 52, there shall be added the following new subarticle (3): Amendment of article 52 to the principal Act.

"(3) The Authority may also issue rules to regulate trustees which are subject to a registration procedure in terms of article 43B. The rules may lay down additional requirements and conditions in relation to the activities of such trustees, their responsibilities to the Authority, adherence to a code of conduct, payment of fees and any other matter as the Authority may consider appropriate."

29. Sub-article (2) of article 55 of the principal Act shall be amended as follows: Amendment of article 55 of the principal Act.

(a) in paragraph (a) thereof, for the words "issue of an authorisation", there shall be substituted the words "issue of an authorisation or registration;" and

(b) in paragraph (b) thereof, for the words "condition of an authorisation", there shall be substituted the words "condition of an authorisation or registration".

30. Article 57 of the principal Act shall be amended as follows: Amendment of article 57 to the principal Act.

(a) subarticle (1) thereof shall be amended as follows:

(i) in paragraph (i) thereof, for the words "the definition of commercial transactions in the Act", there shall be substituted the words "the definition of commercial transaction in this Act";

(ii) paragraph (o) of subarticle (1) thereof shall be renumbered as paragraph (t); and

(iii) immediately after paragraph (n) thereof, there shall be added the following new paragraphs (o), (p), (q), (r) and (s):

"(o) regulate the authorisation and regulation

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of sub-trusts to be used in connection with collective investment schemes and retirement schemes;

(p) regulate the registration, conservation and access of notarial trust deeds as referred to in article 43A of this Act;

(q) regulate the matters in relation to the registration by the Authority of notaries acting as qualified persons, including the powers and duties of such qualified persons and any information which they may be required to submit to the Authority, and to establish any fees payable to the Authority in respect of the registration and the supervision thereof;

(r) exempt any activities or classes of persons from the requirements in article 43(12) and to impose conditions it may deem fit for eligibility for exemption;

(s) transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified therein or to any other matter falling within the terms of this Act, and for this purpose to provide that any provision in any other law shall not apply to matters falling under the regulations; and"; and

(b) immediately after subarticle (2) thereof, there shall be added the following new subarticles (3), (4) and (5):

"(3) Regulations made under this article may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the Authority such powers of adaptation of the regulations as may also be so specified.

(4) Where regulations have been made in terms of this article, the Authority may issue Rules within the meaning of article 52 of this Act for the better carrying out

and to better implement the provisions of the regulations.

(5) Regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment."

31. Immediately after article 57 of the principal Act, there shall be added the following new heading and article 58:

Addition of new heading and new article 58 to the principal Act.

"TRANSITORY PROVISIONS

"Transitory provisions.

58. (1) Subject to the provisions of the Trusts and Trustees (Amendment) Act, 2013, trustees and providers of other fiduciary services in possession of an authorisation before the date of coming into force of the amendments contained in the Act above-mentioned shall take all necessary measures to comply with the provisions of articles 43(4)(i)(e), 43(4)(ii)(e), 43(13)(i)(e), 43(13)(ii)(d) and article 43C within six months from the said date.

(2) Trustees in possession of an authorisation prior to the coming into force of the amendments contained in the Act above-mentioned shall comply with the provisions of articles 43(4)(i)(d), 43(4)(ii)(d) within two years from the said date.

(3) Mandatories in possession of an authorisation prior to the coming into force of the amendments contained in the Act above-mentioned shall comply with the provisions of article 43(13)(i)(d) and article 43(13)(ii)(c), within two years from said date."

Objects and Reasons

The objects and reasons of this Bill are to reinforce the regulatory regime already in place for trusts and trustees as well as to clarify some of the provisions of the Trusts and Trustees Act which have given rise to misinterpretations.