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**MALTA**

**KAMRA TAD-DEPUTATI**

**HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Ligi mressaq mill-Onorevoli Emmanuel Bonnici, M.P., Ministru għall-Iżvilupp Terzjarju u moqri għall-Ewwel darba fis-Seduta tas-26 ta' Settembru, 1988.

A BILL introduced by the Honourable Emmanuel Bonnici, M.P., Minister for Development of Tertiary Sector and read the First time at the Sitting of the 26th September, 1988.

ATT biex jagħmel provediment dwar *Offshore Trusts* u biex jipprovdi għal hwejjeġ li huma ancillari jew incidental għalihom.

AN ACT to make provision with respect to *Offshore Trusts* and to provide for matters ancillary or incidental thereto.

P. MUSCAT TERRIBILE  
*Skrivan tal-Kamra tad-Deputati*

P. MUSCAT TERRIBILE  
*Clerk to the House of Representatives*

## ABBOZZ TA' LIĠI DWAR OFFSHORE TRUSTS

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Dikjarazzjoni minflok prospett ta' taxxa dwar *offshore trust*

ABBOZZ TA' LIĠI  
msejjah

*ATT biex jagħmel provvediment dwar Offshore Trusts u biex jipprovdi għal hwejjeġ li huma anċillari jew inċidentali għalihom.*

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

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1988 dwar l-*Offshore Trusts*. Titolu fil-qosor u bidu fi-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għas-Settur Terzjarju jista' jistabbilixxi b'avviż fil-*Gazzetta*.

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

"l-Att" tfisser l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta;

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

"benefiċjarju" tfisser persuna intitolata li tibbenefika taht *trust* jew li favur tagħha tista' tiġi eżerċitata diskrezzjoni biex titqassam proprjetà miżmuma fi *trust*;

"korp ta' persuni" tfisser kull kumpannija, għaqda, soċjetà jew assoċjazzjoni ohra ta' persuni, sew jekk ikollha personalità ġuridika sew jekk le;

"ksur ta' *trust*" għandha t-tifsira mogħtija lilha bl-artikolu 4 ta' dan l-Att;

"kumpannija" tfisser soċjetà anonima iffurmata u reġistrata kif imiss taht xi liġi li tkun issehh dak iż-żmien f'Malta, u tinkludi korp magħqud simili inkorporat jew registrat barra minn Malta;

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

“proprjetà immobbli sitwata f’Malta” tinkludi azzjonijiet, *stock* jew obligazzjonijiet fi jew ta’ kumpannija li l-attiv tagħha jinkludi proprjetà immobbli sitwata f’Malta;

“kumpannija *nominee*” tfisser kumpannija awtorizzata li taqdi l-funzjonijiet ta’ kumpannija *nominee* kif hemm provdut bl-artikolu 47 ta’ dan l-Att;

“*offshore trust*” għandha t-tifsira mogħtija lilha bis-subartikolu (2) ta’ l-artikolu 6 ta’ dan l-Att;

“persuna” tinkludi korp ta’ persuni;

“preskritt” tfisser preskritt b’regolamenti magħmulin bis-saħħa ta’ dan l-Att;

“proprjetà” tfisser proprjetà ta’ kull xorta jew deskrizzjoni, sew jekk mobbli jew immobbli, personali jew reali, u kulfejn tinsab, u f’relazzjoni għal jeddijiet jew interessi kemm jekk vestiti, kontingenti, annullabili jew futuri;

“persuna kwalifikata” għar-rigward ta’ *settlor* jew benefiċjarju ta’ *trust* tfisser persuna mhux residenti f’Malta, u riferenzi għal persuna kwalifikata biex tkun *settlor* jew benefiċjarju għandhom jiftiehemu f’dak is-sens;

“residenti f’Malta” għandha l-istess tifsira li għandha taht l-Att;

“*settlor*” tfisser il-persuna li tagħmel *trust* u tinkludi persuna li tipprovdi proprjetà ta’ *trust* jew tagħmel dispożizzjoni fuq *trust* jew lil *trust*;

“*trust*” għandha t-tifsira deskritta fl-artikolu 3 ta’ dan l-Att, u tinkludi l-proprjetà ta’ *trust*, il-jeddijiet, is-setgħat, id-dmirijiet, l-interessi, ir-relazzjonijiet u l-obbligi taht *trust*;

“*trustee*” għar-rigward ta’ *offshore trust*, tfisser il-persuna jew il-persuni mahturin sabiex jaġixxu bhala *trustee* jew *trustees* ta’ *trust* skond id-dispożizzjonijiet ta’ dan l-Att.

“dokument ta’ *trust*” tfisser id-dokument li bih tinholoq it-*trust* u tinkludi kull dokument li jbidel it-termini ta’ *trust* kif ukoll dikjarazzjoni unilaterali ta’ *trust*;

“proprjetà ta’ *trust*” tfisser il-proprjetà li tkun għal dak iż-żmien miżmuma fuq *trust*;

“dikjarazzjoni unilaterali ta’ *trust*” għandha t-tifsira mogħtija lilha bis-subartikolu (2) ta’ l-artikolu 7 ta’ dan l-Att;

(2) Kull riferenza f’dan l-Att għal xi liġi, jew dispożizzjoni tagħha, għandha tiftiehem bhala riferenza għal dik il-liġi jew dispożizzjoni li tkun fis-seħh minn żmien għal żmien, u għandha tinkludi riferenza għal kull liġi li tissostitwixxi dik il-liġi jew dispożizzjoni, u għal kull leġislazzjoni sussidjarja magħmula taħtha.

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

(4) Kull riferenza f'dan l-Att għal reat kriminali kommess barra minn Malta, jew kontra l-liġi ta' pajjiż li ma jkunx Malta, jew għal att li jekk ikun magħmul f'Malta ikun reat kriminali kontra l-liġi 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.

Att XVIII  
ta' l-1978.

### Offshore Trusts

3. (1) *Trust* teżisti meta persuna (imsejha *trustee*) iżżomm jew ikollha vestita fiha proprjetà taht l-obbligu li tinnegozja dik il-proprjetà għall-benefiċċju ta' persuni (imsejjha l-benefiċċjarji), kemm jekk ikunu jew ma jkunx għadhom aċċertati jew jeżistu, jew għal għan li ma jkunux għall-benefiċċju tat-*trustee*, jew kemm għal dak il-benefiċċju u dak il-għan imsemmija hawn fuq.

Tifsir ta' *trust*.

(2) Il-proprjetà ta' *trust* għandha tinżamm mit-*trustee* bħala fond separat, distint u separat minn dak tat-*trustee*.

(3) Il-proprjetà ta' *trust* tinżamm minn jew f'isem jew taht il-kontroll tat-*trustee* li għandu jkollu setgħa sħiħa kif ukoll id-dmir, li għalih ikun responsabbli, li jamministra, jutilizza jew jiddisponi mill-proprjetà ta' *trust* skond il-kundizzjonijiet tat-*trust* u kull dmir speċjali mpost fuq it-*trustee* b'xi liġi li tapplika għalih, li jharrek u jiġi mharrek dwar it-*trust* u li xort'ohra jaġixxi fil-materji kollha li jikkonċernaw it-*trust*.

4. Kull ksur ta' dmir impost fuq *trustee* b'dan l-Att jew bil-kundizzjonijiet tat-*trust* jew bil-liġi proprja tat-*trust*, u kull att jew negliġenza min-naħa tat-*trustee* li ma jkunux awtorizzati jew skużati b'dan l-Att, jew bil-liġi proprja tat-*trust* jew bil-kundizzjonijiet tat-*trust*, ikunu jfissru u jfissru b'dan l-Att ksur ta' *trust*.

Ksur ta' *trust*.

5. (1) Bla hsara għad-dispożizzjonijiet ta' dan l-Att, *trust* għandu jkun iggvernat mil-liġi proprja tiegħu u għandu jkun hekk interpretat u eżekutibbli.

Liġi proprja  
ta' *trust*.

(2) Il-liġi proprja ta' *trust* tiġi l-ewwel stabbilita bl-intenzjoni tas-*settlor*, sew jekk dik l-intenzjoni tirriżulta espressament mid-dokument tat-*trust* sew jekk tingibed minnu. Jekk dik l-intenzjoni ma tirriżultax ċar bizżejjed, il-liġi proprja tat-*trust* għandha tkun il-liġi ta' Malta.

6. (1) *Trust* li tkun *offshore trust* validament mahluqa skond jew kif provdut b'dan l-Att, kemm f'Malta jew barra minn Malta, għandha, jekk tkun reġistrata taht dan l-Att, tkun rikonoxxuta u tkun eżekutibbli mil-Qrati ta' Malta; u bla hsara għad-dispożizzjonijiet ta' dan l-Att, *trust* reġistrata u l-kundizzjonijiet tagħha jkunu hekk rikonoxxuti u eżekutibbli minkejja d-dispożizzjonijiet ta' xi liġi ohra.

Offshore trusts  
u l-għarfien  
tagħhom.

(2) *Trust* tkun *offshore trust* jekk —

(a) is-*settlor* ikun persuna kwalifikata, fiż-żmien tal-holqien tat-*trust*;

(b) il-proprjetà tat-*trust* ma tkunx tinkludi xi proprjetà immobbli sitwata f'Malta;

(ċ) il-benefiċjarji kollha taht it-*trust* ikunu persuni kwalifikati fiż-żmien tal-holqien tat-*trust* u fiż-żmien li fih xi wiehed jew aktar minnhom xort'ohra jsiru intitolati li jkunu benefiċjarji:

Iżda jekk fiż-żmien tal-holqien tat-*trust* ebda wiehed mill-benefiċjarji ma jkun residenti f'Malta u wiehed biss jew uhd minnhom ikunu residenti f'Malta fiż-żmien li huma xort'ohra jsiru għall-ewwel intitolati li jkunu benefiċjarji, it-*trust* tkompli tkun *offshore trust*, bla hsara għal xi dispożizzjonijiet ohra ta' dan l-Att.

Iżda wkoll, *trust* għandha tkun u tibqa' *offshore trust* minkejja li persuna jew persuni residenti f'Malta jistgħu jibbenefikaw taħta flimkien ma' persuni ohra bħala membri ta' klassi li huma benefiċjarji ta' *trust* ta' karità;

(3) Għall-finijiet ta' dan l-artikolu, meta *trust* tinholq b'testment, il-waqt li fih tinholq it-*trust* ikun il-waqt li fih isir it-testment.

(4) *Trusts* li jinholqu kif provdut b'dan l-Att għandhom ikunu wkoll rikonoxxuti u esegwiti bħala tali mill-Qrati ta' Malta.

Formalitajiet għal  
*offshore trusts*.

7. (1) *Offshore trust* ma tkunx valida kemm-il darba ma tinholqx b'testment jew dokument iehor bil-miktub:

Iżda dikjarazzjoni unilaterali ta' *trust* ikollha l-istess effett bħal dokument bil-miktub.

(2) Dikjarazzjoni unilaterali ta' *trust* hija dikjarazzjoni bil-miktub magħmula minn kumpannija *nominee* li tghid li l-kumpannija tkun it-*trustee* ta' *offshore trust*, tagħti isem it-*trust* u li jkun fiha l-kundizzjonijiet kollha tat-*trust* kif ukoll l-ismijiet jew l-informazzjoni li biha jkunu jistgħu jiġu identifikati l-benefiċjarji kollha.

(3) Dikjarazzjoni unilaterali ta' *trust* ma għandhiex għalfejn ikollha l-isem tas-*settlor*, imma f'każ bħal dak id-dikjarazzjoni għandu jkun fiha stqarrija mill-kumpannija *nominee* li s-*settlor* ikun persuna kwalifikata fid-data tad-dikjarazzjoni.

Isem ta' *trust*.

8. Id-dokument ta' *trust* ta' *offshore trust* għandu jinkludi l-isem li bih it-*trust* għandha tkun magħrufa u registrata; u dak l-isem għandu, kemm-il darba l-Qorti eċċezzjonalment u għal raġuni xierqa ma tawtorizzax bidla, jibqa' bla mibdul sat-terminazzjoni tat-*trust*.

Benefiċjarji.

9. (1) Persuna ma tkunx intitolata li tagħmel talba taht *offshore trust* jekk —

(a) ma tkunx identifikabli bl-isem, jew

(b) ma tkunx aċċertabli b'riferenza għal klassi jew għal relazzjoni ma' xi persuna, sew jekk tkun hajja jew ma tkunx fiż-żmien li, taht il-kundizzjonijiet tat-*trust*, ikun iż-żmien li b'riferenza għalih membri ta' klassi għandhom jiġu stabbiliti;

u jekk ma jkun hemm ebda benefiċjarji identifikabbli jew aċċertabbli kif imsemmi hawn fuq it-*trust*, kemm-il darba l-ghan tat-*trust* ma jkunx ghan ta' karità, tkun nulla.

(2) *Settlor* ta' *trust* jista' jkun ukoll benefiċjarju taht it-*trust*.

(3) Il-kundizzjonijiet tat-*trust* jistgħu jipprovdu għaż-żieda ta' persuna bhala benefiċjarju, l-esklużjoni ta' benefiċjarju mill-benefiċċju, jew l-impożizzjoni fuq benefiċjarju ta' obbligu bhala kundizzjoni għall-benefiċċju.

(4) Benefiċjarju jista' jirrinunzja l-interess kollu tiegħu; u dik ir-rinunzja tkun irrevokabbli.

(5) Bla hsara għall-kundizzjonijiet tat-*trust*, benefiċjarju jista' jirrinunzja parti mill-interess tiegħu, kemm jekk ikun irċieva jew le xi benefiċċju mill-interess tiegħu; f'kull każ bhala dak, iżda bla hsara għall-kundizzjonijiet tat-*trust* rinunzja tista', bid-dokument li bih l-interess jiġi rinunzjat, issir revokabbli, u mbagħad tkun tista' tigi revokata b'dak il-mod u taht dawk iċ-ċirkostanzi msemmija jew riferiti fih.

(6) L-interess ta' benefiċjarju taht *trust* għandu jikkostitwixxi proprjetà mobbli, wkoll jekk il-proprjetà tat-*trust* tinkludi proprjetà immobbli.

(7) Bla hsara għall-kundizzjonijiet tat-*trust*, benefiċjarju jista', b'dokument bil-miktub, ibiegh, jaddebita, jitransferixxi jew xort'ohra jinneozja l-interess tiegħu b'xi mod li jkun.

10. Bla hsara għall-kundizzjonijiet tat-*trust*, it-*trustee* ta' *offshore trust* jista' jaċċetta minghand kull persuna kwalifikata bhala *settlor* xi proprjetà biex tiżdied mal-proprjetà tat-*trust*, li ma tkunx proprjetà immobbli sitwata f'Malta. Proprjetà addizzjonali ta' *trust*.

11. (1) *Offshore trust* ma tkunx valida u eżekutibbli f'Malta — Invalidità ta' *trust*.

(a) jekk titlob, tindika jew tinkoraġixxi l-għemil ta' xi att li huwa reat kriminali taht il-liġijiet ta' Malta jew li jkun reat tali jekk isir f'Malta;

(b) jekk ikollha *income* li jakkumula lilha jew li tikseb, li jkun joriġina minn operazzjoni, transazzjoni jew attività ohra li tkun reat kriminali taht il-liġijiet ta' Malta jew li, jekk issir f'Malta, tkun offiża tali, jew tinkludi proprjetà li tkun irċeviet, saret sid tagħha jew li l-kontroll fuqha jkun jew kien ikun reat kif imsemmi hawn fuq.

(2) *Trust* ma tkunx ukoll valida u eżekutibbli jekk il-Qorti tiddikjara li l-ghan li għalih tkun inholqot ikun falla jew li l-kundizzjonijiet tat-*trust* ikunu tali li l-eżekuzzjoni tagħha ma tkunx possibbli.

(3) *Meta trust* tinholq għal żewġ għanijiet jew aktar, li xi għan jew aktar jirrenduha invalida u ohrajn le —

(a) jekk l-ghanijiet ma jkunux jistgħu jiġu separati sewwa, *it-trust* tkun invalida;

(b) jekk l-ghanijiet jistgħu jiġu separati sewwa, *it-trust* tkun valida għar-rigward ta' l-ghan jew ghanijiet li fil-fatt jaffettwaw il-validità tagħha jekk il-Qorti hekk tistabbilixxi u safejn u taht il-kundizzjonijiet indikati mill-Qorti.

(4) Meta *t-trustee* ta' *offshore trust* jkun tal-fehma li *t-trust* tkun jew tista' tkun għal kollox jew f'parti invalida huwa għandu jitlob id-direttivi tal-Qorti dwar il-validità jew le *tat-trust* u dwar kull haġa li jkollha x'taqsam mal-proprjetà sugġetta għal dik *it-trust* u l-obbligi tiegħu dwarha.

(5) Direttivi kif provduti fis-subartikolu (4) ta' dan l-artikolu jistgħu jintalbu wkoll mis-*settlor*, jew minn xi benefeċjarju.

Zmien ta' *trusts*.

**12.** (1) *Trust* tista' tkompli sal-mitt anniversarju mid-data li fiha tkun bdiet teżisti u, kemm-il darba ma tiġix terminata qabel, għandha mbagħad tiġi terminata.

(2) Is-subartikolu (1) ta' dan l-artikolu ma japplikax għal *trust* għal ghan ta' karità.

Modifika jew estinzjoni ta' *trust*.

**13.** Jekk ikun hemm benefeċjarju wiehed biss, jew jekk ikun hemm ftehim unanimu fost il-benefeċjarji kollha *tat-trust*, *offshore trust* tista' tiġi sospiża, modifikata jew estinta mill-imsemmija benefeċjarju jew benefeċjarji mingħajr riferenza għax-xewqat tas-*settlor* jew *tat-trustee*, u f'kull każ bħal dan *it-trustee* għandu hekk jaġixxi:

Iżda ebda sospensjoni, modifika jew estinzjoni bħal dik ma għandha jkollha effett —

(a) jekk is-*settlor* ikun għadu haj, mingħajr il-kunsens espress tiegħu bil-miktub;

(b) meta *t-trust* tinholoq b'dikjarazzjoni unilaterali ta' *trust*, mingħajr il-kunsens espress bil-miktub *tat-trustee*.

Varjazzjoni ta' kundizzjonijiet ta' *trust*.

**14.** Meta l-kundizzjonijiet ta' *trust* jipprovdu għall-varjazzjoni tal-kundizzjonijiet tagħha dik is-setgħa ta' varjazzjoni għandha tkun bla hsara għas-setgħa mogħtija b'dan l-Att lill-Qorti għall-varjazzjonijiet tal-kundizzjonijiet ta' *trust*.

Revoka ta' *trust*.

**15.** (1) Meta *trust* jew setgħa eżerċitabbli taht *trust* tkun, bil-kundizzjonijiet tagħha, espressa li tkun —

(a) revokabbli sew għal kollox jew f'parti; jew

(b) tista' tiġi varjata,

ebda revoka jew varjazzjoni bħal dik ma għandha tippregudika xi haġa magħmula skond il-liġi minn *trustee* dwar *trust* qabel ma jirċievi avviz dwar dik ir-revoka jew varjazzjoni.

(2) Bla hsara għall-kundizzjonijiet *tat-trust*, jekk *trust* tiġi revokata, *it-trustee* għandu jżomm il-proprjetà *tat-trust* f'kustodja għas-*settlor* mod assolut.

(3) Meta *trust* tiġi revokata f'parti is-subartikolu (2) ta' dan l-artikolu għandu japplika għall-proprjetà affetwata mir-revoka.

16. (1) Bla ħsara għall-kundizzjonijiet ta' *trust* u għal xi ordni tal-Qorti, meta — Nuqqas jew tmiem ta' interess.

(a) interess taht *trust* jintemm; jew

(b) *trust* tiġi terminata; jew

(ċ) ma jkun ebda benefiċjarju u ebda persuna li tkun tista' ssir benefiċjarju skond il-kundizzjonijiet tat-*trust*,

l-interessi ta' proprjetà affetwati minn dak it-tmiem, terminazzjoni jew mankanza ta' benefiċjarju għandhom jinżammu mit-*trustee* f'kustodja għas-*settlor* b'mod assolut jew, jekk ikun mejjet, għall-eredi tiegħu.

(2) meta interess jew proprjetà tinżamm minn *trustee* għal għan ta' karità li ma jkunx baqa' jeżisti jew li ma jkunx aktar applikabbli, dak l-interess jew proprjetà għandhom jinżammu għal dak il-għan ta' karità li l-Qorti tista' tiddikjara li jkun konsistenti ma' l-intenzjoni oriġinali tas-*settlor*, jew kif il-Qorti tista' xort'oħra tiddeċiedi.

(3) F'dan l-artikolu "*settlor*" tfisser il-persuna partikolari li jkun ipprovdta l-interess jew proprjetà affetwata kif imsemmi fis-subartikolu (1) ta' dan l-artikolu.

(4) Rikors lill-Qorti taht dan l-artikolu jista' jsir minn kull persuna minn dawk imsemmija fis-subartikolu (3) ta' l-artikolu 37 ta' dan l-Att.

17. (1) Mat-terminazzjoni ta' *trust* il-proprjetà tat-*trust* għandha titqassam mit-*trustee* fi żmien raġonevoli skond il-kundizzjonijiet tat-*trust* lill-persuni intitolati għaliha. Terminazzjoni ta' *trust*.

(2) Minkejja d-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, it-*trustee* jista' jżomm attiv biżżejjed biex jagħmel provdiment xieraq għal djun.

(3) Il-Qorti tista', mat-terminazzjoni ta' *trust*, jew f'xi żmien ieħor —

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

(b) jagħti direttiva lit-*trustee* biex ma jqassamx il-proprjetà ta' *trust*; jew

(ċ) tordna mod ieħor skond kif ikun jidhrilha xieraq.

(4) F'dan l-artikolu "djun" tinkludi djun kontingenti.

(5) Rikors lill-Qorti taht dan l-artikolu jista' jsir minn kull persuna minn dawk imsemmija fis-subartikolu (3) ta' l-artikolu 37 ta' dan l-Att.

#### *Trustees*

18. (1) It-*trustees* jiġu maħtura mid-, jew kif provdut fid-, dokument tat-*trust* u f'dak in-numru li jista' jkun hekk provdut. Hatra ta' *trustees*.

(2) Hija biss Kumpannija *nominee* awtorizzata biex tagixxi bhala *trustee* taht l-artikolu 47 ta' dan l-Att illi tista' tkun l-uniku *trustee* ta' *trust* taht dan l-Att; u meta t-*trustees* ikunu iktar minn wiehed, wiehed minn dawk it-*trustees* ghandu jkun kumpannija *nominee* kif imsemmi qabel.

(3) Meta ma jkun hemm ebda *trustee* jew ikun hemm vakanza post it-*trustees* li ma tkunx tista' timtela' mod iehor, l-ahhar *trustee* ta' qabel jew xi *trustee*, jew xi benefiċjarju jew l-Avukat Ġenerali jistghu jitolbu lill-Qorti għall-hatra ta' *trustee* ġdid.

(4) Il-Qorti —

(a) wara li tkun sodisfatta li rikors magħmul minn benefiċjarju jkun ġie notifikat lill-ahhar *trustee* ta' qabel jew mill-anqas lil wiehed mit-*trustees* l-oħrajn, jekk ikun hemm; u

(b) wara li tkun semgħet is-sottomissjonijiet magħmula mill-imsemmi *trustee*, jew *trustees*, jew minn xi benefiċjarju; u

(ċ) wara li tkun aċċertat li t-*trustee* indikat għal dak il-ghan fir-rikors jew xort'oħra intenzjonat biex jinhatar bhala t-*trustee* ġdid ikollu r-rieda li jaġixxi,

tista' tordna l-hatra ta' *trustee* ġdid.

(5) Bla hsara għall-kundizzjonijiet tat-*trust*, *trustee* mahtur bhala *trustee* ġdid taht dan l-artikolu ghandu jkollu l-istess setgħat, diskrezzjonijiet u dmirijiet daqslikieku huwa kien originarjament ġie mahtur bhala *trustee*.

(6) Mal-hatra ta' *trustee* ġdid kull haġa mehtieġa biex il-proprjetà tat-*trust* tiġi vestitā fi, jew taht il-kontroll tat-*trustee* għal dak iż-żmien ghandha, u tista' tkun mehtieġa mit-*trustee* jew xi benefiċjarju li, ssir.

Aċċetazzjoni ta' *trust* u rimunerazzjoni.

19. (1) Hadd ma jkun obligat li jaċċetta l-hatra bhala *trustee*, iżda jekk kumpannija *nominee* mahtura bhala *trustee* tagħmel xi att jew haġa f'relazzjoni mal-proprjetà tat-*trust* konsistenti ma' li *status* ta' *trustee* ta' dik il-proprjetà din titqies li tkun aċċettat il-hatra bhala *trustee*.

(2) Kumpannija *nominee* li ma tkunx aċċettat u ma tkunx meqjusa li tkun aċċettat il-hatra bhala *trustee* tista' tirrinunzja dik il-hatra f'perijodu raġonevoli ta' żmien wara li ssir taf biha permezz ta' avviz bil-miktub lis-*settlor* jew lit-*trustees* l-oħra.

(3) Jekk is-*settlor* ikun mejjet jew ma jkunx jista' jinsab u ma jkun hemm ebda *trustees* oħra, it-*trustee* li għalih japplika s-subartikolu (2) ta' dan l-artikolu jista' jitlob lill-Qorti għall-helsien mill-hatra u l-Qorti tista' tordna kif ikun jidhrilha xieraq.

Riżenja u tnehhija ta' *trustees*.

20. (1) Bla hsara għad-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu *trustee* jista' jirriżenja mill-kariga b'avviz bil-miktub ikkonsenjat lill-Awtoritā u lis-*settlor* jew, fl-assenza tas-*settlor*, lil għall-inqas benefiċjarju wiehed; u r-riżenja jkollha sehħ mal-konsenja ta' l-avviz hawn fuq imsemmija.

(2) Riżenja —

(a) mogħtija biex tiffaċilità ksur ta' *trust*; jew

(b) li tkun tirriżulta f'li ma jkun hemm ebda *trustee*, ma jkollha ebda effett:

Iżda *trustee* jista' jirriżenja mill-kariga minkejja d-dispożizzjonijiet tal-paragrafu (b) ta' dan is-subartikolu jekk, qabel ma tibda sseħħ ir-riżenja, isir rikors lill-Qorti għall-hatra ta' *trustee* ġdid u *trustee* ġdid ikun hekk ġie mahtur.

(3) *Trustee* ma jibqax ikun *trustee* minnufih —

(a) mat-tneħħija tat-*trustee* mill-Qorti; jew

(b) mal-bidu fis-seħħ ta' dispożizzjoni fil-kundizzjonijiet ta' *trust* li taħtha t-*trustee* jitneħħa mill-kariga jew mod ieħor ma jibqax iżomm il-kariga; jew

(ċ) mat-tehid ta' passi għall-istralċ ta' kumpannija *nominee* li taġixxi bhala *trustee*.

(4) *Trustee* li ma jibqax ikun *trustee* għandu jagħmel hiltu biex isiru id-dokumenti kollha meħtieġa biex il-proprjetà tat-*trust* tiġi vestita fi jew taht il-kontroll tat-*trustee* l-ġdid u l-eżekuzzjoni ta' dak l-obbligu tal-persuna li ma tibqax iżjed *trustee* tkun tista' tiġi nfużata mill-Qorti.

21. (1) It-*trustees* għandhom fl-eżekuzzjoni tad-dmirijiet tagħhom u fl-eżerċizzju tas-setgħat u diskrezzjonijiet tagħhom jaġixxu bil-prudenza, b'zulija u attenzjoni ta' *bonus paterfamilias* u josservaw il-*bona fide* bl-iktar mod. Dmirijiet ta' *trustees*.

(2) Bla ħsara għad-dispożizzjonijiet ta' dan l-Att, it-*trustees* għandhom jeseġwixxu u jamministraw it-*trust* skond il-kundizzjonijiet tagħha; u, bla ħsara kif imsemmi hawn fuq, it-*trustees* għandhom —

(a) jassiguraw illi l-proprjetà tat-*trust* tkun vestita fihom jew li tkun taht il-kontroll tagħhom;

(b) safejn ikun raġonevoli jippreservaw u jawmentaw il-valur tal-proprjetà tat-*trust*.

(3) Hlief kif permess b'dan l-Att jew kif espressament provdut bil-kundizzjonijiet tat-*trust*, it-*trustee* ma għandux, mingħajr l-awtorità tal-Qorti —

(a) direttament jew indirettament jipprofitta mit-*trusteeship*; jew

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

(ċ) f'ismu jidhol f'xi transazzjoni li jkollha x'taqsam mal-proprjetà tat-*trust* li tista' tirriżulta f'dak il-profit.

(4) It-*trustees* għandhom iżommu kontegġi u dokumentazzjoni eżatti tat-*trusteeship* tagħhom u jagħtu reżokont ta' dak it-*trusteeship*:—

- (a) skond kif jitolbu l-kundizzjonijiet tat-*trust*;
- (b) fuq ordni tal-Qorti moghti fuq rikors tas-*settlor* jew xi benefiċjarju.

(5) It-*trustees* għandhom iżommu l-proprjetà tat-*trust* distinta u separata mill-proprjetà tagħhom infushom kif ukoll minn kull proprjetà oħra miżmuma minnhom taht xi *trust* jew titolu iehor, u separatament identifikabbli minnhom.

*Co-trustees.*

22. Bla hsara għall-kundizzjonijiet tat-*trust* u hlief kif xort'oħra hemm provdut fihom, meta t-*trustees* ikunu aktar minn wiehed huma —

(a) għandhom jaġixxu flimkien fil-qadi tad-dmirijiet u fl-eżerċizzju tas-setgħat tagħhom, għajr jekk f'każi urġenti ma jkunx possibbli għal xi wiehed jew aktar minnhom li hekk jaġixxu;

(b) ma għandhomx jeżerċitaw xi setgħa jew diskrezzjoni kemm-il darba ma jkunx hemm qbil bejn it-*trustees* kollha; u meta l-kundizzjonijiet tat-*trust* jagħtu s-setgħa lit-*trustees* li jaġixxu b'maġġoranza, *trustee* li ma jkunx jaqbel ma' deċiżjoni tal-maġġoranza, għandu jara l-oġġezzjoni tiegħu titniżzel bil-miktub.

Izda minkejja xi provediment li jista' jkun hemm fit-termini tat-*trust*, ebda att tat-*trustees*, u ebda deċiżjoni, poter jew diskussjoni, magħmulin, mehudin jew eżerċitati minnhom ma għandhom ikunu validi jew ikollhom effett hlief jekk dawn isiru, jittiehdu jew jiġu eżerċitati flimkien ma', jew bi qbil ta' kumpannija *nominee* li tagħxi bħala waħda mit-*trustees* tat-*trust*.

Imparzialità  
tat-*trustees*.

23. Meta t-*trust* tipprovdi għal aktar minn benefiċjarju wiehed, jew għal aktar minn għan wiehed ta' karità jew għal mill-inqas benefiċjarju wiehed u għal mill-inqas għan wiehed ta' karità, it-*trustees* għandhom ikunu imparzjali u ma għandhomx jesegwixxu t-*trust* għall-vantaġġ ta' wiehed u għad-detriment jew a spejjeż ta' iehor hlief safejn huma jkunu hekk awtorizzati jew mehtieg bil-kundizzjonijiet tat-*trust*.

Setgħat  
tat-*trustees*.

24. (1) Bla hsara għall-kundizzjonijiet tat-*trust* u għad-dispożizzjonijiet ta' dan l-Att, *trustee* għandu, għar-rigward ta' proprjetà ta' *trust*, ikollu s-setgħat kollha ta' persuna naturali li jkollha d-dritt assolut għal dik il-proprjetà.

(2) *Trustee* għandu jeżerċita s-setgħat tiegħu fl-interess tal-benefiċjarji u skond il-kundizzjonijiet tat-*trust*.

(3) Meta l-kundizzjonijiet ta' *trust* jirrikjedu li t-*trustee* jikseb il-kunsens ta' xi persuna oħra qabel jeżerċita setgħa jew diskrezzjoni, il-persuna li hekk tagħti l-kunsens tagħha ma għandhiex bis-saħħa ta' dak l-għemil titqies bħala *trustee*.

Delega  
mit-*trustees*.

25. (1) *Trustee* ma jistgħux jiddelega s-setgħat tiegħu kemm-il darba ma jkunx hekk imholli jagħmel b'dan l-Att, jew bil-kundizzjonijiet tat-*trust*, jew mill-Qorti.

(2) Hlief fejn il-kundizzjonijiet tat-*trust* speċifikament jipprovdu għall-kuntrarju, *trustee* —

(a) jista' jiddelega l-manigg ta' proprjeta ta' *trust* lil u jimpjega *investment managers* li *t-trustee* ragonevolment jikkunsidra li jkunu kompetenti u kwalifikati biex jimmaniġġaw l-investiment ta' proprjeta ta' *trust*;

(b) jista' jimpjega *accountants*, avukati, prokuraturi, bankiera, sensala, kustodji, konsulenti ta' l-investimenti, nominatorji, aġenti tal-proprjeta, prokuraturi legali u aġenti jew persuni professjonali ohra biex jaġixxu dwar kull haġa tat-*trust* jew biex iżommu xi proprjeta tat-*trust*.

(3) *Trustee* li b'*bona fede* u minghajr negliġenza jagħmel delega jew hatra skond id-dispożizzjonijiet ta' dan l-artikolu, ma jkunx responsabbli għal xi telf li *t-trust* iġġarrab b'konsegwenza ta' hekk.

(4) *Trustee* jista' jawtorizza persuna msemmija fis-subartikolu (2) ta' dan l-artikolu biex iżomm xi kummissjoni jew hlas iehor li normalment jithallas f'konnessjoni ma' xi transazzjoni.

26. (1) Meta l-kundizzjonijiet tat-*trust* jippreskrivu jew jawtorizzaw l-akkumulazzjoni għal perijodu ta' l-*income* kollu tat-*trust* jew ta' parti minnu, it-*trustee* għandu jqassam d-dhul tat-*trust* li ma jkunx akkumulat kif mehtieg jew awtorizzat mill-kundizzjonijiet tat-*trust*.

Akkumulazzjoni, avvanz jew approprijazzjoni ta' proprjeta ta' *trust*.

(2) Bla hsara għall-kundizzjonijiet tat-*trust*, u bla hsara għal xi interess jew spejjeż ta' qabel li jolqtu l-proprjeta tat-*trust*, meta benefiċjarju jkun minuri u sew jekk l-interess tiegħu jkun jew ma jkunx interess vestit jew interess li jsir vestit meta jilhaq l-età maġġuri jew età wara jew mal-ġrajja ta' xi avveniment, it-*trustee*, jista' —

(a) jakkumula l-*income* attribwibbli għall-interess ta' dak il-benefiċjarju sa tintlaħaq l-età maġġuri jew dik l-età wara jew il-ġrajja ta' dak l-avveniment; jew

(b) japplika dak l-*income* jew parti minnu lil jew għall-manteniment, edukazzjoni jew benefiċċju iehor ta' dak il-benefiċjarju; jew

(c) javvanza jew jiproprija lil jew għall-benefiċċju ta' xi benefiċjarju tali dak l-interess jew parti ta' dak l-interess.

(3) Ir-riċevuta mogħtija minn ġenitur jew it-tutor legittimu ta' benefiċjarju li jkun minuri għandha tkun irċevuta suffiċjenti lit-*trustee* għall-hlas magħmul taht is-subartikolu (2) ta' dan l-artikolu.

(4) Bla hsara għall-kundizzjonijiet tat-*trust*, u bla hsara għal xi interess jew spejjeż ta' qabel li jolqtu l-proprjeta tat-*trust*, it-*trustee* jista' javvanza jew japplika għall-benefiċċju ta' benefiċjarju parti mill-proprjeta tat-*trust* qabel id-data tal-ġrajja ta' l-avviniment li mal-ġrajja tiegħu l-benefiċjarju jsir intitolat assolutament għaliha.

(5) Bla hsara għall-kundizzjonijiet tat-*trust*, *trustee* jista' jappropria proprjeta ta' *trust* fl-interess għall-issodisfar ta' l-interess ta' benefiċjarju b'tali mod u skond dik il-valutazzjoni li *t-trustee* jikkunsidra xierqa.

(6) Kull parti tal-proprjetà tat-*trust* li tigi avvanzata, applikata jew approprijata kif intqal qabel ghandha tittiehed f'konsiderazzjoni meta jkun qed jiġi stabbilit minn żmien għal żmien is-sehem tal-benefiċjarju fil-proprjetà tat-*trust*.

(7) Ebda parti tal-proprjetà tat-*trust* li tigi avvanzata, applikata jew approprijata kif provdut f'dan l-artikolu ma ghandha tkun akbar mis-sehem prezunt, kontingenti jew vestit tal-benefiċjarju fil-proprjetà tat-*trust*.

Attribuzzjoni jew  
ċessjoni ta'  
proprjetà ta' *trust*.

27. Meta l-kundizzjonijiet tat-*trust* jagħtu lit-*trustee* jew lil xi persuna oħra s-setgħa li jattribwixxi jew iċedi l-proprjetà kollha tat-*trust* jew xi parti minnha jew xi interess fil-proprjetà tat-*trust* lil xi persuna, jew lil *trustees* għall-benefiċju ta' xi persuna, dik is-setgħa ghandha, bla hsara għall-kundizzjonijiet tat-*trust*, jkollha sehħ sew jekk dik il-persuna kienet jew ma kenitx benefiċjarju tat-*trust* minnufih qabel dik l-attribuzzjoni jew ċessjoni.

Remunerazzjoni u  
spejjeż ta' *trustee*.

28. (1) Kemm-il darba ma jkunx awtorizzat bil-kundizzjonijiet tat-*trust*, jew bil-kunsens bil-miktub tal-benefiċjarji kollha jew b'xi ordni tal-Qorti, *trustee* ma jkunx intitolat għal remunerazzjoni għas-servizz magħmul.

(2) *Trustee* jista' jirrimborsa lilu nnifsu jew iħallas mit-*trust* l-ispejjeż kollha legittimament magħmula minnu f'konnessjoni mat-*trust*.

Konfidenzjalità  
dwar it-*trusts*.

29. (1) Bla hsara għall-kundizzjonijiet tat-*trust* u għal xi ordni tal-Qorti, mogħtija għal xi raġunijiet speċjali, *trustee* ma jkunx meħtieġ li jiżvela lil xi persuna xi dokument jew informazzjoni li —

(a) tiżvela d-deliberazzjonijiet tat-*trustee* dwar il-mod li bih setgħa jew diskrezzjoni tkun ġiet eżerċitata, jew li bih ikun ġie moqdi dmir mogħti jew impost bil-liġi jew bil-kundizzjonijiet tat-*trust*;

(b) tiżvela r-raġuni għal xi eżerċizzju partikolari ta' dik is-setgħa jew diskrezzjoni jew qadi ta' dmir jew il-materja li fuqha tkun jew setgħet kienet ibbażata dik ir-raġuni;

(ċ) jkollha x'taqsam ma' l-eżerċizzju jew eżerċizzju propost ta' dik is-setgħa jew diskrezzjoni jew il-qadi jew qadi propost ta' dak id-dmir;

(d) jkollha x'taqsam ma' u tiffirma parti mill-kontegġi tat-*trust*:

Iżda meta t-talba tkun għall-kxif ta' xi dokument jew informazzjoni li jkollha x'taqsam ma' jew li tkun tiffirma parti mill-kontegġi tat-*trust* u ssir minn benefiċjarju taħt it-*trust* jew, fil-każ ta' karità, b'karità riferita b'isimha fid-dokument tat-*trust* bhala benefiċjarju taħt it-*trust*, it-*trustee* jkun obligat li jiżvela d-dokument jew informazzjoni oħra mitluba.

(2) Hlief kif meħtieġ, permess jew xort oħra provdut b'dan l-Att, jew bil-kundizzjonijiet tat-*trust* jew skond kif ikun meħtieġ għall-ghanijiet tat-*trust*, u minkejja d-dispożizzjonijiet ta' xi liġi oħra —

(a) kull *trustee* u kull persuna oħra għandhom dejjem iqisu u jitrattaw id-dokumenti u l-informazzjoni kollha dwar *trust* bħala sigrieti u konfidenzjali;

(b) ebda *trustee* jew persuna oħra ma jkunu f'xi żmien meħtieġa li juru lil jew quddiem xi qorti, tribunal, bord, kumitat ta' inkjesta jew xi awtorità oħra jew li jiżvelaw li xi awtorità tali xi materja jew haġa li jsiru jafu biha jew li tkun fil-pussess tagħhom għal xi raġuni tkun xi tkun, meta dik il-materja jew haġa jkollha x'taqsam ma' *trust*.

(3) kull *trustee*, jew persuna oħra li, hliet kif inhu meħtieġ, permess jew xort'oħra provdut b'dan l-Att, jew bil-kundizzjonijiet tat-*trust*, tikkomunika jew tattenta tikkomunika xi materja jew haġa dwar *trust* lil xi persuna tkun min tkun —

(a) tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux anqas minn, elf u mhux iżjed minn hamest elef liri, jew priġunerija għal żmien ta' mhux iżjed minn sentejn, jew dik il-multa u priġunerija flimkien; u

(b) thallas fit-*trust* piena ta' mhux anqas minn tlett mitt lira u ta' mhux iżjed minn għaxart elef lira, jew dak l-ammont oghla jekk id-danni mgarrba jkunu akbar minn dik is-somma, skond kif il-Qorti li tikkundanna dik il-persuna kif imsemmi hawn fuq tista' tiffissa u tordna; liema somma tingabar bħala dejn ċivili u l-ordni tal-qorti tkun titolu eżekuttiv bis-saħħa ta' dan is-subartikolu għall-finijiet ta' dak il-ġbir.

30. (1) *Trustee* li jikkommetti jew jiehu sehem fi ksur ta' *trust* ikun, bla ħsara għal xi responsabbiltà oħra, responsabbli —

Responsabbiltà  
għal ksur ta'  
*trust*.

(a) għat-telf jew deprezzament fil-valur tal-proprjetà tat-*trust* bħala riżultat tal-ksur;

(b) għall-profitt, jekk kien ikun hemm, li t-*trust* kienet tagħmel kieku ma kienx hemm dak il-ksur;

(2) *Trustee* ma jistax ipatti bi qlieġ minn ksur ta' *trust* għal telf mill-istess jew ksur ieħor ta' *trust*.

(3) *Trustee* ma jkunx responsabbli għal ksur ta' *trust* li jkun sar qabel il-hatra tiegħu jew dak il-ksur ta' *trust* ikun sar minn xi persuna oħra. Ikun madankollu d-dmir tat-*trustee*, malli jsir jaf bih, li jiehu l-passi raġonevoli kollha biex dak il-ksur jiġi rmedjat.

(4) *Trustee* ma jkunx responsabbli għal ksur ta' *trust* magħmul minn *co-trustee* għajr jekk huwa —

(a) isir jaf jew kien ikun imissu jsir jaf bl-għemil ta' dak il-ksur jew bil-ħsieb tal-*co-trustee* li jikkommetti ksur ta' *trust*; u

(b) jahbi attivament dak il-ksur jew dak il-ħsieb jew jonqos fi żmien raġonevoli li jiehu l-passi xierqa biex jiproteġi jew iqiegħed lura f'postha l-proprjetà tat-*trust* jew biex ma jithalliex isir dak il-ksur.

(5) Bla hsara għall-kundizzjonijiet tat-*trust*, *trustee* ma jkunx responsabbli —

(a) għan-nuqqas ta' *co-trustee* hlief jekk huwa —

(i) jiehu sehem fin-nuqqas ta' dak it-*trustee*; jew

(ii) jonqos li jiehu l-prekawzjoni xierqa biex ma jhallix dak in-nuqqas isir;

(b) għal xi telf tal-proprjetà tat-*trust*, hlief jekk dak it-telf ikun dovut għal —

(i) nuqqas, att jew sehem volontarju tiegħu; jew

(ii) traskuraġni jew nuqqas tiegħu li jiehu l-prekawzjoni xierqa biex dak it-telf ma jsirx.

(6) Meta żewġ *trustees* jew aktar ikunu responsabbli dwar ksur ta' *trust*, ir-responsabbiltà tagħhom tkun *in solidum*.

(7) Benefiċjarju jista', dwar responsabbiltà lilu għal ksur ta' *trust* li jkun diġà sar, jehles *trustee* minn, jew jindennizzah kontra, dik ir-responsabbiltà, iżda biss jekk il-benefiċjarju —

(a) ikollu l-kapaċità legali; u

(b) għandu t-tagħrif kollu tal-fatti materjali kollha; u

(c) ma jkunx ġie mġieghel b'mod skorret mit-*trustee* biex jagħti dak il-helsien jew indennizz.

(8) Il-Qorti tista' teħles lit-*trustee* jew għal kolloxx jew f'parti mir-responsabbiltà għal ksur ta' *trust* meta hija tkun sodisfatta li t-*trustee* jkun aġixxa onestament u raġonevolment u jkun jisthoqqlu fis-sewwa kollu li jiġi skużat fiċ-ċirkostanzi.

*Trustees*  
li jaġixxu  
dwar aktar  
minn *trust*  
wahda.

31. (1) *Trustee* li jaġixxi għall-għanijiet ta' aktar minn *trust* wahda ma għandux, jekk m'hemmx frodi, jintlaqat b'avviż ta' xi dokument, sugġett, fatt jew haġa dwar xi *trust* partikolari jekk it-*trustee* jkun kiseb avviż dwarha għax ikun qed jaġixxi jew ikun aġixxa għall-għanijiet ta' *trust* ohra.

(2) *Trustee* ta' *trust* għandu jiżvela lil xi *co-trustee* kull interess li huwa jkollu bhala *trustee* ta' *trust* ohra jekk xi transazzjoni li għandha x'taqsam magħha l-ewwel *trust* fuq imsemmija se ssir mit-*trustee* tat-*trust* l-ohra.

Trattament  
ma' terzi.

32. (1) Meta f'xi transazzjoni jew materja li tolgot *trust*, *trustee* jgħarraf lil terza persuna li huwa jkun qed jaġixxi bhala *trustee*, talba minn dik it-terza persuna dwarha għandha testendi biss għall-proprjetà tat-*trust*.

(2) Meta f'xi transazzjoni jew materja bhal dik *trustee* jonqos li jgharraf lil terza persuna li huwa jkun qed jagixxi bhala *trustee*, it-*trustee* —

(a) ikun personalment responsabbli lejn dik it-terza persuna għall-aġir tiegħu; u

(b) ikollu dritt li jirrikorri għall-proprjetà tat-*trust* permezz ta' indennizz kontra dik ir-responsabbiltà, kemm-il darba t-*trustee* ma jkunx aġixxa bi ksur ta' *trust*.

(3) F'dan l-artikolu "terza persuna" tfisser xi persuna li ma tkunx *settlor*, *trustee* jew beneficijarju tat-*trust*.

33. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, meta persuna (f'dan l-artikolu msejha "*trustee* kostruttiv") tagħmel jew tirċievi xi profitt, qliegħ jew vantaġġ minn ksur ta' *trust* hija titqies li tkun *trustee* ta' dak il-profitt, qliegħ jew vantaġġ; u l-benefiċjarju ta' dik it-*trust* jitqies li jkun it-*trust*, jew il-benefiċjarju, jew persuna oħra, għad-detriment ta' min jew a spejjez ta' min ikun sar il-profitt, il-qliegħ jew vantaġġ. Trustees kostruttivi.

(2) Is-subartikolu (1) ta' dan l-artikolu ma għandux japplika għal persuna li takkwista proprjetà taħt titolu oneruż f'*bona fede*.

(3) Persuna li tkun jew issir *trustee* kostruttiv għandha tgħaddi l-proprjetà lil jew a favur il-benefiċjarji tagħha.

34. (1) *Trustee* li jirriżenja jew li jitnehħa mill-kariga jew xort'oħra jieqaf milli jkun *trustee* għandu kif imiss iċedi l-proprjetà tat-*trust* li tkun fil-pussess jew taħt il-kontroll tiegħu. Indennizz ta' trustees li jirtiraw.

(2) *Trustee* li jirriżenja jew li jitnehħa mill-kariga jew xort'oħra jieqaf milli jkun *trustee* u jkun hares il-htigiet tas-subartikolu (1) ta' dan l-artikolu għandu jinheles mir-responsabbiltà lejn xi beneficiċju, *trustee* jew persuna interessata taħt it-*trust* għal xi att jew omissjoni dwar il-proprjetà tat-*trust* jew id-dmir tiegħu bhala *trustee*, hlief għar-rigward ta' azzjonijiet li jirriżultaw minn ksur ta' *trust* li fih dak it-*trustee* kien kompliċi jew li kien jaf bih u heba.

(3) *Trustee* li jirriżenja jew li jitnehħa mill-kariga jew xort'oħra jieqaf milli jkun *trustee* jkompli jkun responsabbli lejn xi beneficijarju, *trustee* jew persuna interessata taħt it-*trust* għall-ġbir lura tal-proprjetà tat-*trust* jew id-dhul mill-proprjetà tat-*trust* li jkun fil-pussess tat-*trustee* jew li jkun ġie konvertit għall-użu tat-*trustee* nnifsu jew li ma jkunx ġie ċedut kif mehtieg bis-subartikolu (1) ta' dan l-artikolu.

(4) Kull dispożizzjoni fil-kundizzjonijiet tat-*trust* li tissinifika li tindennizza t-*trustee* aktar milli hawn provdut f'dan l-artikolu għandha tkun invalida.

## Dispożizzjonijiet Mixxellanji Dwar Trusts

Interess ta' klassi.

35. (1) Bla hsara għall-kundizzjonijiet tat-*trust*, ir-regoli li ġejjin għandhom japplikaw meta *trust*, jew interess taht *trust*, tkun a favur ta' klassi ta' persuni —

(a) klassi tagħlaq meta ma jkunx aktar possibbli għal xi persuna ohra li ssir membru ta' klassi;

(b) mara ta' età 'l fuq minn hamsa u hamsin sena titqies li ma tkunx aktar kapaċi tnissel ulied;

(ċ) meta xi interess ta' klassi jkun dwar *income* u għal xi perijodu ma jkun jeżisti ebda membru tal-klassi, l-*income* għandu jiġi akkumulat u, bla hsara għall-artikolu 12 ta' dan l-Att, għandu jinżamm sakemm ikun jeżisti membru tal-klassi jew il-klassi tagħlaq.

(2) F'dan l-artikolu "interess ta' klassi" tfisser *trust* jew interess taht *trust* li tkun jew ikun a favur ta' klassi ta' persuni.

Varjazzjoni tal-kundizzjonijiet ta' *trust* mill-Qorti u approvazzjoni ta' transazzjonijiet partikolari.

36. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, il-Qorti tista', jekk ikun jidhrilha xieraq, b'ordni tapprova f'isem —

(a) xi persuna inabilitata bil-liġi li jkollha direttament jew indirettament, interess, sew vestit jew kontingenti, taht *trust*; jew

(b) xi persuna, sew aċċertata sew jekk le, li tista' ssir intitolata, direttament jew indirettament, għal interess taht it-*trust* bħala li tkun f'data futura jew mal-ġrajja ta' avveniment futur persuna ta' xi deskrizzjoni speċifikata jew membru ta' xi klassi speċifikata ta' persuni; jew

(ċ) xi persuna mhix imwiolda; jew

(d) xi persuna għar-rigward ta' xi interess tagħha li jista' jirrizultalha minhabba f'xi setgħa diskrezzjonarja mogħtija lil xi hadd man-nuqqas jew tmiem ta' xi interess eżistenti li ma jkunx naqas jew intemm,

kull arrangament, propost minn min ikun u kemm jekk ikun hemm jew ma jkunx hemm xi persuna ohra interessata bħala beneficijarja li tkun kompetenti li tapprova, li tvarja jew jirrevoka l-kundizzjonijiet kollha jew xi kundizzjonijiet tat-*trust* jew li jkabbar is-setgħat tat-*trustees* biex jimmaniġġaw u jamministraw xi proprjetà tat-*trust*.

(2) Il-Qorti ma għandhiex tapprova arrangament f'isem xi persuna li taqa' taht il-paragrafi (a), (b) jew (ċ) tas-subartikolu (1) ta' dan l-artikolu hlief jekk tkun sodisfatta li t-twerttieq ta' dak l-arrangament ikun jidher li jkun għall-benefiċċju ta' dik il-persuna.

(3) Meta fil-manigġ jew amministrazzjoni ta' *trust*, xi bejgh, kiri, plegg, ipoteka, ċessjoni, rihi jew disponiment ohra, jew xi xiri, investment, akkwist, infieq jew transazzjoni ohra tkun, fil-fehma tal-

Qorti, spediti iżda l-istess transazzjoni ma tkunx tista' titqiegħed fis-seħħ minhabba l-mankanza ta' xi setgħa għal dak l-għan vestita fit-*trustee* bil-kundizzjonijiet tat-*trust* bil-liġi, il-Qorti tista' tagħti lit-*trustee*, jew b'mod ġenerali jew f'xi ċirkostanza partikolari, setgħa għal dak il-għan b'dawk il-patti u bla ħsara għal dawk id-dispożizzjonijiet u kundizzjonijiet, jekk ikun hemm, li tqis xierqa, u tista' tordna b'liema mod u mill-liema proprjetà xi flus awtorizzati għall-infieq u l-ispejjeż ta' xi transazzjoni għandhom jithallsu.

(4) Rikors lill-Qorti taħt dan l-artikolu jista' jsir mit-*trustee* jew minn xi benefiċjarju.

37. (1) *Trustee* jista' jitlob lill-Qorti direttivi dwar il-mod li huwa jista' jew għandu jaġixxi f'konnessjoni ma' xi materja li jkollha x'taqsam mat-*trust*; u l-Qorti tista' tagħmel dak l-ordni, jekk ikun hemm, skond kif ikun jidhrilha xieraq. Setgħat oħra tal-Qorti.

(2) Il-Qorti tista' wkoll, jekk ikun jidhrilha xieraq —

(a) tagħmel ordni dwar —

(i) l-eżekuzzjoni jew l-amministrazzjoni ta' xi *trust*; jew

(ii) it-*trustee* ta' xi *trust*, inkluż ordni dwar l-eżerċizzju ta' xi setgħa, diskrezzjoni jew dmir tat-*trustee*, il-hatra jew tneħħija mill-kariga ta' *trustee*, ir-rimunerazzjoni ta' *trustee*, rendikonti, l-imġieba tat-*trustee* u kull hlas fil-qorti; jew

(iii) xi benefiċjarju ta' xi persuna li jkollha xi konnessjoni mat-*trust*;

(b) tagħmel dikjarazzjoni dwar il-validità jew eżekuttibilità ta' *trust*;

(c) tħassar jew tvarja xi ordni jew dikjarazzjoni magħmula taħt dan l-Att, jew tagħmel xi ordni jew dikjarazzjoni ġdida jew oħra.

(3) Rikors lill-Qorti għal ordni jew dikjarazzjoni taħt is-subartikolu (2) ta' dan l-artikolu jista' jsir mit-*trustee* jew minn xi benefiċjarju jew mill-Avukat Ġenerali.

(4) Meta l-Qorti tagħmel ordni għall-hatra ta' *trustee* tista' timponi dawk il-kundizzjonijiet li jidhrilha li jkunu xierqa, magħduda kundizzjonijiet dwar il-konferiment ta' proprjetà ta' *trust*.

(5) Bla ħsara għal xi ordni tal-Qorti, *trustee* mahtur mill-Qorti taħt dan l-artikolu jkollu l-istess setgħat, diskrezzjonijiet u dmirijiet daqslikieku kien ġie oriġinarjament mahtur *trustee*.

38. (1) Fl-eżerċizzju tal-funzjonijiet tagħha taħt dan l-Att il-Qorti jkollha s-setgħat kollha tal-Qorti Ċivili, Prim'Awla, u, bla ħsara għall-ġeneralità ta' dak li ntqal qabel, kull ordni jew direttiva tal-Qorti tista' tiġi eżegwita bħallikieku kienet deċiżjoni ta' l-imsemmija Prim'Awla u ma tkunx tista' tiġi mwarrba mill-imsemmija Prim'Awla Setgħat tal-Qorti għall-eżekuzzjoni ta' l-ordnijiet tagħha u tad-dokumenti ordnati minnha.

izda jkun jista' jsir appell minnha bhallikieku kienet decizjoni ta' dik l-Awla.

(2) Bla hsara ghal xi setgha ohra lill-Qorti bis-sahha tad-dispozizzjonijiet ta' qabel ta' dan l-artikolu jew ta' xi ligi ohra, meta *trustee* jitraskura jew jirrifjuta li jaqdi xi dmir jew li jhares xi ordni tal-Qorti, il-Qorti tista', b'dawk il-pattijiet u l-kundizzjonijiet li tista' tqis xierqa, tordna li l-passi mehtiega jittiehdu u jsiru minn dik il-persuna li l-Qorti tista' tahtar ghal dak il-ghan, a spejjez tat-*trustee* li jkun naqas, jew xort'ohra skond kif il-Qorti tista' tordna; u kull haqa hekk ezegwita jew maghmula ghandha topera u jkollha sehha ghall-finijiet kollha daqlikieu kienet giet ezegwita jew maghmula mit-*trustee*.

Hlas ta' l-ispejjez.

39. L-ispejjez ta' u li jkollhom x'jaqsmu ma' rikors lill-Qorti taht dan l-Att ghandhom jithallsu mill-proprjeta tat-*trust* jew jiggarrbu u jithallsu b'dak il-mod jew minn dik il-persuna ohra skond kif il-Qorti tista' tordna.

Protezzjoni ta' persuni li jkollhom x'jaqsmu mat-*trustees*.

40. (1) Persuna li takkwista proprjeta ta' *trust* minghand *trustee* f'*bona fede* u taht titolu oneruż takkwista titolu tajjeb ghaliha daqlikieu kienet akkwistatha minghand il-persuna li jkollha t-titolu assolut ghaliha u ma tintlaqatx mit-*trusts* li minnhom tinzamm l-imsemmija proprjeta.

(2) Ebda persuna li thallas jew tavvanza flus lil *trustee* ma ghandha tkun koncernata li tara li dawk il-flus ikunu mehtiega ghall-ghanijiet tat-*trust*, jew li ma jingabarx aktar milli jkun mehtieg, jew inkella dwar il-korrettezza tat-transazzjoni jew l-applikazzjoni tal-flus.

Limitazzjoni ta' azzjoni.

41. (1) Azzjoni li tittiehed kontra *trustee* —

(a) ghar-rigward ta' xi frodi li fiha kien komplici jew li kien jaf bih u zamm sigriet; jew

(b) ghall-ghbir lura minghand it-*trustee* tal-proprjeta tat-*trust* fil-pussess jew taht il-kontroll tieghu jew li t-*trustee* ikun ircieva qabel u jkun ikkonverta ghall-uzu tieghu,

ma ghandhiex taqa' bi preskrizzjoni hlief bl-gheluq ta' tletin sena.

(2) Bla hsara ghad-dispozizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, ebda azzjoni ma tista' tittiehed kontra *trustee* minn beneficjarju ghal ksur ta' *trust* wara l-gheluq ta' tliet snin —

(a) li jibdedw mid-data tal-konsenja tal-konteggi finali tat-*trust* lill-beneficjarju; jew

(b) li jibdedw mid-data li fiha l-beneficjarju jkun ghall-ewwel sar jaf bil-ksur tat-*trust*,

skond liema data tiqi l-ewwel.

(3) Meta l-beneficjarju jkun minuri l-perijodi msemmijin f'dan l-artikolu ma jibdedwx ghaddejnin qabel il-gurnata li fiha l-beneficjarju ma jibqax minuri.

(4) Il-perijodi msemmijin f'dan l-artikolu jiġu interrotti jekk att jew talba ġudizzjarja jiġu preżentati fil-qorti kompetenti u notifikati lit-*trustee* qabel għeluq l-imsemmi perijodu.

42. (1) Meta xi persuna, li tkun uffiċjal jew membru ta' kumpannija nominatorja li tkun qiegħda dak iż-żmien taġixxi bhala *trustee* ta' *trust*, ikollha raġuni taħseb li l-imsemmija *trust* ikollha proprjetà jew ikollha *income* li jakkumula lilha jew miksub minnha li joriginaw minn transazzjoni, operazzjoni jew attività oħra li tkun reat kriminali taħt il-liġijiet ta' Malta jew li, kieku tkun saret f'Malta, kienet tkun reat tali, jew tkun irċeviet jew tkun tinkludi jew ikollha fil-pussess jew kontroll tagħha flus jew proprjetà oħra li r-riċeviment, pussess jew kontroll tagħha jkunu jew kienu reat tali kif imsemmi hawn fuq, għandu jkun id-dmir ta' dik il-persuna li tgħarraf lill-Awtorità b'dik il-materja.

Dmirijiet dwar  
ċerti attivitajiet  
illegali.

(2) Kull persuna li mingħajr raġuni xierqa tonqos li thares il-htigiet tas-subartikolu (1) ta' dan l-artikolu tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux inqas minn elfejn u mhux iżjed minn għaxart elef lira jew perijodu ta' prigunerija ta' mhux aktar minn hames snin, jew dik il-multa u prigunerija flimkien.

(3) Persuna misjuba hatja ta' reat taħt dan l-artikolu tiġi skwalifikata permanentement milli tkun uffiċjal jew membru ta' kumpannija *nominee*.

(4) Il-flejjes jew proprjetà kollha mfissra fis-subartikolu (1) ta' dan l-artikolu jiġu konfiskati a favur tal-Gvern u jsiru l-proprjetà assoluta tiegħu.

### Registrazzjoni ta' Trusts

43. (1) Kull *offshore trust* għandha tkun registrata ma' l-Awtorità u ma jkollhiex effett f'Malta kemm-il darba u sakemm ma tkunx hekk registrata.

Registrazzjoni ta'  
*trusts* u  
attestazzjoni  
ta' *trustees*.

(2) Tkun ir-responsabbiltà tat-*trustee* li jaċċerta li *trust* tkun registrata taħt dan l-Att; u t-*trustee* għandu, barra minn hekk, mhux aktar tard minn xahar wara kull anniversarju tar-registrazzjoni tat-*trust*, javża lill-Awtorità dwar jekk it-*trust* tkunx għadha teżisti u dwar jekk huwa jkun jew ma jkunx it-*trustee* tagħha.

(3) Ir-registrazzjoni ssir billi tiġi preżentata lill-Awtorità:

(a) kopja ċertifikata tad-dokument tat-*trust*;

(b) dikjarazzjoni mill-kumpannija nominatorja li taġixxi bhala *trustee* tat-*trust* li tgħid li t-*trust* tissodisfa l-kundizzjonijiet ta' dan l-Att sabiex tista' tkun *offshore trust*.

(4) Wara li tkun sodisfatta illi l-htigiet kollha preskritti b'dan l-Att għall-eżistenza ta' *offshore trust* ikunu jew milqugħa u li jkun thallas id-dritt xieraq, l-Awtorità għandha tirregistra t-*trust* u tohroġ ċertifikat ta' registrazzjoni f'dak is-sens.

(5) Kull bidla sussegwenti fid-dokument tat-*trust* ghandha xorta wahda tiġi registrata ma' l-Awtorità u ma jkollhiex effett f'Malta sakemm tiġi hekk registrata. Kull bidla tali ghandha tiġi registrata mit-*trustee*, irrispettivament mill-origini ta' jew il-persuna li taghmel il-bidla.

(6) *Trustee* ghandu xorta wahda jinnotifika lill-Awtorità dwar it-terminazzjoni tat-*trust*, irrispettivament mill-kawża jew raguni ta' dik it-terminazzjoni.

(7) Fuq it-talba tat-*trustee* ta' *trust*, u fuq prova biżżejjed li tinghata ghas-sodisfazzjon ta' l-Awtorità, l-Awtorità tista' tohrog certifikat fejn tghid li, mill-ahjar taghrif li ghandha, fid-data ta-certifikat, l-applikant kien it-*trustee* tat-*trust*. Certifikat taht dan is-subartikolu jinhareġ mall-hlas ta' dritt ta' Lm15 jew dak l-ammont oghla skond kif l-Awtorità tista' minn żmien ghal żmien tistabilixxi.

(8) L-Awtorità ghandha żżomm registru tat-*trusts* kollha registrati magħha taht dan l-artikolu u ghandha ddahhal fih kull bidla dwarhom li tiġi notifikata lilha u dawk il-materji l-oħra li jkun jidhrilha vieraq li tirregistra.

(9) Id-dritt li jithallas ghar-registrazzjoni ta' *trust* jkun ta' mitejn lira.

(10) *Trust* ma tibqax intitolata għall-eżenzjonijiet, benefiċċji u privileġġi oħra ta' *offshore trust* jekk it-taxxa dovuta kull sena taht l-artikolu 44 ta' dan l-Att ma tithallasx fi żmien tliet xhur mid-data li fiha jkun dovut.

#### *Eżenzjonijiet Fiskali u Ohrajn*

Eżenzjoni  
mit-tassazzjoni.  
Att L IV ta'  
l-1948.

44. (1) It-Taxxa li tithallas taht l-Att ta' l-1948 dwar it-Taxxa fuq l-*Income*, jew taht xi liġi oħra li tissostitwixxi dik il-liġi fuq —

(a) l-*income* ta' xi *offshore trust*;

(b) xi *income* ta' benefiċjarju li jirriżulta minn xi *offshore trust*, ghandha tkun ta' mitejn lira ghal kull sena ta' stima, u ghandha tithallas mit-*trust* lill-Awtorità għan-nom tal-Kummissarju tat-Taxxi Interni mhux iżjed tard mill-ahhar ta' Jannar ta' kull sena li tiġi wara dik tar-registrazzjoni tat-*trust*.

Att XL VII ta'  
l-1973.

(2) Ma jithallas ebda dritt taht l-Att ta' l-1973 dwar it-Taxxa tal-Mewt u tad-donazzjoni, jew taht xi liġi li tissostitwixxi dik il-liġi —

(a) dwar xi attiv mizmum taht *offshore trust*;

(b) minn xi persuna dwar l-interess tagħha bhala benefiċjarju taht *offshore trust*.

Att XXXI ta'  
l-1981.

(3) Ebda dritt ma jithallas taht l-Att ta' l-1981 dwar it-Taxxa ta' Dokumenti, jew taht xi liġi li tissostitwixxi dik il-liġi, rigward xi dokument dwar *offshore trust*.

(4) Kull proprjetà miżmuma taht *offshore trust* tkun eżentata mid-dazju tad-dwana meta tiġi mportata f'Malta:

Iżda dak id-dazju għandu jithallas fuq kull proprjetà importata bla hlas ta' dazju taht dan is-subartikolu jekk u meta dik il-proprjetà tinbiegħ, tiġi assenjata jew mod iehor trasferita lil xi persuna residenti f'Malta.

45. L-Att ta' l-1972 dwar il-Kontroll fuq il-Kambju, u kull liġi oħra li tissostitwixxi dik il-liġi, ma għandux japplika għal xi transazzjoni jew operazzjoni dwar li jkollha x'taqsam ma xi *offshore trusts* jew għal xi proprjetà miżmuma tahtom:

Eżenzjoni  
mill-kontroll  
fuq il-kambju.

Iżda d-dispożizzjonijiet ta' hawn fuq ta' dan l-artikolu ma japplikawx għal transazzjonijiet jew operazzjonijiet magħmula minn persuni residenti f'Malta.

46. (1) Meta dikjarazzjoni fuq il-formola murija fl-Iskeda li tinsab ma' dan l-Att tkun giet sottomessa lill-Kummissarju tat-Taxxi Interni minn kumpannija *nominee* dwar it-*trust* li tagħha tkun *trustee*, la t-*trust* u lanqas *trustee* u lanqas xi persuna oħra li jkollha interess fit-*trust* ma jkunu mehtieġa jagħmlu jew jissottomettu xi prospett, informazzjoni jew dettalji oħra li setgħu ikunu dovuti jew xort'oħra mehtieġa li jsiru jew sottomessi għal xi fini ta' l-Att ta' l-1948 dwar it-Taxxa fuq l-*Income*, dwar dik it-*trust*.

Dikjarazzjoni  
minflok prospett  
ta' taxxa.

(2) Meta proprjetà tkun b'dan l-Att eżentata mit-taxxa li tithallas 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-trasferiment taxxabli relattiv, jekk it-trasferiment ma jinkludi ebda proprjetà oħra; u meta t-trasferiment ikun jinkludi proprjetà oħra l-prospett jista' jkun limitat għall-proprjetà sugġetta għat-taxxa.

#### Kumpanniji Nominee

47. (1) Kumpannija ffurmata għall-għan li taġixxi bħala *trustee* ta' *offshore trusts* jew għal dak il-għan u għall-għan li taqdi l-funzjonijiet ta' kumpannija *nominee* għar-rigward ta' kumpanniji *offshore* kif provdut fl-Att, u li tissodisfa, bla h'sara għad-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu, il-kundizzjonijiet kollha mniżżlin fis-subartikolu (2) ta' l-artikolu 42 ta' l-Att u altrimenti kwalifikata biex tingħata *warrant* biex tiffunzjona bħala kumpannija *nominee* taht l-artikolu 43 ta' l-Att, tikkwalifika wkoll biex tkun kumpannija *nominee* għall-finijiet ta' dan l-Att u d-dispożizzjonijiet ta' l-att għall-ghoti ta' *warrant* lil kumpannija *nominee* għandhom japplikaw għal dik il-kumpannija bħalma huma japplikaw għal kumpannija *nominee* taht l-Att.

Kumpanniji  
nominatorji u  
kundizzjonijiet  
għall-formazzjoni  
tagħhom.

(2) Kumpannija nominatorja ma tistax tiffunzjona bħala *trustee*, u ma għandhiex tiġi trattata bħala tali għall-finijiet ta' dan l-Att, kemm-il darba ma tkun tippossjedi *warrant* mahruġ mill-Awtorità, u fis-sehh dak iż-żmien, li jawtorizzaha biex tiffunzjona bħala tali għall-finijiet ta' dan l-Att.

(3) Id-dispożizzjonijiet kollha ta' l-Att li ghandhom x'jaqsmu ma' kumpanniji *nominee* ghandhom japplikaw ghal kumpannija li tinghata *warrant* biex tiffunzjona bhala kumpannija *nominee* ghall-finijiet ta' dan l-Att, jew ghall-finijiet ta' dan l-Att u ta' l-Att, skond il-każ, bla hsara ghal dawk il-modifikazzjonijiet u adattamenti skond kif ikun mehtieg biex jigu applikati d-dispożizzjonijiet hawn fuq imsemmija ta' l-Att ghal kumpanniji *nominee* li jagixxu bhala *trustees* ta' *offshore trusts*; u partikolarment, izda bla hsara ghall-ġeneralità ghal dak li ntqal qabel, riferenzi fl-Att ghall-Att innifsu ghandhom jiftiehm u bhala riferenzi ghal dan l-Att, riferenzi ghal kumpanniji *offshore* ghandhom jiftiehm u bhala riferenzi ghal *trust* u riferenzi ghal dmirijiet bhala diretturi jew segretarji ta' kumpanniji *offshore* ghandhom jiftiehm u bhala riferenzi ghad-dmirijiet ta' *trustees*.

(4) Id-dispożizzjonijiet ta' dan is-subartikolu msemmija fis-subartikolu (1) ta' dan l-artikolu huma —

(a) il-paragrafu (b) tas-subartikolu (2) ta' l-artikolu 42 ta' l-Att ghandu jftiehem bhala li jirrikjedi li l-ghanijiet tal-kumpannija jkunu limitati espressament ghall-qadi tal-funzjonijiet ta' *trustee* ta' *offshore trusts*, u ghal materji ancillari jew incidental ghalihom, jew ghal dawk il-funzjonijiet u l-funzjonijiet ta' kumpannija *nominee* ghar-rigward ta' kumpanniji *offshore*;

(b) fil-każ ta' kumpannija iffurmata esklussivament biex tagixxi bhala *trustee* ta' *offshore trusts* —

(i) il-persentaġġ imsemmi fil-paragrafu (e) tas-subartikolu (2) ta' l-artikolu 42 ta' l-Att ghandu jkun sittin; u

(ii) l-Awtorità tista', f'każijiet eċċezzjonali u ghal raġunijiet speċjali, tippermetti persuna mhux residenti f'Malta li tippossjedi jew iżzomm l-azzjonijiet kollha fil-kumpannija.

*Trusts* jigu  
reġistrati permezz  
tal-kumpannija  
nominatorja.

48. Bla hsara ghall-ġeneralità tad-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 47 ta' dan l-Att, ebda *trust* ma ghandha tiġi reġistrata mill-Awtorità hliet permezz ta' l-aġenzija ta' kumpannija *nominee* awtorizzata li tagixxi bhala *trustee* ta' *offshore trusts* u ebda persuna hliet kumpannija *nominee* awtorizzata kif imsemmi hawn fuq ma tista' tiġi mahtura *trustee* ta' *offshore trust*.

#### *Dispożizzjonijiet Ġenerali*

49. Il-Ministru jista', fuq parir ta' l-Awtorità, jaghmel regolamenti jew regoli ghall-eżekuzzjoni aħjar ta' xi dispożizzjonijiet ta' dan l-Att, u jista' partikolarment, izda bla hsara ghall-ġeneralità ta' dak li ntqal qabel, b'xi regolamenti jew regoli bhal dawk:

(i) jipprovd i biex il-prospetti, dikjarazzjonijiet, u avvizi jsiru jew iinghataw ghal xi fini ta' dan l-Att, u l-forma u l-kontenut taghhom;

(b) jirregola d-direzzjoni, dmirijiet u obbligi ohra ta' kumpanniji nominatorji, inklużi l-prospetti, dikjarazzjonijiet u informazzjoni ohra li huma għandhom jissottomettu lill-Awtorità, u jistabbilixxi l-ammont massimu li, minkejja xi dispożizzjoni ta' dan l-Att, jista' jintalab bhala drittijiet minn dawk il-kumpanniji;

(ċ) 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 materja li għaliha ma hemmx provdut dritt b'dan l-Att:

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

(d) jagħmel regoli tal-qrati għal xi fini ta' dan l-Att u tal-proċeduri tahtu, biex b'dawk ir-regoli jipprovdi għal xi materja msemmija fl-artiklu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

(e) jippreskrivi xi materja li tista' jew tkun trid tiġi preskritta.

50. (1) Ir-registrazzjoni ta' kumpannija *offshore* taht dan l-Att għandha tikkostitwixxi kuntratt bejn il-Gvern u *t-trust* li jigarantixxi il-jeddijiet u eżenzjonijiet u privileġġi ohra dovuti kif provdut b'dan l-Att, sugġett biss għall-osservanza li għandha tinghata lid-dispożizzjonijiet kollha ta' dan l-Att. Garanzija indefinita ta' eżenzjonijiet.

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

51. (1) Ebda proċedmenti għal reat taht dan l-Att ma għandhom jinbdeu mingħajr l-awtorizzazzjoni ta' l-Avukat Ġenerali. Proċedimenti kriminali.

(2) Id-dispożizzjonijiet ta' dan l-Att ma għandhomx jolqtu xi proċedimenti kriminali li jistgħu jkunu kompetenti taht xi ligi 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 identifikabbli biċ-ċar, 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.

52. Id-dispożizzjonijiet ta' l-Att li għandhom x'jaqsmu ma' Applikazzjoni ta' ċerti dispożizzjonijiet ta' l-Att. Applikazzjoni ta' ċerti dispożizzjonijiet ta' l-Att.

l-Awtorità u partikolarment, izda bla ħsara għall-ġeneralità ta' dak li ntqal qabel, id-dispożizzjonijiet ta' l-artikoli 4, 5, 10 u 11 ta' l-Att, għandhom japplikaw għal u dwar *offshore trusts*, u xort'ohra għall-finijiet ta' dan l-Att, bħalma japplikaw għal u dwar kumpanniji *offshore* u xort'ohra għall-finijiet ta' l-Att, u għandhom hekk japplikaw sugġett għal dawk il-modifikazzjonijiet u adattamenti li jistgħu jkunu meħtieġa għall-finijiet imsemmija qabel.

## SKEDA

## Artikolu 46

DIKJARAZZJONI MINFLOK PROSPETT TA' TAXXA  
DWAR OFFSHORE TRUST

Dikjarazzjoni mit-*Trustee* ta' *Offshore Trust* minflok Prospett ta' Taxxa u 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 nominatorja li qiegħda taġixxi bħala t-*trustee* ta' .....

ta' *offshore trust* registrata taht l-Att ta' l-1988 dwar l-*Offshore Trusts* (hawnhekk iżjed "il quddiem imsejjah "l-Att") solennement u sinċerament niddikjaraw li ahna assigurajna mill-aħjar li stajna li l-imsemmija *offshore trust* tissodisfa l-kundizzjonijiet kollha meħtieġa bl-Att sabiex tkun tista' tibqa' *offshore trust* u jkollha l-*income* imsemmi fis-subartikolu (1) ta' l-artikolu 44 ta' l-Att taxxabli kif hemm provdut f'dak l-artikolu u li konsegwentement:

(a) l-*income* ta' l-imsemmija *trust* u dak tal-benefiċjarji tagħha li jirriżulta mill-imsemmija *trust*, huma soġġetti għat-taxxa fuq l-*income* għas-sena ta' stima ..... kif provdut fl-artikolu msemmi qabel;

(b) is-*settlor* u l-benefiċjarji tat-*trust* huma kwalifikati biex ikunu s-*settlor* u benefiċjarji, rispettivament, skond l-Att u l-proprjetà tat-*trust* ma tinkludi ebda proprjetà immobbli sitwata f'Malta;

(ċ) it-*trust* li tagħha l-imsemmija kumpannija nominatorja hija t-*trustee* mhix f'qagħda li titlef xi dritt, eżenzjoni jew privileġġ iehor mogħti bl-Att għal xi raġuni tkun xi tkun.

Ahna qegħdin naghmlu din id-dikjarazzjoni b'konoxxenza shiha tal-pieni stabbiliti bl-Att għal dikjarazzjonijiet foloz jew inkorretti.

Firma .....

Isem shih .....

Nru. tal-Karta ta' Identità .....

Professjoni .....

Indirizz .....

Datat .....

## Għanijiet u Raġunijiet

L-Għan tal-Abbozz huwa sabiex jirrikonoxxi u jirregola *Trusts* li filhom is-*Settlor* u t-*Trustees* huma t-tnejn residenti ta' Malta. Dawn it-*Trusts* jissejhu *Offshore Trusts* u jingħataw eżenzjonijiet fiskali sabiex tiġi inkoraġġita r-registrazzjoni tagħhom fi, u t-tmexxija tagħhom minn Malta.

## OFFSHORE TRUSTS BILL

### Arrangement of Sections

#### PRELIMINARY

#### SECTION

1. Short title and commencement
2. Interpretation

#### OFFSHORE TRUSTS

3. Meaning of trust
4. Breach of trust
5. Proper law of trusts
6. Offshore trusts and their recognition
7. Formalities for offshore trusts
8. Name of trust
9. Beneficiaries
10. Additional trust property
11. Invalidity of a trust
12. Duration of trusts
13. Modification of extinguishment of trust
14. Variations of terms of a trust
15. Revocation of a trust
16. Failure or lapse of interest
17. Termination of a trust

#### TRUSTEES

18. Appointment of trustees
19. Acceptance of trust and remuneration
20. Resignation and removal of trustees
21. Duties of trustees
22. Co-trustees
23. Impartiality of trustees
24. Powers of trustees
25. Delegation by trustees
26. Accumulation, advancement or appropriation of trust property
27. Appointment or assignment of trust property
28. Remuneration and expenses of trustees
29. Confidentiality relating to trusts
30. Liability for breach of trust
31. Trustees acting in respect of more than one trust
32. Dealings with third parties
33. Constructive trustees
34. Indemnity of retiring trustees

### MISCELLANEOUS PROVISIONS REGARDING TRUSTS

35. Class interest
36. Variation of terms of trust by Court and approval of particular transactions
37. Other powers of the Court
38. Powers of the Court for the execution of its orders and of instruments ordered by it
39. Payment of costs
40. Protection of persons dealing with trustees
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### REGISTRATION OF TRUSTS

43. Registration of trusts and attestation of trustees

### FISCAL AND OTHER EXEMPTIONS

44. Exemption from taxation
45. Exemption from exchange control
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### NOMINEE COMPANIES

47. Nominee companies and condition for the formation thereof
48. Trust to be registered through nominee company

### GENERAL PROVISIONS

49. Power to make regulations or rules
50. Guarantee of exemptions
51. Criminal proceedings
52. Application of certain provisions of the Act

### SCHEDULE

Declaration in lieu of tax return in respect of an offshore trust

**A BILL  
entitled**

*AN ACT to make provision with respect to offshore trusts and to provide for matters ancillary or incidental thereto.*

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

1. (1) This Act may be cited as the Offshore Trusts Act, 1988.

Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for the tertiary sector may by notice in the Gazette appoint.

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

Interpretation.

“the Act” means the Malta International Business Activities Act, 1988;

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

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held in trust may be exercised;

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

“breach of trust” has the meaning assigned to it by section 4 of this Act;

“company” means a limited liability company duly formed and registered under any 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;

“immovable property situated in Malta” includes shares, stock or debentures in or of a company whose assets include immovable property situated in Malta;

“nominee company” means a company authorised to perform the functions of a nominee company as provided in section 47 of this Act;

“offshore trust” has the meaning assigned to it by subsection (2) of section 6 of this Act;

“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, and in relation to rights and interests whether vested, contingent, voidable or future;

“qualified person” in relation to a settlor or beneficiary of a trust means a person not resident in Malta, and references to a person qualified to be a settlor or a beneficiary shall be construed accordingly;

“resident in Malta” has the same meaning as it has under the Act;

“settlor” means the person who makes the trust and includes a person who provides trust property or makes a disposition on trust or to a trust;

“trust” has the meaning described in section 3 of this Act, and includes the trust property the rights, powers, duties, interests, relationships and obligations under a trust;

“trustee” in relation to an offshore trust, means the person or persons appointed to act as trustee or trustees of a trust in accordance with the provisions of this Act;

“trust instrument” means the instrument whereby the trust is created and includes any instrument varying the terms of the trust and also a unilateral declaration of trust;

“trust property” means the property for the time being held on trust;

“unilateral declaration of trust” has the meaning assigned to it by subsection (2) of section 7 of this Act;

(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 any other 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 XVIII of 1978.

### *Offshore Trusts*

3. (1) A trust exists where a person (called a trustee) holds or has vested in him property under an obligation to deal with that property for the benefit of persons (called the beneficiaries), whether or not yet ascertained or in existence, or for a purpose which is not for the benefit of the trustee, or for both such benefit and purpose aforesaid.

Meaning of trust.

(2) The trust property shall be held by the trustee as a separate fund, distinct and separate from that of the trustee.

(3) The trust property is held by or in the name or under the control of the trustee who shall have full power as well as the duty for which he is accountable, to administer, employ or dispose of the trust property in accordance with the terms of the trust and any special duties imposed on the trustee by any law applicable thereto, to sue and be sued in respect of the trust and otherwise to act in all matters concerning the trust.

4. Any breach of duty imposed on a trustee by this Act or by the terms of the trust or by the proper law of the trust, and any act or neglect on the part of the trustee which is not authorised or excused by this Act, or the proper law of the trust or the terms of the trust, shall be and is by this Act defined a breach of trust.

Breach of trust.

5. (1) Subject to the provisions of this Act, a trust shall be governed by its proper law and shall be interpreted and be enforceable accordingly.

Proper law of trusts.

(2) The proper law of a trust is determined in the first place by the intention of the settlor, whether such intention results expressly from the trust instrument or is desumed therefrom. If such an intention does not result sufficiently clear, the proper law of the trust shall be the law of Malta.

6. (1) A trust which is an offshore trust validly created in accordance with or as provided by this Act, whether in Malta or abroad, shall, if registered under this Act, be recognised and be enforceable by

Offshore trusts and their recognition.

the Courts in Malta; and subject to the provisions of this Act, a registered trust and the terms thereof shall be so recognised and enforceable notwithstanding the provisions of any other law.

(2) A trust is an offshore trust if —

(a) the settlor is a qualified person, at the time the trust is created;

(b) the trust property does not include any immovable property situated in Malta;

(c) all the beneficiaries under the trust are qualified persons at the time the trust is created and at the time any one or more of them otherwise become entitled to be a beneficiary;

Provided that if at the time the trust is created none of the beneficiaries is resident in Malta and only one or some of them are resident in Malta at the time they otherwise become first entitled to be a beneficiary, the trust shall continue to be an offshore trust, saving any other provisions of this Act.

Provided further that a trust shall be and remain an offshore trust notwithstanding that a person or persons resident in Malta may benefit thereunder together with other persons as members of a class that are beneficiaries of a charitable trust;

(3) For the purposes of this section, where a trust is created by a will, the time at which the trust is created shall be the time at which the will is made.

(4) Trusts which arise as provided by this Act shall also be recognised and enforced as such by the Courts in Malta.

Formalities for offshore trusts.

7. (1) An offshore trust shall not be valid unless it is created by a will or other written instrument:

Provided that a unilateral declaration of trust shall have the same effect as a written instrument.

(2) A unilateral declaration of trust is a declaration in writing made by a nominee company stating that it is the trustee of an offshore trust, giving the name of the trust and containing all the terms of the trust as well as the names or the information enabling the identification of all the beneficiaries.

(3) A unilateral declaration of trust need not contain the name of the settlor, but in such a case the declaration shall contain a statement by the nominee company that the settlor is a qualified person on the date of the declaration.

Name of trust.

8. The trust instrument of an offshore trust shall include the name by which the trust is to be known and registered; and such name shall, unless the Court exceptionally and for good reason authorises a change, remain unchanged until the termination of the trust.

**9.** (1) A person shall not be entitled to claim under an offshore trust unless he is — Beneficiaries.

(a) identifiable by name, or

(b) ascertainable by reference to a class or to a relationship to some person, whether or not living at the time which under the terms of the trust is the time by reference to which members of a class are to be determined;

and if there are no beneficiaries identifiable or ascertainable as aforesaid the trust shall, unless the purpose of the trust is a charitable purpose, be null.

(2) A settlor of a trust may be also a beneficiary under the trust.

(3) The terms of the trust may provide for the addition of a person as a beneficiary, the exclusion of a beneficiary from benefit, or the imposition on a beneficiary of an obligation as a condition for benefit.

(4) A beneficiary may disclaim his whole interest; and such a disclaimer shall be irrevocable.

(5) Subject to the terms of the trust, a beneficiary may disclaim part of his interest, whether or not he has received some benefit from his interest; in any such case, but subject to the terms of the trust, a disclaimer may, by the instrument by which the interest is disclaimed, be made revocable, and shall then be capable of revocation in the manner and under the circumstances therein mentioned or referred to.

(6) The interest of a beneficiary under a trust shall constitute movable property, even if the trust property includes immovable property.

(7) Subject to the terms of the trust, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

**10.** Subject to the terms of the trust the trustee of an offshore trust may accept from any person qualified to be a settlor any property to be added to the trust property, other than immovable property situate in Malta.

Additional trust property.

**11.** (1) An offshore trust shall be invalid and unenforceable in Malta —

Invalidity of trust.

(a) if it requires, purports or encourages the doing of any act which is a criminal offence under the laws of Malta or would be such offence if done in Malta;

(b) if it has income accruing to, or derived by it, which originates from an operation, transaction or other activity which is a

criminal offence under the laws of Malta or which, if carried out in Malta, would be such an offence, or comprises property the receipt, ownership or control of which is or would be such an offence as aforesaid.

(2) A trust shall also be invalid and unenforceable if the Court declares that the object for which it was created has failed or that the terms of the trust are such that its performance is not possible.

(3) Where a trust is created for two or more purposes, any one or more of which render it invalid and others do not —

(a) if the purpose cannot be properly separated, the trust shall be invalid;

(b) if the purposes can be properly separated, the trust shall be valid with respect to the purpose or purposes which do not effect its validity if the Court so determines and to the extent and under conditions indicated by the Court.

(4) Where the trustee of an offshore trust is of the opinion that the trust is or may be wholly or in part invalid he shall seek directives from the Court as to the validity or otherwise of the trust and as to any matter concerning the property subject to that trust and his obligations in relation thereto.

(5) Directives as provided in subsection (4) of this section may also be requested by the settlor, and by any of the beneficiaries.

Duration of trusts.

**12.** (1) A trust may continue until the one-hundredth anniversary of the date on which it came into existence and, unless sooner terminated, shall then terminate.

(2) Subsection (1) of this section shall not apply to a trust for a charitable purpose.

Modification or extinguishment of trust.

**13.** If there is only one beneficiary, or if there is unanimous agreement amongst all the beneficiaries of the trust, an offshore trust may be arrested, modified or extinguished by the said beneficiary or beneficiaries without reference to the wishes of the settlor or the trustee, and in any such case the trustee shall act accordingly:

Provided that no such arrest, modification or extinguishment shall have effect —

(a) if the settlor is still alive, without his express consent in writing;

(b) where the trust is created by a unilateral declaration of trust, without the express consent in writing of the trustee.

Variation of terms of a trust.

**14.** Where the terms of a trust provide for the variation of its terms such power to vary shall be without prejudice to the power vested by this Act in the Court for the variations of the terms of a trust.

15. (1) Where a trust or a power exercisable under a trust is, by the terms thereof, expressed to be — Revocation of a trust.

- (a) revocable, whether wholly or in part; or
- (b) capable of variation,

no such revocation or variation shall prejudice anything lawfully done by a trustee in relation to a trust before he receives notice of such revocation or variation.

(2) Subject to the terms of the trust, if a trust is revoked the trustee shall hold the trust property in trust for the settlor absolutely.

(3) Where a trust is partly revoked subsection (2) of this section shall apply to the property affected by the revocation.

16. (1) Subject to the terms of a trust and to any order of the Court, where — Failure or lapse of interest.

- (a) an interest under a trust lapses; or
- (b) a trust terminates; or
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust,

the interest of the property affected by such lapse, termination or lack of beneficiary shall be held by the trustee in trust for the settlor absolutely or, if he is dead, for his heirs.

(2) Where an interest or property is held by a trustee for a charitable purpose which has ceased to exist or is no longer applicable, that interest or property shall be held for such charitable purposes as the Court may declare to be consistent with the original intention of the settlor, or as the Court may otherwise determine.

(3) In this section "settlor" means the particular person who provided the interest or property affected as mentioned in subsection (1) of this section.

(4) An application to the Court under this section may be made by any of the persons mentioned in subsection (3) of section 37 of this Act.

17. (1) On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto. Termination of a trust.

(2) Notwithstanding the provisions of subsection (1) of this section, the trustee may retain sufficient assets to make reasonable provision for liabilities.

(3) The Court may, on the termination of a trust, or at any other time —

- (a) require the trustee to distribute trust property;
- (b) direct the trustee not to distribute trust property; or
- (c) make such other order as it thinks fit.

(4) In this section “liabilities” includes contingent liabilities.

(5) An application to the Court under this section may be made by any of the persons mentioned in subsection (3) of section 37 of this Act.

*Trustees*

Appointment  
of Trustees.

18. (1) Trustees are appointed by, or as provided in, the trust instrument, and in such number as may be so provided.

(2) Only a nominee company authorised to act as trustee under section 47 of this Act may be the sole trustee of a trust under this Act; and where the trustees are more than one, one of such trustees shall be a nominee company as aforesaid.

(3) Where there is no trustee or there is a vacancy among the trustees which cannot otherwise be filled the last former trustee or any trustee, or any beneficiary or the Attorney General may apply to the Court for the appointment of a new trustee.

(4) The Court —

(a) upon being satisfied that an application made by a beneficiary has been served on the last former trustee or on at least one of the other trustees, if any; and

(b) having heard the representations made by the said trustee or trustees, or by any beneficiary; and

(c) having ascertained that the trustee indicated for the purpose in the application or otherwise intended for appointment as the new trustee is willing to act,

may make an order appointing a new trustee.

(5) Subject to the terms of the trust, a trustee appointed as a new trustee under this section shall have the same powers, discretions and duties as if he had originally been appointed trustee.

(6) On the appointment of a new trustee anything requisite for vesting the trust property in or under the control of the trustee for the time being shall, and may be required by the trustee or any beneficiary, to be done.

Acceptance of  
trust and  
remuneration.

19. (1) No one is obliged to accept appointment as trustee, but if a nominee company appointed as trustee does any act or thing in relation to the trust property consistent with the status of a trustee of that property it shall be deemed to have accepted appointment as trustee.

(2) A nominee company which has not accepted and is not deemed to have accepted appointment as trustee may disclaim such appointment within a reasonable period of time after becoming aware of it by notice in writing to the settlor or to the other trustees.

(3) If the settlor is dead or cannot be found and there are no other trustees, the trustee to which subsection (2) of this section applies may apply to the Court for relief from the appointment and the Court may make such order as it thinks fit.

20. (1) Subject to the provisions of subsection (2) of this section, a trustee may resign office by notice in writing delivered to the Authority and to the settlor or, in the absence of the settlor, to at least one beneficiary; and the resignation shall take effect on the delivery of the aforesaid notices.

Resignation and  
removal of  
trustees.

(2) A resignation —

(a) given in order to facilitate a breach of trust; or

(b) which would result in there being no trustee, shall have no effect:

Provided that a trustee may resign office notwithstanding the provisions of paragraph (b) of this subsection, if, before the resignation takes effect, application is made to the Court for the appointment of a new trustee and a new trustee has been so appointed.

(3) A trustee shall cease to be a trustee immediately upon —

(a) the removal of the trustee by the Court; or

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

(c) steps are taken for the winding up of the nominee company acting as trustee.

(4) A trustee ceasing to be a trustee shall concur in executing all documents necessary for the vesting of the trust property in or under the control of the trustee and such obligation of the person ceasing to be a trustee shall be capable of forced execution by the Court.

21. (1) Trustees shall in the execution of their duties and the exercise of their powers and discretions act with the prudence, diligence and attention of a bonus paterfamilias and observe the utmost good faith.

Duties of trustees.

(2) Subject to the provisions of this Act, trustees shall carry out and administer the trust according to its terms; and, subject as aforesaid, the trustees shall —

(a) ensure that the trust property is vested in them or is under their control;

(b) so far as reasonable preserve and enhance the value of the trust property.

(3) Except as permitted by this Act or as expressly provided by the terms of the trust, a trustee shall not, without the Authority of the Court —

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

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

(c) on his own account enter into any transaction relating to the trust property which may result in such profit.

(4) Trustees shall keep accurate accounts and records of their trusteeship and shall render an account of such trusteeship:—

(a) as required by the terms of the trust;

(b) on an order by the Court given on an application by the settlor or any of the beneficiaries.

(5) Trustees shall keep trust property distinct and separate from their own property as well as from any other property held by them under any other trust or title, and separately identifiable therefrom.

Co-trustees.

22. Where the trustees are more than one they shall, subject to the terms of the trust and except as otherwise provided therein —

(a) act jointly in the performance of their duties and the exercise of their powers, unless in urgent cases it is not possible for any one or more of them so to act;

(b) not exercise any power or discretion unless all the trustees are in agreement;

and where the terms of the trust empowers the trustees to act by a majority, a trustee who dissents from a decision of the majority, shall cause his dissent to be recorded in writing.

Provided that, notwithstanding anything contained in the terms of the trust, no act of the trustees, and no decision, power or discretion, done, taken or exercised by them shall be valid or have effect unless it is done, taken or exercised jointly with, or with the agreement of, a nominee company acting as one of the trustees of the trust.

Impartiality of trustees.

23. Where the trust provides for more than one beneficiary, or more than one charitable purpose or for at least one beneficiary and at least one charitable purpose, trustees shall be impartial and shall not execute the trust for the advantage of one and to the detriment or at the expense of another, except to the extent that they are so authorised or required by the terms of the trust.

24. (1) Subject to the terms of the trust and to the provisions of this Act, a trustee shall, in relation to the trust property, have all the powers of a natural person having the absolute title to such property. Powers of trustees.

(2) A trustee shall exercise his powers in the interest of the beneficiaries and in accordance with the terms of the trust.

(3) Where the terms of a trust require the trustee to obtain the consent of some other person before exercising a power or discretion, the person who so consents shall not by virtue of so doing be deemed to be a trustee.

25. (1) A trustee may not delegate his powers unless permitted to do so by this Act, or by the terms of the trust, or by the Court. Delegation by trustees.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee —

(a) may delegate management of trust property to and employ investment managers whom the trustee reasonably considers competent and qualified to manage the investment of trust property;

(b) may employ accountants, advocates, attorneys, bankers, brokers, custodians, investment advisers, nominees, property agents, solicitors and other professional agents or persons to act in relation to any of the affairs of the trust or to hold any of the trust property.

(3) A trustee who in good faith and without neglect makes a delegation or an appointment in accordance with the provisions of this section, shall not be liable for any loss arising to the trust in consequence thereof.

(4) A trustee may authorise a person referred to in subsection (2) of this section to retain any commission or other payment usually payable in relation to any transaction.

26. (1) Where the terms of the trust direct or authorise the accumulation for a period of all or part of the income of the trust, the trustee shall distribute the income of the trust which is not accumulated as required or authorised by the terms of the trust. Accumulation, advancement or appropriation of trust property.

(2) Subject to the terms of the trust, and subject to any prior interest or charges affecting the trust property, where a beneficiary is a minor and whether or not his interest is a vested interest or an interest which will become vested on attaining the age of majority or a later age or upon the happening of any event, the trustee may —

(a) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such later age or the happening of such an event; or

(b) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary; or

(c) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(3) The receipt given by a parent or the lawful guardian of a beneficiary who is a minor shall be sufficient discharge to the trustee for a payment made under subsection (2) of this section.

(4) Subject to the terms of the trust, and subject to any prior interest or charges affecting the trust property, the trustee may advance to, or apply for the benefit of, a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(5) Subject to the terms of the trust, a trustee may appropriate trust property in or towards the satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as the trustee may think fit.

(6) Any part of the trust property advanced, applied or appropriated as aforesaid shall be brought into account in determining from time to time the share of the beneficiary in the trust property.

(7) No part of the trust property advanced, applied or appropriated as provided in this section shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

Appointment or assignment of trust property.

27. Where the terms of the trust confer on the trustee or on any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of any person, such power shall, subject to the terms of the trust, have effect whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

Remuneration and expenses of trustees.

28. (1) Unless authorised by the terms of the trust, or by the consent in writing of all the beneficiaries or by any order of the Court, a trustee shall not be entitled to remuneration for services rendered.

(2) A trustee may reimburse himself or pay out of the trust all expenses properly incurred by him in connection with the trust.

Confidentiality relating to trusts.

29. (1) Subject to the terms of the trust and to any order of the Court given for special reasons, a trustee shall not be required to disclose to any person any document or information which —

(a) discloses the trustee's deliberations as to the manner in which a power or discretion was exercised, or a duty conferred or imposed by law or by the terms of the trust was performed;

(b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason will be or might have been based;

(c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty;

(d) relates to or forms part of the accounts of the trust:

Provided that where the request is for the disclosure of any document or information relating to or forming part of the accounts of the trust and is made by a beneficiary under the trust or, in the case of a charity, by a charity referred to by name in the trust instrument as a beneficiary under the trust, the trustee shall be obliged to disclose the document or other information requested.

(2) Save as is required, permitted or otherwise provided by this Act, or by the terms of the trust or as may be necessary for the purposes of the trust, and notwithstanding the provisions of any other law —

(a) every trustee and every other person shall at all times regard and deal with all documents and information relating to a trust as secret and confidential;

(b) no trustee or other person shall at any time be required to produce to or before any court, tribunal, board, committee of inquiry or any other authority or to divulge to any such authority any matter or thing coming to his notice or being in his possession for any reason whatsoever, where such matter or thing relates to a trust.

(3) Any trustee or other person who, except as is required, permitted or otherwise provided by this Act, or by the terms of the trust, at any time communicates or attempts to communicate any matter or thing relating to a trust to any person whatsoever —

(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; or

(b) shall pay into the trust a penalty or not less than three hundred and not more than ten thousand liri, or such higher amount if the damages sustained exceed that sum, as the court convicting such person as aforesaid 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 subsection for the purposes of such recovery.

30. (1) A trustee committing or concurring in a breach of trust shall without prejudice to any other liability be liable for —

Liability for  
breach of trust.

(a) the loss of depreciation in value of the trust property resulting from the breach;

(b) the profit, if any, which would have accrued to the trust if there had been no such breach;

(2) A trustee may not set off a gain from a breach of trust against a loss from the same or some other breach of trust.

(3) A trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person. It shall, however, be the duty of the trustee on becoming aware of it to take all reasonable steps to have such breach remedied.

(4) A trustee shall not be liable for breach of trust committed by a co-trustee unless —

(a) he becomes aware or ought to have become aware of the commission of such breach or the intention of the co-trustee to commit a breach of trust; and

(b) he actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(5) Subject to the terms of the trust, a trustee shall not be liable —

(a) for the default of a co-trustee unless he —

(i) concurs in the default of that trustee; or

(ii) fails to take reasonable care to prevent it;

(b) for any loss to the trust property, unless such loss is due to —

(i) his wilful default, act or concurrence; or

(ii) his neglect or failure to exercise reasonable care to prevent such loss.

(6) Where two or more trustees are liable in respect of a breach of trust, their liability shall be joint and several.

(7) A beneficiary may, in respect of a liability to him for a breach of trust already committed, relieve a trustee of, or indemnify him against, such liability, but only if the beneficiary —

(a) has legal capacity; and

(b) has full knowledge of all material facts; and

(c) has not been improperly induced by the trustee to give the relief or indemnity.

(8) The Court may relieve the trustee either wholly or in part from liability for a breach of trust where it is satisfied that the trustee has acted honestly and reasonably and ought in fairness to be excused in the circumstances.

Trustees acting in respect of more than one trust.

31. (1) A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust if the trustee has obtained notice of it by reason of acting or having acted for the purposes of another trust.

(2) A trustee of a trust shall disclose to any co-trustee any interest which he has as trustee of another trust if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

Dealings with third parties.

32. (1) Where in any transaction or matter affecting a trust a trustee informs a third party that he is acting as trustee, a claim by such third party in relation thereto shall extend only to the trust property.

(2) Where in any such transaction or matter a trustee fails to inform a third party that he is acting as trustee, the trustee —

(a) shall be personally liable to such third party in respect thereof; and

(b) shall have a right of recourse to the trust property by way of indemnity against such liability, unless the trustee acted in breach of trust.

(3) In this section “third party” means any person not being a settlor, a trustee or a beneficiary of the trust.

33. (1) Subject to the provisions of subsection (2) of this section, where a person (in this section referred to as a “constructive trustee”) makes or receives any profit, gain or advantage from a breach of trust he shall be deemed to be a trustee of that profit, gain or advantage; and the beneficiary of such trust shall be deemed to be the trust, or the beneficiary, or other person, to the detriment of whom or at the expense of whom the profit, gain or advantage was made.

Constructive  
trustees

(2) Subsection (1) of this section shall not apply to a person acquiring property under an onerous title in good faith.

(3) A person who is or becomes a constructive trustee shall deliver up the property to or in favour of the beneficiaries thereof.

34. (1) A trustee who resigns or is removed or otherwise ceases to be a trustee shall duly surrender trust property in his possession or control.

Indemnity of  
retiring  
trustees.

(2) A trustee who resigns or is removed or otherwise ceases to be a trustee and has complied with the requirements of subsection (1) of this section shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or his duty as a trustee, except in respect of actions arising from breach of trust to which such trustee was a party or to which he was privy.

(3) A trustee who resigns or is removed or otherwise ceases to be a trustee shall continue to be liable to any beneficiary, trustee or person interested under the trust for the recovery from such trustee of trust property or the proceeds of trust property in the possession of the trustee or converted to the trustee’s own use or not surrendered as required by subsection (1) of this section.

(4) Any provisions in the terms of the trust purporting to indemnify the trustee to an extent greater than is provided in this section shall be invalid.

*Miscellaneous Provisions Regarding Trusts*

Class interest.

**35.** (1) Subject to the terms of the trust, the following rules shall apply where a trust, or an interest under a trust, is in favour of a class of persons —

(a) a class closes when it is no longer possible for any other person to become a member of a class;

(b) a woman who is over the age of fifty-five years shall be deemed to be no longer capable of bearing a child;

(c) where any class interest relates to income and for any period there is no member of the class in existence, the income shall be accumulated and, subject to section 12 of this Act, shall be retained until there is a member of the class in existence or the class closes.

(2) In this section “class interest” means a trust or an interest under a trust which is in favour of a class of persons.

Variation of terms of trust by the Court and approval of particular transactions.

**36.** (1) Subject to the provisions of subsection (2) of this section, the Court may, if it thinks fit, by order approve on behalf of —

(a) any person incapacitated at law having directly or indirectly, an interest, whether vested or contingent, under the trust; or

(b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons; or

(c) any person unborn; or

(d) any person in respect of any interest of his that may arise to him by reason of any discretionary power given to any one on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustees of managing or administering any of the trust property.

(2) The Court shall not approve an arrangement on behalf of any person coming within paragraphs (a), (b) or (c) of subsection (1) of this section, unless it is satisfied that the carrying out of such arrangement appears to be for the benefit of that person.

(3) Where in the management or administration of a trust, any sale, lease, pledge, charge, surrender, release or other disposition,

or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the terms of the trust or by law, the Court may confer on the trustee, either generally or in any particular circumstance, a power for that purpose on such terms and subject to such provisions and conditions, if any, as it thinks fit, and may direct in what manner and from what property any money authorised to be expended, and the costs of any transaction, are to be borne.

(4) An application to the Court under this section may be made by the trustee or by any beneficiary.

37. (1) A trustee may apply to the Court for directives concerning the manner in which he may or should act in connection with any matter concerning the trust; and the Court may make such order, if any, as it thinks fit.

Other powers  
of the court.

(2) The Court may also, if it thinks fit —

(a) make an order concerning —

(i) the execution or the administration of any trust; or

(ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and any payments into court; or

(iii) any beneficiary of any person having any connection with the trust;

(b) make a declaration as to the validity or enforceability of a trust;

(c) rescind or vary any order or declaration made under this Act, or make any new or further order or declaration.

(3) An application to the Court for an order or declaration under subsection (2) of this section may be made by the trustee or by any beneficiary or by the Attorney General.

(4) Where the Court makes an order for the appointment of a trustee it may impose such conditions as it thinks fit, including conditions as to the vesting of trust property.

(5) Subject to any order of the Court, a trustee appointed by the Court under this section shall have the same powers, discretions and duties as if he had been originally appointed a trustee.

38. (1) In the exercise of its functions under this Act the Court shall have all the powers of the Civil Court, First Hall, and, without prejudice to the generality of the aforesaid, any order or direction of the Court may be carried into execution as if it were a judgement of the said First Hall and shall not be subject to be set aside by the said First Hall but

Powers of the  
Court for the  
Execution of its  
orders

shall be subject to be appealed from as if they were judgements of that Hall.

(2) Without prejudice to any other power to the Court by virtue of the foregoing provisions of this section or of any other law, where a trustee neglects or refuses to perform any duty or to comply with any order of the Court, the Court may, on such terms and conditions it may deem appropriate, order that the required action be executed, made or done by such person as the Court may appoint for the purpose, at the cost of the trustee in default, or otherwise as the Court may direct; and anything so executed, made or done shall operate and have effect for all purposes as if it had been executed, made or done by the trustee.

Payment of costs. **39.** The costs and expenses of and incidental to an application to the Court under this Act shall be paid out of the trust property or be borne and paid in such other manner or by such other person as the Court may order.

Protection of persons dealing with trustees. **40.** (1) A person acquiring trust property from a trustee in good faith and under an onerous title acquires a good title thereto as if he had acquired it from the person having the absolute title thereto and shall not be affected by the trusts on which the said property is held.

(2) No person paying or advancing money to a trustee shall be concerned to see that such money is required for the purposes of the trust, or that no more than is required is raised, or otherwise as to the propriety of the transaction or the application of the money.

Limitation of action. **41.** (1) An action brought against a trustee —  
(a) in respect of any fraud to which the trustee was a party or to which he was privy; or  
(b) for the recovery from the trustee of trust property in his possession or control or previously received by the trustee and converted to his use,

shall not be barred by prescription except by the lapse of thirty years.

(2) Without prejudice to the provisions of subsection (1) of this section, no action may be brought against a trustee by a beneficiary for breach of trust after the lapse of three years —

(a) commencing from the date of the delivery of the final accounts of the trust to the beneficiary; or

(b) commencing from the date on which the beneficiary first had knowledge of the occurrence of the breach of trust,

whichever is the earlier date.

(3) Where the beneficiary is a minor the periods referred to in this section shall not begin to run until the day on which the beneficiary ceases to be a minor.

(4) The periods mentioned in this section shall be interrupted if a judicial act or demand is filed in the competent Court and served on the trustee before the expiration of the said period.

42. (1) Where any person, being an officer or member of a nominee company for the time being acting as a trustee of a trust, has reason to believe that the said trust has property or has income accruing to it or derived by it and originating from a transaction, operation or other activity which is a criminal offence under the laws of Malta or which, had it been carried out in Malta, would have been such an offence, or has received or comprises or has in its possession or control money or other property the receipt, ownership or control of which is or would be an offence as aforesaid, it shall be the duty of such person to bring the matter to the notice of the Authority.

Duties in respect of certain illegal activities.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) of this section shall be guilty of an offence and shall be liable on conviction to a fine (multa) of not less than two thousand and not more than ten thousand liri or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

(3) A person convicted of an offence under this section shall be permanently disqualified from being an officer or member of a nominee company.

(4) All moneys or property described in subsection (1) of this section shall be forfeited in favour of the Government and become its property absolutely.

#### *Registration of Trusts*

43. (1) Every offshore trust shall be registered with the Authority and shall not have effect in Malta unless and until it is so registered.

Registration of trusts and attestation of trustees.

(2) It shall be the responsibility of the trustee to ascertain that a trust is registered under this Act; and the trustee shall, moreover, not later than one month after every anniversary of the registration of the trust, advise the Authority whether the trust is still in existence and whether or not he is the trustee thereof.

(3) Registration shall be effected by filing with the Authority:

- (a) a certified copy of the trust instrument;
- (b) a declaration by the nominee company acting as trustee of the trust that the trust satisfies the conditions of this Act in order that it may be an offshore trust.

(4) The Authority, on being satisfied that all the requirements prescribed by this Act for the existence of an offshore trust concur and that the appropriate fee has been paid, shall register the trust and issue a certificate of registration accordingly.

(5) Any subsequent change in the trust instrument shall likewise be registered with the Authority and shall not have effect in Malta until it is so registered. Any such change shall be registered by the trustee, irrespective of the origin of or the person making the change.

(6) The trustee shall likewise give notice to the Authority of the termination of the trust, irrespective of the cause or reason of such termination.

(7) At the request of the trustee of a trust, and on adequate proof being given to the satisfaction of the Authority, the Authority may issue a certificate stating that, to the best of its knowledge, on the date of the certificate, the applicant was the trustee of the trust. A certificate under this subsection shall be issued on the payment of a fee of Lm15 or such higher amount as the Authority may from time to time determine.

(8) The Authority shall keep a register of all trusts registered with it under this section and shall enter therein any change relative to them notified to it and such other matters it may deem appropriate to register.

(9) The fee payable for the registration of a trust shall be two hundred liri.

(10) A trust shall cease to be entitled to the exemptions, benefits or other privileges of an offshore trust if the tax due each year under section 44. of this Act is not paid within three months from the due date.

*Fiscal and other exemptions*

44. (1) The tax chargeable under the Income Tax Act, 1948, or under any enactment replacing that law on —

Exemption from  
taxation Act  
LIV of 1948.

(a) the income of any offshore trust;

(b) any income of a beneficiary arising from any offshore trust shall be two hundred liri for each year of assessment, and shall be payable by the trust to the Authority on behalf of the Commissioner of Inland Revenue not later than the end of January of each year following that of the registration of the trust.

Act XLVII of  
1973.

(2) No duty shall be chargeable under the Death and Donation Duty Act, 1973, or under any enactment replacing that law —

(a) in respect of any asset held under an offshore trust;

(b) by any person in respect of his interest as a beneficiary under an offshore trust.

Act XXXI of  
1981.

(3) No duty shall be chargeable under the Duty on Documents Act, 1981, or under any enactment replacing that law, in respect of any document concerning an offshore trust.

(4) Any property held under an offshore trust shall be exempt from customs duty when imported into Malta:

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

45. The Exchange Control Act, 1972, and any enactment replacing that law, shall not apply to any transaction or operation concerning or relating to offshore trusts or any property held thereunder:

Exemption from exchange control.

Provided that the foregoing provisions of this section shall not apply to transactions or operations carried out with persons resident in Malta.

46. (1) Where a declaration in the form set out in the Schedule to this Act has been submitted to the Commissioner of Inland Revenue by a nominee company in respect of the trust of which it is a trustee, neither the trust nor a trustee nor any other person having an interest in the trust shall be required to make or furnish any return, information or other details that could be due or otherwise be lawfully required to be made or furnished for any purpose of the Income Tax Act, 1948, in relation to that trust.

Declaration in lieu of tax returns.

(2) Where property is by this Act exempt from 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 where the transmission comprises other property the return may be limited to the property liable to duty.

#### *Nominee Companies*

47. (1) A company formed for the purposes of acting as trustee of offshore trusts or for such purpose and for the purpose of performing the functions of a nominee company with respect to offshore companies as provided in the Act, and satisfying, subject to the provisions of subsection (3) of this section, all the conditions set out in subsection (2) of section 42 of the Act and otherwise qualified to be granted a warrant to function as a nominee company under section 43 of the Act, shall also qualify to be a nominee company for the purposes of this Act and the provisions of the Act for the grant of a warrant to a nominee company shall apply to such company as they apply to a nominee company under the Act.

Nominee companies and conditions for the formation thereof.

(2) A nominee company may not function as trustee, 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.

(3) All the provisions of the Act relating to nominee companies shall apply to a company which is granted a warrant to function as a nominee company for the purposes of this Act, or for the purposes of this Act and of the Act, as the case may be, subject to such modifications and adaptations as may be necessary to apply the aforesaid

provisions of the Act to nominee companies acting as trustees of offshore trusts; and in particular, but without prejudice to the generality of the aforesaid, references in the Act to the Act itself shall be construed as references to this Act, references to offshore companies shall be construed as references to trust and references to duties as directors or secretaries of offshore companies shall be construed as references to the duties of trustees.

(4) The provisions of this subsection referred to in subsection (1) of this section are —

(a) paragraph (b) of subsection (2) of section 42 of the Act shall be construed as requiring the objects of the company to be limited expressly to carrying out the functions of a trustee of offshore trusts, and to matters ancillary or incidental thereto, or to such functions and the functions of a nominee company with respect to offshore companies;

(b) in the case of a company formed exclusively to act as a trustee of offshore trusts —

(i) the percentage referred to in paragraph (e) of subsection (2) of section 42 of the Act shall be sixty; and

(ii) the Authority may, in exceptional cases and for special reasons, allow a person not resident in Malta to own or hold all the shares in the company.

Trusts to be registered through nominee company.

48. Without prejudice to the generality of the provisions of subsection (2) of section 47 of this Act, no trust shall be registered by the Authority except through the agency of a nominee company authorised to act as the trustee of offshore trusts and no person other than a nominee company authorised as aforesaid may be appointed trustee of an offshore trust.

#### *General Provisions*

Power to make regulations or rules.

49. 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) 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;

(d) 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;

(e) prescribe any matter that may or is to be prescribed.

50. (1) The registration of an offshore trust under this Act shall constitute a contract between the Government and the trust 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.

51. (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 effect 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 identifiably, 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.

52. The provisions of the Act relating to the Authority and in particular, but without prejudice to the generality of the aforesaid, the provisions of sections 4, 5, 10 and 11 of the Act, shall apply to and with respect to offshore trusts, and otherwise for the purposes of this Act, as they apply to and with respect to offshore companies and otherwise for the purposes of the Act, and shall so apply subject to such modifications and adaptations as may be necessary for the purposes aforesaid.

Application of  
certain  
provisions  
of the Act.

SCHEDULE

Section 46

**Declaration in lieu of Tax Return  
in respect of an Offshore Trust**

*Declaration by the Trustee of an Offshore Trust in lieu of a Return of Income and Capital  
Asset under the Income Tax Act, 1948.*

Year of Assessment .....

We ..... and .....  
two of the directors of .....  
the nominee company acting as the trustee of .....

.....  
an offshore trust registered under the Offshore Trusts 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 trust satisfies all the conditions required by the Act in  
order that it may remain an offshore trust and have the income referred to in subsection  
(1) of section 44 of the Act not chargeable to tax as provided in that section, and that  
accordingly:

(a) the income of said trust and that of its beneficiaries arising from the said  
trust, are chargeable to income tax for the year of assessment ..... as  
provided in the section aforesaid;

(b) the settlor and the beneficiaries of the trust are qualified to be the settlor  
and beneficiaries, respectively, in terms of the Act and the trust property does not  
include any immovable property situated in Malta;

(c) the trust of which the said nominee company is the trustee does not stand  
to lose any 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 declaration.

Signature .....

Name in full .....

I.D. Card No. ....

Profession .....

Addresses .....

.....

Dated .....

**Objects and Reasons**

The Object of the Bill is to recognise and regulate Trusts in which the Settlor and  
the Trustees are both residents of Malta. Such Trusts are called Offshore Trusts and  
they are given fiscal exemptions in order to encourage their registration in, and man-  
agement from Malta.