

MALTA

ATT Nru. XXXIV ta' l-1988

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

ATT biex iwaqqaf Awtorità ghal Attivitajiet Finanzjarji u Kummerċjali Internazzjonali minn ġewwa Malta, biex jirregola dawk l-attivitajiet u biex jipprovdi ghal hwejjeġ li huma ancillari jew incidental ghalihom jew li ghandhom x'jaqsmu magghom.

ACT No. XXXIV of 1988

AN ACT enacted by the Parliament of Malta.

AN ACT to establish an Authority for International Financial and Trading Activities from within Malta, to regulate such activities and to provide for matters ancillary or incidental thereto or connected therewith.

ATT TA' L-1988 DWAR ATTIVITAJIET KUMMERĊJALI
INTERNAZZJONALI TA' MALTA

Arrangament ta' Sezzjonijiet

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Naghti l-kunsens tiegħi.

(L.S.)

PAUL XUEREB
Agent President

2 ta' Diċembru, 1988

ATT Nru. XXXIV ta' l-1988

ATT biex iwaqqaf Awtorità għal Attivitajiet Finanzjarji u Kummerċjali Internazzjonali minn ġewwa Malta, biex jirregola dawk l-attivitajiet u biex jipprovdì għal hwejjeġ li huma anċillari jew incidentali għalihom jew li għandhom x'jaqsmu magħhom.

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

Preliminari

1. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.

Titolu fil-qosor
u bidu fis-sehħ.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għal Attivitajiet Kummerċjali Internazzjonali jista' jistabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

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

Tifsir.

“attività kummerċjali internazzjonali” tfisser attività *offshore*;

“attività *offshore*” tfisser kull kummerċ jew attività ohra eżerċitata minn Malta fi flus barranin minn persuni u ma' persuni mhux residenti f'Malta jew ma' kumpannija *offshore* ohra jew ma' *offshore trust*;

Iżda t-tmexxija jew il-provvediment ta' servizz lil kumpannija *offshore* minn kumpannija ohra ma tkunx attività *offshore* hlief

meta l-attività tkun tikkonsisti fit-tmexxija ta' kumpanniji *offshore* ta' assigurazzjoni *captive* li jitwaqqfu u jiġu reġistrati f' Malta għall-finijiet ta' dan l-Att mill-kumpannija li tmexxihom u jkunu hekk reġistrati:

Iżda wkoll dik l-attività kummerċjali li tista' legalment issir minn persuna residenti Malta ma' bank barrani tista' bl-approvazzjoni ta' l-Awtorità issir ma' kumpannija *offshore* bankarja ta' barra minn Malta jew ma kumpannija *offshore* bankarja sussidjarja, u kull attività kummerċjali hekk magħmula tkun attività *offshore*;

“l-Awtorità” tfisser l-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta mwaqqfa bl-artikolu 3 ta' dan l-Att;

“il-Bord” jew “Bord ta' Gvernaturi” tfisser il-Bord ta' Gvernaturi ta' l-Awtorità mwaqqaf bl-artikoli 5 u 6 ta' dan l-Att;

“flus barranin” tfisser flus barranin *convertible* u tinkludi l-European Currency Unit jew ECU;

“korp ta' persuni” tfisser kull kumpannija, għaqda, soċjetà jew assoċjazzjoni oħra ta' persuni, sew jekk ikollha personalità ġuridika sew jekk le;

“il-kumitat” jew “il-Kumitat Eżekuttiv” tfisser il-Kumitat Eżekuttiv ta' l-Awtorità mwaqqaf bl-artikoli 5 u 8 ta' dan l-Att;

“kumpannija” tfisser soċjetà anonima ffurmata u reġistrata kif imiss taht il-liġi li dak iż-żmien tkun fis-sehh f' Malta u tinkludi korp magħqud simili inkorporat jew reġistrat barra minn Malta;

“kumpannija *nominee*” tfisser kumpannija awtorizzata li taqdi l-funzjonijiet ta' kumpannija *nominee* taht l-artikolu 43 ta' dan l-Att;

“kumpannija *offshore*” għandha t-tifsira mogħtija lilha bl-artikolu 22 ta' dan l-Att; u “kumpannija *offshore* bankarja”, “kumpannija *offshore* ta' l-assigurazzjoni”, “kumpannija *offshore* ta' kummerċ ġenerali” u “kumpannija *offshore* mhux kummerċjali” għandhom it-tifsira mogħtija lilhom rispettivament bl-artikolu 23 ta' dan l-Att;

“kumpannija *offshore* lokali” għandha t-tifsira mogħtija lilha bis-subartikolu (5) ta' l-artikolu 22 ta' dan l-Att;

“kumpannija *offshore* sussidjarja” għandha t-tifsira mogħtija lilha bis-subartikolu (4) ta' l-artikolu 22 ta' dan l-Att;

“kumpanija *offshore* ta' assigurazzjoni *captive*” hija kumpannija *offshore* ta' l-assigurazzjoni li tillimita l-impriża ta' l-assigurazzjoni eskusivament għal riskju ta' kumpanniji li jkunu mem-

bri ta' grupp ta' kumpanniji, li tiegħu hi stess tkun membru, u jkollha kumpannija wahda matriċi ċentrali jew *holding company* wahda ma' kumpanniji li jkunu l-azzjonisti wahdenin tal-kumpannija *offshore* ta' l-assigurazzjoni u s-sussidjarji tagħhom u tinkludi kumpannija li hi rikonoxxuta mill-Awtorità bhala kumpannija *offshore* ta' assigurarazzjoni *captive*;

“*kumpannija offshore* ta' barra minn Malta” għandha t-tifsira mogħtija lilha bis-subartikolu (3) ta' l-artikolu 22 ta' dan l-Att;

“kumpannija ta' barra minn Malta” għandha t-tifsira mogħtija lilha bl-artikolu 176 ta' l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali;

“Ministru” tfisser il-Ministru responsabbli għal attivitajiet kummerċjali internazzjonali;

“*offshore trust*” għandha t-tifsira mogħtija lilha bl-Att ta' l-1988 dwar l-*Offshore Trusts*;

“persuna” tinkludi korp ta' persuni;

“persuna kwalifikata”, għar-rigward ta' azzjonist ta' kumpannija *offshore* jew għar-rigward ta' persuna li jkollha interess f'kumpannija *offshore*, tfisser persuna mhux residenti f'Malta u riferenzi għal persuna li jkollha interess kif imsemmi hawn fuq għandhom jiftehmu f'dak is-sens;

“preskritt” tfisser preskritt b' regolamenti magħmulin taħt dan l-Att;

“proprietà” tfisser proprietà ta' kull xorta jew deskrizzjoni, sew jekk mobbli jew immobbli, personali jew reali, u kulfejn tinsab;

“il-Qorti” tfisser is-Sekond'Awla tal-Qorti Ċivili;

“Registratur” tfisser ir-Registratur tas-Soċjetajiet;

“reġistru” tinkludi kull xorta ta' *record*;

“residenti f'Malta” tfisser:

(a) fil-każ ta' individwu, persuna li jew tkun ordinarjament residenti f'Malta jew tkun domiciljata f'Malta;

(b) fil-każ ta' korp ta' persuni, kull korp tali li jiġi ffurmat u reġistrat f'Malta jew li jkollu l-post prinċipali tan-negozju tiegħu f'Malta, jew li jkun kontrollat, direttament jew indirettament minn persuna jew persuni residenti f'Malta;

Iżda individwu li ordinarjament jirresjedi f'Malta u jkun hekk intitolat li jirresjedi bis-saħħa ta' permess ta' residenza mahruġ taħt l-Att ta' l-1970 dwar l-Immigrazzjoni, u d-dipendenti ta' dik il-persuna, għandu jitqies li ma jkunx residenti f'Malta għall-fini ta' dan l-Att;

Att IX
ta' l-1970.

Iżda wkoll li għall-finijiet ta' dan l-Att kumpannija li hi hi stess kumpannija *offshore* ma titqiesx li hi residenti f'Malta.

(2) Kull riferenza f'dan l-Att ghal xi ligi jew dispożizzjoni tagħha għandha tiftiehem bħala riferenza għal dik il-ligi jew dispożizzjoni li tkun fis-seħh minn żmien għal żmien u għandha tinkludi riferenza għal kull ligi li tissostitwixxi dik il-ligi jew dispożizzjoni, u għal kull legislazzjoni sussidjarja magħmula taħtha.

(3) Kliem u espressjonijiet użati f'dan l-Att b'riferenza għal xi ligi oħra għandhom, safejn ikun meħtieġ biex jagħtu effett lil dan l-Att, u konsistentement mad-dispożizzjonijiet tiegħu, ikollhom l-istess tifsir bħalma għandhom fil-ligi li b'riferenza għaliha huma wżati f'dan l-Att.

(4) Kull riferenza f'dan l-Att għal reat kriminali konness barra minn Malta, jew kontra l-ligi ta' pajjiż li ma jkunx Malta, jew għal att li jekk ikun magħmul f'Malta jkun reat kriminali kontra l-ligi ta' Malta, għandha tiftiehem bħala limitata għal reati li jkunu reati ta' estradizzjoni għall-finijiet ta' l-artikolu 5 ta' l-Att ta' l-1978 dwar l-Estradizzjoni.

(5) F'dan l-Att u f'kull regolament magħmul bis-saħha tiegħu, jekk ikun hemm xi konflitt bejn it-test Ingliż u dak Malti, it-test Ingliż għandu jipprevali.

Att XVII
ta' l-1978.

TAQSIMA I

L-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta

3. (1) Għandu jkun hemm Awtorità li għandha tissejjah l-Awtorità dwar il-Kummerċ Internazzjonali ta' Malta.

(2) L-Awtorità għandha tkun korp magħqud li jkollu personalità ġuridika distinta u li jkun jista' jidhol għall-kuntratti, jakkwista u jiddisponi minn proprjetà ta' kull xorta għall-finijiet tal-funzjonijiet tiegħu taħt dan l-Att, tħarrek u jiġi mħarrek u li jagħmel dawk il-hwejjeġ kollha u jidhol għal dawk it-transazzjonijiet kollha li huma incidentali jew li jwasslu għall-eżerċizzju jew qadi ta' xi funzjonijiet tiegħu imsemija hawn fuq.

4. (1) Bla hsara għal xi setgħa jew funzjoni oħra mogħtija lilha b'dan l-Att jew b'xi ligi oħra, għandha tkun il-funzjoni ta' l-Awtorità —

(a) li tippromwovi lil Malta bħala ċentru għal attivitajiet *offshore*;

(b) li tgħin lil għaqdiet korporati u entitajiet u persuni oħra biex jistabbilixxu attivitajiet *offshore* minn ġewwa Malta;

(ċ) li tagħmel stima u valutazzjoni ta' kull attività *offshore* kummerċjali proposta;

Twaqqif ta'
l-Awtorità.

Funzjonijiet
ta' l-Awtorità.

(d) li ssegwi u tissorvelja attivitajiet *offshore* sabiex tassigura li jkunu qieghdin jiġu mwettqa skond il-liġi u partikolarment li ma jkunux qieghdin jitmexxew f'dawk l-arej jew b'dak il-mod biex jaqdu l-ghanijiet ta' attivitajiet illeċiti, sew f'Malta sew barra minn Malta, jew xort'ohra b'detriment għall-interessi ta' Malta;

(e) li tagħti pariri lill-Gvern ġeneralment dwar kull materja msemmija fil-paragrafi ta' qabel ta' dan l-artikolu.

(2) L-Awtorità għandha, minkejja kull liġi oħra, tkun iċ-ċentru u l-mezz li fih u li permezz tiegħu il-Ministeri u d-Dipartimenti kollha tal-Gvern u l-korpi jew awtoritajiet oħra kollha mwaqqfa bil-liġi, għandhom jaġixxu fil-materji kollha, u bis-saħħa tas-setgħat kollha tagħhom, dwar l-attivitajiet *offshore* kollha regolati b'dan l-Att u dwar korpi u persuni oħra li jkunu reġistrati, jew li jkunu qed ifittxu li jiġu reġistrati, għal dak il-ghan taħt dan l-Att, kif ukoll iċ-ċentru u l-mezz li kull korp jew persuna oħra bħal dawk għandhom japplikaw lilu u permezz tiegħu jiksbu xi permess, liċenza jew awtorizzazzjoni oħra, jew, kull haġa oħra li jistgħu ikunu jeħtieġu u li permezz tiegħu għandhom jikkomunikaw ma' xi awtorità minn dawk imsemmija hawn fuq. B'mod partikolari, iżda bla hsara għall-ġeneralità ta' dak li ntqal qabel, kull investigazzjoni, spezzjoni, jew att ieħor simili li xi awtorità bħal dik tista' tqis xieraq li titwettaq u kull tagħrif li dik l-awtorità tista' teħtieġ, għall-ghanijiet ta' xi funzjoni tagħha taħt il-liġi, dwar xi attività *offshore* jew korp jew persuna li tkun qed twettaq dik l-attività, għandhom isiru jew miksuba permezz ta' l-Awtorità.

(3) Għandu jkun id-dmir ta' l-Awtorità li tesegwixxi l-funzjonijiet mogħtija lilha bis-subartikolu (2) ta' dan l-artikolu bil-heffa u b'effiċjenza; u għandu jkun id-dmir partikolari tal-Bord tal-Gvernaturi li jassigura li kull att jew haġa li jkun se jaġħmel il-Kumitat Eżekuttiv bis-saħħa tas-subartikolu hawn fuq imsemmi jsir għas-sodisfazzjon tal-ministeru, dipartiment, korp jew awtorità oħra li għaliha tkun meħtieġa taġixxi; u jekk dik l-awtorità ma tkunx hekk sodisfatta, jew turi xi kawża ġusta oħra, il-funzjoni u s-setgħat tagħha għandhom, bl-approvazzjoni tal-Kabinett, jiġu eżerċitati direttament mill-awtorità konċernata f'kull materja u b'dak il-mod li jista' jkun hekk approvat.

5. (1) L-Awtorità għandha tkun tikkonsisti f'Bord ta' Gvernaturi u Kumitat Eżekuttiv.

Tqassim
tad-dmirijiet
ta' l-Awtorità.

(2) Il-Bord ta' Gvernaturi għandu jkun responsabbli għall-*policy* li għandha tiġi adottata mill-Awtorità u li għandha tiġi esegwita u segwita mill-Kumitat Eżekuttiv u li jassigura li l-Kumitat jesegwixxi dawk il-funzjonijiet. Waqt li jkun qed jistabbilixxi dawk il-*policies* il-Bord għandu jsegwu l-linji ta' gwida ġenerali dwar il-*policy* ekonomika stabbilita mill-Gvern. Il-Bord għandu wkoll ikun responsabbli biex jagħti pariri lill-Gvern kif hemm provdut fil-paragrafu (d) tas-subartikolu (1) ta' l-artikolu 4 ta' dan l-Att, biex jagħti pariri lill-Ministru taħt l-artikolu 52 ta' dan l-Att u għall-ghoti ta' xi *warrant* ta' għarfien taħt dan l-Att.

(3) Il-Kumitat Eżekuttiv għandu jkun responsabbli għall-eżekuzzjoni tal-*policy* stabbilita mill-Bord u għall-qadi tal-funzjonijiet

kollha ta' l-Awtorità li ma humiex attribwiti b'dan l-Att lill-Bord skond dik il-*policy* u suġġetti ghas-sorveljanza generali tal-Bord.

(4) La l-Bord ta' Gvernaturi u lanqas xi membru individwali jew membri tieghu ma ghandhom ikollhom aċċess ghal xi informazzjoni fil-pussess ta' jew taht il-kontroll ta' l-Awtorità dwar xi persuna li tkun qed tesegwixxi attivitajiet *offshore* taht id-dispożizzjonijiet ta' dan l-Att. Bla hsara ghal dak li ntqal qabel, ghandu jkun id-dmir tal-Kumitat Eżekuttiv li jipprovdi lill-Bord dik l-informazzjoni kollha li l-Bord ikun jista' jehriegh għall-qadi sewwa tal-funzjonijiet tieghu, u b'mod partikolari tad-dmir tieghu li jassigura li l-*policies* tieghu jkunu qeghdin jiġu esegwiti sewwa.

Ghamla tal-Bord ta' Gvernaturi.

6. (1) Il-Bord ta' Gvernaturi ghandu jkun magħmul minn *Chairman*, li ghandu jkun ukoll il-President ta' l-Awtorità u dak in-numru ta' membri oħra li minn żmien għal żmien jistgħu jiġu mahtura li minnhom:

(a) tnejn ghandhom ikunu uffiċjali pubbliċi anzjani li jaqdu dmirijiet wiehed fil-Ministeru responsabbli għal attivitajiet kummerċjali internazzjonali u l-iehor fil-Ministeru tal-Finanzi, rispettivamente;

(b) wiehed ghandu jkun uffiċjal anzjan tal-Bank Ċentrali ta' Malta; u

(c) mhux aktar minn tlieta ghandhom jiġu magħzula minn fost persuni li ddissingwew ruhhom fin-negozju, relazzjonijiet industrijali, attivitajiet finanzjarji, il-professionijiet, is-servizz pubbliku jew affarijiet akkademiċi.

(2) Il-membri kollha tal-Bord imsemmijin fis-subartikolu (1) ta' dan l-artikolu, ghandhom jiġu magħzula mill-Prim Ministru.

(3) Il-membri tal-Bord ghandhom, kemm-il darba l-hatra tagħhom ma ttemx qabel, iżommu l-kariga tagħhom għal dak il-perijodu, li ma jkunx iżjed minn hames snin, li jkun speċifikat fl-ittra tal-hatra tagħhom, u ghandhom ikunu eligibbli għal hatra mill-ġdid.

(4) Persuna ma tikkwalifikax biex tigi mahtura, jew iżzomm il-kariga bħala, membru tal-Bord jekk —

(a) tkun legalment inkapaċitata; jew

(b) tkun ġiet dikjarata falluta jew tkun ghamlet kompożizzjoni jew arrangement mal-kredituri tagħha; jew

(c) tkun ġiet misjuba hatja ta' delitt li jolqot il-fiduċja pubblika jew serq jew ta' frodi jew talli xjentement tkun irċeviet proprjetà miksuba b'serq jew bi frodi; jew

(d) tkun ġiet misjuba hatja ta' xi reat kontra dan l-Att.

(5) Membru tal-Bord jista' jitneħha mill-kariga tiegħu mill-Prim Ministru minħabba f'inkapaċità li jaqdi l-funzjonijiet tal-kariga tiegħu, kemm jekk minħabba mard mentali jew korporali, jew għal xi raġuni oħra, jew għal imġieba hażina; u għall-finijiet ta' dan is-subartikolu assenja ripetuta u mhux ġustifikata minn laqgħat tal-Bord tista' titqies li tammonta għal imġieba hażina.

(6) Membru tal-Bord jista' wkoll jirriżenja mill-kariga tiegħu permezz ta' ittra indirizzata lill-Prim Ministru.

7. (1) Il-Bord ta' Gvernaturi għandu jiltaqa' spiss kemm ikun meħtieġ jew spedjenti, iżda f'ebda każ inqas spiss minn darba kull tliet xhur. Il-laqgħat għandhom jiġu msejha miċ-*Chairman* kemm fuq l-inizjattiva tiegħu stess kif ukoll fuq it-talba ta' xi tnejn mill-membri l-oħra.

Laqgħat tal-Bord ta' Gvernaturi.

(2) Il-Bord ma għandux jaġixxi kemm-il darba ma jkun preżenti *quorum* ta' mhux inqas minn erba' membri.

(3) Il-laqgħat tal-Bord għandhom jiġu presjeduti miċ-*Chairman* jew, fl-assenja tiegħu, minn membru elett għall-laqgħa partikolari mill-membri l-oħra preżenti f'dik il-laqgħa.

(4) Id-deċiżjonijiet tal-Bord għandhom jittieħdu b'maġġoranza tal-voti tal-membri preżenti u li jivvotaw; u fil-każ ta' voti ndaq il-membri li jkun qed jippresjedi l-laqgħa għandu jkollu u jeżerċita vot iehor jew vot decisiv.

(5) Iċ-*Chief Executive* u d-Deputat *Chief Executive* ta' l-Awtorità għandhom ikunu intitolati li jattendu l-laqgħat tal-Bord u li jieħdu sehem fid-diskussjonijiet tiegħu, iżda ma għandu jkollhom ebda vot.

(6) Kull vakanza fost il-membri tal-Bord, u xi partecipazzjoni fih minn persuna li ma tkunx intitolata li tagħmel dan, ma għandhomx jinvalidaw il-proċedimenti tal-Bord.

(7) Bla ħsara għad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, il-Bord jista' jirregola l-proċedura tiegħu stess.

8. (1) Il-Kumitat Eżekuttiv ta' l-Awtorità għandu jkun jikkon-sisti fi —

Kompożizzjoni tal-Kumitat Eżekuttiv.

(a) iċ-*Chief Executive* ta' l-Awtorità li jkun ukoll iċ-*Chairman* tal-Kumitat Eżekuttiv;

(b) id-Deputat *Chief Executive* ta' l-Awtorità; u

(c) mhux aktar minn tlett membri oħra li jistgħu jiġu maħtura mill-Bord tal-Gvernaturi minn fost l-uffiċjali anzjani ta' l-Awtorità.

(2) Id-dispożizzjonijiet ta' l-artikolu 7 ta' dan l-Att għandhom, safejn ikunu applikabbli, japplikaw għall-laqgħat tal-Kumitat bħalma japplikaw għall-laqgħat tal-Bord, hliet li l-*quorum* għall-laqgħat tal-Kumitat għandu jkun ta' tlett membri.

(3) Ghandu jkun hemm ukoll segretarju għall-Kumitat, mahtur mill-Kumitat bl-approvazzjoni tal-Bord, li ghandu jaġixxi wkoll bħala segretarju tal-Bord. Ikun id-dmir tas-segretarju li jagħmel it-thejjiet meħtieġa għall-laqgħat tal-Bord u tal-Kumitat u li jzomm il-minuti ta' dawk il-laqgħat.

L-Eżekuttiv u *personnel* iehor ta' l-Awtorità.

9. (1) Iċ-*Chief Executive* u d-Deputat *Chief Executive* ta' l-Awtorità għandhom jinhatru mill-Bord ta' Gvernaturi.

(2) L-uffiċjali u l-*personnel* l-iehor ta' l-Awtorità għandhom jiġu mahtura jew reklutati mill-Kumitat Eżekuttiv b'dawk il-pattijiet u l-kundizzjonijiet u f'dawk in-numri li l-Kumitat jista' bl-approvazzjoni tal-Bord jistabbilixxi:

Izda sakemm il-Kumitat Eżekuttiv jiġi kostitwit, dawk il-hatriet jew dak ir-reklutaġġ issir miċ-*Chief Executive* bl-approvazzjoni tal-Bord.

(3) Id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 40 ta' dan l-Att għandu japplika għal kull persuna li tkun tagħmel parti mill-*personnel* ta' l-Awtorità, jew li tkun xort'ohra impjegata minnha, li ma tkunx domiciljata f'Malta, jew jekk tkun hekk domiciljata, ma tkunx ordinarjament residenti f'Malta, bħalma japplikaw għall-impjegati ta' kumpanniji *offshore*.

Rappreżentanza legali u ġudizzjarja ta' l-Awtorità.

10. (1) Ir-rappreżentanza legali u ġudizzjarja ta' l-Awtorità għandha tkun vestita fiċ-*Chief Executive*:

Izda l-Kumitat jista' jahtar xi wiehed jew aktar mill-uffiċjali jew impjegati tiegħu biex jidhru f'isem u għall-Awtorità f'xi proċedimenti ġudizzjarji jew f'xi att, kuntratt, kitba legali jew dokument iehor.

(2) Kull dokument li jkun jidher li jkun sar jew maħruġ mill-Awtorità u li jkun jidher li jkun iffirmit miċ-*Chief Executive* għandu jiġi riċevut bħala xhieda u għandu, sakemm jiġi ppruvat il-kuntrarju, jitqies li jkun sar jew maħruġ mill-Awtorità.

Konfidenzjalità.

11. (1) L-Awtorità għandha titratta d-dokumenti u l-informazzjoni l-oħra kollha li jkunu fil-pussess tagħha jew taht il-kontroll tagħha, jew li xort'ohra jiġu għall-konjizzjoni tagħha, dwar persuni li legittimament ikunu qegħdin imexxu attivitajiet *offshore* taht dan l-Att, u l-materji u l-hwejjeġ kollha li jkollhom x'jaqsmu ma' dawk il-persuni dwar l-attivitajiet *offshore* tagħhom, bħala sigrieti u konfidenzjali, u ma għandhiex tara li tidentifika l-individwi jew persuni oħra li jkollhom interess f'attivitajiet legittimi bħal dawk.

(2) L-obbligi mposti fuq l-Awtorità bis-subartikolu (1) ta' dan l-artikolu għandhom jestendu għall-membri kollha tal-Bord ta' Gvernaturi u tal-Kumitat Eżekuttiv u għall-uffiċjali u impjegati kollha ta' l-Awtorità; u dispożizzjonijiet ta' l-artikolu 38 ta' dan l-Att għandhom, bla ħsara għall-ġeneralità tagħhom, japplikaw għal kull wiehed minn dawk il-persuni kollha.

(3) Hlief fejn ikun essenzjalment meħtieġ għall-finijiet ta' dan l-Att jew skond kif permess tahtu, ebda membru, uffiċjal jew im-

pjegat kif imsemmi qabel ma jkun mehtieg jipprezenta jew jizvela lil xi qorti, tribunal, bord, kumitat ta' inkjesta jew awtorità ohra xi dokument, informazzjoni jew materja ohra li tigi għall-konjizzjoni tiegħu jew li tkun fil-pussess jew taħt il-kontroll tiegħu għal xi raġuni, tkun xi tkun, li huwa għandu jittratta bħala haġa sigrieta jew konfidenzjali taħt dan l-artikolu.

12. (1) Fl-eżercizzju tal-funzjonijiet tagħha taħt dan l-Att, u partikolarment fit-tmexxija ta' xi investigazzjoni biex tassigura li d-dispożizzjonijiet ta' dan l-Att ikunu qegħdin jiġu osservati, jew ebda attivitajiet illegali ma jkunu qegħdin isiru, jiġu mghejunin jew inkorragġiti, jew li ebda eżenzjoni jew privileġġ mogħti mhux qed jiġi abbużat, l-Awtorità għandha tuża dik id-diskrezzjoni li tkun kompatibbli madmir tagħha ta' konfidenzjalità; iżda, bla hsara għal dak li ntqal hawn fuq, l-Awtorità għandha jkollha setgħa li tagħmel dawk il-ħwejjeġ kollha u li titlob dik l-informazzjoni skond kif ikun mehtieg għall-finijiet tal-funzjonijiet tagħha.

Mod ta' eżercizzju ta' funzjonijiet mill-Awtorità.

(2) Jekk fit-tmexxija ta' xi investigazzjoni kif hemm imsemmi fis-subartikolu (1) ta' dan l-artikolu, l-Awtorità ssib illi l-investigazzjonijiet ma jkunux jistgħu isiru kif ikun hemm bżonn kemm-il darba ma tinkisibx informazzjoni dwar individwi, attivitajiet u transazzjonijiet jew materji ohra li jkunu jridu jiġu trattati bħala konfidenzjali, l-Awtorità għandha tara li dawk l-investigazzjonijiet jiġu mmexxija mill-Qorti ta' l-Appell *in camera* taħt gurament ta' segretezza mehud mill-imħallfin li jikkostitwixxu dik il-Qorti qabel ma tibda l-investigazzjoni; u l-Qorti ta' l-Appell għandha, bl-urgenza xierqa, tmexxi dawk l-investigazzjonijiet u tagħmel rapport dwar ir-riżultat tagħha lill-Awtorità, waqt li tiżvela biss dawk il-fatti, persuni jew materji ohra, li r-riżultat ta' l-investigazzjonijiet tagħha juri li jkunu bi ksur ta', jew li jkunu kisru, id-dispożizzjonijiet ta' dan l-Att, jew li jkunu jew ikunu kkommettew reat kriminali, kemm jekk f'Malta jew barra minn Malta, jew li jkun reat kriminali jekk jiġi kommess f'Malta, flimkien ma' dak il-materjal li bih l-awtoritajiet f'Malta jkunu jistgħu jieħdu l-passi xierqa fiċ-ċirkostanzi; u għall-finijiet ta' xi azzjoni bħal dik, kull haġa li tigi żvelata mill-Qorti ta' l-Appell kif intqal qabel ma tibqax tkun konfidenzjali u tista' tigi trattata mill-awtoritajiet imsemmija f'dak is-sens.

(3) Fl-eżercizzju tal-funzjonijiet tagħha taħt dan l-artikolu, il-Qorti ta' l-Appell għandu jkollha s-setgħat kollha ta' dik il-qorti fil-gurisdizzjoni ordinarja tagħha.

13. (1) Is-somma ta' hames mitt elf lira għandha tithallas mill-Gvern lill-Awtorità mill-Fond Konsolidat, u mingħajr approprijazzjoni ohra barra minn dan l-Att, b'*warrant* li jkun iġib il-firma tal-Ministru responsabbli għall-finanzi li jawtorizza lill-*Accountant General* li jagħmel dak il-ħlas:

Provvedimenti dwar il-kapital u dwar il-finanzi.

Iżda s-somma ta' mitejn elf lira biss tkun pagabbli mal-bidu fis-seħħ ta' dan l-Att u l-bilanċ jithallas kif u meta mehtieg mill-Awtorità.

(2) Id-dhul ta' l-Awtorità għandu jkun jikkonsisti fi:

(a) id-dhul mid-drittijiet dwar registrazzjoni u drittijiet ohra li jithallsu taħt dan l-Att;

(b) kirjiet, imghax u profitti minn proprjetà, depożiti u attiv ieħor ta' l-Awtorità;

(ċ) kull flus oħra li l-Awtorità tista' tirċievi jew tkun irċeviet.

Estimi u
nfieq.

14. (1) Il-Kumitat Eżekuttiv għandu jara li jiġu mhejjija għar-rigward ta' kull sena finanzjarja, u mhux aktar tard minn sitt ġimghat wara tmiem is-sena ta' qabel għandu jadotta, estimi tad-dhul u nfieq ta' l-Awtorità għal dik is-sena finanzjarja:

Iżda l-estimi għall-ewwel sena finanzjarja ta' l-Awtorità għandhom jiġu mhejjija u adottati f'dak iż-żmien li l-Ministru jista' jispeċifika b'avviż bil-miktub lill-Awtorità.

(2) Fit-thejjija ta' dawk l-estimi l-Awtorità għandha tagħmel mill-aħjar biex tassigura li d-dhul totali ta' l-Awtorità jkun għall-inqas biżżejjed biex ikopri s-somom kollha li suppost jinħarġu mill-kont tad-dhul u infiq, inkluż, iżda bla hsara għall-ġeneralità ta' dik l-espressjoni, id-deprezzament.

(3) L-estimi għandhom isiru f'dik l-għamla u għandu jkun fihom dik l-informazzjoni u dawk il-paraguni ma' snin ta' qabel skond id-direttivi tal-Bord.

(4) Kopja ta' l-estimi għandha, malli jiġu adottati mill-Kumitat Eżekuttiv, tintbagħat minnufih lill-Bord.

(5) Mhux aktar tard minn erba' ġimghat wara li jkun irċieva l-estimi, il-Bord għandu japprovahom bi jew mingħajr emendi.

(6) L-Awtorità ma għandha tagħmel jew iġġarrab ebda nfieq jekk dan ma jkunx ġie approvat mill-Bord skond is-subartikolu (5) ta' dan l-artikolu;

Iżda sa qabel ma l-Bord ikun approva l-estimi, l-Awtorità tista' tagħmel jew iġġarrab infieq li ma jkunx aktar mill-infieq magħmul jew imġarrab matul l-istess perijodu tas-sena minnufih qabel:

Iżda wkoll dan is-subartikolu ma għandux japplika fl-ewwel sena finanzjarja ta' l-Awtorità qabel ma l-estimi għal dik is-sena jkunu ġew approvati mill-Bord.

(7) Minkejja d-dispożizzjonijiet tas-subartikolu (6) ta' dan l-artikolu, jekk għar-rigward ta' xi sena finanzjarja, jinstab illi l-ammont approvat mill-Bord ma jkunx biżżejjed jew tkun inqas għalhekk ta' nfieq għal skop li ma jkunx hemm maħsub għalih fl-estimi, il-Kumitat Eżekuttiv jista' jadotta estimi supplimentari għall-approvazzjoni tal-Bord u, f'każ bhal dan id-dispożizzjonijiet ta' dan l-Att li japplikaw għall-estimi għandhom b'kemm jista' jkun l-istess mod japplikaw għall-estimi supplimentari.

Setgħat ta'
l-Awtorità.

15. (1) L-Awtorità tista':

(a) iżzomm kontijiet ma' xi bank;

(b) tinvesti xi attiv likwidu tagħha f'titoli prima klassi ta' perijodi qosra u medji skond kif ikun gie approvat mill-Bord;

(ċ) takkwista, tixtri, tikri jew tiddisponi minn xi proprjeta' mobbli jew immobbli li tkun mehtieġa għall-attivitajiet tagħha jew għal xi skopijiet anċillari jew inċidentali għall-qadi tal-funzjonijiet tagħha taht dan l-Att.

(2) Għall-fini tal-qadi ta' xi funzjoni tagħha taht dan l-Att, l-Awtorità tista', bil-approvazzjoni bil-miktub tal-Ministru mogħtija wara konsultazzjoni mal-Ministru responsabbli għall-finanzi, tissellef jew tiġbor b'dak il-mod, minghand dik il-persuna, korp jew awtorità, u taht dawk il-pattijiet u l-kondizzjonijiet li l-Ministru, wara konsultazzjoni kif imsemmi qabel, jista' bil-miktub japprova.

16. Il-Ministru responsabbli għall-finanzi jista', wara konsultazzjoni mal-Ministru, javvanza lill-Awtorità dawk is-somom li jista' jaqbel li jkunu mehtieġa mill-Awtorità għall-qadi ta' kull funzjoni tagħha taht dan l-Att, u jista' jagħmel dawk l-avvanzi taht dawk il-pattijiet u l-kondizzjonijiet li jista', wara konsultazzjoni kif imsemmi qabel, iqis li jkunu xierqa. Kull avvanzi bħal dawk jistgħu jsiru mill-Ministru responsabbli għall-finanzi mill-Fond Konsolidat, u minghajr aktar approprijazzjoni barra l-Att, b'*warrant* li jġib il-firma tiegħu u li jawtorizza lill-*Accountant General* biex jagħmel dawk l-avvanzi.

Avvanzi
mill-Gvern.

17. (1) L-Awtorità tista' twaqqaf Fond ta' Riserva li għalih jista' jiġi approprijat ir-residwu ta' fondi li jidderiva mill-Kont ta' Dhul u Nfieg tagħha iżda dak il-fond ma għandu f'ebda żmien ikun akbar mill-kapital inizjali ta' l-Awtorità mħallas lilha taht l-artikolu 13 ta' dan l-Att.

Iffissar
u allokazzjoni
ta' profitti.

(2) Ir-residwu ta' fondi ta' l-Awtorità għal kull sena finanzjarja għandu jiġi stabbilit wara li l-Awtorità tkun issodisfat l-infieg korrenti kollu għal dik is-sena u wara li tkun għamlet dawk il-provvedimenti, magħduda provvedimenti għal kontingenzi, kif ikun jidhrilha xieraq, u l-approprijazzjoni msemmija fis-subartikolu (1) ta' dan l-artikolu.

(3) Wara li jkunu saru l-allokazzjonijiet imsemmija fis-subartikoli (1) u (2) ta' dan l-artikolu, dak li jibqa' mir-residwu għandu jithallas lill-Gvern.

18. Is-sena finanzjarja ta' l-Awtorità għandha tibda fl-1 ta' Jannar u tagħlaq fil-31 ta' Diċembru: Sena Finanzjarja.

Izda l-ewwel sena finanzjarja għandha tibda b'din id-data tal-bidu fis-sehħ ta' dan l-Att u għandha tagħlaq fil-31 ta' Diċembru tas-sena ta' wara.

19. Il-kontijiet ta' l-Awtorità għandhom jiġu verifikati minn udituri maħtura mill-Bord minn fost persuni li jkunu kwalifikati li jiġu maħtura bħala udituri ta' kumpannija taht il-liġi li tkun fis-sehħ dak iż-żmien f'Malta, bħallikieku l-Awtorità kient kumpannija tali.

Verifika.

Kontijiet annwali. **20.** (1) Il-Bord ghandu, kmieni kemm jista' iżda mhux aktar tard minn tliet xhur wara għeluq kull sena finanzjarja, jgħaddi lill-Parlament permezz tal-Ministru:

- (a) kopja tal-kontijiet annwali ċċertifikati mill-udituri;
- (b) rapport dwar il-hidmiet tiegħu matul is-sena.

Eżenzjoni mit-taxxi.

21. L-Awtorita' għandha tiġi eżentata minn kull responsabbilita' għall-hlas tat-taxxa ta' l-*income* u tat-taxxa fuq dokumenti taht xi liġi li tkun fis-seħh dak iż-żmien.

TAQSIMA II

Kumpanniji Offshore

Tifsir ta' kumpanniji offshore.

22. (1) Kumpannija *offshore* hija kumpannija li fiha jikkonkorru l-kondizzjonijiet ġenerali kollha msemmija fis-subartikolu (2) ta' dan l-artikolu, u kull kondizzjoni speċjali applikabbli għat-tip partikolari ta' kumpannija *offshore*, b'mod partikolari dawk li huma msemmija fl-artikolu 23 ta' dan l-Att, jew hija kumpannija li għalija japplika s-subartikolu (3) jew is-subartikolu (4) jew is-subartikolu (5) ta' dan l-artikolu; u kull kumpannija bħal dik għandha tibqa' kumpannija *offshore* biss jekk, u sa dak iż-żmien li, il-kondizzjonijiet ġenerali u speċjali msemmija jkomplu jiġu sodisfatti jew is-subartikoli (3), (4) jew (5) imsemmija jkomplu japplikaw, skond il-każ.

(2) Il-kondizzjonijiet ġenerali msemmijin fis-subartikolu (1) ta' dan l-artikolu huma li l-kumpannija —

(a) tkun kumpannija privata ffurmata u reġistrata taht il-liġi li tkun fis-seħh f'Malta dak iż-żmien;

(b) ikollha l-għanijiet tagħha espressament limitati għal attivitajiet *offshore* u għal dawk l-atti oħra biss li jkunu mehtieġa għall-operazzjonijiet tagħha minn Malta;

(ċ) ma tkunx is-sid ta' jew b'xort' oħra tippossjedi hliet b'kiri, u għall-iskopijiet ta' l-operazzjonijiet tagħha minn Malta, xi proprjeta' immobbli sitwata f'Malta u ma tkunx is-sid ta' jew xort' oħra tippossjedi xi proprjeta' mobbli sitwata f'Malta hliet depożiti f'kontijiet bankarji, għamara, tagħmir, materjal, dokumenti u proprjeta' oħra li raġonevolment tkun mehtieġa minnha għall-operazzjonijiet tagħha minn Malta;

Iżda kumpannija *offshore* li tkun esklussivament jew prinċipalment *holding company* tista' iżomm azzjonijiet fi jew obligazzjonijiet ta' kumpannija ffurmata u reġistrata f'Malta jekk din il-kumpannija ta' l-aħħar tkun proprjeta' kollha kemm hi ta' persuni mhux residenti f'Malta, ikollha bħala l-għanijiet ewlenin tagħha l-manifattura u l-ipproċessar ta' oġġetti f'Malta u tkun sussidjarja ta' dik il-*holding company*;

(d) ma jkollha ebda parti mill-kapital jew jeddijiet ta' votazzjoni tagħha, jew xi setgħa oħra ta' kontroll, li tkun kemm direttament jew indirettament, tappartjeni lil, miżmuma jew eżerċitabbli minn, jew vestita fi, xi persuna residenti f'Malta;

(e) ma jkollha ebda persuna hlief kumpannija *nominee* bhala *n-nominee* ta' xi persuna li tkun id-detentur effettiv ta' xi azzjonijiet jew obbligazzjonijiet taghha;

(f) ikollha kumpannija *nominee* jew bhala d-direttur wahdieni taghha jew bhala s-segretarju taghha:

Izda kumpannija ta' reputazzjoni internazzjonali, rikonoxxuta bhala tali ma' l-Awtorità, li tkun *manager* ta' kumpannija *offshore* ta' assigurazzjoni *captive* jew tkun kumpannija *offshore* ta' assigurazzjoni *captive*, tista' jew jistghu jigu eżentati mill-Awtorità milli jikkonformaw mad-dispożizzjonijiet ta' dan il-paragrafu;

(g) tkun registrata ma' l-Awtorità bhala kumpannija *offshore* taht dan l-Att u ċertifikat ta' registrazzjoni jkun inhareg lilha mill-Awtorità;

(h) thallas id-drittijiet ta' registrazzjoni u annwali li japplikaw ghalha meta jkunu dovuti.

(3) Dan is-subartikolu japplika ghal kumpannija ta' barra minn Malta li —

(a) tkun bank jew istituzzjoni bankarja jew kumpannija ta' assigurazzjoni, ta' livell u reputazzjoni internazzjonali u li tkun konoxxuta bhala tali mill-Awtorità;

(b) tkun fi hsiebha, jekk registrata taht dan l-Att, li tistabilixxi, u hekk tistabilixxi, fergha f'Malta esklussivament ghal attivitajiet *offshore*, u dawk l-attivitajiet l-oħra biss li jkunu meħtieġa għall-operazzjonijiet taghha minn Malta, u li f'kull żmien tillimita effettivament l-operazzjonijiet taghha f'dan is-sens;

(ċ) ma tkunx is-sid ta' jew xort'oħra tippossjedi jew tikkontrolla xi proprjeta' sitwata f'Malta hlief kif hemm provdut fil-paragrafu (ċ) tas-subartikolu (2) ta' dan l-artikolu;

(d) tkun registrata ma' l-Awtorità bhala kumpannija *offshore* taht dan l-Att u ċertifikat ta' registrazzjoni jkun inhareg lilha mill-Awtorità;

(e) thallas id-drittijiet ta' registrazzjoni u drittijiet annwali li japplikaw ghalha meta jkunu dovuti;

u dik il-kumpannija hija f'dan l-Att imsejha bhala "kumpannija *offshore* ta' barra minn Malta".

(4) Dan is-subartikolu japplika ghal kumpannija privata li —

(a) tkun iffurmata u registrata taht il-liġijiet li jkunu fis-seħh dak iż-żmien f'Malta għall-iskop li tmexxi esklussivament il-kummerċ bankarju bhala kumpannija *offshore* bankarja jew l-impriza ta' l-assigurazzjoni bhala kumpannija *offshore* ta' l-assigurazzjoni, skond il-każ:

(b) tkun sussidjarja ta' bank jew istituzzjoni bankarja, jew ta' kumpannija ta' l-assigurazzjoni, skond il-każ, ta' livell u reputazzjoni internazzjonali, u li tkun konoxxuta bhala tali mill-Awtorità, sakemm l-isem tal-kumpannija sussidjarja jkun jinkludi l-isem tal-*holding company*;

(c) ikollha isem li jindika ċar illi hi kumpanija sussidjarja tal-*holding company* tagħha u aċċettata bhala tali mill-Awtorità;

(d) ma jkollha ebda parti mill-kapital jew jeddijiet ta' votazzjoni tagħha, jew xi setgħa oħra ta' kontroll, kemm direttament jew indirettament tappartjeni lil, miżmuma jew eżerċitabbli minn, jew vestita fi, xi persuna residenti f'Malta;

Iżda din il-kondizzjoni għandha, fil-każ ta' kumpannija eżistenti qabel il-bidu fis-seħħ ta' dan l-Att u li tkun liċenzjata biex tmexxi kummerċ bankarju taħt l-Att ta' l-1970 dwar il-Kummerċ Bankarju, titqies li tkun giet sodisfatta minkejja li parti tal-kapital tagħha, li ma tkunx aktar minn għoxrin fil-mija tiegħu, tkun tappartjeni lil jew miżmuma minn persuna residenti f'Malta;

(e) ma tkunx is-sid ta' jew xort'oħra tippossjedi, jew tikkontrolla xi proprjeta' sitwata f'Malta hlief kif provdut fil-paragrafu (c) tas-subartikolu (2) ta' dan l-artikolu;

(f) tkun registrata ma' l-Awtorità bhala kumpannija *offshore* u ċertifikat ta' registrazzjoni jkun inhareg lilha mill-Awtorità;

(g) thallas id-drittijiet ta' registrazzjoni u d-drittijiet annwali li japplikaw għaliha meta jkunu dovuti;

u dik il-kumpannija hija f'dan l-Att imsejha bhal "kumpannija *offshore* sussidjarja".

(5) Dan is-subartikolu japplika għal kumpannija privata li —

(a) tkun iffurmata u registrata taħt il-liġi li tkun dak iż-żmien isseħħ f'Malta, għall-iskop li tmexxi esklussivament il-kummerċ bankarju bhala kumpannija *offshore* bankarja jew l-impriża ta' l-assigurazzjoni bhala kumpannija *offshore* ta' l-assigurazzjoni, skond il-każ;

(b) tkun sussidjarja ta' kumpannija ffurmata u registrata taħt il-liġi li tkun dak iż-żmien isseħħ f'Malta li tkun hi nniffisha, fil-każ ta' kumpannija ffurmata biex tmexxi il-kummerċ bankarju, liċenzjata biex tmexxi dak il-kummerċ taħt l-Att ta' l-1970 dwar il-Kummerċ Bankarju u, fil-każ ta' kumpannija ffurmata biex tmexxi l-impriża ta' l-assigurazzjoni, liċenzjata biex tmexxi dik l-impriża bhala prinċipal taħt l-Att ta' l-1981 dwar l-Impriża ta' Assigurazzjoni;

(c) ma jkollha ebda parti mill-kapital jew jeddijiet ta' votazzjoni tagħha, jew xi setgħa oħra ta' kontroll, kemm direttament jew indirettament tappartjeni lil, miżmuma jew eżerċitabbli minn, jew vestita fi, xi persuna oħra residenti f'Malta;

Att V ta' -1970.

Att XVII
ta' l-1981.

Iżda persuna wahda residenti f'Malta tista' żzomm dak in-numru ta' azzjonijiet fil-kumpannija li b'kollox ma jeċċedux elf lira f'valur nominali jew wiehed fil-mija tal-kapital azzjonarju tal-kumpannija, liema jkun l-iżghar numru ta' azzjonijiet, jekk tkun hekk awtorizzata mill-Ministru responsabbli għall-Finanzi;

(d) ikollha l-permess tal-Ministru responsabbli għall-Finanzi, għall-finijiet tal-kontroll fuq il-kambju, li topera bhala kumpannija *offshore* bankarja jew bhala kumpannija *offshore* ta' l-assigurazzjoni, skond kif ikun jehtieg il-każ;

(e) tkun registrata ma l-Awtorità bhala kumpannija *offshore* u ċertifikat ta' registrazzjoni jkun inhareg lilha mill-Awtorità;

(f) thallas id-drittijiet ta' registrazzjoni u d-drittijiet annwali li japplikaw għaliha meta jkunu dovuti:

u dik il-kumpannija hija f'dan l-Att imsejha bhala "kumpannija *offshore* lokali".

(6) Għall-finijiet ta' dan l-artikolu kull azzjoni jew *stock* f'kumpannija jew korp magħqud iehor registrat jew inkorporat barra minn Malta li tiġi kkwotata fuq *stock exchange* barrani ma għandhiex tittiehed f'konsiderazzjoni meta jkun qed jiġi stabbilit jekk kumpannija tkunx kumpannija *offshore*.

(7) Bla ħsara għal xi dispożizzjoni oħra ta' dan l-Att jew ta' l-Att ta' l-1972 dwar il-Kontroll fuq il-Kambju, jew għal xi konsegwenzi oħra taħthom, jekk persuna residenti f'Malta jkollha interess f'kumpannija registrata bhala kumpannija *offshore* taħt dan l-Att u dak l-interess ikun tali li l-kumpannija ma kienx ikun imissha giet hekk registrata jew ma tibqax tkun kumpannija *offshore* bis-sahha tas-subartikolu (1) ta' dan l-artikolu, dik il-persuna tkun hatja ta' reat kontra l-Att ta' l-1972 dwar il-Kontroll fuq il-Kambju għar-raġuni biss li jkollha dak l-interess u tehel meta tinstab hatja l-pieni stabbiliti bl-artikolu 41 ta' dak l-Att.

Att XLIX ta' l-1972.

23. (1) Kumpannija *offshore* tista' tkun jew kumpannija *offshore* kummerċjali jew mhux kummerċjali.

Xorta ta' kumpanniji *offshore*.

(2) Kumpannija *offshore* kummerċjali tista' tkun kumpannija *offshore* bankarja, jew kumpannija *offshore* ta' l-assigurazzjoni jew kumpannija *offshore* ta' kummerċ ġenerali.

(3) Kumpannija *offshore* bankarja hija kumpannija *offshore* li espressament tillimita l-għanijiet tagħha għall-kummerċ bankarju jew li hija kumpannija *offshore* ta' barra minn Malta jew kumpannija *offshore* sussidjarja li għaliha japplika s-subartikolu (3) jew is-subartikolu (4) ta' l-artikolu 22 ta' dan l-Att jew kumpannija *offshore* lokali, u li f'kull każ tillimita l-operazzjonijiet tagħha minn Malta għall-kummerċ bankarju; u kumpannija *offshore* ta' l-assigurazzjoni hija kumpannija *offshore* li espressament tillimita l-għanijiet tagħha għall-impriża ta' l-assigurazzjoni jew li hija kumpannija *offshore* ta' barra minn Malta jew kumpannija *offshore* sussidjarja li għaliha japplika s-subartikolu (3) jew is-subartikolu (4) ta' l-artikolu 22 ta' dan l-Att jew hija kumpannija *offshore* lokali u li f'kull każ tillimita l-operazzjonijiet tagħha minn Malta għall-impriża ta' l-assigurazzjoni.

(4) Għall-finijiet ta' dan l-Att, l-espressjonijiet "kummerċ bankarju" u "impriza ta' l-assigurazzjoni" għandhom it-tifsira mogħtija lilhom bl-artikolu 2 ta' l-Att ta' l-1970 dwar il-Kummerċ Bankarju u bl-artikolu 2 ta' l-Att ta' l-1981 dwar l-Impriza ta' l-Assigurazzjoni rispettivament.

(5) Kumpannija *offshore* ta' kummerċ ġenerali jista' jkollha bħala l-ghan tagħha kull kummerċ jew negozju li ma jkunx kummerċ bankarju jew impriza ta' l-assigurazzjoni.

(6) Kumpannija *offshore* mhux kummerċjali hija kumpannija *offshore* li espressament tillimita l-ghanijiet tagħha għall-proprjetà, tmexxija barra minn beni u amministrazzjoni ta' beni ta' kull xorta, li hija ma tistax tkun sid tagħhom jew xort'ohra tippossjedi taħt il-paragrafu (ċ) tas-subartikolu (2) ta' l-artikolu 22 ta' dan l-Att, u għal materji inċidentali jew anċillari għalihom:

Iżda meta l-proprjetà tal-kumpannija tkun tikkonsisti f'bastiment jew bastimenti reġistrati f'Malta, il-kumpannija ma tieqafx milli tkun kumpannija *offshore* mhux kummerċjali għar-raġuni biss li topera dawk il-bastimenti:

Iżda wkoll, illi meta l-proprjetà ta', immexxija jew amministrata minn, kumpannija *offshore* tinkludi investiment kollettiv jiġifieri assi derivati minn investimenti magħmula minn, jew f'isem jew a benefiċċju ta' persuni, li ma jkollhomx il-kontroll minn jum għall-iehor fuq it-tmexxija jew amministrazzjoni tagħha, hliel għal assi miżmuma għal finijiet ta' xi fond għal pensjoni, *provident fund* jew fond iehor simili aċċettat bħala tali mill-Awtorità, dik il-kumpannija ma tkunx kumpannija *offshore* mhux kummerċjali.

Reġistrazzjoni ta' kumpannija *offshore*.

24. (1) Kull kumpannija *offshore* għandha tkun reġistrata ma' l-Awtorità u ma għandhiex tkun tista' tibda l-kummerċ tagħha kemm-il darba u sakemm ma tkunx ġiet hekk reġistrata u ċertifikat ta' reġistrazzjoni jkun inhareġ għaliha mill-Awtorità.

(2) Qabel ir-reġistrazzjoni ta' kumpannija *offshore*, barra minn kumpannija *offshore* ta' barra minn Malta, għandha tiġi konsenjata lill-Awtorità kopja ċertifikata tal-*memorandum* ta' assoċjazzjoni tal-kumpannija u ta' l-istatut tagħha, jekk ikun hemm, u l-konsenja jew provdiment ta' dawk iċ-ċertifikati, dokumenti jew informazzjoni l-oħrajn li l-Awtorità tista' teħtieġ għar-rigward tat-tip partikolari tal-kumpannija *offshore* li tapplika għar-reġistrazzjoni, flimkien ma applikazzjoni għal dik ir-reġistrazzjoni fuq il-formola preskrittta jew fuq formola oħra li-l-Awtorità tista' taċċetta:

Iżda fil-każ ta' kumpannija mhux kummerċjali, ma' l-applikazzjoni għandha tiġi konsenjata biss kopja tal-*memorandum* u ta' l-istatut, jekk ikun hemm, tal-kumpannija u dikjarazzjoni mill-kumpannija *nominee* li taġixxi bħala d-direttur wahdieni jew segretarju tagħha, li tiċċertifika li l-kumpannija tissodisfa l-kundizzjonijiet kollha ta' dan l-Att biex tkun tista' tiġi reġistrata bħala kumpannija *offshore*.

(3) Qabel ir-reġistrazzjoni ta' kumpannija *offshore* ta' barra minn Malta għandha ssir applikazzjoni lill-Awtorità fuq il-formola preskrittta jew fuq formola aċċettabbli għall-Awtorità u li tagħti dik

l-informazzjoni u dawk id-dettalji l-oħra partikolarment dwar kif u safejn il-kumpannija tkun fi hsiebha topera minn Malta, skond kif jista' jkun preskritt jew skond kif tkun tehtieg l-Awtorita'.

(4) Minkejja kull haġa li hemm fid-dispożizzjonijiet l-oħra ta' dan l-Att:

(a) kumpannija ma tiġix registrata bhala kumpannija *offshore* bankarja jew kumpannija *offshore* ta' l-assigurazzjoni kemm-il darba l-Awtorità ma tkunx sodisfatta li il-kumpannija hi kapaċi li tmexxi sew u tiflah għall-kummerċ li tkun ser tagħmel, li għandha ir-rizorsi finanzjarji għal dan il-ghan, u li żżomm dawn ir-rizorsi fl-attiv, u żżomm fejn ikun xieraq, margini ta' solvibilità kif normalment aċċettabbli.

(b) kumpannija li il-kummerċ tagħha hu, jew jinkludi, it-tmexxija ta' kumpannija *offshore* ta' l-assigurazzjoni *captive* ma għandiex tiġi registrata bhala kumpannija *offshore* kemm il-darba l-kumpannija ma tippruvax għas-sodisfazzjon ta' l-Awtorita' li għandha dik il-konoxxenza speċjali suffiċjenti u dik l-esperjenza Prattika suffiċjenti ta' l-impriza ta' l-assigurazzjoni biex tagħmilha bhala tali, u li hi assicurata b'mod xieraq u adekwat kontra r-responsabbilitajiet tagħha għal negliġenza u għemil hażin fit-tmexxija tan-negozju tagħha; u kull kumpannija bħal dik ma tibqax iktar kumpannija *offshore* jekk għal xi żmien ma tkunx hekk assicurata għal perjodu ta' aktar minn xahar jew jekk l-Awtorità tkun sodisfatta li l-kumpannija ma għadx għandha il-konoxxenza u l-esperjenza msemmija.

(5) Meta tkun sodisfatta li l-htiegiet kollha ta' dan l-Att għall-eżistenza tat-tip partikolari ta' kumpannija *offshore* li dwarha ssir applikazzjoni jkunu ġew moqdija, u li l-kumpannija tista' b'kull mod ieħor tiġi registrata kif jixraq, u wara li taċċerta li jkun thallas id-dritt xieraq, l-Awtorita' għandha tirreġistra l-kumpannija bhala kumpannija *offshore*, waqt li tindika t-tip tagħha, u toħroġ ċertifikat ta' reġistrazzjoni f'dak is-sens.

(6) L-Awtorità għandha żżomm reġistru tal-kumpanniji kollha reġistrati magħha taht dan l-artikolu, li jiddistingwi bejn id-diversi tipi ta' kumpanniji, u għandha ddaħhal f'dak ir-reġistru kull tibdil li jiġi avżat lilha u dawk il-materji l-oħra kollha li jkunu relevanti għal dawk il-kumpanniji.

(7) Meta kumpannija tieqaf milli tkun kumpannija *offshore* taht xi dispożizzjoni ta' dan l-Att, l-Awtorità għandha thassar l-isem ta' dik il-kumpannija mir-reġistru tagħha u l-kumpannija minnufih milli tkun reġistrata ma l-Awtorita':

Iżda l-eżenzjonijiet, il-privileġġi jew il-benefiċċji l-oħra kollha mogħtija jew permessi b'xi dispożizzjoni ta' dan l-Att lil kumpanniji *offshore* u d-diretturi u l-impjegati tagħhom ma jibqgħux isehhu minnufih malli l-kumpannija tieqaf milli tkun kumpannija *offshore*.

(8) L-Awtorità għandha, darba kull tlett xhur, tara li fil-Gazzetta u f'gurnal lokali li johroġ bl-Ingliż jiġi pubblikat l-isem ta' kull kumpannija li hija tkun irreġistrata bhala kumpannija *offshore* matul it-

tlett xhur ta' qabel u ghandha tippubblika wkoll kif imsemmi qabel l-isem ta' kull kumpannija li isimha jkun gie mhassar mill-imsemmi registru matul l-istess perjodu. L-Awtorità ghandha, barra minn hekk, tippubblika, kif imsemmi qabel, u mhux aktar tard mill-wiehed u tletin ta' Jannar ta' kull sena, lista tal-kumpanniji kollha li jkunu registrati magħha bhala kumpanniji *offshore* sal-wiehed u tletin ta' Diċembru tas-sena ta' qabel.

Registrazzjoni u drittijiet annwali.

25. (1) Id-drittijiet li għandhom jithallsu għar-registrazzjoni ta' kumpannija *offshore* u d-drittijiet li għandhom jithallsu ta' kull sena wara r-registrazzjoni għandhom ikunu dawk imsemmija fl-Ewwel Skeda ta' dan l-Att. Id-dritt annwali għandu jithallas ma' kull anniversarju tar-registrazzjoni tal-kumpannija.

(2) Kumpannija ma tibqax tkun kumpannija *offshore* jekk id-dritt annwali applikabbli għal dik il-kumpannija ma jithallasx fi żmien xahar mid-data li fiha jkun imiss jithallas:

Iżda dan is-subartikolu għandu jitqies li ma kellu ebda effett jekk somma li tagħmel daqs mija u hamsin fil-mija ta' l-ammont dovut bhala dritt annwali tithallas lill-Awtorità mhux aktar tard minn sitt xhur mid-data li fiha dak id-dritt kien dovut.

Kumpannija li ma tibqax tkun kumpannija *offshore* minhabba f'attivitajiet illegali.

26. (1) Bla hsara għad-dispożizzjonijiet ta' l-artikoli 22 u 25 ta' dan l-Att, kumpannija ma tibqax tkun kumpannija *offshore* jekk ikollha dhul li jispetta lilha jew li taqla', li jorigina minn xi transazzjoni, operazzjoni jew attività oħra li tkun reat kriminali kontra l-liġi ta' Malta, jew li tkun offiża bħal dik jekk issir f'Malta, jew jekk tkun irċeviet jew ikollha fil-pussess jew kontroll tagħha flus jew proprjeta' oħra li l-fatt li tkun irċevejthom il-proprjeta' tagħhom, il-pussess jew il-kontroll tagħhom huwa jew ikun, reat bħal dak kif imsemmi qabel.

(2) Id-dhul, il-flus u l-proprjeta' l-oħra kollha kif hemm imsemmi fis-subartikolu (1) ta' dan l-artikolu ikunu suġġetti għal konfiska u jiġu konfiskati favur il-Gvern u jsiru l-proprjeta' assoluta tiegħu.

Applikazzjoni ta' l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali.

27. (1) L-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali (hawnhekk iżjed 'il quddiem imsejha "l-Ordinanza") għandha, għar-rigward ta' kumpannija *offshore*, ikollha seħh suġġett għad-dispożizzjonijiet li ġejjin ta' dan l-artikolu kif dawn japplikaw jew ġeneralment jew għal kumpannija *offshore* partikolari jew għal tipi partikolari ta' kumpanniji *offshore*; u għall-finijiet ta' dan l-artikolu, l-espressjoni "kumpannija *offshore*" tinkludi kumpannija li tkun qed tiġi fformata li meta tiġi registrata taht dan l-Att tkun kumpannija *offshore*.

(2) L-artikolu 5 ta' l-Ordinanza m'għandux japplika.

(3) L-artikolu 68 ta' l-Ordinanza għandu japplika bla hsara għad-dispożizzjonijiet li ġejjin ta' dan is-subartikolu:—

(a) il-paragrafu (a) tiegħu għandu japplika għal kumpannija *offshore* mhux kummerċjali bħallikieku kien hemm miżjud miegħu dan il-proviso li ġej:—

“Izda l-*memorandum* jista’ jiġi sottoskritt minn kumpannija *nominee* jew minn kumpannija *nominee* bħala nominatorji ta’ persuni kwalifikati li jkollhom azzjonijiet fil-kumpannija izda biss jekk il-*memorandum* ikun fih dikjarazzjoni mill-kumpannija jew mill-kumpannija *nominee* li jissottoskrivu l-*memorandum* illi l-persuni kollha li għalihom ikunu qed jaġixxu jkunu persuni kwalifikati li jkollhom azzjonijiet fil-kumpannija”;

(b) il-paragrafu (e) tiegħu għandu jfittiehem li jirrikjedi li l-kapital azzjonarju tal-kumpannija jiġi espress u mħallas fi flus barranin u jiġi diviż f’azzjonijiet f’dak is-sens;

(ċ) il-paragrafu (f) tiegħu għandu japplika għal kumpannija *offshore* mhux kummerċjali bhallikieku kien hemm miżjud miegħu dan il provizo li ġej:—

“Izda l-*memorandum* jista’ jsemmi l-isem u l-kunjom ta’ wiehed biss jew aktar ta’ l-ewwel diretturi tal-kumpannija u f’kull każ bħal dan, u sakemm jiġu żvelati l-ismijiet tad-diretturi l-oħra tal-kumpannija li, jzommu l-kariga minn żmien għall-żmien, id-dispożizzjonijiet ta’ din l-Ordinanza għandhom japplikaw bhallikieku d-direttur jew id-diretturi li isimhom jiġi żvelat kienu l-uniku direttur jew l-uniċi diretturi tal-kumpannija”;

(d) l-artikolu għandu japplika bhallikieku l-*memorandum* kien ukoll mehtieg li jgħid l-isem ta’ l-ewwel kumpannija *nominee* li taġixxi bħala segretarju tal-kumpannija *offshore* kull meta dik il-kumpannija tkun mehtieġa li jkollha dak is-segretarju skond is-subartikolu (2) ta’ l-artikolu 22 ta’ dan l-Att.

(4) L-artikolu 70 ta’ l-Ordinanza għandu japplika sugġett għall-limitazzjonijiet li jinsabu fl-artikoli ta’ qabel ta’ din it-Taqsima ta’ dan l-Att dwar l-għanijiet ta’ kumpannija *offshore*.

(5) L-artikolu 74 ta’ l-Ordinanza għandu japplika bhallikieku jirrikjedi wkoll li —

(a) l-kumpannija tkun reġistrata ma’ l-Awtorita’ taht dan l-Att qabel ma tkun tista’ tibda attivita’ tagħha; u

(b) r-Registratur jistqarr fiċ-ċertifikat maħruġ minnu illi l-kumpannija tkun hekk biss tista’ tibda l-attivita’ tagħha:

Izda għar-rigward ta’ kumpannija li għaliha japplika l-proviso li hemm għall-paragrafu (d) tas-subartikolu (4) ta’ l-artikolu 22 ta’ dan l-Att, l-artikolu 74 ta’ l-Ordinanza għandu japplika bhallikieku kien ukoll jirrikjedi biss li l-kumpannija tkun reġistrata taht dan l-Att qabel ma tkun tista’ tkompli l-attivita’ tagħha bħala kumpannija *offshore* taht dan l-Att.

(6) L-artikolu 77 ta’ l-Ordinanza ma għandux jfittiehem li jimpedixxi, jew li jipposponi s-seħh ta’, it-tnaqqis tal-kapital azzjonarju ta’ kumpannija *offshore* mhux kummerċjali bil-fidwa ta’ azzjonijiet imħallsa għal kollox bil-hlas mill-kumpannija lid-detentur tagħhom ta’ ammont li jkun daqs il-valur nett ta’ l-attiv ta’ dawk l-azzjonijiet; u l-fidwa ta’ dawk l-azzjonijiet kif intqal qabel tista’ ssir jekk jinkonkorru dawn il-kondizzjonijiet li ġejjin —

(a) il-*memorandum* u l-istatut tal-kumpannija jkunu ġew osservati u mharsa;

(b) il-kumpannija tkun, wara l-fidwa, f'pożizzjoni li tkopri d-djun tagħha;

(ċ) il-valur ta' l-azzjonijiet mhux mifdiya ma jitnaqqasx bhala riżultat tal-fidwa; u

(d) l-azzjonijiet, darba li jkunu ġew mifdiya, ma jagħtu ebda jedd ta' votazzjoni jew jeddijiet oħra hlief u sakemm jinħarġu mill-ġdid.

(7) L-artikolu 102 ta' l-Ordinanza għandu japplika bhallikieku kien hemm miżjud miegħu dan il-proviso li ġej:—

“Iżda wkoll, l-istatut ta' kumpannija *offshore* mhux kummerċjali jista' jipprovdi għat-trasferiment ta' xi azzjoni fi jew obbligazzjoni tal-kumpannija b'kull mod imsemmi fl-istatut, jista' wkoll jipprovdi għat-trasferiment, b'dak il-mod u taht dawk il-kondizzjonijiet li jistgħu ikunu imniżżla fl-istatut, ta' xi azzjoni fi jew obbligazzjoni tal-kumpannija wara, jew li jkollhom seħħ wara, l-mewt ta' detentur ta' azzjonijiet jew ta' obbligazzjonijiet; u kull trasferiment bħal dak għandu jkun validu u effettiv u l-kumpannija għandha taġixxi fuqu, minkejja d-dispożizzjonijiet ta' xi liġi oħra ta' Malta jew ta' xi liġi personali li altrimenti tkun tapplika”.

(8) L-artikolu 128 ta' l-Ordinanza għandu japplika għas-segretarju ta' kumpannija *offshore* bhallikieku r-riferenzi għad-diretturi jinkludu riferenzi għas-segretarju tal-kumpannija .

(9) Id-dispożizzjonijiet ta' —

(a) il-paragrafu (b) ta' l-artikolu 126. u

(b) is-subparagrafi (ii) u (iii) tal-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 140 ta' l-Ordinanza,

ma għandhomx japplikaw għal kumpannija *offshore*; u d-dispożizzjonijiet ta' l-artikoli 139, 141, 143 u 144 ta' l-Ordinanza ma għandhomx japplikaw għal kumpannija *offshore* mhux kummerċjali.

(10) Id-dispożizzjonijiet ta' l-Ordinanza li japplikaw għall-istralċ ta' kumpannija għandhom japplikaw bla ħsara għad-dispożizzjonijiet li ġejjin ta' dan l-artikolu:—

(a) meta l-kumpannija jkollha bhala l-aħħar direttur wahdieni tagħha jew bhala l-aħħar segretarju tagħha kumpannija *nominee*, dik il-kumpannija *nominee* għandha tiġi maħtura bhala l-istralċjarju tagħha, iżda tkun sugġetta għat-tneħħija mil-kariga u li tiġi sostitwita bl-istess mod u fl-istess cirkostanzi bħal kull stralċjarju ieħor; u

(b) meta l-istralċjarju tal-kumpannija jkun il-kumpannija *nominee* kif intqal qabel, fiż-żmien meta l-kumpannija tkun ġiet finalment stralċjata —

(i) dikjarazzjoni mill-stralċjarju illi l-affarijiet tal-kumpannija jkunu ġew stralċjati għal kollox bl-approvazzjoni

tal-kumpannija f'laqgħa ġenerali tista' tiġi mgħoddija lir-Registatur minflok il-kontijiet u l-prospetti msemmijin fl-artikolu 158 ta' l-Ordinanza, u f'kull każ bħal dak id-dispożizzjonijiet ta' dak l-artikolu għandhom hekk japplikaw.

(ii) il-kotba u d-dokumenti kollha tal-kumpannija għandhom, minkejja d-dispożizzjonijiet ta' l-Ordinanza, jinżammu mill-istralċjarju li għandu hekk iżommhom għal perijodu ta' hames snin wara d-data li fiha l-kumpannija tkun giet imnehhija minn fuq ir-registru.

(11) L-artikolu 191 ta' l-Ordinanza għandu jiftiehem li jirrikjedi li r-Registatur iżomm il-kotba dwar kumpannija *offshore* separati minn dawk li jinżammu għar-rigward ta' kumpannija oħra.

(12) Għar-rigward ta' kumpannija *offshore* li tkun spiċċat bħala tali taht xi wiehed mid-dispożizzjonijiet ta' dan l-Att, l-Ordinanza għandha tapplika bħallikieku ipprovdiet ukoll illi, minkejja kull dispożizzjoni oħra tagħha —

(a) il-kumpannija għandha tiġi xolta minnufih malli l-kumpannija ma tibqax tkun kumpannija *offshore*;

(b) is-setgħat u l-funzjonijiet kollha mogħtija mill-Ordinanza lill-kumpannija f'laqgħa ġenerali jew lid-diretturi tagħha, inkluż, iżda bla preġudizzju għall-ġeneralità ta' dak li ntqal qabel in-nomina u t-tnehhija ta' stralċjarju, ikunu vestiti fi u jiġu eżerċitati mill-Awtorità, u d-dmirijiet ta' l-istralċjarju għandhom hekk jiftehmu.

28. (1) L-Att ta' l-1970 dwar il-Kummerċ Bankarju (f'dan l-artikolu msejjah "l-Att") għandu japplika għar-rigward ta' kumpannija *offshore* bankarja bla ħsara għal dawn id-dispożizzjonijiet li ġejjin ta' dan l-artikolu.

Applikazzjoni ta' l-Att ta' l-1970 dwar il-Kummerċ Bankarju għal kumpannija *offshore* bankarji

(2) Il-paragrafu (a) tas-subartikolu (6) ta' l-artikolu 4 ta' l-Att għandu japplika bħallikieku jirrekjedi hemm il-Ministru imsemmi li jaġixxi wara li jkun irċeva rakkomandazzjoni mingħand l-Awtorità u l-paragrafi (b) u (ċ) tiegħu ma għandhomx japplikaw.

(3) L-artikolu 5 ta' l-Att, hlief għas-subartikoli (1) u (5) tiegħu ma għandhomx japplikaw, u l-imsemmija subartikoli (1) u (5) ma għandhomx japplikaw għal kumpannija bankarja *offshore* ta' barra minn Malta.

(4) Il-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 6 ta' l-Att ma għandux japplika, u s-subartikolu (2) ta' dak l-artikolu għandu jiftiehem f'dak is-sens.

(5) L-artikolu 7 ta' l-Att għandu japplika kif ġej:

(a) il-paragrafu (a) tiegħu għandu japplika kemm jekk il-kumpannija *offshore* tkun jew ma tkunx bank kummerċjali; u għandu jiftiehem daqslikieku jeħtieġ li l-kumpannija ikollha kapital azzjonarju imhallas ta' mhux inqas minn miljun u hames mitt elf dollaru Amerikan jew l-ekwivalenti tiegħu fi flus barranin oħra: u

(b) il-paragrafu (b) tieghu ma ghandux japplika.

(6) L-artikoli 9 u 11 ta' l-Att ma ghandhomx japplikaw.

(7) L-artikoli 12 u 13 ta' l-Att ma ghandhomx japplikaw ghal kumpannija *offshore* bankarja ta' barra minn Malta jew kumpannija *offshore* bankarja sussidjarja.

(8) Il-paragrafu (b) tas-subartikolu (1) ta' l-artikoli 19 u 22 ta' l-Att ma ghandhomx japplikaw.

Applikazzjoni ta' l-Att ta' l-1981 dwar l-Impriża ta' l-Assigurazzjoni ghal kumpanniji *offshore* ta' l-assigurazzjoni

29. (1) L-Att ta' l-1981 dwar l-Impriża ta' l-Assigurazzjoni (f'dan l-artikolu msejjah "l-Att") ghandu japplika ghar-rigward ta' kumpannija *offshore* ta' l-assigurazzjoni bla hsara ghal dawn id-dispożizzjonijiet li ġejjin ta' dan is-subartikolu:

(2) Is-subartikolu (3) ta' l-artikolu 3 ta' l-Att ma ghandux japplika.

(3) L-artikolu 5 ta' l-Att ghandu japplika bla hsara ghad-dispożizzjonijiet li ġejjin ta' dan is-subartikolu:

(a) il-paragrafu (a) tas-subartikolu (1) tieghu, ghandu japplika bhallikieku minflok is-somma ta' żewġ miljun lira kien hemm sostitwit —

(i) fil-każ ta' kumpannija *offshore* ta' l-assigurazzjoni *captive* is-somma ta' mitejn u hamsin elf dollaru Amerikan, jew l-ekwivalenti taghhom f'xi flus barranin ohra; u

(ii) fil-każ ta' kumpannija *offshore* ta' l-assigurazzjoni ohra, is-somma ta' seba' mija u hamsin elf dollaru Amerikan, jew ekwivalenti taghhom f'xi flus barranin ohra;

(b) il-paragrafu (b) tas-subartikolu (1) tieghu ma ghandux japplikaw;

(c) il-paragrafu (a) tas-subartikolu (3) tieghu japplika bhallikieku jirikjedi li l-Ministri hemm imsemmi, li jaġixxi wara li jkun irċieva rakomandazzjoni mill-Awtorità; u

(d) il-paragrafu (b) tas-subartikolu (3) tieghu ma ghandux japplika.

(4) Is-subartikolu (1) ta' l-artikolu 6 ta' l-Att ma ghandux japplika ghal kumpannija *offshore* ta' l-assigurazzjoni ta' barra minn Malta, jew ghal kumpannija *offshore* ta' l-assigurazzjoni sussidjarja; is-subartikolu (3) ta' dak l-artikolu ghandu japplika ghal kumpannija *offshore* ta' l-assigurazzjoni ta' barra minn Malta, jew ghal kumpannija *offshore* ta' l-assigurazzjoni sussidjarja, biss safejn jirrikjedi li din taghti l-informazzjoni msemmija fih; u s-subartikolu (5) ta' dak l-artikolu ghandu japplika safejn huwa applikabbli in vista tad-dispożizzjonijiet ta' qabel ta' dan is-subartikolu.

(5) Is-subartikoli (2) u (4) ta' l-artikolu 6, l-artikolu 15 u l-artikolu 26 ta' l-Att ma ghandhomx japplikaw.

(6) L-artikoli 8, 9, 10, 11, 12, 13 u 14 ta' l-Att ma ghandhomx japplikaw ghal kumpannija *offshore* ta' l-assigurazzjoni ta' barra minn Malta jew ghal kumpannija *offshore* ta' l-assigurazzjoni sussidjarja.

(7) Il-paragrafi (b) u (ċ) tas-subartikolu (1) u l-paragrafi (b) u (ċ) tas-subartikolu (2) ta' l-artikolu 16 ta' l-Att ma ghandhomx japplikaw.

30. (1) L-Att ta' l-1948 dwar it-Taxxa fuq l-Income (f'dan l-artikolu imsejjah 'l-Att') u kull liġi oħra li tissostitwixxi dik il-liġi, ghandhom japplikaw ghal kumpannija *offshore* kummerċjali bla hsara ghad-dispożizzjonijiet tas-subartikoli (2) u (3) ta' dan l-artikolu.

Sa fejn japplika l-Att ta' l-1948 dwar it-Taxxa fuq l-Income ghal kumpannija *offshore*.

(2) It-taxxa li ghandha tithallas minn kumpannija *offshore* kummerċjali ghandha tkun bir-rata ta' hamsa fil-mija fuq l-income taxxabli tal-kumpannija, u ebda taxxa ma ghandha tithallas fuq —

(a) xi dividend (inklużi xi dividendi meqjusin bhala mqassmin) imqassma minn dik il-kumpannija;

(b) xi imghax jew *income* iehor imhallas minn dik il-kumpannija lil xi persuna li ma tkunx residenti f'Malta:

Izda, dan is-subartikolu, sa fejn huwa jeżenta l-income imsemmi fil-paragrafi (a) u (b) tieghu, ma ghandux japplika ghal kumpannija *offshore* lokali:

Izda wkoll it-taxxa li ghandha tithallas kif hemm provdut f'dan is-subartikolu ma ghandhiex tiġi mnaqqsa kemm bhala helsien mit-taxxa doppja jew xort'oħra, u ebda tpattija jew kreditu ma ghandhom isiru jew jinghataw dwar dik it-taxxa a favur ta' xi azzjonist jew persuna oħra li lilha jista' jkun dovut jew ikun thallas dividend jew hlas iehor eżentat mit-taxxa taht dan is-subartikolu.

(3) It-taxxa li ghandha tithallas kif provdut fis-subartikolu (2) ta' dan l-artikolu ghandha tiġi mposta fuq l-income kif dikjarat fil-prospett ta' l-income moghti mill-kumpannija lill-Kummissarju tat-Taxxi Interni taht l-Att, u l-Kummissarju ghandu, minkejja d-dispożizzjonijiet ta' dak l-Att, jaċċetta l-prospett bhala korrett u komplet, kemm-il darba ma jkollux raġuni tajba li jemmen xort'oħra u jkun jista' jipprova dak li jemmen ghas-sodisfazzjon tal-Bord ta' Kummissarji Speċjali u f'kull każ tali huwa ghandu jaġixxi skond kif hemm provdut fis-subartikoli (2) u (3) ta' l-artikolu 4 ta' dan l-Att qabel ma l-ħaġa tiġi riferita lill-imsemmi Bord ghad-deċiżjoni tieghu.

(4) Ebda taxxa ma ghandha tiġi mposta taht l-Att, jew taht xi liġi li tissostitwixxi dik il-liġi, fuq —

(a) l-income akkumulat jew derivat minn kumpannija *offshore* mhux kummerċjali;

(b) xi dividend (inklużi xi dividendi meqjusin bhala mqassmin) imqassam minn dik il-kumpannija;

(ċ) xi imghax jew *income* iehor imhallas minn dik il-kumpannija lil xi persuna li ma tkunx residenti f'Malta meta dak l-

imghax jew *income* iehor jithallas mill-profitti eżentati kif intqal qabel.

(5) Minkejja kull haġa li tinsab fid-dispożizzjonijiet ta' qabel ta' dan l-artikolu, kull taxxa mnaqqsa minn xi dividend jew imghax li jithallsu dwar azzjonijiet jew obbligazzjonijiet ta' kumpannija sussidjarja kif imsemmi fil-*proviso* għall-paragrafu (ċ) tas-subartikolu (2) ta' l-artikolu 22 ta' dan l-Att, ma tinghatax lura jew tkun xort'ohra sugġetta għal tpattija kontra t-taxxa.

(6) Kumpannija *offshore* għandha tkun eżentata mill-htigiet ta' l-artikolu 37A ta' l-Att.

(7) Ebda azzjonist, detentur ta' obbligazzjonijiet, depożitur jew persuna oħra interessata f'kumpannija *offshore* ma jkun mehtieg jagħmel jew jagħti xi prospett li altrimenti kien ikun dovut, jew legalment mehtieg, li jsir jew jinghata għall-finijiet ta' l-Att ghar-rigward tagħha.

(8) Bla hsara għall-generalità tad-dispożizzjonijiet ta' l-artikolu 38 ta' dan l-Att, il-proċedimenti kollha quddiem il-Bord ta' Kummissarji Speċjali jew tal-Qorti ta' l-Appell għall-finijiet ta' l-Att għandhom isiru *in camera* u l-htigiet ta' konfidenzjalità imposti b'dak l-artikolu għandhom jiġu osservati fi, u dwar, dawk il-proċedimenti, hlief sa fejn jista' jkun mehtieg li jsir xort'ohra għat-tmexxija kif jixraq ta' dawk il-proċedimenti.

(9) Ghar-rigward ta' kumpannija *offshore*, l-artikolu 68A ta' l-Att għandu japplika bħallikieku minnufih wara l-*proviso* għas-subartikolu (1) tiegħu kien hemm imdahhal dan il-*proviso* li ġej:

“Izda wkoll id-dispożizzjonijiet ta' l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta għandhom jipprevalu fuq id-dispożizzjonijiet ta' dan is-subartikolu u ta' xi arrangamenti magħmulin kif inghad qabel.”.

Eżenzjoni
mit-taxxa
tal-mewt u
tad-donazzjoni.

31. Ebda taxxa ma għandha tigi mposta taht l-Att ta' l-1973 dwar it-Taxxa tal-Mewt u tad-Donazzjoni, jew taht xi ligi oħra li tissostitwixxi dik il-ligi, fuq —

(a) xi azzjoni fi jew obbligazzjoni ta' kumpannija *offshore*;

(b) xi flus jew proprjetà oħra mqegħda ma' dik il-kumpannija bħala depożitu jew titolu iehor;

(ċ) xi hlas dovut jew magħmul minn xi kumpannija bħal dik,

meta dik l-azzjoni, obbligazzjoni, flus, proprjetà jew dak il-hlas ikun kompriż fi trasmissjoni taxxabli taht l-imsemmi Att u l-persuna li favur tagħha jsir it-trasmissjoni tkun persuna mhux domiciljata f'Malta.

Eżenzjoni
mit-taxxa
tal-boll.

32. Ebda taxxa ma għandha tigi mposta taht l-Att ta' l-1981 dwar it-Taxxa fuq Dokumenti jew taht xi ligi li tissostitwixxi dik il-ligi, fuq xi dokument dwar xi transazzjoni jew att iehor ta' kumpannija *offshore*, jew dwar xi azzjoni, *stock* jew proprjetà oħra tagħha, hlief għall-bejgħ jew trasferiment, fejn permissibbli taht dan l-Att, ta' xi proprjetà li persuna residenti f'Malta.

33. (1) Bla hsara ghad-dispożizzjonijiet tas-subartikolu (7) tal-artikolu 22 ta' dan l-Att, l-Att ta' l-1972 dwar il-Kontroll fuq il-Kambju u kull liġi li tissostitwixxi dik il-liġi ma ghandhomx japplikaw ghal kull haġa li ghandha x'taqsam mal-formazzjoni ta' kumpanija *offshore* jew ghal xi transazzjoni jew operazzjoni ta' jew li jkollha x'taqsam ma' kumpanija *offshore*, jew xi azzjoni fiha jew obligazzjoni taghha, hlief ghal transazzjonijiet jew operazzjonijiet maghmula ma' persuni residenti f'Malta.

Eżenzjoni mill-kontroll fuq il-kambju, dazju tad-dwana u kontribuzzjonijiet tas-sigurtà soċjali.

(2) Ghamara, taghmir u materjal ieħor mehtieġ minn kumpanija *offshore* u mpurtat f'Malta għall-użu u għall-iskop taghha nnifisha, u oġġetti personali wżati ta' xi uffiċjal jew impjegat tal-kumpanija, mhux residenti f'Malta, impurtati f'Malta mhux aktar tard minn sitt xhur minn meta tkun ittieddet residenza f'Malta, jistgħu jiġu hekk impurtati minghajr il-hlas tad-dwana;

Iżda dak id-dazju għandu jithallas fuq kull haġa li tiġi mpurtata minghajr il-hlas tad-dazju taht dan is-subartikolu jekk u meta dik il-haġa tinbiegh, tiġi assenjata jew mod ieħor tiġi trasferita lil persuna residenti f'Malta.

(3) Persuni mhux residenti f'Malta li jkunu uffiċjali jew impjegati ta' kumpanija *offshore*, u l-kumpanija li taghha jkunu dawk l-uffiċjali u impjegati, ikunu intitolati għall-eżenzjoni mid-dispożizzjonijiet ta' l-Att ta' l-1987 dwar is-Sigurtà Soċjali, u ta' xi liġi li tissostitwixxi dik il-liġi.

(4) Id-dispożizzjonijiet ta' qabel ta' dan l-artikolu għandhom japplikaw biss għar-rigward ta' transazzjonijiet, operazzjonijiet, hwejjeġ u persuni li jkunu rilevanti jew mehtieġa għall-ghanijiet li għalihom tiġi kostitwita kumpanija *offshore*, jew għat-tmexxija jew amministrazzjoni taghha.

34. (1) Meta dikjarazzjoni fuq il-formola murija fit-Tieni Skeda li tinsab ma' dan l-Att tkun ġiet sottomessa lill-Kummissarju tat-Taxxi Interni minn kumpanija *nominee* li tkun qed taġixxi bhala d-direttur jew segretarju wahdieni ta' kumpanija *offshore* mhux kummerċjali, la l-kumpanija *offshore* u lanqas xi persuna ohra li jkollha interess f'dik il-kumpanija ma jkunu mehtieġa jaghmlu jew jissottomettu xi prospett, informazzjoni jew dettalji ohra li altrimenti jistgħu ikunu legalment mehtieġa li jsiru jew li jiġu sottomessi għall-finijiet ta' l-Att ta' l-1948 dwar it-Taxxa fuq l-*Income*.

Dikjarazzjoni minflok prospett ta' taxxa.

(2) Meta proprjetà tkun b'din it-Taqsima ta' dan l-Att eżentata mit-taxxa taht l-Att ta' l-1973 dwar it-Taxxa tal-Mewt u tad-Donazzjoni ebda prospett ta' l-imsemmija proprjetà ma jkun mehtieġ li jsir taht l-imsemmi Att u lanqas tat-trasmissjoni taxxabli relattiva, jekk it-trasmissjoni ma tkun tinkludi ebda proprjetà ohra u ebda persuna residenti f'Malta ma tibbenefika taht dak it-trasmissjoni; u meta t-trasmissjoni tkun tinkludi proprjetà ohra jew kif imsemmi qabel persuna tibbenefika tahtha, il-prospett jista' jkun limitat għall-proprjetà suġġetta għat-taxxa.

Rimedji speċjali
ghal azzjonisti
jew diretturi
mhux żvelati
ta' kumpannija
offshore
mhux
kummerċjali.

35. (1) Persuna li tkun eżerċitat bhala avukat ghal mhux inqas minn seba' snin bla interruzzjoni tista', f'isem, iżda minghajr ma tiżvela l-isem ta', xi persuna jew persuni li hija tiddikjara li tkun jew li jkunu azzjonist jew azzjonisti, jew direttur jew diretturi, ta' kumpannija *offshore* mhux kummerċjali, jew fil-pożizzjoni tagħhom bhala tali jew bhala li jkunu jirrapprezentaw il-maġġoranza mehtieġa tal-kumpannija f'laqgħa ġenerali jew tal-Bord ta' diretturi għall-approvazzjoni ta' riżoluzzjonijiet jew deċiżjonijiet ohra dwar xi materja li tkun taqa' taht il-kompetenza jew setgħat tagħhom, tagħmel applikazzjoni lill-Qorti li fiha titlob xi ordni jew direttiva mill-Qorti li hija tista' tqis mehtieġa jew spedjenti; u l-Qorti, wara li tkun semgħet xi azzjonist jew direttur magħruf tal-kumpannija u l-kumpannija *nominee*, li taġixxi bhala d-direttur jew segretarju tagħha, u wara li tkun eżaminat dawk il-provi l-ohra li hija tista' tqis xierqa fiċ-ċirkostanzi, tista', jekk tara li jkun xieraq, tagħmel dik l-ordni jew tagħti dik id-direttiva li fil-fehma tagħha jkunu jitolbu ċ-ċirkostanzi.

(2) Kull ordni jew direttiva tal-Qorti taht dan l-artikolu għandha jkollha l-istess validità u effett bhala riżoluzzjoni kif xieraq mehuda mill-kumpannija f'laqgħa ġenerali jew deċiżjoni tal-bord ta' diretturi kif il-Qorti tista' tordna; u kull ordni jew direttiva bhal dik ma tistax tiġi revokata jew mibdula fuq applikazzjoni preżentata mill-applikant oriġinali jew minn persuna li jkollha l-istess kwalifiki u li tkun taġixxi bhala l-applikant oriġinali, jew minn xi persuna ohra interessata.

(3) Il-proċedimenti taht dan l-artikolu, hliet għall-ordni jew direttiva tal-Qorti u dawk il-partijiet tal-proċedimenti li l-Qorti tista' tqis bhala essenzjali li tiżvela, għandhom, flimkien ma' kull dokument jew informazzjoni ohra preżentata jew mogħtija u kull xhieda mismugħa għall-finijiet ta' dawk il-proċedimenti, jinżammu sigrieti u konfidenzjali minn kull persuna kkonċernata jew konnessa ma' l-imsemmija proċedimenti kif ukoll minn xi persuna ohra li xi haġa bhal dik tista' tiġi għal konjizzjoni tagħha l-atti ta' dawk il-proċedimenti għandhom jinżammu taht il-kustodja personali tar-registratur tal-Qorti; u d-dispożizzjonijiet ta' l-artikolu 38 ta' dan l-Att għandhom minghajr hsara għall-ġeneralità tad-dispożizzjonijiet tiegħu, japplikaw għal kull persuna li tiżvela jew li tagħmel tentattiv biex tiżvela lil xi persuna xi haġa li b'dan l-artikolu għandha tinzamm sigrieta u konfidenzjali.

Eżenzjoni
minn atti
kawtelatorji
u eżekuttivi.

Kap. 12.

36. (1) Ebda azzjoni fi jew obligazzjoni ta', u ebda dividend jew hlas iehor dovut minn, kumpannija *offshore*, u, hliet għall-fini, jew fl-eżekuzzjoni ta', sentenza mogħtija in segwitu ta' xi proċess imsemmi fis-subartikolu (3) ta' dan l-artikolu, ebda proprjetà ta' xi għamla li tkun tappertjeni lil dik il-kumpannija ma għandhom ikunu sugġetti għal xi att kawtelatorju jew eżekuttiv jew mandat kif hemm imsemmi fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(2) Ebda direttur jew uffiċjal iehor ta' kumpannija *offshore*, u ebda persuna li tkun membru ta' jew li jkollha interess f'xi kumpannija bhal dik, ma għandhom ikunu sugġetti għal xi att kawtelatorju jew eżekuttiv jew mandat kif intqal qabel dwar xi obligu jew responsabbiltà ohra tal-kumpannija:

Iżda dan is-subartikolu ma għandux japplika għal kumpannija *nominee* dwar xi obligu jew responsabbiltà li tinholoq minn xi dispożizzjoni ta' dan l-Att.

(3) Il-proċess imsemmi fis-subartikolu (1) ta' dan l-artikolu huwa jew —

(a) proċess biex jiġi nfurzat obbligu jew responsabbiltà oħra tal-kumpanija; jew

(b) proċess biex tiġi mehuda lura xi proprjetà akkwistata jew miżmuma mill-kumpanija, jew li mod ieħor tkun fil-pussess jew taħt il-kontroll tagħha, u li toriġina minn xi transazzjoni, operazzjoni jew attività msemmija fis-subartikolu (1) ta' l-artikolu 26 ta' dan l-Att.

(4) Minkejja d-dispożizzjonijiet ta' qabel ta' dan l-artikolu ebda mandat jew att ieħor ma għandu jinhareġ mill-qorti kemm-il darba l-applikant ma jkunx l-ewwel issodisfa lil qorti li l-mandat jew att ieħor jistgħu jinħarġu taħt dan l-artikolu.

37. Meta kumpanija *offshore* tkun attur f'xi kawża jew proċedimenti ġudizzjarji oħra, il-qorti li quddiemha jittiehdu l-proċedimenti tista', fuq it-talba tal-konvenut u jekk tkun sodisfatta li l-kumpanija tista' ma tkunx f'pożizzjoni li tħallas l-ispejjeż tal-konvenut jekk dawn jiġu deċiżi a favur tal-konvenut, titlob lill-attur li jagħmel dak id-depożitu bhala garanzija għall-ispejjeż skond kif ikun jidhrilha suffiċjenti għal dak il-ghan, u tista' twaqqaf il-proċedimenti sakemm tinghata l-garanzija.

Garanzija
tinghata
f'ċerti każi.

38. (1) It-transazzjonijiet u l-attivitajiet ta' kumpanija *offshore* huma ta' natura sigrieta u konfidenzjali u, hlief kif xort'oħra provdut b'dan l-Att, għandhom hekk jiġu trattati għall-finijiet kollha, magħduda finijiet tal-liġi, u għandhom ikomplu jkunu trattati hekk ukoll wara li l-kumpanija ma tibqax kumpanija *offshore* jew tkun giet imneħħija minn fuq ir-registru.

Konfidenzjalità
fuq materji u
hwejjeġ li
għandhom
x'jaqsmu
ma' kumpaniji
offshore.

(2) Għalhekk, bla hsara għal dak li jista' jkun essenzjalment meħtieġ għat-tmexxija normali ta' l-affarijiet tal-kumpanija *offshore* jew għal dak li jista' jkun essenzjalment meħtieġ għall-finijiet ta' dan l-Att jew permiss tahtu:

(a) ebda persuna ma għandha f'xi żmien tikkomunika jew tiżvela xi dokument, informazzjoni jew haġa oħra li jkollha x'taqsam ma' kumpanija *offshore* hlief lil uffiċjal jew membru ta' dik il-kumpanija li jkun intitolat li jirċievi dik il-komunikazzjoni, dokument jew informazzjoni;

(b) ebda persuna ma għandha f'xi żmien tkun meħtieġa tipproduċi jew tiżvela lil xi qorti, tribunal, bord, kumitat ta' inkjesta jew awtorità oħra xi dokument, informazzjoni jew haġa oħra li tiġi għall-konjizzjoni tagħha jew li tkun fil-pussess jew taħt il-kontroll tagħha għal xi raġuni tkun xi tkun, jekk dak id-dokument, dik l-informazzjoni jew materja jkollha x'taqsam ma' kumpanija *offshore*.

(3) Kull persuna li, hlief kif eċċettwat fis-subartikolu (2) ta' dan l-artikolu, f'xi żmien tikkomunika jew tiżvela, jew tagħmel tentattiv

biex tikkomunika jew tiżvela, xi dokument, informazzjoni jew materja oħra li jkollha x'taqsam ma' kumpannija *offshore* —

(a) tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux inqas minn elf u mhux aktar minn hamest elef lira, jew prigunerija għal żmien mhux aktar minn sentejn jew dik il-multa u prigunerija flimkien;

(b) għandha thallas lill-kumpannija penali ta' mhux inqas minn elf u mhux aktar minn għaxart elef lira skond kif il-qorti li ssib lil dik il-persuna hatja tista' tistabbilixxi u tordna; liema somma tingabar bhala dejn ċivili, u l-ordni tal-qorti tkun titolu eżekuttiv bis-saħħa ta' dan l-artikolu għall-għanijiet ta' dak il-ġbir.

(4) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr hsara għal xi azzjoni oħra li tkun kompetenti lill-kumpannija taht xi liġi oħra.

Kontinwazzjoni ta' kumpanniji.

39. (1) Bla hsara għad-dispożizzjonijiet li ġejjin ta' dan l-artikolu —

(a) korp magħqud, iffurmat u inkorporat jew registrat f'pajjiż li ma jkunx Malta, li jkun jixbah fl-għamla tiegħu lil kumpannija privata kif magħruf taht il-liġi ta' Malta u li, kieku kienet kumpannija bhal dik, kienet tikkwalifika li tiġi registrata bhala kumpannija *offshore* taht dan l-Att, tista' titkompla bhala kumpannija *offshore* taht l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali u taht dan l-Att; u

(b) kumpannija *offshore* registrata taht dan l-Att tista' titkompla bhala korp magħqud inkorporat u registrat taht il-liġijiet ta' pajjiż li ma jkunx Malta,

f'kull każ billi timxi skond id-dispożizzjonijiet li ġejjin ta' dan l-artikolu; u l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali għandha, għar-rigward ta' dawk il-korpi magħqudin jew kumpanniji *offshore*, ikollha seħħ konformament.

(2) Kontinwazzjoni kif hawn fuq imsemmija tista' ssir biss jekk ikun fis-setgħa ta' dik l-għaqda jew kumpannija *offshore* li hekk ikompli u l-kontinwazzjoni tkun approvata —

(a) fil-każ ta' korp barrani li jkun jixtieq ikompli bhala kumpannija *offshore* taht dan l-Att, b'dak il-mod, b'dak il-korp kostitwit u b'dik il-maġġoranza li tkun l-ekwivalenti, taht il-liġijiet tal-pajjiż ta' l-inkorporazzjoni jew registrazzjoni tiegħu u skond id-dokument li bih ikun kostitwit, ta' riżoluzzjoni straordinarja taht il-liġijiet ta' Malta; u

(b) fil-każ ta' kumpannija *offshore* li tkun tixtieq tkompli taht ġurisdizzjoni barranija b'riżoluzzjoni straordinarja tal-kumpannija.

(3) Meta l-kontinwazzjoni kif imsemmi qabel tintitola jew tirrikjedi lill-korp magħqud jew kumpannija *offshore*, skond il-każ, li

tifdi l-interess ta' persuni li ma jaqblux li l-approvazzjoni tagħhom tkun mehtieġa, dak l-interess jista' jiġi mifdi b'dawk il-patti li jista' jintlaħaq ftehim dwarhom jew skond kif il-qrati f'Malta jistgħu, fuq talba ta' parti jew ohra, jistabbilixxu.

(4) Il-kontinwazzjoni ta' korp magħqud barrani bhala kumpannija *offshore* f'Malta għandha ssehh permezz ta' dokument ta' kontinwazzjoni li jkun fih, b'żieda mad-dikjarazzjonijiet li jkollhom x'jaqsmu mal-kontinwazzjoni, l-ekwivalenti ta' *memorandum* u statut ta' kumpannija privata kif mehtieġ b'dan l-Att sabiex kumpannija tkun tista' tiġi reġistrata bhala kumpannija *offshore* taht dan l-Att skond ix-xorta ta' kumpannija *offshore* li fiha għandha titkompli, u li juri fih innifsu illi l-kontinwazzjoni tkun ġiet approvata skond kif hemm provdut fis-subartikolu (2) ta' dan l-artikolu.

(5) Il-konsenja tad-dokument ta' kontinwazzjoni lir-Registratur għandha, għall-finijiet kollha ta' l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali, tkun ekwivalenti għall-konsenja tal-memorandum u l-istatut ta' kumpannija bhallikieku kienet kumpannija li tkun trid tiġi reġistrata taht dan l-Att; u r-Registratur għandu hekk jittrattaha.

(6) Mar-reġistrazzjoni tagħha kif hemm provdut fis-subartikolu (5) ta' dan l-artikolu, u r-reġistrazzjoni tagħha taht dan l-Att, il-korp magħqud għandu jispiċċa milli jkun korp magħqud taht il-ġurisdizzjoni ta' qabel tiegħu u għandu jkompli l-eżistenza korporata tiegħu u jibqa' jzomm l-attiv, id-drittijiet u r-responsabbilitajiet kollha tiegħu bhala kumpannija xort'ohra reġistrata taht l-Ordinanza msemmija qabel u dan l-Att, u dik il-kontinwazzjoni għandu jkollha sehh minkejja kull haġa li tkun tinsab fil-liġi tal-ġurisdizzjoni tagħha ta' qabel.

(7) Il-kontinwazzjoni ta' kumpannija *offshore* bhala korp magħqud taht ġurisdizzjoni barranija ma għandhiex issir hlief jekk —

(i) dik il-kontinwazzjoni (jew proċess simili, magħduda konverżjoni) tkun permessa bil-liġi ta' dik il-ġurisdizzjoni barranija u skond dawk id-dispożizzjonijiet tagħha li jistgħu joħolqu dik il-kontinwazzjoni (jew proċess simili); u

(ii) dik il-kontinwazzjoni (jew proċess simili) thaddem il-kontinwità ta' l-eżistenza korporata tal-kumpannija *offshore* bhala, jew il-konverżjoni tagħha fi, għaqda korporata li tkompli żzomm jew li turet l-attiv, id-drittijiet u r-responsabbilitajiet kollha tal-kumpannija *offshore*.

(8) Minkejja d-dispożizzjonijiet ta' qabel ta' dan l-artikolu kumpannija *offshore* ma tieqafx milli tibqa' kumpannija suġġetta għall-ġurisdizzjoni Maltija sakemm ir-Registratur jirċievi avviż bil-miktub tal-kontinwazzjoni (jew proċess ieħor) magħmul kif imsemmi qabel u hlief jekk u sakemm, wara li jkun sodisfatt illi l-htigiet ta' dan l-artikolu ikunu ġew imharsa, huwa jkun irreġistra dik il-kontinwazzjoni u, b'konsegwenza ta' hekk u bis-saħħa ta' dan l-artikolu, ikun nehha l-isem tal-kumpannija minn fuq ir-reġistru.

Diretturi
u impjegati
mhux residenti
ta' kumpanniji
offshore.

40. (1) Kumpannija *offshore* kummerċjali tkun intitolata li timpjega individwu, nominat minnha, u ghal dan il-ghan li titlob li tinhariġlu liċenza taht l-Att ta' l-1970 dwar l-Immigrazzjoni; u dak id-dritt ikun eżerċitabbli sakemm il-kumpannija tibqa' reġistrata bhala kumpannija *offshore* ma' l-Awtorità.

(2) meta individwu li ma jkunx domiciljat f'Malta jew li, jekk hekk domiciljat, ma jkunx ordinarjament residenti fiha, ikun direttur jew impjegat ta' kumpannija *offshore*, l-*income* tiegħu jiġi ntaxxat bir-rati kontemplati fl-Att ta' l-1948 dwar it-Taxxa fuq l-*Income*, hekk illi kull rata ta' taxxa li tkun akbar minn 30 ċenteżmu ghal kull lira Maltija ghandha tiġi mnaqqsa ghal 30 ċenteżmu:

Iżda t-taxxa li tithallas minn xi individwu kif imsemmi qabel ma ghandhiex tkun inqas minn Lm1,000 fis-sena, jew *pro rata* ghal dik is-somma għall-perijodu tas-sena li fiha kien direttur jew hekk impjegat, hlief jekk l-ammont li jithallas minn dak l-individwu li kieku ma kienx ghad-dispożizzjonijiet ta' dan l-artikolu jkun ammont iżgħar, f'liema każ dak l-ammont iżgħar biss għandu jithallas.

Għażla ta'
eżenzjonijiet
u privileġġi.

41. (1) L-eżenzjonijiet, privileġġi u benefiċċji oħra mogħtija jew permessi minn xi dispożizzjoni ta' dan l-Att lil kumpannija *offshore* u d-diretturi jew impjegati tagħhom jiġu hekk mogħtija jew permessi bla hsara għall-għażla tal-persuna li favurha dawn ikunu hekk mogħtija jew permessi li ma tibbenifikax minnhom.

(2) Dik l-għażla tkun eżerċitata permezz ta' avviż bil-miktub lill-Awtorità fejn jiġu indikati l-eżenzjonijiet, privileġġi jew benefiċċji rinunzjati; u dik ir-rinunzja tkun indefinita u irrevokabbli.

TAQSIMA III

Kumpanniji Nominee

Kumpanniji
nominee u
kundizzjonijiet
għall-formazzjoni
tagħhom.

42. (1) Bla hsara għad-dispożizzjonijiet ta' dan l-Att, kull żewġ persuni jew aktar assoċjati bl-iskop li jeseġwixxu l-funzjonijiet ta' kumpannija *nominee* għar-rigward ta' kumpannija *offshore* jistgħu, billi jiffurmaw kumpannija taht il-liġi li tkun fis-sehħ f'Malta dak iż-żmien, u billi jharsu l-kundizzjonijiet ta' dan l-Att dwar il-formazzjoni ta' kumpannija *nominee*, jiffurmaw kumpannija *nominee*.

(2) Il-kundizzjonijiet għall-formazzjoni ta' kumpannija *nominee* huma li—

(a) il-kumpannija tkun kumpannija privata;

(b) l-ghanijiet tal-kumpannija jkun espressament limitati għall-attività bhala kumpannija *nominee* għar-rigward ta' kumpannija *offshore* għall-finijiet ta' dan l-Att, u għal hwejjeġ anċillari jew inċidentali għalihom:

Iżda meta kumpannija *nominee* tiġi stabbilita wkoll biex taġixxi bhala *trustee* ta' *offshore trust* taht l-Att ta' 1988 dwar l-*Offshore Trusts*, l-ghanijiet tagħha jistgħu ukoll jinkludu dak il-ghan.

- (c) l-isem tal-kumpannija jinkludi l-kelma “*Nominee*”;
- (d) il-kapital azzjonarju mahruġ tal-kumpannija ma jkunx inqas minn hamest elef lira;
- (e) il-kapital azzjonarju tal-kumpannija u xi setgha ta' votazzjoni jew kontroll fiha, la jkun direttament u lanqas indirettament, proprjetà ta' miżmum jew eżerċitabbli minn, jew vestit fi, persuna mhux residenti f'Malta f'ammont li fit-total jaqbeż erbgħin fil-mija;
- (f) id-diretturi tal-kumpannija ma jkunux inqas minn tlieta, li għall-inqas tnejn minnhom ikunu cittadini Maltin residenti f'Malta, li, għal perijodu mhux interrot ta' hames snin, ikunu xi persuna minn dawn li ġejjin:
- (i) persuna li tkun detentur ta' *warrant* ta' avukat taht il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili; jew
- (ii) persuna li tkun detentur ta' *warrant* ta' *accountant* pubbliku ċertifikat jew ta' *accountant* u uditur pubbliku ċertifikat taht l-Att ta' l-1979 dwar il-Professjoni ta' l-*Accountancy*; jew
- (iii) *associate* jew *fellow* taċ-*Chartered Institute of Bankers* jew tal-*Institute of Chartered Secretaries and Administrators* jew taċ-*Chartered Insurance Institute* tar-Renju Unit jew membru ta' istituzzjoni oħra bħal dik jew korp simili iehor rikonoxxut mill-Awtorità għall-finijiet ta' dan l-artikolu; jew
- (iv) persuna li tkun serviet bħal uffiċjal pubbliku fi grad mhux taht dak ta' assistent kap ta' dipartiment, jew f'pożizzjoni ekwivalenti ma' korp imwaqqaf b'liġi, jew li tkun xort'oħra konoxutta mill-Awtorità bhala persuna li tista' tiġi paragonata ma' xi persuna msemmija qabel;
- (g) ebda persuna li tkun instabet hatja ta' reat kontra d-dispożizzjonijiet ta' dan l-Att ma jkollha xi interess dirett jew indirett fil-kumpannija jew tkun membru jew direttur tagħha, u ebda persuna li, taht xi liġi oħra, mhix kwalifikata li tkun direttur ta' kumpannija ma jkollha dak l-interess jew tkun membru kif imsemmi qabel.

Att XXVIII ta' l-1979.

43. (1) Kumpannija *nominee* ma tistax tiffunzjona, u ma għandiex tiġi trattata bhala tali għall-finijiet ta' dan l-Att, kemm-il darba ma tkunx tippossjedi *warrant* mahruġ mill-Awtorità fis-seħh dak iż-żmien li jawtorizzaha biex tiffunzjona bhala tali għall-finijiet ta' dan l-Att.

Warrant biex kumpannija tiffunzjona bhala kumpannija *nominee*.

(2) Sabiex tikseb *warrant* mill-Awtorità il-kumpannija għandha tissottometti lill-Awtorità kopja ċertifikata tal-memorandum tagħha u ta' l-istatut tagħha, jekk ikun hemm, flimkien ma' dettalji dwar id-diretturi; u meta tkun sodisfatta illi l-htigiet ta' dan l-Att u ta' kull regoli jew regolamenti magħmulin tahtu jkun għew kollha mharsa u li d-dritt dovut ikun thallas, l-Awtorità għandha tohroġ *warrant* li jawtorizza lill-kumpannija biex tiffunzjona għall-ghanijiet ta' dan l-Att.

(3) L-Awtorità ghandha żzomm regjistru tal-kumpanniji kollha li lilhom ikun inhareġ *warrant* taht dan l-Att, u ddahhal fih kull bidla jew haġa oħra rilevanti għal dik il-kumpannija, b'mod partikolari indikazzjoni tad-diretturi u segretarji tal-kumpannija, u kull bidla fiha. L-Awtorità ghandha wkoll tara li fil-Gazzetta tiġi pubblikata lista tal-kumpanniji kollha li dak iż-żmien ikollhom *warrant* taht dan l-artikolu.

(4) Id-dritt li jithallas għall-hruġ ta' *warrant* taht dan l-artikolu għandu jkun mitejn u hamsin lira għall-ewwel hruġ ta' dak il-*warrant* u wara għandu jithallas id-dritt annwali ta' registrazzjoni ta' mitejn u hamsin lira li għandu jithallas m hux aktar tard mill-aħhar ta' Jannar ta' kull sena ta' wara.

Notifika ta' bidliet.

44. Kumpannija *nominee* ghandha tinnotifika lill-Awtorità b'kull bidla fil-memorandum jew fl-istatut tagħha u b'kull bidla fost id-diretturi tagħha u kull bidla bħal dik ma għandhiex ikollha effett hlief jekk u sakemm tiġi hekk notifikata.

Revoka ta' *warrant*.

45. *Warrant* mahruġ lil kumpannija taht l-artikolu 43 ta' dan l-Att għandu jkun revokabbli mill-Awtorità —

(a) jekk ikun hemm dik il-bidla fiċ-ċirkostanzi tal-kumpannija li, kieku dawn kienu jeżistu qabel il-hruġ tal-*warrant*, dak il-*warrant* ma kienx jinhareġ;

(b) jekk il-kumpannija tikkontravveni xi dispożizzjoni ta' dan l-Att u l-kontravvenzjoni tkun meqjusa mill-Awtorità bhala serja biżżejjed li tiġġustifika r-revoka tal-*warrant*;

(ċ) jekk il-kumpannija tonqos li thallas id-dritt annwali meta jkun imiss:

Iżda l-Awtorità ma għandhiex tirrevoka *warrant* kemm il-darba ma tkunx tat lill-kumpannija r-raġunijiet l-ghala l-*warrant* jista' jiġi revokat u l-opportunità li tagħmel oġġezzjonijiet u tispjega xi fatt li jkun allegat kontriha; u l-Awtorità tista' wkoll, kull meta l-att jew nuqqas ikun jista' jiġi rmedjat, thalli lill-kumpannija tiehu passi rimedjali f'dak il-perijodu ta' żmien u skond dawk il-kondizzjonijiet li l-Awtorità tista' tqis xierqa.

Funzjonijiet ta' kumpannija *nominee*

46. (1) Kumpannija *nominee* għandu jkollha funzjonijiet biss f'konnessjoni ma' u għall-finijiet ta' dan l-Att jew għall-finijiet ta' l-Att ta' l-1988 dwar l-*Offshore Trusts*, jew għall-finijiet ta' dawk iż-żewġ Atti, u dawk il-funzjonijiet l-oħra li jkunu anċillari jew inċidentali għalihom.

(2) Kumpannija *offshore* mhux kummerċjali tista' tiġi registrata ma l-Awtorità taht dan l-Att biss permezz ta' l-aġenzija tal-kumpannija *nominee* awtorizzata biex taġixxi bhala tali għar-rigward ta' dik il-kumpannija; u kumpannija *nominee*, kemm bhala direttur wahdieni jew bhala segretarju ta' kumpannija *offshore* mhux kummerċjali għandha, kemm jekk wahedha jew kif xort'oħra jista' jkun provdut fl-istatut tal-kumpannija, jkollha r-rappreżentanza legali u ġudizzjarja tal-kumpannija.

Dmirijiet ta' kumpannija *nominee*

47. (1) B'żieda mad-dmirijiet tagħhom bhala direttur jew segretarju ta' kumpannija *offshore*, skond il-każ, kumpannija *nominee*

tkun responsabbli lejn l-Awtorità li tassigura li d-dispożizzjonijiet ta' dan l-Att jiġu mharsa u osservati sew dwar jew mill-kumpannija *offshore* li tagħha tkun id-direttur waħdieni jew segretarju waħdieni.

(2) Kumpannija *nominee* jkollha d-dmir li tiehu dawk il-passi jew miżuri oħra li tkun tista' tiehu biex tassigura l-osservanza tal-liġi kif imsemmi qabel u biex tavża lill-Awtorità, minghajr dewmien, dwar xi att jew nuqqas, li jkollu x'jaqsam ma' jew mill-kumpannija *offshore* li tagħha tkun id-direttur waħdieni jew segretarju, waħdieni, li jkun b'kontravvenzjoni ta' xi dispożizzjoni ta' dan l-Att, jew xort'oħra offiċjali kriminali taħt il-liġijiet ta' Malta jew li kien ikun offiċja tali li kieku kellu jiġi kommess f'Malta.

(3) Kumpannija *nominee* jkollha wkoll d-dmir li taċċerta illi l-eżenzjonijiet mogħtija b'dan l-Att lil xi kumpannija *offshore* kif imsemmi qabel ikunu verament dovuti u li ma tkun teżesti ebda ċirkostanza li tirrendi dawk l-eżenzjonijiet inapplikabbli; u li tirraporta lill-Awtorità kull fatt jew ċirkostanza li tkun taf biha u li tkun tirrendi kull eżenzjoni bħal dik inapplikabbli jew xi taxxa jew dritt b'kull mod ieħor dovut.

(4) Kumpannija *nominee* għandha, barra minn hekk, tagħmel u tikkonsenja, mhux aktar tard mill-aħhar ta' Jannar ta' kull sena, rapport lill-Awtorità iffirmit minn żewġ diretturi tal-kumpannija u magħmul dwar is-sena ta' qabel, li fih tghid li l-kumpannija aċċertat mill-aħjar li setgħet li l-kumpannija *offshore* li tagħha tkun id-direttur waħdieni jew is-segretarju tkun issodisfat il-kundizzjonijiet kollha meħtieġa b'dan l-Att sabiex il-kumpannija tibqa' kumpannija *offshore*, u illi ma tkun teżesti ebda ċirkostanza li tkun tirrendi l-eżenzjonijiet u privileġġi oħra mogħtija b'dan l-Att inapplikabbli għar-rigward ta' dik il-kumpannija.

48. Meta b'dan l-Att jew b'xi liġi oħra jkun dovut it-twertieq, ħarsien jew osservanza ta' obbligu jew dmir minn kumpannija *nominee* bħala d-direttur waħdieni jew segretarju ta' kumpannija *offshore*, dak l-obbligu jew dmir għandu jiġi wkoll imwettaq, imħares jew osservat minn kull direttur jew uffiċjal ieħor tal-kumpannija *nominee*, skond il-każ; u kull tali direttur jew uffiċjal ieħor:

Pożizzjoni ta' diretturi u uffiċjali ta' kumpannija *nominee*.

(a) għandu jkun personalment responsabbli, *in solidum* mad-diretturi jew uffiċjali oħra u mal-kumpannija, għal xi nuqqas jew xi att magħmul bi ksur ta' xi dispożizzjoni ta' liġi dwar l-obbligi u d-dmirijiet imsemmija qabel; u

(b) meta n-nuqqas, jew att kif imsemmi qabel ikun offiċja kriminali, jehel meta jinstab hati l-pieni stabbiliti għal dik l-offiċja.

49. (1) Meta kumpannija *nominee* tkun is-segretarju ta' kumpannija *offshore*, għandha tkun responsabbli *in solidum* mad-diretturi tal-kumpannija għall-qadi tad-dmirijiet kollha ta' dawk id-diretturi għar-rigward tat-thejjija, preżentazzjoni jew sottomissjoni ta' xi prospett, stqarrija, dikjarazzjoni jew xi haġa oħra meħtieġa minn xi dispożizzjoni ta' liġi, u għall-osservanza ta' xi dmir tad-diretturi li jagħtu xi informazzjoni li legalment tkun meħtieġa minnhom.

Dmirijiet oħra ta' kumpannija *nominee* bħala segretarju ta' kumpannija *offshore*.

(2) Meta kumpannija *nominee* tkun id-direttur wahdieni ta' kumpannija *offshore* mhux kummerċjali jew is-segretarju taghha, ghandha, bla hsara ghal xi dmir iehor li tista' tkun responsabbli ghalih:

(a) iżżomm dokumentazzjoni ta' l-azzjonisti effettivi, detenturi ta' obligazzjonijiet u diretturi kollha tal-kumpannija kemm jekk żvelati jew le, kif ukoll tat-tibdil rilevanti fihom;

(b) tipprovdi lill-membri tal-kumpannija b'dik l-informazzjoni li tista' tkun mehtiega biex turihom il-qagħda vera ta' l-affarijiet tal-kumpannija, u partikolarment b'kull informazzjoni li tkun raġonevolment mistennija li taffettwa dik il-qagħda.

(3) Jekk il-kumpannija *nominee* tirriżenja, jew tigi mnehhija mill-kariga taghha, kemm bhala direttur wahdieni jew bhala segretarju ta' kumpannija *offshore*, hija ghandha tirraporta bla dewmien dak il-fatt lill-Awtorità, u meta dik ir-riżenja jew tnehhija mill-kariga tkun minhabba xi irregolarità serja kommissa minn jew dwar il-kumpannija jew xi direttur taghha, il-kumpannija *nominee* il-kumpannija ghandha tagħmel rapport lill-Awtorità fejn tiddikjara l-fatti kif ikunu magħrufa minnha.

(4) Kumpannija *nominee* ghandha wkoll tavża bla dewmien lill-Awtorità bil-miktub kull meta tkun tal-fehma illi kumpannija *offshore* li taghha tkun jew kienet l-aħhar direttur wahdieni jew segretarju tkun ġiet abbandunata jew ma jkollha ebda diretturi fil-kariga.

Pieni ghal
stqarrijiet,
dikjarazzjonijiet
foloz eċċ.

50. Jekk kumpannija *nominee* jew xi direttur jew uffiċjal taghha, xjentement jew b'negligenza:

(a) tagħmel stqarrija jew dikjarazzjoni mhux korretta jew falza, jew idahhal xi haġa falza jew mhux korretta fi prospett, dikjarazzjoni jew stqarrija, magħmula, imhejjija jew mibghuta ghal xi fini ta', jew, skond xi dispożizzjoni ta' dan l-Att; jew

(b) taghti xi informazzjoni jew twegiba mhux korretta jew falza dwar jew skond xi dispożizzjoni bhal dik; jew

(ċ) thejji jew iżżomm xi dokumentazzjoni jew dokumenti mhux korretti jew foloz, jew tghin jew tassisti xi persuna ohra biex tagħmel hekk,

il-kumpannija, u kull direttur jew uffiċjal iehor taghha, tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux inqas minn elf u mhux aktar minn ghaxart elef lira, jew ghal prigunerija ghal żmien ta' mhux aktar minn tliet snin, jew ghal dik il-multa u prigunerija flimkien.

Stralé ta'
kumpannija
nominee.

51. (1) Meta kumpannija *nominee* tkun ġiet xjolta hija ma tibqax taġixxi bhala direttur wahdieni jew segretarju ta' kumpannija *offshore* u d-diretturi taghha ghandhom, qabel ma jhallu l-kariga taghhom, jikkomunikaw il-fatti lill-kumpannija li taghhom il-kumpannija *nominee* tkun id-direttur wahdieni jew segretarju; u malli jiġi mahtur stralċjarju dan ghandu —

(a) bla dewmien igharraf lill-Awtorità bil-fatt li l-kumpannija tkun se tigi stralċjata:

(b) jaċċerta illi l-Awtorità jkollha d-dettalji shah tal-kumpannija *offshore* li tagħhom il-kumpannija li tkun qed tiġi stralċjata tkun direttur jew segretarju, skond il-każ;

(ċ) jagħmel dak kollu li jkun mehtieg, jew li l-Awtorità tista' tehtieg jew tordna, għall-finijiet ta' kull xi dispożizzjoni ta' dan l-Att;

(d) jzomm lura milli finalment jistralċja l-kumpannija sakemm tinghata approvazzjoni mill-Awtorità għal dak l-istralċ finali.

(2) Kull persuna li tonqos li tħarres xi dispożizzjoni ta' dan l-artikolu tehel meta tinsab hatja multa ta' mhux inqas minn mitt lira u mhux iżjed minn hames mitt lira.

(3) Meta kumpannija *nominee* tkun se tiġi xjolta, l-istralċjarju ma għandux jiġi mahtur flief bl-approvazzjoni bil-miktub ta' l-Awtorità; u l-Awtorità għandha, barra minn hekk, ikollha s-setgħa li tahtar, tneħhi jew tissostitwixxi l-istralċjarju.

(4) Minkejja d-dispożizzjonijiet ta' l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali, il-kotba u d-dokumenti ta' kumpannija *nominee* li tkun ġiet stralċjata għandhom jinżammu mill-istralċjarju li għandu jzommhom għal perijodu ta' hames snin wara d-data li fiha l-kumpannija tkun ġiet imneħhija minn fuq ir-registru u għandhom imbagħad jiġu distrutti.

TAQSIMA IV

Dispożizzjonijiet Ġenerali

52. (1) Il-Ministru jista', fuq il-parir ta' l-Awtorità, jagħmel regolamenti jew regoli għall-eżekuzzjoni ahjar ta' xi dispożizzjonijiet ta' dan l-Att, u jista', partikolarment, iżda bla hsara għall-ġeneralità ta' dak li ntqal qabel, b'xi regolamenti jew regoli bħal dawk:

Setgħa biex isiru regolamenti jew regoli.

(a) jipprovdi biex isiru jew jinghataw prospetti, dikjarazzjonijiet, u avvizi għal xi fini ta' dan l-Att, u l-forma u l-kontenut tagħhom;

(b) jirregola l-imġieba, dmirijiet u obbligi ohra ta' kumpanniji *nominee*, inklużi l-prospetti, dikjarazzjonijiet u informazzjoni ohra li huma għandhom jissottomettu lill-Awtorità, u jistabilixxi l-ammont massimu li, minkejja xi dispożizzjoni ta' dan l-Att, jista' jintalab bħala drittijiet minn dawk il-kumpanniji;

(ċ) jeżenta jew jipprovdi għall-eżenzjoni ta' xi klassi jew klassijiet ta' kumpanniji *offshore* bankarji jew ta' l-assigurazzjoni minn xi dispożizzjonijiet ta' l-Att ta' l-1970 dwar il-Kummerċ Bankarju jew ta' l-Att ta' l-1981 dwar l-Impriża ta' l-Assigurazzjoni, skond kif ikun jehtieg il-każ, bla hsara għal dawk il-kondizzjonijiet li jistgħu ikunu speċifikati jew li jkun hemm provdut għalihom fir-regolamenti magħdudin kundizzjonijiet li jkunu jikkonsistu fl-applikazzjoni ta' l-imsemmija dispożizzjonijiet

b'dawk it-tibdiliet li jistghu jkunu speċifikati jew provdut ghalihom kif inghad qabel;

(d) ibiddel xi drittijiet stabbiliti b'xi dispożizzjoni ta' dan l-Att, u jemenda xi dispożizzjoni tali f'dak is-sens biex jiġi rifless tibdil fl-gholi tal-hajja jew fil-valur ta' flus, u jistabbilixxi dawk id-drittijiet ohra skond kif jitqies xieraq dwar kull haġa li ghalha ma hemmx provdut dritt b'dan l-Att:

Izda ebda bidla ta' xi drittijiet ma ghandha jkollha sehħ qabel ma tkun ghaddiet sena mill-pubblikazzjoni ta' dik il-bidla fil-Gazzetta;

(e) jaghmel regoli tal-qrati għal xi fini ta' dan l-Att u tal-proċeduri tahtu, biex b'dawk ir-regoli jipprovdi għal xi haġa msemmija fl-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili; u

(f) jippreskrivi kull haġa li tista' jew li tkun trid tiġi preskritta.

(2) Regolamenti, regoli, u ordnijiet magħmula taht xi dispożizzjoni ta' dan l-Att, jistghu isiru bl-ilsien Inġliż biss.

Garanzija ta' eżenzjonijiet.

53. (1) Ir-registrazzjoni ta' kumpannija *offshore* taht dan l-Att ghandha tikkostitwixxi kuntratt bejn il-Gvern u l-kumpannija li jiggarrantixxi il-jeddijiet u l-eżenzjonijiet u privileġġi ohra dovuti kif provdut b'dan l-Att, sugġett biss għall-osservanza li ghandha tinghata lid-dispożizzjonijiet kollha ta' dan l-Att.

(2) Il-garanzija mogħtija mis-subartikolu (1) ta' dan l-artikolu ghandha tapplika wkoll kontra azzjoni retrospettiva, sew jekk b'leġislazzjoni jew xort'ohra, li tista' tannulla xi jeddijiet, eżenzjonijiet jew privileġġi hekk garantiti.

(3) Il-garanzija mogħtija bis-subartikolu (1) ta' dan l-artikolu ghandha ssehħ għal perjodu ta' għaxar snin mill-ħruġ taċ-ċertifikat ta' registrazzjoni.

Proċedimenti kriminali.

54. (1) Ebda proċedimenti għal reat taht dan l-Att ma ghandhom jinbdeu mingħajr is-sanzjoni ta' l-Avukat Ġenerali.

(2) Id-dispożizzjonijiet ta' dan l-Att ma ghandhomx jolqtu xi proċedimenti kriminali li jistghu ikunu kompetenti taht xi liġi ohra.

(3) Meta dwar xi reat kontra xi dispożizzjoni ta' dan l-Att, l-att jew nuqqas li jikkostitwixxi r-reat ikun jista' jiġi attribwit direttament lil persuna jew persuni li jkunu kjarament identifikabbli, u dik il-persuna jew dawk il-persuni jinsabu hatja ta' dak ir-reat, il-qorti ma tkunx meħtieġa tikkundanna wkoll xi persuna ohra jekk tkun sodisfatta illi dik il-persuna ma kellha ebda sehem fir-reat u li minhabba fl-imġieba tagħha jew ċirkostanzi ohra ma jkunx jisthoqqilha li tiġi kkundannata.

Emenda ta' l-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali.

55. L-Ordinanza ta' l-1962 dwar Soċjetajiet Kummerċjali ghandha tiġi emendata bis-sostituzzjoni, għall-artikolu 69 tagħha, ta' l-artikolu li ġej:

“Isem tal-kumpannija. 69. (1) Bla ħsara għad-dispożizzjonijiet ta’ dan l-artikolu, kumpannija tista’ tissejjaħ b’kull isem, iżda dak l-isem għandu jkollu l-kelma “*limited*” bħala l-aħħar kelma.

(2) Kumpannija ma għandhiex tiġi registrata b’xi isem li:

(a) ikun l-istess bħala isem ta’ kumpannija registrata oħra jew li jkun tant jixxiebaħ li fil-fehma tar-Registratur jista’ johloq konfużjoni; jew

(b) ikun fil-fehma tar-Registratur offensiv jew altrimenti sgradevoli; jew

(c) ikun ġie riservat għar-registrazzjoni ta’ kumpannija oħra wara avviż bil-miktub lir-Registratur mogħti mhux aktar kmieni minn tliet xhur qabel id-data tat-tieni rikjesta;

Iżda r-Registratur għandu jinnotifika b’kull rifjut taħt dan l-artikolu mingħajr dewmien lill-persuna li titlob ir-registrazzjoni.

(3) Kumpannija ma għandhiex tiġi registrata b’isem li jinkludi l-kelma “*nominee*” kemm-il darba ma tkunx kumpannija li tikkwalifika għar-registrazzjoni bħala kumpannija *nominee* taħt l-Att ta’ 1-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta’ Malta.

(4) Persuna jew persuni li jikkumerċjaw jew imexxu negozju jew attività oħra —

(a) taħt isem jew titolu li tiegħu il-kelma “*limited*” jew taqsis jew imitazzjoni ta’ dik il-kelma, tkun l-aħħar kelma u li ma tkunx l-isem ta’ kumpannija registrata kif imiss taħt din l-Ordinanza; jew

(b) taħt isem jew titolu li jkun fih il-kelma “*nominee*”, jew taqsis jew imitazzjoni ta’ dik il-kelma, u li ma tkunx l-isem ta’ kumpannija li jkollha *warrant*, li jkun fis-seħħ dak iż-żmien, maħruġ taħt l-Att ta’ 1-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta’ Malta, jew l-Att ta’ 1-1988 dwar l-*Offshore Trusts*, li jawtorizza lil dik il-kumpannija taġixxi bħala kumpannija *nominee* għall-finijiet ta’ dawk l-Atti.

tehel meta tinsab hatja l-pieni ta’ mhux inqas minn mitt lira u mhux iżjed minn hames mitt lira u piena oħra li ma tkunx iżjed minn għaxar liri għal kull ġurnata li fiha jitkompla r-reat.”.

L-EWWEL SKEDA

(Artikolu 25)

Drittijiet li Jithallsu minn Kumpanniji 'Offshore'

	MAR-REGISTRAZZJONI Lm	DRITT ANNWALI Lm
(a) Dwar kumpannija <i>offshore</i> bankarja —	25,000	25,000
(b) dwar kumpannija <i>offshore</i> ta' assigurazzjoni, li ma tkunx kumpannija <i>offshore</i> ta' l-assigurazzjoni <i>captive</i> —	5,000	5,000
(c) dwar kumpannija <i>offshore</i> ta' kummerç għall-investment kollettiv —	5,000	5,000
(d) dwar kumpannija <i>offshore</i> ta' l-assigurazzjoni <i>captive</i> —	1,000	1,000
(e) dwar kumpannija <i>offshore</i> ta' kummerç ġenerali hlief għal kumpannija imsemmija fil-paragrafu (c) hawn fuq —	1,000	1,000
(f) dwar kumpannija <i>offshore</i> mhux kummerçjali —	500	500

IT-TIENI SKEDA

(Artikolu 34)

Dikjarazzjoni minflok Prospett ta' Taxxa dwar Kumpannija 'Offshore' mhux Kummerçjali

Dikjarazzjoni mid-Direttur Waħdieni/Segretarju ta' Kumpannija *Offshore* Mhux Kummerçjali minflok Prospett ta' *Income* u ta' *Attiv Kapitali* taht l-Att ta' l-1948 dwar it-Taxxa fuq l-*Income*.

Sena ta' Stima

Ahna u
 tnejn mid-diretturi ta' il-kumpannija
nominee li *hija* *d-direttur waħdieni/segretarju* ta'
 *kumpannija offshore* mhux kummerçjali
 registrata taht l-Att ta' l-1988 dwar *Attivitajiet Kummerçjali Internazzjonali* ta' Malta (hawnhekk iżjed 'il quddiem imsejjaħ "l-Att") solennement u sinçerament niddikjaraw li ahna assigrajna ruhna mill-ahjar li stajna illi l-imsemmija kumpannija *offshore* tissodisfa l-kondizzjonijiet kollha mehtieġa bl-Att sabiex tkun tista' tibqa' kumpannija *offshore* mhux kummerçjali u biex ma jkollhiex taxxabbli l-*income* imsemmi fis-subartikolu (3) ta' l-artikolu 30 ta' l-Att kif hemm provdut f'dak l-artikolu, u li konsegwentement:

(a) L-imsemmija kumpannija *offshore* hija eżentata mill-hlas tat-taxxa fuq l-*income* għas-sena ta' stima

(b) il-membri ta' l-imsemmija kumpannija huma kollha persuni kwalifikati biex ikollhom azzjonijiet fil-kumpannija u ebda persuna hlief persuna kwalifikata ma għandha interess fil-kumpannija jew xort'ohra għandha setgħa ta' votazzjoni jew setgħa ohra ta' kontroll fil-kumpannija;

(ċ) l-imsemmija kumpannija mhix f'qagħda li ttitlef xi dritt, eżenzjoni jew privileġġ iehor mogħti bl-Att għal xi raġuni tkun xi tkun.

Ahna qegħdin nagħmlu din id-dikjarazzjoni b'għarfien shiħ tal-pieni stabbiliti bl-Att għal dikjarazzjonijiet inkorretti jew foloz.

Firma

Nru. tal-Karta ta' Identità

Professjoni

Indirizz

Datata

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 158 tat-2 ta' Novembru, 1988.

P. MUSCAT TERRIBILE
Skrivan tal-Kamra tad-Deputati

LAWRENCE GONZI
Speaker

MALTA INTERNATIONAL BUSINESS ACTIVITIES ACT, 1988

Arrangement of Sections

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART I — THE MALTA INTERNATIONAL BUSINESS AUTHORITY

3. Establishment of the Authority
4. Functions of the Authority
5. Distribution of the duties of the Authority
6. Composition of the Board of Governors
7. Meetings of the Board of Governors
8. Composition of Executive Committee
9. The executive and other staff of the Authority
10. Legal and judicial representation of the Authority
11. Confidentiality
12. Manner of exercise of functions by the Authority
13. Capital and financial provisions
14. Estimates and expenditure
15. Powers of the Authority
16. Advances by the Government
17. Determination and allocation of profits
18. Financial year
19. Audit
20. Annual accounts
21. Exemptions from taxes

PART II — OFFSHORE COMPANIES

22. Meaning of offshore companies
23. Types of offshore companies
24. Registration of offshore companies
25. Registration and annual fees
26. Company ceasing to be an offshore company for illegal activities
27. Application of the Commercial Partnerships Ordinance, 1962
28. Application of the Banking Act, 1970 to banking offshore companies
29. Application of the Insurance Business Act, 1981 to insurance offshore companies
30. Extent of application of the Income Tax Act, 1948 to offshore companies
31. Exemption from death and donation duties
32. Exemption from stamp duties
33. Exemptions from exchange control, customs duty and social security contributions
34. Declaration in lieu of tax return
35. Special remedies for undisclosed shareholders or directors of non-trading offshore companies
36. Exemption from precautionary and executive acts
37. Security to be given in certain cases

38. Confidentiality on matters relating to offshore companies
39. Continuance of companies
40. Non-resident directors and employees of offshore companies
41. Exemptions and privileges option

PART III — NOMINEE COMPANIES

42. Nominee companies and conditions for the formation thereof
43. Warrant to function as nominee company
44. Notification of changes
45. Revocation of warrant
46. Functions of a nominee company
47. Duties of nominee companies
48. Position of directors and officers of nominee companies
49. Other duties of nominee companies as secretary of offshore company
50. Penalties for false statements, declarations etc.
51. Winding up of nominee companies

PART IV — GENERAL PROVISIONS

52. Power to make regulations or rules
53. Guarantee of exemptions
54. Criminal proceedings
55. Amendment of the Commercial Partnerships Ordinance, 1962

SCHEDULES

FIRST SCHEDULE — Fees payable by offshore companies

SECOND SCHEDULE — Declaration in lieu of tax return in respect of a non-trading offshore company

I assent.

(L.S.)

PAUL XUEREB
Acting President

2nd December, 1988

ACT No. XXXIV of 1988

AN ACT to establish an Authority for International Financial and Trading Activities from within Malta, to regulate such activities and to provide for matters ancillary or incidental thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary

Short title
and
commencement.

1. (1) This Act may be cited as the Malta International Business Activities Act, 1988.

(2) This Act shall come into force on such date as the Minister responsible for the International Business Activities may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

Interpretation.

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

“the Authority” means the Malta International Business Authority established by section 3 of this Act;

“the Board” or “Board of Governors” means the Board of Governors of the Authority established by sections 5 and 6 of this Act;

“body of persons” means any company, fellowship, society or other association of persons, whether vested with legal personality or not;

“captive insurance offshore company” is an insurance offshore company which restricts its business of insurance to risks originating with companies being members of a group of companies, of which it is itself a member, and having one parent or holding company or with companies who are the sole shareholders of the insurance offshore company and their subsidiaries, and includes a company which is recognised by the Authority as a captive insurance offshore company;

“the Committee” or “the Executive Committee” means the Executive Committee of the Authority established by sections 5 and 8 of this Act;

“company” means a limited liability company duly formed and registered under the law for the time being in force in Malta, and includes a similar body corporate incorporated or registered abroad;

“the Court” means the Second Hall of the Civil Court;

“foreign currency” means convertible foreign currency and includes the European Currency Unit or ECU;

“international business activity” means an offshore activity;

“Minister” means the Minister responsible for international business activities;

“nominee company” means a company authorised to perform the functions of a nominee company under section 43 of this Act;

“offshore activity” means any business or other activity carried on from Malta in a foreign currency by persons and with persons not resident in Malta or with another offshore company or with an offshore trust:

Provided that the management or servicing of an offshore company by another company shall not be an offshore activity except where the activity consists in the management of captive insurance offshore companies caused to be formed and registered in Malta for the purposes of this Act by the company managing them and are so registered:

Provided further that business which may lawfully be carried on by a person resident in Malta with a foreign bank may, with the approval of the Authority, be carried on with a banking offshore overseas company or a banking offshore subsidiary company, and any business so done shall be an offshore activity;

“offshore company” has the meaning assigned to it by section 22 of this Act; and “banking offshore company”, “insurance offshore company”, “general trading offshore company” and “non-trading offshore company” have the meaning respectively assigned to them by section 23 of this Act;

“offshore local company” has the meaning assigned to it by subsection (5) of section 22 of this Act;

“offshore oversea company” has the meaning assigned to it by subsection (3) of section 22 of this Act;

“offshore subsidiary company” has the meaning assigned to it by subsection (4) of section 22 of this Act;

“offshore trust” has the meaning assigned to it by the Offshore Trusts Act, 1988;

“oversea company” has the meaning assigned to it by section 176 of the Commercial Partnerships Ordinance, 1962;

“person” includes a body of persons;

“prescribed” means prescribed by regulations made under this Act;

“property” means property of any kind or description, whether movable or immovable, personal or real, and wherever situated;

“qualified person”, in relation to a shareholder of or to a person having an interest in an offshore company, means a person not resident in Malta and references to a person qualified to be a shareholder or person having an interest as aforesaid shall be construed accordingly;

“register” includes any kind of record;

“Registrar” means the Registrar of Partnerships;

“resident in Malta” means:

(a) in the case of an individual, a person who is either ordinarily resident in Malta or is domiciled in Malta;

(b) in the case of a body of persons, any such body as is formed and registered in Malta, or which has its principal place of business in Malta, or which is controlled, directly or indirectly by a person or persons resident in Malta:

Act IX
of 1970.

Provided that an individual who resides ordinarily in Malta and is so entitled to reside by virtue of a residence permit issued under the Immigration Act, 1970, and the dependants of such person, shall be deemed not to be resident in Malta for the purposes of this Act:

Provided further that for the purposes of this Act a company which is itself an offshore company shall be deemed not to be resident in Malta.

(2) Any reference in this Act to any law or provision thereof, shall be construed as a reference to that law or provision as from time to time in force and shall include a reference to any enactment replacing such law or provision, and to any subsidiary legislation made thereunder.

(3) Words and expressions used in this Act with reference to another law shall, so far as necessary to give effect to this Act and consistently with the provisions thereof, have the same meaning as they have in the law with reference to which they are used in this Act.

(4) Any reference in this Act to a criminal offence committed abroad, or against the law of a country other than Malta, or to an act which if committed in Malta would be a criminal offence against the law of Malta, shall be construed as limited to offences which are extraditable for the purposes of section 5 of the Extradition Act, 1978. Act XVII of 1978.

(5) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

PART I

The Malta International Business Authority

3. (1) There shall be an authority, to be called the Malta International Business Authority. Establishment of the Authority.

(2) The Authority shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring and disposing of property of any kind for the purposes of its functions under this Act, of suing and being sued, and of doing all such things and entering into all transactions as are incidental or conducive to the exercise or performance of any of its functions aforesaid.

4. (1) Without prejudice to any other power or function conferred on it by this Act or by any other law, it shall be the function of the Authority — Functions of the Authority.

(a) to promote Malta as a centre for offshore activities;

(b) to assist bodies corporate and other entities and persons to establish offshore activities from within Malta;

(c) to assess and evaluate any proposed trading offshore activity;

(d) to monitor and supervise offshore activities to ensure that they are performed according to law and in particular that they are not carried out in such areas or manner as to serve the purposes of illicit activities, whether in Malta or abroad, or otherwise to be detrimental to the interests of Malta;

(e) to advise the Government generally on any of the matters mentioned in the foregoing paragraphs of this section.

(2) The Authority shall, notwithstanding any other law, be the centre and the channel wherein and through which all Ministries and

Departments of Government and all bodies or other authorities established by law, shall act in all matters, and in the exercise of all their powers, with respect to all offshore activities regulated by this Act and with respect to bodies and other persons who are registered, or who seek to be registered, for that purpose under this Act, as well as the centre and the channel through which any such body or other person shall apply for and obtain any permit, licence or other authorisation, or, any other thing they may require and through which they shall communicate with any of the authorities aforesaid. In particular, but without prejudice to the generality of the aforesaid, any investigation, inspection, or other similar act which any such authority may deem expedient to have carried out and any information such authority may require, for the purposes of any of its functions under the law, with respect to any offshore activity or body or person carrying out such activity, shall be carried out or obtained through the Authority.

(3) It shall be the duty of the Authority to carry out the functions conferred on it by subsection (2) of this section promptly and efficiently; and it shall be the particular duty of the Board of Governors to ensure that any act or thing to be done by the Executive Committee by virtue of the subsection aforesaid is done to the satisfaction of the ministry, department, body or other authority for which it is required to act; and if such authority is not so satisfied, or shows some other just cause, the function and powers thereof shall, with the approval of the Cabinet, be exercised directly by the authority concerned in any matter and in such manner as may be so approved.

Distribution
of duties
of the
Authority.

5. (1) The Authority shall consist of a Board of Governors and an Executive Committee.

(2) The Board of Governors shall be responsible for the policy to be adopted by the Authority and to be executed and pursued by the Executive Committee and to ensure that the Committee carries out those functions accordingly. In determining such policies the Board shall follow such policy guidelines as may be set out by Government. The Board shall also be responsible for advising the Government as provided in paragraph (d) of subsection (1) of section 4 of this Act, for advising the Minister under section 52 of this Act and for the grant of any warrant of recognition under this Act.

(3) The Executive Committee shall be responsible for the execution of the policy established by the Board and for carrying out all the functions of the Authority not attributed by this Act to the Board in accordance with that policy and subject to the general supervision of the Board.

(4) Neither the Board of Governors nor any individual member or members thereof shall have access to any information in the possession or under the control of the Authority relating to any person carrying on offshore activities under the provisions of this Act. Subject to the aforesaid, it shall be the duty of the Executive Committee to provide the Board with all such information as the Board may require for the proper performance of its functions, and in particular of its duty to ensure that its policies are being properly carried out.

6. (1) The Board of Governors shall consist of a Chairman, who shall also be the President of the Authority, and such number of other members as may from time to time be appointed of whom:

Composition
of the
Board of
Governors.

(a) two shall be senior public officers performing duties in the Ministry responsible for international business activities, and in the Ministry responsible for finance, respectively;

(b) one shall be a senior officer of the Central Bank of Malta;
and

(c) not more than three shall be selected from among persons who have distinguished themselves in business, industrial relations, financial activities, the professions, the public service or academic affairs.

(2) All the members of the Board referred to in subsection (1) of this section, shall be appointed by the Prime Minister.

(3) The members of the Board shall, unless their appointment terminates earlier, hold office for such term, being not more than five years, as may be specified in the letter of appointment, and shall be eligible for re-appointment.

(4) A person shall not be qualified to be appointed, or to hold office as, a member of the Board if he —

(a) is legally incapacitated; or

(b) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(c) has been convicted of a crime affecting public trust or theft or fraud or of knowingly receiving property obtained by theft or fraud; or

(d) has been convicted of an offence against this Act.

(5) A member of the Board may be relieved of office by the Prime Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and for the purposes of this subsection repeated and unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour.

(6) A member of the Board may also resign from office by letter addressed to the Prime Minister.

7. (1) The Board of Governors shall meet as often as may be necessary or expedient, but in no case less frequently than once every three months. The meetings shall be called by the Chairman either on his own initiative or at the request of any two of the other members.

Meetings
of the
Board of
Governors.

(2) The Board shall not act unless a quorum consisting of not less than four members is present.

(3) The meetings of the Board shall be chaired by the Chairman or, in his absence, by a member elected for the particular meeting by the other members present at that meeting.

(4) The decisions of the Board shall be taken by a majority of the votes of the members present and voting; and in the case of an equality of votes the member presiding at the meeting shall have and exercise a second or casting vote.

(5) The Chief Executive and the Deputy Chief Executive of the Authority shall be entitled to attend the meetings of the Board and to take part in the discussions, but shall have no vote.

(6) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(7) Subject to the foregoing provisions of this section the Board may regulate its own proceedings.

Composition
of Executive
Committee.

8. (1) The Executive Committee of the Authority shall consist of —

(a) the Chief Executive of the Authority, who shall also be Chairman of the Executive Committee;

(b) the Deputy Chief Executive of the Authority; and

(c) not more than three other members as may be appointed by the Board of Governors from among senior officers of the Authority.

(2) The provisions of section 7 of this Act shall, in so far as applicable, apply to the meetings of the Committee as they apply to the meetings of the Board, except that the quorum for the meetings of the Committee shall be three members.

(3) There shall also be a secretary to the Committee, appointed by the Committee with the approval of the Board, who shall also act as Secretary to the Board. It shall be the duty of the secretary to make the necessary preparations for the meetings of the Board and of the Committee and to keep minutes of those meetings.

The Executive
and other staff
of the
Authority.

9. (1) The Chief Executive and the Deputy Chief Executive of the Authority shall be appointed by the Board of Governors.

(2) The other officers and staff of the Authority shall be appointed or recruited by the Executive Committee on such terms and conditions, and in such numbers as the Committee may with the approval of the Board determine:

Provided that until the Executive Committee is constituted such appointments or recruitment shall be made by the Chief Executive with the approval of the Board.

(3) The provisions of subsection (2) of section 40 of this Act shall apply to any person on the staff of the Authority, or otherwise employed by it, who is not domiciled in Malta, or if so domiciled, is not ordinarily resident in Malta, as they apply to employees of offshore companies.

10. (1) The legal and judicial representation of the Authority shall vest in the Chief Executive:

Legal and judicial representation of the Authority.

Provided that the Committee may appoint any one or more of its officers or servants to appear in the name and on behalf of the Authority in any judicial proceedings or in any act, contract, instrument or other document.

(2) Any document purporting to be made or issued by the Authority and to be signed by the Chief Executive shall be received in evidence and shall, until the contrary is proved, be deemed to be made or issued by the Authority.

11. (1) The Authority shall deal with all documents and other information in its possession or under its control, or otherwise coming to its notice, concerning persons lawfully carrying on offshore activities under this Act, and all matters and things relating to such persons concerning their offshore activities, as secret and confidential, and shall not seek to identify the individuals or other persons having an interest in such lawful activities.

Confidentiality.

(2) The obligations imposed on the Authority by subsection (1) of this section shall extend to all the members of the Board of Governors and of the Executive Committee and to all officers and servants of the Authority; and the provisions of section 38 of this Act shall, without prejudice to the generality thereof, apply to each and every one of such persons.

(3) Except as may be essentially required for the purposes of this Act or as is permitted thereunder, no member, officer or servant as aforesaid shall be required to produce or divulge to any court, tribunal, board, committee of inquiry or other authority any document, information or other matter coming to his notice, or being in his possession or control for any reason whatsoever, which he is to treat as secret and confidential under this section.

12. (1) In the exercise of its functions under this Act, and in particular in carrying out any investigation to ensure that the provisions of this Act are being observed, or that no unlawful activities are being carried on, abetted or encouraged, or that any exemption or other privilege granted is not being abused, the Authority shall use such discretion as is compatible with its duty of confidentiality; but subject to the above, the Authority shall have power to do all such things and

Manner of exercise of functions by the Authority.

require such information as is necessary for the purposes of its functions.

(2) If in carrying out any investigation as is mentioned in subsection (1) of this section, the Authority finds that the investigations cannot be properly made unless information is obtained as to individuals, activities and other transactions or matters which need to be treated as confidential, the Authority shall cause such investigations to be conducted by the Court of Appeal in camera under an oath of secrecy taken by the judges constituting that Court before the investigation is commenced; and the Court of Appeal shall, with due urgency, carry out such investigations and make a report on its findings to the Authority, revealing only such facts, persons or other matters, as its findings show to be in contravention of, or to have contravened, the provisions of this Act, or to be or to have committed a criminal offence, whether in Malta or abroad, or which would be a criminal offence if committed in Malta, together with such material as will enable the authorities in Malta to take the appropriate steps in the circumstances; and for the purposes of any such action, anything disclosed by the Court of Appeal as aforesaid shall cease to be confidential and may be treated by the said authorities accordingly.

(3) In the exercise of its functions under this section the Court of Appeal shall have all the powers of that court in its ordinary jurisdiction.

Capital and
financial
provisions.

13. (1) A sum not exceeding five hundred thousand liri, which amount shall constitute the initial capital of the Authority, shall be paid by the Government to the Authority out of the Consolidated Fund, and this without further appropriation other than this Act, by warrant under the hand of the Minister responsible for finance authorising the Accountant General to make such payment:

Provided that only an amount of two hundred thousand liri shall become payable on the coming into force of this Act and the balance shall be paid as and when required by the Authority.

(2) The revenue of the Authority shall consist of:

(a) income from registration and other fees payable under this Act;

(b) rents, interests and profits accruing from property, deposits and other assets of the Authority;

(c) any other money receivable or received by the Authority.

Estimates and
expenditure.

14. (1) The Executive Committee shall cause to be prepared in respect of each financial year and shall not later than six weeks after the end of the previous year adopt estimates of the income and expenditure of the Authority for that financial year:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates the Authority shall endeavour to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its income and expenditure account, including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board may direct.

(4) A copy of the estimates shall, upon their adoption by the Executive Committee be sent forthwith to the Board.

(5) The Board shall not later than four weeks after the receipt of the estimates approve the same with or without amendments.

(6) No expenditure shall be made or incurred by the Authority unless it has been approved by the Board in accordance with subsection (5) of this section:

Provided that until the estimates are approved by the Board, the Authority may make or incur expenditure not exceeding the expenditure made or incurred during the corresponding period of the immediately preceding year:

Provided further that this subsection shall not apply in the first financial year of the Authority until the estimates for that year are approved by the Board.

(7) Notwithstanding the provisions of subsection (6) of this section if in respect of any financial year, it is found that the amount approved by the Board is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Executive Committee may adopt supplementary estimates for approval by the Board and, in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

15. (1) The Authority may:

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

(2) For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance,

Powers of the
Authority.

borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

Advances
by the
Government.

16. The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advances may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than the Act, by warrant under his hand authorising the Accountant General to make such advances.

Determination
and allocation
of profits.

17. (1) The Authority may establish a Reserve Fund to which may be appropriated surplus funds arising from its Income and Expenditure Account provided the said fund does not exceed at any time the initial capital of the Authority paid to it under section 13 of this Act.

(2) The surplus funds of the Authority for each financial year shall be determined after meeting all current expenditure for that year and after making such provisions, including provisions for contingencies, as it deems fit, and the appropriation referred to in subsection (1) of this section.

(3) After the allocations referred to in subsections (1) and (2) of this section have been made, the remainder of the surplus funds shall be paid to the Government.

Financial Year.

18. The financial year of the Authority shall begin on the first day of January and end on the thirty first day of December:

Provided that the first financial year shall begin at the date of commencement of this Act and shall end on the thirty first day of December of the following year.

Audit.

19. The accounts of the Authority shall be audited by auditors appointed by the Board from among persons who are qualified to be appointed as auditors of a company under the law for the time being in force in Malta, as if the Authority were such a company.

Annual accounts.

20. (1) The Board shall, as soon as may be but not later than three months after the close of each financial year, transmit to Parliament through the Minister:

- (a) a copy of the annual accounts certified by the auditors:
- (b) a report on its operations during the year.

Exemption
from taxes.

21. The Authority shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being in force.

PART II

Offshore Companies

22. (1) An offshore company is a company in which all the general conditions set out in subsection (2) of this section and any special conditions applicable to the particular type of offshore company, in particular those set out in section 23 of this Act, concur, or is a company to which subsection (3) or subsection (4) or subsection (5) of this section applies; and any such company shall remain an offshore company only if, and for so long as, the said general and special conditions continue to be satisfied or the said subsections (3), (4) or (5) continue to apply, as the case may be.

Meaning of offshore companies.

(2) The general conditions referred to in subsection (1) of this section are that the company —

(a) is a private company formed and registered under the law for the time being in force in Malta;

(b) has its objects expressly limited to offshore activities and to such other acts only as are necessary for its operations from Malta;

(c) does not own or otherwise hold, except on lease and for the purpose of its operations from Malta, any immovable property situated in Malta and does not own or otherwise hold any movable property situated in Malta other than deposits in bank accounts, furniture, equipment, material, documents and other property reasonably required by it for its operations from Malta;

Provided that an offshore company which is exclusively or mainly a holding company may hold shares in or debentures of a company formed and registered in Malta if the latter company is wholly owned by persons not resident in Malta, has as its main objects the manufacture or processing of goods in Malta and is a subsidiary of the said holding company;

(d) has no part of its capital or voting rights, or other controlling power, whether directly or indirectly, owned, held or exercisable by, or vested in, any person resident in Malta;

(e) has no person other than a nominee company as the nominee of any person who is the effective holder of any of its shares or debentures;

(f) has a nominee company either as its sole director or as its secretary;

Provided that a company of international repute, recognised as such by the Authority, being a manager of a captive insurance offshore company or a captive insurance offshore company, may be exempted by the Authority from complying with the provisions of this paragraph;

(g) is registered with the Authority as an offshore company under this Act and a certificate of registration is issued to it by the Authority;

(h) pays the registration and annual fees applicable to it when due.

(3) This subsection applies to an oversea company which —

(a) is a bank or a banking institution, or an insurance company, of international standing and repute and recognised as such by the Authority;

(b) intends, if registered under this Act, to establish, and does so establish a branch in Malta exclusively for offshore activities, and such other activities only which are necessary for its operations from Malta, and at all times effectively limits its operations accordingly;

(c) does not own or otherwise hold or control any property situated in Malta except as provided in paragraph (c) of subsection (2) of this section;

(d) is registered with the Authority as an offshore company under this Act and a certificate of registration is issued to it by the Authority;

(e) pays the registration and annual fees applicable to it when due;

and such a company is in this Act referred to as an “offshore overseas company”.

(4) This subsection applies to a private company which —

(a) is formed and registered under the laws for the time being in force in Malta for the purpose of carrying on exclusively the business of banking as a banking offshore company or the business of insurance as an insurance offshore company, as the case may be;

(b) is a subsidiary of a bank or a banking institution, or of an insurance company, as the case may be, of international standing and repute, and recognised as such by the Authority, provided the name of the subsidiary company includes the name of the holding company;

(c) has a name which on the face of it shows clearly that it is a subsidiary of its holding company, and is acceptable as such by the Authority;

(d) has no part of its capital or voting rights, or other controlling power, whether directly or indirectly owned, held or exercisable by, or vested in, any person resident in Malta;

Provided that this condition shall in the case of a company existing before the commencement of this Act and licensed to carry on the business of banking under the Banking Act, 1970, be deemed to be satisfied notwithstanding that part of its capital, being not more than twenty per cent thereof, is owned or held by a person resident in Malta.

(e) does not own or otherwise hold or control any property situated in Malta except as provided in paragraph (c) of subsection (2) of this section;

(f) is registered with the Authority as an offshore company and a certificate of registration is issued to it by the Authority;

(g) pays the registration and annual fees applicable to it when due;

and such a company is in this Act referred to as an “offshore subsidiary company”.

(5) This subsection applies to a private company which —

(a) is formed and registered under the law for the time being in force in Malta, for the purpose of carrying on exclusively the business of banking as a banking offshore company or the business of insurance as an insurance offshore company, as the case may be;

(b) is a subsidiary of a company formed and registered under the law for the time being in force in Malta which is itself in the case of a company formed to carry on the business of banking, licensed to carry on that business under the Banking Act, 1970 and, in the case of a company formed to carry on the business of insurance, licensed to carry on that business as principal under the Insurance Business Act, 1981;

Act V of 1970.

Act XVII of 1981.

(c) has no part of its capital or voting rights, or other controlling power, whether directly or indirectly owned, held or exercisable by, or vested in, any other person resident in Malta:

Provided that one person resident in Malta may hold such number of shares in the company as do not exceed in the aggregate one thousand liri in nominal value or one per cent of the share capital of the company, whichever is the smaller number of shares, if he is so authorised by the Minister responsible for finance;

(d) has the permission of the Minister responsible for finance, for the purpose of exchange control, to operate as a banking offshore company or as an insurance offshore company, as the case may require;

(e) is registered with the Authority as an offshore company, and a certificate of registration is issued to it by the Authority;

(f) pays the registration and annual fees applicable to it when due;

and such a company is in this Act referred to as an "offshore local company".

(6) For the purpose of this section any shares or stock in a company or other body corporate registered or incorporated abroad which is quoted on a foreign stock exchange shall not be taken into account in determining whether a company is an offshore company.

(7) Without prejudice to any other provision of this Act or of the Exchange Control Act, 1972, and to any other consequences thereunder, if a person resident in Malta has an interest in a company registered as an offshore company under this Act and that interest is such that the company should not have been so registered or ceases to be an offshore company by virtue of subsection (1) of this section, such person shall be guilty of an offence against the Exchange Control Act, 1972, by reason only of having such an interest and shall be liable on conviction to the punishments established by section 41 of that Act.

Act XLIX of 1972.

23. (1) An offshore company may be either a trading or a non-trading offshore company.

Types of offshore companies.

(2) A trading offshore company may be a banking offshore company, or an insurance offshore company or a general trading offshore company.

(3) A banking offshore company is an offshore company which expressly restricts its objects to the business of banking or is an

offshore oversea or an offshore subsidiary company to which subsection (3) or subsection (4) of section 22 of this Act applies or is an offshore local company, and in any case limits its operations from Malta to the business of banking; and an insurance offshore company is an offshore company which expressly restricts its objects to the business of insurance or is an offshore oversea or an offshore subsidiary company to which subsection (3) or subsection (4) of section 22 of this Act applies or is an offshore local company and in any case restricts its operations from Malta to the business of insurance.

(4) For the purposes of this Act the expressions “business of banking” and “business of insurance” have the meaning respectively assigned to them by section 2 of the Banking Act, 1970 and by section 2 of the Insurance Business Act, 1981.

(5) A general trading offshore company may have as its object any trade or business other than the business of banking and of insurance.

(6) A non-trading offshore company is an offshore company which expressly limits its objects to the ownership, management and administration of property of any kind, other than property which it cannot own or otherwise hold under paragraph (c) of subsection (2) of section 22 of this Act, and to matters incidental or ancillary thereto:

Provided that where the property of the company consists of a ship or ships registered in Malta, the company shall not cease to be a non-trading offshore company by reason only that it operates such ships:

Provided further that where the property owned by, managed or administered by, an offshore company includes a collective investment, that is to say assets derived from investments made by, or on behalf or for the benefit of persons, who do not have the day-to-day control over the management or administration thereof, other than assets held for the purposes of a pension, provident or similar fund accepted as such by the Authority, such a company shall not be a non-trading offshore company.

Registration of
offshore
companies.

24. (1) Every offshore company shall be registered with the Authority and shall not be capable of commencing business unless and until it is so registered and a certificate of registration is issued to it by the Authority.

(2) The registration of an offshore company, other than an offshore oversea company, shall be preceded by the delivery to the Authority of a certified copy of the memorandum of association of the company and of its articles, if any, and the delivery or provisions of such other certificates, documents or information as may be required by the Authority with respect to the particular type of offshore company that applies for registration, together with an application for such registration in the prescribed form or such other form as the Authority may accept:

Provided that in the case of a non-trading company, there shall only be delivered with the application a copy of the memorandum and articles, if any, of the company and a declaration by the nominee company acting as its sole director or secretary, certifying that the company satisfies all the conditions of this Act to enable it to be registered as an offshore company.

(3) The registration of an offshore oversea company shall be preceded by an application to the Authority in the prescribed form or in a form acceptable to the Authority and giving such information and other details, in particular as to the manner and extent it intends to operate from Malta, as may be prescribed or as the Authority may require.

(4) Notwithstanding anything contained in the other provisions of this Act:

(a) a company shall not be registered as a banking offshore company or an insurance offshore company unless the Authority is satisfied that the company is capable of properly conducting and supporting the business to be carried on, that it has the financial resources for such purpose and that it will keep such resources in assets and maintain where appropriate margins of solvency, as are normally acceptable;

(b) a company whose business is, or includes, the management of captive insurance offshore companies shall not be registered as an offshore company unless the company proves to the satisfaction of the Authority that it has sufficient special knowledge and practical experience of insurance business so to act and that it is properly and adequately insured against its liabilities for negligence and misfeasance in the conduct of its affairs; and any such company shall cease to be an offshore company if it is at any time not so insured for a period exceeding one month or the Authority is satisfied that the company has ceased to have the knowledge and experience aforesaid.

(5) On being satisfied that all the requirements of this Act for the existence of the particular type of offshore company in respect of which the application is made have been met, and that the company may otherwise be properly registered, and on ascertaining that the appropriate fee has been paid, the Authority shall register the company as an offshore company, indicating its type, and issue a certificate of registration accordingly.

(6) The Authority shall keep a register of all companies registered with it under this section, distinguishing between the various types of companies, and shall enter in such register all changes notified to it and all such other matters as are relevant to such companies.

(7) Where a company ceases to be an offshore company under any of the provisions of this Act, the Authority shall strike the name of that company off its register and the company shall thereupon cease to be registered with the Authority:

Provided that all exemptions, privileges or other benefits granted or allowed by any of the provisions of this Act to offshore companies and their directors or employees shall cease to have effect immediately the company ceases to be an offshore company.

(8) The Authority shall once every three months, cause to be published in the Gazette and in a local newspaper published in the English language the name of every company which it registered as an offshore company during the previous three months and shall also publish as aforesaid the name of every company whose name has been struck off the said register during the same period. The Authority shall, moreover, publish as aforesaid, and not later than the thirty-first day of January of each year a list of all the companies registered with it as offshore companies as on the thirty-first day of December of the previous year.

Registration and annual fees.

25. (1) The fees payable for the registration of an offshore company and the fees payable annually thereafter shall be those set out in the first schedule of this Act. The annual fee shall be payable upon each anniversary of the company's registration.

(2) A company shall cease to be an offshore company if the annual fee appropriate to that company is not paid within one month from the date on which it is due:

Provided that this subsection shall be deemed not to have had effect if a sum equal to one hundred and fifty per cent of the amount due by way of annual fee is paid to the Authority not later than six months from the date on which such fee was due.

Company ceasing to be an offshore company for illegal activities.

26. (1) Without prejudice to the provisions of sections 22 and 25 of this Act, a company shall cease to be an offshore company if it has income accruing to it or derived by it which originates from any transaction, operation or other activity which is a criminal offence against the law of Malta or would be such an offence if carried out in Malta, or has received or has in its possession or control money or other property the receipt, ownership, possession or control of which is, or would be, such an offence as aforesaid.

(2) All income, money or other property as is referred to in subsection (1) of this section shall be liable to seizure and shall be forfeited in favour of the Government and become its property absolutely.

Application of the Commercial Partnerships Ordinance, 1962.

27. (1) The Commercial Partnership Ordinance, 1962 (hereinafter in this section referred to as "the Ordinance") shall, with respect to an offshore company, have effect subject to the following provisions of this section as applied either generally or to a particular or to particular types of offshore companies; and for the purpose of this section the expression "offshore company" includes a company in formation which when registered under this Act will be an offshore company.

(2) Section 5 of the Ordinance shall not apply.

(3) Section 68 of the Ordinance shall apply subject to the following provisions of this subsection:—

(a) paragraph (a) thereof shall apply to a non-trading offshore company as if there were added thereto the following proviso:—

“Provided that the memorandum may be subscribed by a nominee company or companies as nominees of persons qualified to hold shares in the company but only if the memorandum contains a declaration by the nominee company or companies subscribing the memorandum that all the persons for whom they are acting are persons qualified to hold shares in the company”;

(b) paragraph (e) thereof shall be construed as requiring the share capital of the company to be expressed and paid in a foreign currency and to be divided into shares accordingly;

(c) paragraph (f) thereof shall apply to a non-trading offshore company as if there were added thereto the following proviso:—

“Provided that the memorandum may state the name and surname of only one or more of the first directors of the company and in any such case, and until the name of the other directors of the company holding office from time to time is disclosed, the provisions of this Ordinance shall apply as if the director or directors whose name is disclosed were the only director or directors of the company”;

(d) the section shall apply as if the memorandum was further required to state the name of the first nominee company that will act as secretary of the offshore company whenever such company is required to have such a secretary in accordance with subsection (2) of section 22 of this Act.

(4) Section 70 of the Ordinance shall apply subject to the limitations contained in the foregoing sections of this Part of this Act relative to the objects of an offshore company.

(5) Section 74 of the Ordinance shall apply as if it further required:—

(a) the company to be registered with the Authority under this Act before it is capable of commencing business; and

(b) the Registrar to state in the certificate issued by him that the company is only so capable of commencing business:

Provided that in respect of a company to which the proviso to paragraph (d) of subsection (4) of section 22 of this Act applies, section 74 of the Ordinance shall apply as if it further required only that the company be registered under this Act before it is capable of continuing business as an offshore company under this Act.

(6) Section 77 of the Ordinance shall not be construed as preventing, or postponing the effect of, the reduction of the share capital of a non-trading offshore company by the redemption of fully paid up shares against the payment by the company to the holder thereof of an amount equal to the net asset value of such shares; and the

redemption of such shares as aforesaid may take place if the following conditions concur —

(a) the memorandum and articles of the company are observed and complied with;

(b) the company will, after the redemption, be in a position to meet its liabilities;

(c) the value of the unredeemed shares is not impaired as a result of the redemption; and

(d) the shares, once redeemed, do not carry any voting or other rights unless and until they are re-issued.

(7) Section 102 of the Ordinance shall apply as if there were added thereto the following proviso:—

“Provided further that the articles of association of a non-trading offshore company may provide for the transfer of any share in or debenture of the company in any manner stated in the articles, and may also provide for the transfer, in such manner and under such conditions as may be set out in the articles, of any share in or debenture of the company after, or having effect after, the death of a share or debenture holder; and any such transfer shall be valid and effective and shall be acted upon by the company, notwithstanding the provisions of any other law of Malta or of any personal law otherwise applicable”.

(8) Section 128 of the Ordinance shall apply to the secretary of an offshore company as if references to directors included references to the secretary of the company.

(9) The provisions of —

(a) paragraph (b) of section 126, and

(b) sub-paragraph (ii) and (iii) of paragraph (a) of subsection (1) of section 140 of the Ordinance,

shall not apply to an offshore company; and the provisions of sections 139, 141, 143 and 144 of the Ordinance shall not apply to a non-trading offshore company.

(10) The provisions of the Ordinance applicable to the winding up of a company shall apply subject to the following provisions of this section:—

(a) where the company has as its last sole director or as its last secretary a nominee company, that nominee company shall be appointed as its liquidator, but shall be liable to be removed from office and substituted in the same manner and circumstances as any other liquidator; and

(b) where the liquidator of the company is the nominee company as aforesaid at the time when the company is finally wound up —

(i) a statement by the liquidator that the affairs of the company have been fully wound up with the approval of the company in general meeting may be delivered to the Registrar in lieu of the accounts and returns mentioned in section 158 of the Ordinance, and in any such case the provisions of that section shall apply accordingly.

(ii) all the books and documents of the company shall, notwithstanding the provisions of the Ordinance, be retained by the liquidator who shall keep them for a period of five years after the date on which the company is struck off the register.

(11) Section 191 of the Ordinance shall be construed as requiring the Registrar to keep the books in respect of offshore companies separate from those kept in respect of other companies.

(12) In respect of an offshore company which has ceased to be such a company under any of the provisions of this Act, the Ordinance shall apply as if it further provided that, notwithstanding any other of its provisions —

(a) the company shall be dissolved immediately the company ceases to be an offshore company;

(b) all the powers and functions given by the Ordinance to the company in general meeting or to its directors, including, but without prejudice to the generality of the foregoing, the appointment and removal of the liquidator, shall vest in and be exercisable by the Authority, and the duties of the liquidator shall be construed accordingly.

28. (1) The Banking Act, 1970 (in this section referred to as “the Act”) shall apply with respect to a banking offshore company subject to the following provisions of this section.

Application of the Banking Act, 1970 to banking offshore companies.

(2) Paragraph (a) of subsection (6) of section 4 of the Act shall apply as if it required the Minister therein referred to, to act after he has received a recommendation from the Authority and paragraphs (b) and (c) thereof shall not apply.

(3) Section 5 of the Act, other than subsections (1) and (5) thereof, shall not apply, and the said subsections (1) and (5) shall not apply to a banking offshore overseas company.

(4) Paragraph (b) of subsection (1) of section 6 of the Act shall not apply, and subsection (2) of that section shall be construed accordingly.

(5) Section 7 of the Act shall apply as follows:—

(a) paragraph (a) thereof shall apply whether or not the offshore company is a commercial bank and shall be construed as requiring the company to have a paid up share capital of not less than one million and five hundred thousand United States dollars, or its equivalent in any other foreign currency; and

(b) paragraph (b) thereof shall not apply.

(6) Sections 9 and 11 of the Act shall not apply.

(7) Sections 12 and 13 of the Act shall not apply to a banking offshore overseas company or to a banking offshore subsidiary company.

(8) Paragraph (b) of subsection (1) of section 19, and section 22 of the Act shall not apply.

Application of the Insurance Business Act, 1981 to insurance offshore companies.

29. (1) The Insurance Business Act, 1981 (in this section referred to as "the Act") shall apply with respect to an insurance offshore company subject to the following provisions of this section.

(2) Subsection (3) of section 3 of the Act shall not apply.

(3) Section 5 of the Act shall apply subject to the following provisions of this subsection:—

(a) paragraph (a) of subsection (1) thereof shall apply as if for the sum of two million liri there were substituted —

(i) in the case of a captive insurance offshore company, the sum of two hundred and fifty thousand United States dollars, or its equivalent in any other foreign currency; and

(ii) in the case of any other insurance offshore company, the sum of seven hundred and fifty thousand United States dollars, or its equivalent in any other foreign currency;

(b) paragraph (b) of subsection (1) thereof shall not apply;

(c) paragraph (a) of subsection (3) thereof shall apply as if it required the Minister therein referred to act after he has received a recommendation from the Authority; and

(d) paragraph (b) of subsection (3) thereof shall not apply.

(4) Subsection (1) of section 6 of the Act shall not apply to an insurance offshore oversea company, or to an insurance offshore subsidiary company; subsection (3) of that section shall apply to an insurance offshore oversea company, or to an insurance offshore subsidiary company to the extent only of requiring it to give the information therein referred to; and subsection (5) of that section shall apply to the extent it is applicable in view of the foregoing provisions of this subsection.

(5) Subsections (2) and (4) of section 6, section 15 and section 26 of the Act shall not apply.

(6) Sections 8, 9, 10, 11, 12, 13 and 14 of the Act shall not apply to an insurance offshore oversea company or to an insurance offshore subsidiary company.

(7) Paragraphs (b) and (c) of subsection (1) and paragraphs (b) and (c) of subsection (2) of section 16 of the Act shall not apply.

Extent of application of the Income Tax Act, 1948 to offshore companies.

30. (1) The Income Tax Act, 1948 (in this section referred to as "the Act") and any enactment replacing that law, shall apply to trading offshore companies subject to the provisions of subsections (2) and (3) of this section.

(2) The tax payable by a trading offshore company shall be at the rate of five per cent on the chargeable income of the company, and no tax shall be chargeable on —

(a) any dividend (including any deemed distribution of dividend) distributed by such company;

(b) any interest or other income paid by such a company to any person who is not resident in Malta:

Provided that, this subsection, in so far as it exempts the income referred to in paragraphs (a) and (b) thereof, shall not apply to an offshore local company:

Provided further that the tax payable as provided in this subsection shall not be reduced whether by way of double taxation relief or otherwise, and no set-off or credit shall be made or allowed in respect of such tax in favour of any shareholder or other person to whom a dividend or other payment exempt from tax under this subsection may be due, or is paid or made.

(3) The tax payable as provided in subsection (2) of this section shall be charged on the income as declared in the return of income furnished by the company to the Commissioner of Inland Revenue under the Act, and the Commissioner shall, notwithstanding the provisions of that Act, accept the return as correct and complete, unless he has good reason to believe otherwise and can prove such belief to the satisfaction of the Board of Special Commissioners and in any such case he shall act as provided in subsection (2) and (3) of section 4 of this Act before the matter is referred to the said Board for its decision.

(4) No tax shall be chargeable under the Act, or under any enactment replacing that law, on —

(a) the income accruing to or derived by a non-trading offshore company;

(b) any dividend (including any deemed distribution of dividend) distributed by such company;

(c) any interest or other income paid by such company to any person who is not resident in Malta where such interest or other income is paid out of profits exempt as aforesaid.

(5) Notwithstanding anything contained in the foregoing provisions of this section any tax deducted from any dividend or interest payable in respect of shares or debentures of a subsidiary company as is referred to in the proviso to paragraph (c) of subsection (2) of section 22 of this Act, shall not be refundable or otherwise be liable to be set off against tax.

(6) An offshore company shall be exempt from the requirements of section 37A of the Act.

(7) No shareholder, debenture holder, depositor or other person interested in an offshore company shall be required to make or furnish any return that could otherwise be due, or be lawfully required, to be made or furnished for the purposes of the Act in respect thereof.

(8) Without prejudice to the generality of the provisions of section 38 of this Act, all proceedings before the Board of Special Commissioners or of the Court of Appeal for the purposes of the Act shall be held in camera and the requirements of confidentiality imposed by that section shall be observed in, and with respect to such proceedings, except to the extent that it may be necessary to act otherwise for the proper conduct of those proceedings.

(9) In respect of offshore companies, section 68A of the Act shall apply as if immediately after the proviso to subsection (1) thereof there was inserted the following proviso:

“Provided further that the provisions of the Malta International Business Activities Act, 1988, shall prevail over the provisions of this subsection and of any arrangements made as aforesaid”.

Exemption from death and donation duty.

31. No duty shall be chargeable under the Death and Donation Duty Act, 1973, or under any enactment replacing that law, on —

- (a) any share in or debenture of an offshore company;
- (b) any money or other property placed with such a company on deposit or other title;
- (c) any payment due to or made by any such company,

where such share, debenture, money, property or payment is comprised in a chargeable transmission under the said Act and the person in whose favour the transmission takes place is a person not domiciled in Malta.

Exemption from stamp duties.

32. No duty shall be chargeable under the Duty on Documents Act, 1981, or under any enactment replacing that law, on any document relating to any transaction or other act of an offshore company, or to any share, stock or other property thereof, other than the sale or transfer, where permissible under this Act, of any property to a person resident in Malta.

Exemption from exchange control, customs duty and social security contributions.

33. (1) Subject to provisions of subsection (7) of section 22 of this Act, the Exchange Control Act, 1972 and any enactment replacing that law shall not apply to any matter relating to the formation of an offshore company or to any transaction or operation of or relating to an offshore company, or any of its shares or debentures, other than transactions or operations carried out with a person resident in Malta.

(2) Furniture, equipment and other material required by an offshore company and imported into Malta for its own use and purpose, and the used personal belonging of any officer or employee of the company, not resident in Malta, imported into Malta not later than six months from the first taking up residence in Malta, may be so imported free of customs duty:

Provided that duty shall be payable on any thing imported free of duty under this subsection if and when such thing is sold, assigned or otherwise transferred to a person resident in Malta.

(3) Persons not resident in Malta who are officers or employees of an offshore company, and the company in respect of such officers and employees, shall be entitled to be exempt from the provisions of the Social Security Act, 1987, and of any enactment replacing that law. Act X of 1987.

(4) The foregoing provisions of this section shall apply only in respect of transactions, operations, things and persons that are relevant and necessary to the purposes for which an offshore company is constituted, or to its management or administration.

34. (1) Where a declaration in the form set out in the Second Schedule to this Act has been submitted to the Commissioner of Inland Revenue by a nominee company acting as the sole director or secretary of a non-trading offshore company, neither the offshore company nor any other person having an interest in such company shall be required to make or furnish any return, information or other details that could otherwise be due or be lawfully required to be made or furnished for the purposes of the Income Tax Act, 1948. Declaration in lieu of tax return.

(2) Where property is by this Part of this Act exempt from the duty payable under the Death and Donation Duty Act, 1973 no return of the said property shall be required to be made under the said Act nor of the relative chargeable transmission, if the transmission comprises no other property and no person resident in Malta benefits under the transmission; and where the transmission comprises other property or a person as aforesaid benefits thereunder, the return may be limited to the property liable to duty.

35. (1) A person who has practised as an advocate for not less than seven uninterrupted years may, on behalf, but without disclosing the name of, any person or persons whom he declares to be a shareholder or shareholders, or a director or directors, of a non-trading offshore company, either in their capacity as such or as representing the required majority of the company in general meeting or of the board of directors for the approval of resolutions or other decisions in respect of any matter within their competence and powers, apply to the Court requesting any order or directive from the Court which he may consider necessary or expedient; and the Court, after hearing any known shareholder or director of the company and the nominee company acting as director or secretary thereof, and examining such other evidence as it may deem appropriate in the circumstances, may, if it thinks fit, make such order or give such directive as in its opinion the circumstances warrant. Special remedies for undisclosed shareholders or directors of non-trading offshore companies.

(2) Any order or directive of the Court under this section shall have the same validity and effect as an appropriate resolution taken by the company in general meeting or a decision of the board of directors as the Court may direct; and any such order or directive may not be revoked or altered except by the Court on an application filed by the original applicant, or by a person having the same qualifications and acting as the original applicant, or by any other person interested.

(3) The proceedings under this section, other than the order or directive of the Court and such parts of the proceedings as the Court may deem essential to disclose, shall, together with any document or other information produced or given and any evidence heard for the purposes of such proceedings, be kept secret and confidential by every person concerned or connected with the said proceedings as well as by an other person to whose notice any such matter may come and the records of such proceedings shall be kept under the personal custody of the Registrar of the Court; and the provisions of section 38 of this Act shall, without prejudice to the generality of the provisions thereof, apply to every person who divulges or attempts to divulge to any person any matter which is by this section to be kept secret and confidential.

Exemption from precautionary and executive acts.

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36. (1) No share in or debenture of, and no dividend or other payment due by, an offshore company, and, except for the purpose, or in execution of, a judgement given in pursuance of any action mentioned in subsection (3) of this section, no property of any kind belonging to such company, shall be subject to any precautionary or executive act or warrant as is mentioned in the Code of Organisation and Civil Procedure.

(2) No director or other officer of any offshore company, and no person being a member of or having an interest in any such company, shall be subject to any precautionary or executive act or warrant as aforesaid in respect of any obligation or other liability of the company:

Provided that this subsection shall not apply to a nominee company in respect of any obligation or liability arising from any of the provisions of this Act.

(3) The action referred to in subsection (1) of this section is either —

(a) an action for the enforcement of an obligation or other liability of the company; or

(b) an action for the recovery of any property acquired or held by the company, or otherwise in its possession or control, and originating from any transaction, operation or activity referred to in subsection (1) of section 26 of this Act.

(4) Notwithstanding the foregoing provisions of this section no warrant or other act shall be issued by the court unless the applicant first satisfies the court that the warrant or other act may be issued under this section.

Security to be given in certain cases.

37. Where an offshore company is a plaintiff in any action or other judicial proceedings, the court before which the proceedings are taken may, at the request of the defendant and if it is satisfied that the company may not be in a position to pay the costs of the defendant if these should be awarded in favour of the defendant, require the plaintiff to make such deposit by way of security for costs as it may deem sufficient for the purpose, and may stay proceedings until the security is given.

38. (1) The transactions and activities of an offshore company are of a secret and confidential nature and, except as otherwise provided by this Act, shall be so treated for all purposes, including purposes of law, and shall continue to be so treated even after the company has ceased to be an offshore company or has been struck off the register.

Confidentiality on matters relating to offshore companies.

(2) Accordingly, save as may be essentially required for the normal conduct of the affairs of an offshore company or as may be essentially required for the purposes of this Act or is permitted thereunder:

(a) no person shall at any time communicate or divulge any document, information or other matter relating to an offshore company, except to an officer or member of that company entitled to receive such communication, document or information;

(b) no person shall at any time be required to produce or divulge to any court, tribunal, board, committee of inquiry or other authority any document, information or other matter coming to his notice or being in his possession or under his control for any reason whatsoever, if such document, information or matter relates to an offshore company.

(3) Any person who, save as excepted by subsection (2) of this section, at any time communicates or divulges, or attempts to communicate or divulge, any document, information or other matter relating to an offshore company —

(a) shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not less than one thousand and not more than five thousand liri, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;

(b) shall pay to the company a penalty of not less than one thousand and not more than ten thousand liri as the court convicting such person may determine and order; such sum being recoverable as a civil debt, the order of the court being an executive title by virtue of this section for the purpose of such recovery.

(4) The provisions of this section shall be without prejudice to any other action that may be competent to the company under any other law.

39. (1) Subject to the following provisions of this section:—

Continuance of companies.

(a) a body corporate, formed and incorporated or registered in a country other than Malta, which is similar in nature to a private company as known under the laws of Malta and which would, if were such a company, qualify to be registered as an offshore company under this Act, may be continued as an offshore company under the Commercial Partnerships Ordinance, 1962, and under this Act; and

(b) an offshore company registered under this Act may be continued as a body corporate incorporated or registered under the laws of a country other than Malta,

in either case by complying with the following provisions of this section; and the aforesaid Commercial Partnerships Ordinance, 1962, shall, in respect of such bodies corporate or offshore companies, have effect accordingly.

(2) Continuance as aforesaid may only take place if it is within the power of such body or offshore company so to continue and the continuance is approved —

(a) in the case of a foreign body desiring to continue as an offshore company under this Act, in such manner, by such constituted body and with such majority as would be the equivalent, under the laws of the country of its incorporation or registration and according to the instrument whereby it is constituted, of an extraordinary resolution under the laws of Malta; and

(b) in the case of an offshore company desiring to continue under a foreign jurisdiction, by an extraordinary resolution of the company.

(3) Where continuance as aforesaid entitles or requires the body corporate or offshore company, as the case may be, to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the courts in Malta may, demand of either party, establish.

(4) The continuance of a foreign body corporate as an offshore company in Malta shall be effected by an instrument of continuance containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles of a private company as is required by this Act in order that a company may be registered as an offshore company under this Act in accordance with the type of offshore company in which it is to be continued, and showing on the face of it that the continuance has been approved as provided in subsection (2) of this section.

(5) The delivery of the instrument of continuance to the Registrar shall, for all purposes of the Commercial Partnerships Ordinance, 1962, be equivalent to the delivery of the memorandum and articles of a company as if it were a company to be registered under this Act; and the Registrar shall treat it accordingly.

(6) Upon its registration as provided in subsection (5) of this section, and its registration under this Act, the body corporate shall cease to be a body corporate under its previous jurisdiction and shall continue its corporate existence, and retain all its assets, rights and liabilities as a company otherwise registered under the Ordinance aforesaid and this Act, and such continuance shall have effect notwithstanding anything contained in the law of its former jurisdiction.

(7) The continuance of an offshore company as a body corporate under a foreign jurisdiction shall not take place unless —

(i) such continuance (or similar process, including conversion) is permitted by the law of such foreign jurisdiction

and in accordance with such provisions thereof as may bring about such continuance (or similar process); and

(ii) such continuance (or similar process) will operate the continuation of the corporate existence of the offshore company as, or its conversion into, a body corporate which will continue to retain or will succeed to all the assets, rights and liabilities of the offshore company.

(8) Notwithstanding the foregoing provisions of this section an offshore company shall not cease to be a company subject to Maltese jurisdiction until the Registrar has received notice in writing of the continuance (or other process) made as aforesaid and unless and until, being satisfied that the requirements of this section have been complied with, he has registered such continuance and has, in consequence thereof and by virtue of this section, struck the name of the company off the register.

40. (1) A trading offshore company shall be entitled to employ an individual, named by it, and for such purpose to require that a licence be granted to him under the Immigration Act, 1970; and such right shall be exercisable for as long as the company is registered as an offshore company with the Authority.

Non-resident
directors and
employees of
offshore companies

(2) Where an individual who is not domiciled in Malta or who, if so domiciled, is not ordinarily resident therein, is a director or employee of an offshore company, his income shall be charged at the rates contemplated in the Income Tax Act, 1948, so however that any rate of tax in excess of 30 cents on every Maltese lira shall be reduced to 30 cents:

Provided that the tax payable by an individual as aforesaid shall not be less than Lm1000 per annum, or pro rata to that sum for the period of the year he was a director or so employed, unless the amount payable by such individual but for the provisions of this section is a smaller amount, in which case only such smaller amount shall be payable.

41. (1) The exemptions, privileges and other benefits granted or allowed by any of the provisions of this Act to offshore companies and their directors or employees are so granted or allowed subject to the option of the person in whose favour they are so granted or allowed not to benefit therefrom.

Exemptions and
privileges option.

(2) Such option shall be exercised by notice in writing to the Authority indicating the exemptions, privileges or benefits waived; and any such waiver shall be indefinite and irrevocable in respect thereof.

PART III

Nominee Companies

42. (1) Subject to the provisions of this Act, any two or more persons associated for the purpose of performing the functions of a nominee company with respect to offshore companies may, by forming

Nominee
companies and
conditions for
the formation
thereof.

a company under the law for the time being in force in Malta, and complying with the conditions of this Act with respect to the formation of a nominee company, form a nominee company.

(2) The conditions for the formation of a nominee company are that —

(a) the company is a private company;

(b) the objects of the company are expressly limited to acting as a nominee company with respect to offshore companies for the purposes of this Act, and to matters ancillary or incidental thereto:

Provided that where a nominee company is established also to act as trustee of an offshore trust, its objects may also include such purpose;

(c) the name of the company includes the word “Nominee”;

(d) the issued share capital of the company is not less than five thousand liri;

(e) the share capital of the company, and any voting or controlling power therein, is, neither directly nor indirectly, owned, held or exercisable by, or vested in, a person not resident in Malta in an amount exceeding in the aggregate forty per cent;

(f) the directors of the company are not less than three, of whom at least two are Maltese citizens resident in Malta, who, for an uninterrupted period of five years, have been any of the following:

(i) a person holding the warrant of advocate under the Code of Organisation and Civil Procedure; or

(ii) a person holding the warrant of a certified public accountant or a certified public accountant and auditor under the Accountancy Profession Act, 1979; or

(iii) an associate or fellow of the Chartered Institute of Bankers or of the Institute of Chartered Secretaries and Administrators or of the Chartered Insurance Institute of the United Kingdom or a member of such other institute or similar body recognised by the Authority for the purposes of this section; or

(iv) a person who has served as a public officer in a grade not below that of assistant head of department, or in an equivalent position with a statutory body, or is otherwise recognised by the Authority as a person comparable to any of the persons aforesaid;

(g) no person who has been convicted of an offence against the provisions of this Act has any direct or indirect interest in the company or is a member or director thereof, and no person who, under any other law, is not qualified to be a director of a company has such an interest or is a member as aforesaid.

Act XXVIII
of 1979.

Warrant to
function as
nominee company.

43. (1) A nominee company may not function, and shall not be treated as such for the purposes of this Act, unless it is in possession of a warrant issued by the Authority and currently in force authorising it to function as such for the purposes of this Act.

(2) For the purpose of obtaining a warrant from the Authority, the company shall submit to the Authority a certified copy of its memorandum of association and of its articles, if any, together with details concerning the directors; and on being satisfied that the requirements of this Act and of any rules or regulations made thereunder, are fully met and that the appropriate fee has been paid, the Authority shall issue a warrant authorising it to function for the purposes of this Act.

(3) The Authority shall keep a register of all companies to which a warrant has been issued under this Act, and enter therein any change or other matter relevant to that company, in particular an indication of the directors and secretaries of the company, and any change therein. The Authority shall also cause from time to time to be published in the Gazette a list of all the companies currently in possession of a warrant under this section.

(4) The fee payable for the issue of a warrant under this section shall be two hundred and fifty liri for the first issue of such warrant and thereafter there shall be paid an annual registration fee of two hundred and fifty liri payable not later than the end of January of each succeeding year.

44. A nominee company shall notify the Authority of any change in its memorandum or articles of association and of any change among its directors and any such change shall not have effect unless and until they are so notified. Notification of changes.

45. A warrant issued to a company under section 43 of this Act shall be revocable by the Authority — Revocation of warrant.

(a) if there is such a change in the circumstances of the company that, had they existed before the issue of the warrant, such warrant would not have been issued;

(b) if the company contravenes any of the provisions of this Act and the contravention is considered by the Authority serious enough to justify the revocation of the warrant;

(c) if the company fails to pay the annual fee when due:

Provided that the Authority shall not revoke a warrant unless it has first given the company the reasons why the warrant might be revoked and the opportunity of making representations and explaining any fact which is alleged against it; and the Authority may also, whenever the act or default is capable of remedy, allow the company to take remedial action within such time and subject to such conditions the Authority may think fit.

46. (1) A nominee company shall have functions solely in connection with and for the purposes of this Act or for the purposes of the Offshore Trusts Act, 1988, or both such purposes, and such other functions as are ancillary or incidental thereto. Functions of a nominee company.

(2) A non-trading offshore company may be registered with the Authority under this Act only through the agency of a nominee

company authorised to act as such with respect to such a company; and a nominee company, whether as sole director or as secretary of a non-trading offshore company shall, whether alone or as may otherwise be provided in the articles of the company, have the legal and judicial representation of the company.

Duties of
nominee companies.

47. (1) In addition to their duties as a director or secretary of an offshore company, as the case may be, a nominee company shall be responsible to the Authority for ensuring that the provisions of this Act are duly complied with and observed in relation to or by the offshore company of which it is the sole director or secretary.

(2) A nominee company shall have the duty to take such steps or other actions as may be in its power to ensure the observance of the law as aforesaid and to notify the Authority, without delay, of any act or default, in relation to or by the offshore company of which it is the sole director or secretary, which is in contravention of any of the provisions of this Act or is otherwise a criminal offence under the laws of Malta or would have been such an offence if it had been committed in Malta.

(3) A nominee company shall also have the duty to ascertain that the exemptions granted by this Act to any offshore company as aforesaid are properly due and that no circumstance exists which would render those exemptions inapplicable; and to report to the Authority any fact or circumstance of which it is aware and which would render any such exemption inapplicable or any tax or duty otherwise payable.

(4) A nominee company shall, moreover, make out and deliver, not later than the end of January of each year, a report to the Authority signed by two directors of the company and made out in respect of the preceding year, stating that the company has ascertained to the best of its ability that the offshore company of which it is the sole director or the secretary satisfied all the conditions required by this Act for the company to remain an offshore company and that no circumstance exists which would render the exemptions and other privileges granted by this Act inapplicable in respect of that company.

Position of
directors and
officers of
nominee companies.

48. Where by this Act or by any other law an obligation or duty is due to be fulfilled, complied with or observed by a nominee company as sole director or secretary of an offshore company, that obligation or duty shall also be due to be fulfilled, complied with or observed by each and every director or other officer of the nominee company, as the case may be; and every such director or other officer:

(a) shall be personally liable, jointly and severally with the other directors and officers and with the company, for any failure or default or any act done in contravention of any provision of law in respect of the obligation and duties aforesaid; and

(b) where the failure, default or act as aforesaid is a criminal offence, shall be liable on conviction to the penalties established for such offence.

49. (1) Where a nominee company is the secretary of an offshore company, it shall be responsible jointly and severally with the directors of the company for the performance of all the duties of those directors with respect to the preparation, filing or submission of any return, statement, declaration or other matter required by any provision of law, and for the observance of any duty of the directors to furnish any information that may lawfully be required from them.

Other duties of nominee companies as secretary of offshore company.

(2) Where a nominee company is the sole director of a non-trading offshore company or its secretary, it shall, without prejudice to any other duty to which it may be liable:

(a) keep a record of all the effective shareholders, debenture holders and directors of the company, whether disclosed or not, as well as of all relevant changes therein;

(b) provide the members of the company with such information as may be necessary to show them the true position of the affairs of the company, and in particular with any information that could reasonably be expected to affect that position.

(3) If a nominee company resigns, or is removed from office, whether as sole director or as secretary of an offshore company, it shall without delay report that fact to the Authority, and when such resignation or removal is due to any serious irregularity committed by or in relation to the company or any of its directors, the nominee company shall make a report to the Authority stating the facts as known to it.

(4) A nominee company shall without delay also notify the Authority in writing whenever it is of the opinion that an offshore company of which it is or has been the last sole director or secretary has been abandoned or has no directors in office.

50. If a nominee company or any director or officer thereof, wilfully or negligently:

Penalties for false statements, declarations, etc.

(a) makes an incorrect or false statement or declaration, or any false or incorrect entry in a return, declaration or statement, made, prepared or submitted for any of the purposes, or in pursuance, of any of the provisions of this Act; or

(b) gives any incorrect or false information or answer in connection with or in pursuance of any such provision; or

(c) prepares or maintains any incorrect or false records or documents, or aids or abets any other person to do so.

the company, and every director or other officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not less than one thousand and not more than ten thousand liri, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

51. (1) When a nominee company has been dissolved it shall cease to act as sole director or secretary of an offshore company and the

Winding up of nominee companies.

directors thereof shall before relinquishing such office bring the facts to the notice of the companies of which the nominee company is the sole director or secretary; and as soon as a liquidator is appointed he shall —

(a) without delay inform the Authority of the fact that the company is being wound up and of his appointment as liquidator;

(b) ascertain that the Authority has full details of the offshore companies of which the company being wound up is a director or secretary, as the case may be;

(c) do all that may be necessary, or which the Authority may require or direct, for the purposes of any of the provisions of this Act;

(d) refrain from finally winding up the company until approval has been given by the Authority for such final winding up.

(2) Every person who fails to comply with any of the provisions of this section shall be liable, on conviction to a fine (*multa*) of not less than one hundred and not more than five hundred liri.

(3) Where a nominee company is dissolved, the liquidator shall not be appointed except with the written approval of the Authority; and the Authority shall, moreover, have the power to appoint, remove or replace the liquidator.

(4) Notwithstanding the provisions of the Commercial Partnerships Ordinance, 1962, the books and documents of a nominee company that has been wound up shall be retained by the liquidator who shall keep them for a period of five years after the date on which the company is struck off the register and shall then be destroyed.

PART IV

General Provisions

Power to make regulations or rules.

52. (1) The Minister may, on the advice of the Authority, make regulations or rules for the better carrying out of any of the provisions of this Act, and may, in particular, but without prejudice to the generality of the foregoing, by any such regulations or rules:

(a) provide for the returns, statements, and notices to be made or given for any of the purposes of this Act, and the form and contents thereof;

(b) regulate the conduct, duties and other obligations of nominee companies, including the returns, statements and other information they are to submit to the Authority, and establish the maximum amount which, notwithstanding any provision of this Act, may be charged as fees by such companies;

(c) exempt, or provide for the exemption of, any class or classes of banking or insurance offshore companies from any of the

provisions of the Banking Act, 1970 or of the Insurance Business Act, 1981, as the case may require, subject to such conditions as may be specified or provided for in the regulations; including conditions consisting in the application of the said provisions with such variations as may be specified or provided for as aforesaid;

(d) alter any fees established by any provision of this Act, and amend any such provision accordingly to reflect changes in the cost of living or in the value of currencies, and establish such other fees as may be deemed appropriate in respect of any matter for which a fee is not provided by this Act:

Provided that no alteration of any fees shall have effect before the expiration of one year from the publication of such alteration in the Gazette;

(e) make rules of court for any purpose of this Act and of proceedings thereunder, providing by such rules for any matter referred to in section 29 of the Code of Organisation and Civil Procedure;

(f) prescribe any matter that may or is to be prescribed;

(2) Regulations, rules and orders made under any of the provisions of this Act may be made in the English language only.

53. (1) The registration of an offshore company under this Act shall constitute a contract between the Government and the company guaranteeing the rights and exemptions and other privileges due as provided by this Act, subject only to the due observance of all the provisions of this Act. Guarantee of exemptions.

(2) The guarantee given by subsection (1) of this section shall apply also against retrospective action, whether by legislation or otherwise, as would nullify any rights, exemptions or privileges so guaranteed.

(3) The guarantee granted by subsection (1) of this section shall be for a period of ten years from the issue of the certificate of registration.

54. (1) No proceedings for an offence under this Act shall be commenced without the sanction of the Attorney General. Criminal proceedings.

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

(3) Where in respect of any offence against any of the provisions of this Act, the Act or omission constituting the offence can be attributed directly to a person or persons clearly identifiable, and such person or persons are convicted of that offence, the Court shall not be required to convict also any other person if it is satisfied that such person had no part in the offence and that by reason of his behaviour or other circumstances he deserves not to be convicted.

55. The Commercial Partnerships Ordinance, 1962, shall be amended by the substitution, for section 69 thereof, of the following section:— Amendment of Commercial Partnerships Ordinance, 1962.

"Name of company.

69. (1) Subject to the provisions of this section, a company may be designated by any name, but such name shall have "limited" as the last word.

(2) A company shall not be registered by a name which:—

(a) is the same as a name of another registered company or so nearly similar as in the opinion of the Registrar it could create confusion; or

(b) is in the opinion of the Registrar offensive or otherwise undesirable; or

(c) has been reserved for registration for another company upon a notice in writing to the Registrar given not earlier than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this section without delay to the person requesting the registration.

(3) A company shall not be registered by a name which includes the word "nominee" unless it is a company qualified to be registered as a nominee company under the Malta International Business Activities Act, 1988.

(4) A person or persons trading or carrying on business or other activity:—

(a) under a name or title of which "limited" or a contraction or imitation thereof is the last word and which is not the name of a company duly registered under this Ordinance; or

(b) under a name or title which contains the word "nominee", or a contraction or imitation thereof, and which is not the name of a company in possession of a warrant, currently in force, issued under the Malta International Business Activities Act, 1988, or the Offshore Trusts Act, 1988, authorising such company to act as a nominee company for the purpose of those Acts,

shall be liable on conviction to a penalty of not less than one hundred and not more than five hundred liri and to a further penalty not exceeding ten liri for any day during which the offence continues."

FIRST SCHEDULE

Section 25

Fees Payable by Offshore Companies

	ON REGISTRATION Lm	ANNUAL FEE Lm
(a) in respect of a banking offshore company —	25,000	25,000
(b) in respect of an insurance offshore company, other than a captive insurance offshore company —	5,000	5,000
(c) in respect of a trading offshore company for collective investment	5,000	5,000
(d) in respect of a captive insurance offshore company —	1,000	1,000
(e) in respect of a general trading offshore company other than a company referred to in paragraph (c) above	1,000	1,000
(f) in respect of a non-trading offshore company —	500	500

SECOND SCHEDULE

Section 34

Declaration in lieu of Tax Return in respect of a Non-Trading Offshore Company

Declaration by the Sole Director/Secretary of a Non-Trading Offshore Company in Lieu of a Return of Income and of Capital Assets under the Income Tax Act, 1948.

Year of Assessment

We and
two of the directors of
the nominee company which is the sole director/secretary of
....., a non trading
offshore company registered under the Malta International Business Activities Act, 1988 (hereinafter referred to as "the Act") do solemnly and sincerely declare that we have ascertained to the best of our ability that the said offshore company satisfies all the conditions required by the Act in order that it may remain a non-trading offshore company and have the income referred to in subsection (3) of section 30 of the Act not chargeable to tax as provided in that section, and that consequently:

(a) the said offshore company is exempt from the payment of income tax for the year of assessment

(b) the members of the said company are all persons qualified to hold shares in the company and no person other than a qualified person has an interest in or otherwise has voting or other controlling power in the company;

(c) the said company does not stand to lose any of the rights, exemptions and other privileges granted by the Act for any reason whatsoever.

We make this declaration in full knowledge of the penalties established by the Act for incorrect or false declarations.

Signature

I. D. Card No.

Profession

Address

.....

Dated

Passed by the House of Representatives at Sitting No. 158 of the 2nd November, 1988.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives