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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Emanuel Bonnici, M.P., Ministru għall-Iżvilupp Terzjarju, u moqri għall-Ewwel darba fis-Seduta tat-2 ta' Lulju, 1990.

ATT biex jemenda l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.

P. MUSCAT TERRIBILE
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Emanuel Bonnici, M.P., Minister for Development of Tertiary Sector, and read the First time at the Sitting of the 2nd July, 1990.

AN ACT to amend the Malta International Business Activities Act, 1988.

P. MUSCAT TERRIBILE
Clerk to the House of Representatives

ABBOZZ TA' LIĠI imsejjah

ATT biex jemenda l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta.

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. Dan l-Att jista' jissejjah l-Att ta' l-1990 li jemenda l-Att dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta, u għandu jinqara u jiftiehem haġa waħda ma' l-Att ta' l-1988 dwar Attivitajiet Kummerċjali Internazzjonali ta' Malta, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu
fil-qosor.

Att XXXIV
ta' l-1988.
2. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:
 - (a) fis-subartikolu (1) tiegħu:
 - (i) minnufih wara t-tifsira ta' "impriza ta' l-assigurazzjoni" għandha tidhol din it-tifsira ġdida li ġejja:

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

“ “impriza ta' senserija ta' l-assigurazzjoni” għandha t-tifsir mogħti lilha bil-paragrafu (b) tas-subartikolu (6) ta' l-artikolu 23 ta' l-Att ta' l-1981 dwar l-Impriza ta' l-Assigurazzjoni, u tinkludi kull kummerċ ieħor ġestit in konnessjoni ma' l-impriza jew anċillari għaliha li huwa ġeneralment rikonoxxut bħala senserija ta' l-assigurazzjoni; ” ;

Att XVII
ta' l-1981
 - (ii) minnufih wara t-tifsira ta' "kumpannija ta' barra minn Malta" għandha tidhol din it-tifsira ġdida li ġejja:

Att XXVI
ta' l-1989.

“ “Malta” ma tinkludix xi *area* li titqies bħala zona ta' port hieles taħt l-Att ta' l-1989 dwar il-Portijiet Hielsa ta' Malta; ” ;

(iii) minflok l-ewwel proviso għat-tifsira ta' "attività offshore" għandu jidhol dan li ġej:

"Izda kumpannija *offshore* ma tistax tiġġestixxi l-attività kummerċjali ta' tmexxija jew il-provvediment ta' servizzi lil kumpannija *offshore* ohra hliet meta dik il-kumpannija ohra hija kumpannija *offshore* ta' assigurazzjoni *captive* jew f'dawk il-każi l-ohra li jistgħu jiġu preskritti;" ;

(iv) minnufih wara t-tieni proviso għat-tifsira ta' "attività offshore" għandhom jidhlu dawn il-provisos li ġejjin:

"Izda wkoll *bank offshore* jista' jinnegozja fi flus Maltin biex jagħti servizz lill-klijenti tiegħu għall-htigiet tagħhom f'dik il-munita;

Izda wkoll kumpannija *offshore* tista', bil-għan li tesporta, tixtri oġġetti manifatturati, mibnijin jew proċessati f'Malta;" ;

(v) fit-tifsira ta' "kumpannija *offshore*", minnufih wara l-kliem "kumpannija *offshore* ta' l-assigurazzjoni", għandhom jidhlu l-kliem "kumpannija *offshore* ta' senserija ta' l-assigurazzjoni", ; u

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

"(b) kumpannija *offshore* tista' tuża bank f'Malta li ma jkunx bank *offshore* għall-finijiet ta' xi transazzjoni fi flus barranin li setgħet legittimament tagħmel ma' xi bank ieħor, u għall-fini ta' xi transazzjoni bħal dik dak il-bank għandu jitqies li ma jkunx residenti f'Malta għall-finijiet ta' dan l-Att:

Izda self, *overdraft*, jew faċilità ta' kreditu ohra tista' biss tiġi provduta jekk dik il-faċilità tkun giet debitament awtorizzata taht l-Att dwar il-Kontroll fuq il-Kambju."

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

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

(a) minflok it-tieni proviso tal-paragrafu (f) tas-subartikolu (2), għandu jidhol dan li ġej:

"Izda wkoll li kumpannija ta' statura u reputazzjoni internazzjonali u li tkun rikonoxxuta bħala tali mill-Awtorità, li tkun *manager* ta' kumpannija *offshore* ta' l-assigurazzjoni, jew ta' kumpannija *offshore* ta' l-assigurazzjoni li tkun immexxija minn *manager* bħal dak imsemmi qabel, jew li tkun kumpannija *offshore* ta' assigurazzjoni *captive* li tkun sussidjarja ta' kumpannija ta' statura u reputazzjoni internazzjonali u li tkun rikonoxxuta bħala tali mill-Awtorità, tista' tiġi eżentata mill-Awtorità milli tikkonforma mal-htigiet ta' dan il-paragrafu;" ;

(b) fil-paragrafu (a) tas-subartikolu (3) tiegħu, minnufih wara l-kliem “kumpannija ta’ assigurazzjoni,” għandhom jidhlu l-kliem “jew kumpannija ta’ senserija ta’ l-assigurazzjoni, ” ;

(ċ) fis-subartikolu (4) tiegħu —

(i) minnufih wara l-kliem “kumpannija *offshore* ta’ l-assigurazzjoni,” fil-paragrafu (a), għandhom jidhlu l-kliem “jew l-impriza ta’ senserija ta’ l-assigurazzjoni bhala kumpannija *offshore* ta’ senserija ta’ l-assigurazzjoni, ” ;

(ii) minflok il-paragrafu (b), għandu jidhol dan li ġejj:

“(b) tkun sussidjarja ta’ bank jew istituzzjoni bankarja, jew ta’ kumpannija ta’ l-assigurazzjoni jew ta’ kumpannija ta’ senserija ta’ l-assigurazzjoni, skond il-każ, ta’ statura u reputazzjoni internazzjonali, u li tkun rikonoxxuta bhala tali mill-Awtorità, jew ta’ *holding company* li tagħha bank, istituzzjoni jew kumpannija kif imsemmijin qabel huma wkoll sussidjarji jew li tkun hi nnifisha *holding company* ta’ statura u reputazzjoni internazzjonali u aċċettata bhala tali mill-Awtorità;” ;

(iii) minnufih wara l-kliem “kumpannija ta’ l-assigurazzjoni” fil-paragrafu (ċ), għandhom jidhlu l-kliem “jew ta’ kumpannija ta’ senserija ta’ l-assigurazzjoni, jew ta’ *holding company* imsemmija fil-paragrafu ta’ qabel” ; u

(d) minnufih wara s-subartikolu (7) tiegħu għandhom jiżdiedu dawn is-subartikoli ġodda li ġejjin:

Att XXXV
ta’ l-1988. “(8) Minkejja kull dispożizzjoni oħra ta’ dan l-Att, jew ta’ l-Att ta’ l-1988 dwar l-*Offshore Trusts*, meta l-attività kummerċjali ta’ kumpannija bankarja *offshore* ta’ barra minn Malta jew sussidjarja, jew ta’ kumpannija ta’ l-assigurazzjoni *offshore* ta’ barra minn Malta jew sussidjarja, jew ta’ kumpannija *offshore* kummerċjali li tkun sussidjarja tagħhom, jew ta’ dik il-kumpannija *offshore* kummerċjali li tista’ tiġi preskritta u tkun kumpannija aċċettabbli għall-Awtorità għall-finijiet ta’ dan is-subartikolu, tkun tinkludi attività fiduċjarja jew ta’ *trust* jew kull attività oħra simili, l-Awtorità tista’ salv dawk il-kondizzjonijiet li tista’ tqis xieraq li tagħmel, teżenta —

(a) kull kumpannija *offshore* kif imsemmija qabel u kull kumpannija *offshore* li ma tagħmilx attività kummerċjali li tkun immexxija minnha jew li tkun taqa’ taht ir-responsabbiltà tagħha, mid-dispożizzjonijiet tal-paragrafu (f) tas-subartikolu (2) ta’ dan l-artikolu;

(b) kull *offshore trust* li tagħha kumpannija *offshore* kif imsemmija qabel jew xi wiehed mill-impjegati ta’ dik il-kumpannija jkun *trustee*, mid-

dispożizzjonijiet ta' l-artikoli 18 u 48 ta' l-Att ta' l-1988 dwar l-*Offshore Trusts* li jenhtiegu kumpannija *nominee* li tkun *trustee* ta' *offshore trust*, sew bhala l-uniku *trustee* jew bhala wiehed minn fost għadd ta' *trustees*,

u kull eżenzjoni bħal dik ikollha biss effett sakemm il-kondizzjonijiet kollha imqegħda mill-Awtorità jiġu osservati.

Kap. 16. (9) Id-dispożizzjonijiet ta' l-artikolu 1852 tal-Kodiċi Ċivili ma għandhom japplikaw għal ebda kumpannija *offshore*.

(10) Minkejja kull haġa li tinstab f'dan l-Att, l-Awtorità tista' f'każi partikolari tneħhi l-htieġa li kumpannija *offshore* tkun kumpannija privata salv dawk il-kondizzjonijiet li jistgħu jiġu preskritti jew li l-Awtorità tista' tqiegħed. ”.

Emenda ta' l-artikolu 23 ta' l-Att prinċipali.

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

(a) fis-subartikolu (2) tiegħu minflok il-kliem “kumpannija *offshore* ta' l-assigurazzjoni” għandhom jidhlu l-kliem “kumpannija *offshore* ta' l-assigurazzjoni, jew kumpannija *offshore* ta' senserija ta' l-assigurazzjoni”;

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

“(4) Kumpannija *offshore* ta' senserija ta' l-assigurazzjoni hija kumpannija *offshore* li espressament tirrestringi l-għanijiet tagħha għall-attività ta' senserija ta' l-assigurazzjoni jew li tkun kumpannija *offshore* ta' barra minn Malta jew *offshore* sussidjarja li għaliha s-subartikolu (3) jew is-subartikolu (4) ta' l-artikolu 22 ta' dan l-Att japplika, u li tirrestringi l-ħdim tagħha minn Malta għall-attività ta' senserija ta' l-assigurazzjoni.”;

(ċ) minflok il-kliem “ta' l-assigurazzjoni.” fis-subartikolu (5) tiegħu għandhom jidhlu l-kliem “ta' l-assigurazzjoni jew ta' senserija ta' l-assigurazzjoni.”;

(d) is-subartikolu (6) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem “tmexxija barra minn beni u amministrazzjoni ta' beni ta' kull xorta,” għandhom jidhlu l-kliem “tmexxija u amministrazzjoni ta' proprjetà lilha appartenenti ta' kull xorta, inklużi privattivi, drittijiet tal-awtur u *trade marks* u proprjetà simili iżda eskluża dik il-proprjetà”;

(ii) minflok l-ewwel proviso li hemm mas-subartikolu għandu jidhol dan li ġej:

“Izda kumpannija *offshore* mhux kummerċjali tista’ esspressament tillimita l-għanijiet tagħha, jew tista’ wkoll tinkludi fl-għanijiet tagħha, il-proprjetà, tmexxija, amministrazzjoni u thaddim ta’ bastiment jew bastimenti li ma jkunux jappartjenu lilha, u dik il-kumpannija ma għandhiex, minhabba f’dan, tieqaf milli tkun kumpannija *offshore* mhux kummerċjali.”;

(iii) fit-tieni proviso li hemm mas-subartikolu il-kliem “hlief għal assi miżmuma għal finijiet ta’ xi fond għal pensjoni, *provident fund*, jew fond ieħor simili aċċettat bħala tali mill-Awtorità,” għandhom jithassru;

(iv) wara t-tieni proviso li hemm mas-subartikolu għandhu jiddied dan li ġej:

“Izda wkoll jekk kumpannija *offshore* mhux kummerċjali, direttament jew indirettament ikollha għaxra fil-mija jew iktar mill-azzjonijiet, jew ikollha jedd għal għaxra fil-mija jew iktar mill-jeddijiet ta’ vot jew ta’ kontroll f’xi istituzzjoni finanzjarja, il-kumpannija *offshore* mhux kummerċjali għandha għall-finijiet ta’ dan l-Att titqies bħala kumpannija *offshore* ta’ kummerċ generali.”.

5. L-artikolu 24 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta’
l-artikolu 24 ta’
l-Att prinċipali.

(a) minflok is-subartikolu (4) tiegħu għandu jidhol dan li ġej:

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

(a) kumpannija bankarja *offshore*, jew kumpannija ta’ l-assigurazzjoni *offshore*, jew kumpannija *offshore* ta’ senserija ta’ l-assigurazzjoni, jew kull kumpannija oħra simili li tista’ tiġi preskritta, ma għandhiex tiġi registrata bħala kumpannija *offshore* ta’ kummerċ hlief jekk l-Awtorità tkun qabel aċċertat, skond direttivi li jistgħu jiġu preskritti jew stabbiliti mill-Awtorità, it-tip jew aspekk speċifiku ta’ kummerċ mahsub li jiġi ġestit u l-mod u ċirkostanzi oħra rilevanti rigward it-tmexxija ta’ dak il-kummerċ, u hlief jekk l-Awtorità tkun sodisfatta li l-kumpannija —

(i) tkun kapaċi li tmexxi sew u tiflah għall-kummerċ li tkun ser tagħmel u li jkollha t-taħriġ u l-hila kif ukoll ir-rizorsi finanzjarji għal dak l-għan; u

(ii) iżzomm dawk ir-rizorsi f’dak l-attiv, u iżzomm fejn ikun xieraq dawk il-margini ta’ solvibilità kif jistgħu jenhtiegu mill-Awtorità li jinżammu jew jiġu preservati minn żmien għal żmien u li jistgħu jiġu mod ieħor preskritti; u

(iii) tosserva u tikkonforma ruħha mal-kondizzjonijiet li l-Awtorità tista’ fiċ-ċirkostanzi

torbot maċ-ċertifikat ta' registrazzjoni tal-kumpannija;

(b) kumpannija li l-kummerċ tagħha hu, jew jinkludi, it-tmexxija ta' kumpannija *offshore* ta' l-assigurazzjoni *captive* jew l-impriza ta' senserija ta' l-assigurazzjoni, ma għandhiex tiġi registrata bħala kumpannija *offshore* kemm-il darba l-kumpannija ma tissodisfax lill-Awtorità li hi assigurata b'mod xieraq u adegwat kontra dawk ir-responsabbiltajiet li jistgħu jerħtieġu mill-Awtorità u li jistgħu jiġu preskritti.”;

(b) minnufih wara s-subartikolu (8) tiegħu għandu jżieded dan is-subartikolu li ġej:

“(9) L-Awtorità ma tkun obbligata tagħti ebda raġuni għal xi rifjut tagħha li tirreġistra kumpannija bħala kumpannija *offshore*, jew għal kull kondizzjoni li tista' tenħtieġ li kumpannija tikkonforma ruħha magħha qabel ma tghaddi biex tilqa' applikazzjoni għal registrazzjoni; u d-deċiżjonijiet ta' l-Awtorità dwar kull haġa bħal dik tkun waħda aħħarja u konklussiva.”.

Emenda ta'
l-artikolu 26 ta'
l-Att prinċipali.

6. Minflok is-subartikolu (3) ta' l-artikolu 26 ta' l-Att prinċipali għandu jidhol dan li ġej:

“(3) Jekk l-Awtorità, wara li tkun għamlet jew gieghlet li jsiru, skond id-dispożizzjonijiet ta' dan l-Att, dawk l-investigazzjonijiet li jkun jidhrilha xierqa dwar kumpannija *offshore*, tkun sodisfatta li —

(i) ikunu jeżistu ċirkostanzi, jew li kien hemm dik il-bidla fiċ-ċirkostanzi tal-kumpannija, li, li kieku l-Awtorità kienet taf bihom jew li kieku kienu jeżistu fil-hin tar-reġistrazzjoni tal-kumpannija, il-kumpannija ma kenitx tkun ġiet registrata bħala kumpannija *offshore*; jew

(ii) il-kumpannija tkun naqset milli tosserva, rigward xi haġa materjali, kondizzjoni jew ħtieġa marbutin maċ-ċertifikat tar-reġistrazzjoni tagħha; jew

(iii) fil-każ ta' kumpannija msemmija fil-paragrafu (b) tas-subartikolu (4) ta' l-artikolu 24 ta' dan l-Att, il-kumpannija ma tkunx assigurata kif meħtieġ b'dak il-paragrafu għal perijodu ta' iktar minn xahar,

l-Awtorità tista' tħassar ir-reġistrazzjoni tal-kumpannija u ma' dan il-kumpannija tieqaf milli tibqa' kumpannija *offshore*:

Iżda l-Awtorità ma għandhiex tħassar ir-reġistrazzjoni ta' kumpannija bis-saħħa ta' dan is-subartikolu kemm-il darba l-ewwel ma tkunx tat lill-kumpannija l-oppurtunità li tagħti spjegazzjoni taċ-ċirkostanzi u li tagħmel sottomissjonijiet oħra; u l-Awtorità tista' wkoll, meta ċ-ċirkostanzi li dwarhom ikun hemm ilment ikunu

jistgħu jiġu rmedjati, tippermetti lill-kumpannija li tiegħu passi ta' rimedju f'dak iż-żmien u taht dawk il-kondizzjonijiet li l-Awtorità tista' tispeçifika.”.

7. Fl-artikolu 28 ta' l-Att prinçipali, minnufih wara s-subartikolu (8) tiegħu għandu jidhol dan is-subartikolu ġdid li ġej:

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

“(9) L-artikolu 27 ta' l-Att, u kull ordni jew dikjarazzjoni magħmula bis-saħħa tiegħu, ma għandhomx japplikaw.”.

8. L-artikolu 29 ta' l-Att prinçipali għandu jiġi emendat kif ġej:

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

- (a) minflok is-subartikolu (4) tiegħu għandu jidhol dan li ġej:

“(4) Is-subartikolu (1) ta' l-artikolu 6 ta' l-Att ma għandux japplika; is-subartikolu (3) ta' dak l-artikolu għandu japplika biss safejn jenhtieg kumpannija tagħti t-tagħrif imsemmi f'dak is-subartikolu; u s-subartikolu (5) ta' dak l-artikolu għandu japplika safejn huwa applikabbli in vista tad-dispożizzjonijiet ta' qabel ta' dan is-subartikolu.”;

- (b) minflok is-subartikolu (6) tiegħu għandu jidhol dan li ġej:

“(6) L-artikoli 8, 9, 10, 11, 12, 13 u 14, u s-subartikolu (1) ta' l-artikolu 23 ta' l-Att ma għandhomx japplikaw.”;

- (c) minflok is-subartikolu (7) tiegħu għandhom jidhlu dawn is-subartikoli li ġejjin:

“(7) L-artikolu 16 ta' l-Att għandu japplika kif ġej:

(a) il-paragrafi (b) u (c) tas-subartikoli (1) u l-paragrafi (b) u (c) tas-subartikolu (2) tiegħu ma għandhomx japplikaw;

(b) is-subartikoli (1) u (2) tiegħu għandhom japplikaw bħallikieku s-sena finanzjarja ta' kumpannija *offshore* ta' l-assigurazzjoni intemmet f'dik id-data li l-kumpannija tista' tgħarraf b'avviz li jinghata bil-miktub lill-Awtorità, u salv is-setgħa ta' l-Awtorità li ttawwal il-perijodi ta' erba' xhur u ta' sitt xhur hemmhekk preskritti b'dak il-perijodu ieħor li l-Awtorità tista' fiç-çirkostanzi tqis xieraq.

- (8) L-Att ma jgħandux japplika —

(a) għal kumpannija *offshore* ta' senserija ta' l-assigurazzjoni;

(b) għal kumpannija li l-attività kummerçjali tagħha hija esklussivament it-tmexxija ta' kumpanniji *offshore* ta' assicurazzjoni *captive*.”.

Emenda ta' l-artikolu 31 ta' l-Att prinċipali

9. Fl-artikolu 31 ta' l-Att prinċipali, minnufih wara l-kliem "f'Malta." għandhom jiżdiedu dawn il-kliem li ġejjin: "Iżda f'ebda każ ma għandu l-artikolu 41 ta' l-imsemmi Att japplika għal kumpannija *offshore*, li l-obbligazzjoni tagħha tkun limitata li tgharraf lill-Kummissarju tat-Taxxi Interni dwar kull trasmissjoni taxxabbli li jkollha għaliex taħseb li dwarha għandha tithallas it-taxxa taht l-Att, fi żmien xahar mit-trasmissjoni taxxabbli jew minn dak iż-żmien li tkun intebhet bir-responsabbiltà tagħha dwar dan id-dmir. Fin-nuqqas li tikkonforma ruħha ma' l-obbligazzjoni tagħha taht dan l-artikolu, dan għandu jitqies għall-finijiet u effetti ta' l-imsemmi Att li jkun nuqqas ta' konformità mad-dispożizzjonijiet ta' l-artikolu 41 ta' l-imsemmi Att."

Emenda ta' l-artikolu 41 ta' l-Att prinċipali

10. Fis-subartikolu (1) ta' l-artikolu 41 ta' l-Att prinċipali minflok il-kliem "jew permessi li ma tibbenefikax minnhom." għandhom jidhlu l-kliem "jew permessi li ma tibbenefikax minnhom, jew li tibbenefika minn kull eżenzjoni, privileġġ jew kull benefiċċju ieħor bħal dawk sa dak il-limitu biss kif l-Awtorità tista' taċċetta li jsir."

Emenda ta' l-artikolu 46 ta' l-Att prinċipali

11. Minflok is-subartikolu (2) ta' l-artikolu 46 ta' l-Att prinċipali għandu jidhol dan li ġej:

"(2) Kumpannija *offshore* mhux kummerċjali tista' tiġi reġistrata ma' l-Awtorità taht dan l-Att biss permezz ta' l-aġenzija tal-kumpannija *nominee* awtorizzata biex taġixxi bħala tali għar-rigward ta' dik il-kumpannija; u kumpannija *nominee*, kemm bħala direttur waħdieni jew bħala segretarju ta' kumpannija *offshore* mhux kummerċjali għandha, kemm jekk waħedha jew flimkien ma' dawk il-persuni kif jista' jkun provdut fl-istatut tal-kumpannija, jkollha r-rappreżentanza legali u ġudizzjara tal-kumpannija. Il-kumpannija *nominee* tista' tahtar lil kull persuna jew kumpannija oħra sabiex taġixxi f'isimha bħala rappreżentanti legali u ġudizzjarja tal-kumpannija *offshore* mhux kummerċjali."

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

12. L-artikolu 52 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) il-paragrafi (ċ), (d), (e), (f) u (g) tiegħu għandhom jiġu indikati mill-ġdid bħala l-paragrafi (e), (f), (g), (h) u (i) rispettivament;

(b) minflok il-paragrafu (b) tas-subartikolu (1) tiegħu għandhom jidhlu dawn il-paragrafi li ġejjin:

"(b) jirregola t-tmexxija, id-dmirijiet u l-obbligazzjonijiet ta' —

(i) kumpanniji *nominee*;

(ii) kumpanniji *offshore* ta' senserija ta' l-assigurazzjoni;

(iii) kumpanniji li l-kummerċ tagħhom jinkludi t-tmexxija ta' kumpanniji ta' l-assigurazzjoni *captive*,

investimenti kollettivi, jew dak il-kummerċ ieħor li l-Ministru jista' jippreskrivi wara li jikkonsulta lill-Awtorità;

(ċ) jippreskrivi t-tagħrif, li l-kumpanniji msemmija fil-paragrafu (b) ta' dan is-subartikolu, għandhom jissottomettu lill-Awtorità;

(d) jistabbilixxi d-drittijiet li, minkejja kull dispożizzjoni oħra ta' dan l-Att, kumpanniji *nominee* jistghu jitolbu;"

(ċ) fil-paragrafu (e) kif indikat mill-ġdid tas-subartikolu (1) tiegħu, minnufih wara l-kliem "skond kif ikun jeħtieġ il-każ," għandhom jidhlu l-kliem "jew jeżenta, jew jipprovdi dwar l-eżenzjoni ta' xi kategorija jew kategoriji ta' kummerċ magħmul minn kumpannija *offshore* mid-dispożizzjonijiet ta' kull liġi li f'dak il-waqt tkun fis-seħh,";

(d) minflok il-paragrafu (f) kit indikat mill-ġdid tas-subartikolu (1) tiegħu, għandu jidhol dan li ġej:

"(f) jagħti lok li jippermetti lill-Awtorità, minkejja kull dispożizzjoni oħra ta' dan l-Att, iżda salvi dawk il-kondizzjonijiet ta' konfidenzjalità u kondizzjonijiet oħra li jistghu jiġu preskritti jew li jistghu jiġu imposti mill-Awtorità, li tagħti dak it-tagħrif dwar banek *offshore* jew istituzzjonijiet bankarji *offshore* jew kumpanniji ta' l-assigurazzjoni *offshore* jew kumpanniji ta' senserija ta' l-assigurazzjoni *offshore* jew intrapriži *offshore* għal investimenti kollettivi jew *offshore holding companies* li tagħhom bank, istituzzjoni, kumpannija jew intrapriża kif imsemmi qabel ikunu sussidjarji, li jirrendi kapaci banek ċentrali barranin jew korpi finanzjarji sorveljanti simili li jkollhom interess fit-tmexxija sew tal-kummerċ ta' bank, istituzzjoni, kumpannija ta' l-assigurazzjoni, kumpannija ta' senserija ta' l-assigurazzjoni jew intrapriża għal investimenti kollettivi f'Malta li lkoll ikunu *offshore*, li jeżaminaw il-mod kif ikunu qed jitmexxew."

13. Minnufih wara s-subartikolu (3) ta' l-artikolu 53 ta' l-Att prinċipali għandu jizdied dan is-subartikolu ġdid li ġej:

Emenda ta' l-artikolu 53 ta' l-Att prinċipali.

"(4) Ebda liġi, magħmula wara l-1 ta' Jannar, 1989 illi, li kieku ma kienx għad-dispożizzjonijiet ta' dan l-artikolu, kienet tolqot b'mod kuntrarju l-pożizzjoni ta' kumpannija *offshore* dwar it-taxxi, magħduhin kull dazju, imposta, taxxi jew hlasijiet oħrajn ta' l-istess xorta, jew dwar kull haġa oħra li għar-rigward tagħha dik il-kumpannija tinghata jeddijiet, privileġġi jew eżenzjonijiet taħt dan l-Att, ma għandha tkun tapplika għal dik il-kumpannija hliet jekk u sakemm dik il-liġi tkun hekk tipprovdi b'mod speċifiku."

14. L-Ewwel Skeda li tinsab ma' l-Att prinċipali għandha tigi emendata kif ġej:

Emenda ta' l-Ewwel Skeda li tinsab ma' l-Att prinċipali.

(a) il-partiti (f) u (g) tagħha għandhom jiġu ndikati mill-ġdid bħala l-partiti (g) u (h) rispettivament; u

(b) minnufih wara l-partita (e) tagħha għandha tidhol din il-partita ġdida li ġejja:

“(f) dwar kumpannija *offshore* ta' senserija ta' l-assigurazzjoni 1,000 1,000”.

15. Minflok l-artikolu 22 ta' l-Att ta' l-1981 dwar l-Impriża ta' l-Assigurazzjoni għandu jidhol dan li ġej:

Emenda li għandha x'taqsam ma' l-Att ta' l-1981 dwar l-Impriża ta' l-Assigurazzjoni. Att XVII ta' l-1981.

“22. (1) Jekk kumpannija jkollha hsieb li tieqaf milli tkompli tmexxi l-impriża li tkun liċenzjata li tmexxi jew jekk id-dhul mill-*premiums* tagħha għal xi sena finanzjarja jkollu mnejn jaqqa' taht it-tmenin fil-mija mid-dhul mill-*premiums* tagħha għas-sena finanzjarja li tiġi minnufih qabel, hija għandha minghajr dewmien tavża b'dan lill-Ministru, u l-kumpannija għandha tikkonforma ruħha ma' dawk il-kondizzjonijiet li l-Ministru jista' jqis li jkunu xierqa li jagħmel.

(2) Kull kumpannija li tonqos li thares xi waħda mid-dispożizzjonijiet ta' qabel ta' dan l-artikolu, maghduda xi kundizzjoni imposta bis-saħħa tiegħu, tehel, għal kull nuqqas bħal dak, penali ta' mhux iżjed minn għaxart elef lira.

(3) Għall-finijiet ta' dan l-artikolu, “dhul mill-*premiums*” għandha x'taqsam ma' kuntratti ta' l-assigurazzjoni li jinbdeu matul is-sena finanzjarja li jkun qed jittiehed kont tagħha, jew ma' dawk il-kuntratti kontinwi li d-dati ta' kull sena tagħhom ikunu jahbtu matul is-sena finanzjarja li jkun qed jittiehed kont tagħha, u tfiggħu l-aggregat kollu ta' *gross premiums* dovut lill-kumpannija wara t-tnaqqis ta' kull skont, hlas lura jew roħs fil-prezz, iżda qabel it-tnaqqis ta' rati ta' kommissjoni u qabel it-tnaqqis ta' *premiums* dovuti għal rijassigurazzjoni li tiġi ċeduta.”.

Għanijiet u Raġunijiet

L-għan ewlieni ta' dan l-Abbozz huwa sabiex idahhal dispożizzjonijiet fl-Att prinċipali li jkunu jirregolaw kumpanniji *offshore* ta' senserija ta' l-assigurazzjoni. L-Abbozz jagħmel ukoll emendi ohra fl-Att prinċipali li l-esperjenza wriet fit-thaddim tiegħu li huma meħtieġa jew spedjenti.

**A BILL
entitled**

AN ACT to amend the Malta International Business Activities Act, 1988.

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. This Act may be cited as the Malta International Business Activities (Amendment) Act, 1990, and shall be read and construed as one with the Malta International Business Activities Act, 1988, hereinafter referred to as "the principal Act". Short title.
Act XXXIV
of 1988.

2. Section 2 of the principal Act shall be amended as follows: Amendment of
section 2
of the principal
Act.
 - (a) in subsection (1) thereof:
 - (i) immediately after the definition of "business of insurance" there shall be inserted the following new definition:

"“business of insurance broking” has the meaning assigned to it by paragraph (b) of subsection (6) of section 23 of the Insurance Business Act, 1981, and includes any other business carried on in connection therewith or as ancillary thereto which is generally recognised as insurance broking;”;

Act XVII
of 1981.
 - (ii) immediately after the definition of "international business activity" there shall be inserted the following new definition:

"“Malta” does not include any area which is a freeport zone under the Malta Freeports Act, 1989;”;

Act XXVI
of 1989.
 - (iii) for the first proviso to the definition of "offshore activity" there shall be substituted the following:

“Provided that an offshore company may not carry on the business of managing or servicing another offshore company except where such other company is a captive insurance offshore company or in such other cases as may be prescribed;”;

(iv) immediately after the second proviso to the definition of “offshore activity” there shall be inserted the following new provisos:

“Provided further that an offshore bank may deal in Maltese currency to service its customers for their requirements in that currency;

Provided further that an offshore company may purchase for export, goods manufactured, assembled or processed in Malta;”;

(v) in the definition of “offshore company”, immediately after the words ““insurance offshore company”,” there shall be inserted the words ““insurance broking offshore company, ””;

(b) for paragraph (b) of subsection (2) thereof there shall be substituted the following:

“(b) an offshore company may use a bank in Malta which is not an offshore bank for the purposes of any transaction in foreign currency which it could lawfully carry out with any other bank, and for the purpose of any such transaction such bank shall be deemed not to be resident in Malta for the purposes of this Act:

Provided that a loan, overdraft or other credit facility may only be provided if such facility has been duly authorised under the Exchange Control Act.”.

Cap 233.

Amendment of section 22 of the principal Act.

3. Section 22 of the principal Act shall be amended as follows:

(a) for the second proviso of paragraph (f) of subsection (2), there shall be substituted the following:

“Provided further that a company of international standing and repute and recognised as such by the Authority, being a manager of an insurance offshore company, or an insurance offshore company, being managed by such a manager as aforesaid, or a captive insurance offshore company being a subsidiary of a company of international standing and repute and recognised as such by the Authority, may be exempted by the Authority from complying with the requirements of this paragraph;”;

(b) in paragraph (a) of subsection (3) thereof, immediately after the words “an insurance company,” there shall be inserted the words “or an insurance broking company,”;

(c) in subsection (4) thereof —

(i) immediately after the words “an insurance offshore company,” in paragraph (a), there shall be inserted the words “or the business of insurance broking as an insurance broking offshore company,”;

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

“(b) is a subsidiary of a bank or a banking institution, or of an insurance company or an insurance broking company, as the case may be, of international standing and repute, and recognised as such by the Authority, or of a holding company of which a bank, institution or company as aforesaid is also a subsidiary or which is itself of international standing and repute and accepted as such by the Authority;”;

(iii) immediately after the words “an insurance company” in paragraph (c), there shall be inserted the words “or of an insurance broking company, or of a holding company referred to in the preceding paragraph”;

(d) immediately after subsection (7) thereof there shall be added the following new subsections:

“(8) Notwithstanding any other provision of this Act, or of the Offshore Trusts Act, 1988, where the business of a banking offshore oversea or subsidiary company, or of an insurance offshore oversea or subsidiary company, or of a trading offshore company which is a subsidiary thereof, or of such trading offshore company as may be prescribed and is a company acceptable to the Authority for the purposes of this subsection, includes fiduciary or trust or similar business, the Authority may, subject to such conditions it may deem appropriate to impose, exempt —

Act XXXV
of 1988.

(a) any offshore company aforesaid and any non-trading offshore company managed by it or under its responsibility, from the provisions of paragraph (f) of subsection (2) of this section;

(b) any offshore trust of which any offshore company aforesaid or any of the employees of such company is a trustee, from the provisions of sections 18 and 48 of the Offshore Trusts Act, 1988 requiring a nominee company to be a trustee of an offshore trust, whether as sole trustee or as one of more trustees,

and any such exemption shall have effect only so long as all conditions imposed by the Authority are complied with.

Cap 16.

(9) The provisions of section 1852 of the Civil Code shall not apply to any offshore company.

(10) Notwithstanding anything contained in this Act, the Authority may in particular cases waive the requirement that an offshore company be a private company subject to such conditions as may be prescribed or as the Authority may impose.”.

Amendment of
section 23
of the principal
Act.

4. Section 23 of the principal Act shall be amended as follows:

(a) in subsection (2) thereof for the words “insurance offshore company” there shall be substituted the words “insurance offshore company, or an insurance broking offshore company”;

(b) immediately after subsection (3) thereof there shall be inserted the following new subsection:

“(4) An insurance broking offshore company is an offshore company which expressly restricts its objects to the business of insurance broking or is an offshore oversea or an offshore subsidiary company to which subsection (3) or subsection (4) of section 22 of this Act applies, and restricts its operations from Malta to the business of insurance broking.”;

(c) for the words “of insurance.” in subsection (5) thereof there shall be substituted the words “of insurance or of insurance broking.”;

(d) subsection (6) thereof shall be amended as follows:

(i) for the words “of property of any kind other than” there shall be substituted the words “of property belonging to it of any kind, including patents, copyrights, trademarks and similar property, but excluding”;

(ii) for the first proviso thereof there shall be substituted the following:

“Provided that a non-trading offshore company may expressly limit its objects to, or may also include in its objects, the ownership, management, administration, and operation of a ship or ships not belonging to it, and such company shall not, thereby, cease to be a non-trading offshore company.”;

(iii) in the second proviso thereof the words “other than assets held for the purposes of a pension, provident or similar fund accepted as such by the Authority,” shall be deleted;

(iv) after the second proviso thereof there shall be added the following:

“Provided further that if a non-trading offshore company, directly or indirectly, holds ten per cent or more of the shares, or is entitled to ten per cent or more of the voting or controlling rights, in any financial institution, the non-trading offshore company shall for the purposes of this Act be considered as a general trading offshore company.”.

5. Section 24 of the principal Act shall be amended as follows:

Amendment of
section 24
of the principal
Act.

(a) for subsection (4) thereof there shall be substituted the following:

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

(a) a banking offshore company, or an insurance offshore company, or an insurance broking offshore company, or any such other company as may be prescribed, shall not be registered as a trading offshore company, unless the Authority has first ascertained, in accordance with guidelines as may be prescribed or as may be established by the Authority, the specific type or aspect of business intended to be carried on and the manner and other relevant circumstances concerning the conduct of that business, and unless the Authority is satisfied that the company —

(i) is capable of properly conducting and supporting the business to be carried on and has the expertise and the financial resources for such purpose; and

(ii) will keep such resources in such assets, and maintain where appropriate such margins of solvency, as may be required by the Authority to be kept or maintained from time to time and as may otherwise be prescribed; and

(iii) will observe and comply with the conditions which the Authority may in the circumstances attach to the certificate of registration of the company;

(b) a company whose business is or includes the management of captive insurance companies or the business of insurance broking, shall not be registered as an offshore company unless it satisfies the Authority that it is properly and adequately insured against such liabilities as may be required by the Authority and as may be prescribed.”.

(b) immediately after subsection (8) thereof there shall be added the following subsection:

“(9) the Authority shall not be bound to give reasons for any refusal to register a company as an offshore company, or for any conditions it may require to be met before it accedes to an application for registration; and the decisions of the Authority on any such matter shall be final and conclusive.”.

Amendment of section 26 of the principal Act.

6. For subsection (3) of section 26 of the principal Act there shall be substituted the following:

“(3) If the Authority, having carried out or caused to be carried out in accordance with the provisions of this Act, such investigations as it may deem appropriate in respect of an offshore company is satisfied that —

(i) circumstances exist, or there has been such a change in the circumstances of the company, that, had they been known to the Authority or had they existed at the time of the company’s registration, the company would not have been registered as an offshore company; or

(ii) the company has failed to observe, in any material respect, a condition or requirement attached to the certificate of its registration; or

(iii) in the case of a company referred to in paragraph (b) of subsection (4) of section 24 of this Act, the company is not insured as required by that paragraph for a period exceeding one month,

the Authority may cancel the registration of the company and thereupon the company shall cease to be an offshore company:

Provided that the Authority shall not cancel the registration of a company under this subsection unless it has first given the company the opportunity of explaining the circumstances and making other representations; and the Authority may also, where the circumstances complained of are capable of remedy, allow the company to take remedial action within such time and under such conditions as the Authority may specify.”.

Amendment of section 28 of the principal Act.

7. In section 28 of the principal Act, immediately after subsection (8) thereof, there shall be added the following new subsection:

“(9) Section 27 of the Act, and any order or declaration made thereunder, shall not apply.”.

Amendment of section 29 of the principal Act.

8. Section 29 of the principal Act shall be amended as follows:

(a) for subsection (4) thereof there shall be substituted the following:

“(4) Subsection (1) of section 6 of the Act shall not apply; subsection (3) of that section shall apply to the extent

only of requiring it to give the information therein referred to; and subsection (5) of that section shall apply to the extent it is applicable in view of the foregoing provisions of this subsection.”.

(b) for subsection (6) thereof there shall be substituted the following:

“(6) Sections 8, 9, 10, 11, 12, 13 and 14, and subsection (1) of section 23 of the Act shall not apply.”;

(c) for subsection (7) thereof, there shall be substituted the following subsections:

“(7) Section 16 of the Act shall apply as follows:

(a) paragraphs (b) and (c) of subsection (1) and paragraphs (b) and (c) of subsection (2) thereof shall not apply;

(b) subsections (1) and (2) thereof shall apply as if the financial year of an insurance offshore company terminated on such date as the company may indicate by notice in writing to the Authority, and subject to the power of the Authority to extend the periods of four and six months therein prescribed by such further period as it may in the circumstances deem reasonable.

(8) The Act shall not apply —

(a) to an insurance offshore broking company;

(b) to a company whose business is exclusively the management of captive insurance offshore companies.”.

9. In section 31 of the principal Act, immediately after the word “Malta.” there shall be added the following words: “In no case, however, shall section 41 of the said Act apply to an offshore company, whose obligation shall be limited to informing the Commissioner of Inland Revenue of any chargeable transmission it has reason to believe is liable to duty under the Act, within one month of the chargeable transmission or of such time as it became aware of the liability of such a duty. Failure to comply with its obligation under this section shall for all intents and purposes of the said Act be deemed to be a failure to comply with the provisions of section 41 of the said Act.”.

Amendment of
section 31
of the
principal Act.

10. In subsection (1) of section 41 of the principal Act for the words “or allowed not to benefit therefrom.” there shall be substituted the words “or allowed not to benefit therefrom, or to benefit from any such exemption, privilege or any other benefit to such extent only, as may be acceptable to the Authority.”.

Amendment of
section 41
of the
principal Act.

11. Subsection (2) of section 46 of the principal Act shall be substituted as follows:

Amendment of
section 46
of the
principal Act.

“(2) A non-trading offshore company may be registered with the Authority under this Act only through the agency of a nominee company authorised to act as such with respect to such company; and a nominee company, whether as sole director or as secretary of a non-trading offshore company shall, whether alone or with such persons as may be provided for in the articles of the company, have the legal and judicial representation of the company. The nominee company may appoint any other person or company to act on its behalf as legal and judicial representative of the non-trading offshore company.”.

Amendment of
section 52
of the
principal Act.

12. Section 52 of the principal Act shall be amended as follows:

(a) paragraphs (c), (d), (e), (f) and (g) thereof shall be renumbered as paragraphs (e), (f), (g), (h) and (i) respectively;

(b) for paragraph (b) of subsection (1) thereof there shall be substituted the following paragraphs:

“(b) regulate the conduct, duties and obligations of —

(i) nominee companies;

(ii) insurance broking offshore companies;

(iii) companies whose business includes the management of captive insurance companies, or collective investments, or such other business which the Minister in consultation with the Authority may prescribe;

(c) prescribe information, that companies referred to in paragraph (b) of this subsection, are to submit to the Authority;

(d) establish the fees which, notwithstanding any other provision of this Act, nominee companies may charge;”;

(c) in paragraph (e) as renumbered, of subsection (1) thereof, immediately after the words “as the case may require,” there shall be inserted the words “or exempt, or provide for the exemption of any class or classes of business carried on by an offshore company from any of the provisions of any law at the time in force,”;

(d) for paragraph (f) as renumbered, of subsection (1) thereof, there shall be substituted the following:

“(f) make provision allowing the Authority, notwithstanding any other provision of this Act, but subject to such conditions of confidentiality and other conditions as may be prescribed or as may be imposed by the Authority, to give such information concerning offshore banks or offshore banking institutions or insurance offshore companies or

insurance broking offshore companies or offshore undertakings for collective investments or offshore holding companies of which a bank, institution, company or undertaking as aforesaid is a subsidiary, as will enable foreign central banks or similar financial supervisory bodies having an interest in the proper conduct of the affairs of an offshore bank, institution, insurance company, insurance broking company or undertaking for collective investments in Malta, to examine such conduct.”.

13. Immediately after subsection (3) of section 53 of the principal Act there shall be added the following new subsection:

Amendment of section 53 of the principal Act.

“(4) No law, enacted after 1st January, 1989 which, but for the provisions of this section, would affect adversely the position of an offshore company with regard to taxation, including any duty, levy, dues or other liability of a similar nature, or to any other matter in respect of which such company is given rights, privileges or exemptions under this Act, shall apply to such company except and to the extent that that law specifically so provides.”.

14. The First Schedule of the principal Act shall be amended as follows:

Amendment of First Schedule of the principal Act.

(a) items (f) and (g) thereof shall be renumbered as items (g) and (h) respectively; and

(b) immediately after item (e) thereof there shall be inserted the following new item —

“(f) in respect of an insurance broking offshore company 1,000 1,000”

15. For section 22 of the Insurance Business Act, 1981, there shall be substituted the following:

Related amendment to Insurance Business Act, 1981. Act XVII of 1981.

“22 (1) If a company intends to cease to carry on the business it is licensed to carry on or if its premium income in respect of a financial year is likely to fall below eighty per centum of its premium income in respect of the immediately preceding financial year it shall without delay give notice thereof to the Minister, and the company shall comply with such conditions as the Minister may deem proper to impose.

(2) Any company which fails to comply with any of the foregoing provisions of this section, including any conditions imposed thereunder, shall be liable, in respect of each such failure, to a penalty not exceeding ten thousand liri.

(3) For the purposes of this section “premium income” relates to contracts of insurance commencing during the financial year under account, or to those continuous contracts whose anniversary dates fall during the financial year under account, and

means the aggregate of gross premiums due to the company after deduction of discounts, refunds or rebates, but before deduction of commissions and before deduction of premiums for reinsurance ceded.”.

Objects and Reasons

The main object of this Bill is to introduce provisions in the principal Act, regulating insurance broking offshore companies. The Bill also makes other amendments to the principal Act which experience in its operation has shown to be necessary or expedient.