

?????? ??? ?????????? (????? ?????? ??????)

??? 13?? ??????? 2012 (*)

«????? 49 ??? 63 ??? – ?????? ?????????? – ?????? ?????? – ?????? C-446/04 –
Test Claimants in the FII Group Litigation – ?????? ??? ?????????? – ?????? ??? ??????
????????????? ?????????? – ?????????? ??? ?????? ?????????? ??? ?????????? – ??????
“????????? ??????????” ??? “????? ??? ?????????? ??????????” – ??????
????????? ??? ??????»

???? ?????? C-35/11,

?? ?????????? ?????? ?????????????? ?????????? ?????? 267 ???, ??
????? ?? High Court of Justice (England & Wales), Chancery Division (????? ??????), ??
????? ??? 20?? ?????????? 2010, ? ?????? ?????? ??? ?????????? ??? 21 ??????????
2011, ??? ?????? ??? ???

Test Claimants in the FII Group Litigation

????

Commissioners of Inland Revenue,

The Commissioners for Her Majesty's Revenue & Customs,

?? ?????????? (????? ?????? ??????),

????????? ??? ??? ?. ??????, ??????, K. Lenaerts (?????), ??????????, A. Tizzano, L.
Bay Larsen, T. von Danwitz, A. Rosas, ?????????? ??????, U. Löhmus, E. Levits, A. Ó Caoimh,
J.-C. Bonichot ??? A. Arabadjiev, ??????,

????????? ??????: N. Jääskinen

?????????: L. Hewlett, ????? ?????????? ??????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
??? ?????????? 2012,

????????? ??? ?????? ??? ?????????? ??? ??????:

– ? Test Claimants in the FII Group Litigation, ?????????? ??? G. Aaronson, QC,
??? P. Farmer, barrister,

– ? ?????????? ??? ?????? ??????, ?????????? ??? S. Ossowski,
????????? ??? K. Bacon, barrister,

– ? ?????????? ??????, ?????????? ??? T. Henze ??? K. Petersen,

– ? ????????, ?????????? ??? D. O'Hagan, ?????????? ??? A. Collins,
SC, ??? N. McNicholas, BL,

- ? ??????? ????????, ?????????????? ??? ??? G. de Bergues ??? ??? N. Rouam,
- ? ????????, ????????, ?????????????? ??? ??? C. Wissels ??? B. Koopman,
- ? ????????, ????????, ?????????????? ??? ??? R. Lyal ??? W. Mölls,
???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 19?? ?????? 2012,

????????? ??? ??????????

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 49 ??? ?? 63
????.

2 ? ??????? ?? ???? ?????????? ??? ??????? ?????????? ??? ?????????? ??? 12??
?????????? 2006, C-446/04, Test Claimants in the FII Group Litigation (?????? 2006, ?. I-
11753), ??? ??????? ??? ????? ?????????????? ??????? ?? ?????????? ??????? ??? ?? ???
?????????.

?? ?????? ?? ?????? ??? ?????????? ??????????

3 ??????? ?? ??? ??????? ?? ??????? ??????? ??????? ??????? ???????, ?? ????? ??
????????????????? ?????? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ?? ???
????? ?????? ??????, ????? ??? ??? ?????????? ?? ?????????????? ?' ???? ??????, ?
????? ???? ????? ?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ???
????????????? ? ???????????, ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ???.

4 ??? ?? 1973, ?? ??????? ?????????? ??? ??????? ?????????? ??? ?? ??????? ?????????? ?????????? ??
????????? ?? ?????????????? ?????????? ?????? «?????? ??????????», ??? ??????? ??
??????, ??? ??????? ?? ?????????? ?????? ?????????? ??????, ??? ?? ??????? ???????
????????? ????, ??? ?? ?????? ??????? ??? ?????? ??????? ???? ?????? ?????? ?????
????????????? ??? ?? ??????? ??? . ?????? ??? 6 ??????? 1999, ?? ??????? ??
??????????, ??????, ??? ?? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ??
????????? ???, ???????, ??? ?? ?????? ?????????? ?????? ?????? ?????????? ??? ??
????????? ???, ??? ?? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????????? ??? ??
????????? ???, ?????????? ??? ?? ?????? ?????????? ?????? ?????????? ?????? ?????????? ??? ??
????? ??? ?? ?????? ?????????? ???' ??? ?? ?????? ??????.

? ?????????????? ??? ???? ?????

5 ????. ?? ???? 14 ??? ?????? ??? 1988, ????. ?????? ?????????????? ??? ?????? ????????
(Income and Corporation Taxes Act 1988, ??? ?????: ICTA), ?? ?????? ??? ?????? ??? ?????? ???
????????????? ?????????????? ??? ?????? ???, ?? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??
????????????? ??? ?????? ??? ?????? (advance corporation tax, ??? ?????: ACT), ??????????????
?? ?? ?????? ? ?? ?????? ??? ?????????????? ??? ??????????.

6 ? ??????? ?? ?????????? ?? ??????????, ????, ??? ACT ???
????????? ?? ?????????????? ?? ?????????? ?????????? ?? ??? ?????????? ??
????????? (mainstream corporation tax) ??? ?? ?????? ????. ?? ? ?????? ?????????? ?? ?????????? ??
????????? ??? ?????? ?? ?????????? ?? ?????????? ? ACT. ? ?????????? ACT ?????? ??

? ?????????? ??? ? ? ?????????????? ? ?????????????? ?????? ??? ???? ?????????????? ???
????????? ???, ?? ?????? ??????? ?? ??? ?????????????? ?? ?? ??? ???? ?????? ?????? ?????????? ???
????????? ?? ??????. ? ????????? ACT ?????? ?? ?????????? ?????? ?? ??????????
????????????? ??? ?????? ??????.

7 ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???????, ??????, ??
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ???????, ?? ?????? ??????????
???? ?????????? ?? ?????? ?? ?????? ?? ??? ?????????? ACT ?????? ??? ? ??????
????????? ??? ?????? ?????? ?? ?????? ??????????.

? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ?????????? ??????????

8 ???' ?????????? ??? ?????? 208 ??? ICTA, ??? ?????? ?????????????? ??? ??????
????????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??????????????
?' ??? ?? ?????? ?????, ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????????? ???.

9 ??????, ?????? ??? ?????? 231, ?????????? 1, ??? ICTA, ? ?????????? ?? ACT
????????? ?????????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????????? ?????????? ???
????????? ?????????? ?????? ?????? ACT ??? ?????? ? ???.

10 ??? ?? ?????? 238, ?????????? 1, ??? ICTA, ?? ?????? ?????????????? ??????????
?? ?????????? ?????? ?????????, ??? ?? ?????????? ??????, ?? «????????????? ?????????? ???
?????????» (franked investment income ? FII).

11 ??? ?????????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??????????
????????? ?????????? ??? ?????? ? ?????? ?????????? ?????????? ?????????? ?????? ??????
?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ACT ??? ?? ??? ?????? ??? ??
ACT ??? ?????? ?? ?????????? ? ??? ?????? ?????? ?????????? ?????? ?????? ???, ???
?? ?????????? ??? ?????? ?????? ACT.

? ?????????? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ??????????

12 ??? ?? ?????????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?? ?????????? ???.

13 ??? ?????????? ???, ? ?????????? ??? ?? ??? ?????? ?????????? ??????? ??? ???
????????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????????? ??
????????????? ?????????? ??? ?????????? . ???????, ??? ?? ??? 788 ??? 790 ??? ICTA,
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ? ?????????? ???
????? ??? ?????? ?????? ?????????????, ??? ?????? ?????? ??? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????
??? ?? ?????? ?????? ?????? ???.

14 ???????, ? ?????? ?????????? ??????? ??? ?????????? ??? ?????????? ???????
?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?? ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ???
??????. ?? ? ?? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?? ?????? ? ??????, ? ???
????????? ?????? ??? ??????, ??? ? ?????, ?????????? ?? 10 % ??? ??????????
????? ??? ?????????? ??????, ? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? . ?
????????? ??? ?????????? ?? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ???
?????????.

15 ??????? ?????????? ??????? ??????? ?????????? ??? ?? ?????????? ??? ??????
????????? ??? ?????? ?????? ?? ?????? ??????.

16 ?? ??????? ??????? ??????? ???? ?? ?????? ?? ?????? ?????????? ?????? ?????????? ???,
????? ?????? ACT.

17 ??? ?????? ?? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ??????
????????? ACT ?? ??? ??? ?????? ?????? ??? ?????? ? ?? ??? ?????? ??????, ?? ??????
??? ? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?? ???
?? ?????????? ??? ?????? ?????????? ACT, ????, ??? ???? ???, ??? ??????????
?? ?? ?????? 13 ??? ??????? ??????????, ? ?????? ?????????? ??? ?????????? ?????? ???
????????? ?????????? ?????????? ??? ?????? ?????????? ?? ??? ACT ??? ? ?????? ??????
????? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ???.

? ? ?????????? ?? ?????????? ??? ?????? ?????????? ?????????? ??????????

18 ??? 1?? ?????? 1994, ?? ??????? ?????????? ??? ?????????? ?????????? ??? ??????????
????????? ??????, ??? ? ?? ?????? ?????????? ?????? ?????????? ???, ?? ?????????? ???
????????? ??? ?? ??? ?????????? ?? ?????????? ??? ?????????? ??????????
????????? (foreign income dividend, ??? ???: FID), ??? ??? ?????? ?????????? ??? ACT,
???? ? ?????? ??? ?? ??????????, ?????? ?? FID ?????? ?? ?? ??? ??? ??????????
????????? ?????????? ??????????, ?? ?????? ?????????? ??? ?????????? ??????????????
ACT.

19 ??? ? ACT ?????? ?? ?????????? ?????? ?????????????? ?????? ??? ?? ?????????? ???
????????? ??? ???? ?????? ?????????? ?? ???????, ? ?????????? ACT ?????? ??
????????? ??? ? ?????? ?????? ?????? ?? ?????????? ??? ??? ?????? ??????, ??????
????? ??? ???? ?? ?????? ??? ?????? ??????.

20 ?? ??????? ??? ACT, ?????????????????? ??? ?????????? ??? FID, ?????????? ???
?? ?????? ??? ??? ?????????????? ??? 6 ?????? 1999 ?????? ??????????.

? ? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ? ?????????? ???
?????????

21 ?? High Court of Justice (England & Wales), Chancery Division, ?????, ??????,
????????????? ?????? ?? ?? ?????? 56 ??? ?? ?????? 1 ??? ?????????? ???
????????????? ?????? Test Claimants in the FII Group Litigation. ?????????? ??? ??
?????????, ?? ??? ?????? 48 ??? 53, 57 ??? 60 ??? ?????? ??????, ?????????? ???
????? ?????? ? ?????? ?????? ??? ??? ?????????? ?????? ?????????? ?????????? ???
??? ??????????, ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ???

?????????? ?? ?? ???? 49 ????, ?? ????? ? ?????????????? ?????????????? ??
?????????? ?? ?????????? ?????????? ?? ?????? ?????????????? ?? ?????????????? ??
?? ?? ?????????? ?????????? ?????????????? ?? ?????? ?????????? ?????????? ??
?????????? ?? ?????? ?? ?? ?? ???? ?? ?????????????? ?? ?????? ?????? ?? ?????? ??
????????????? ?? ?????????? ???????, ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
????? ?? ?? ?????? ?? ?????? ?????????????? ?? ?????????? ???????.

«55 ????? ??? ?????????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??????????, ? ?????, ???,
????????????? ??? ??????? ??????? ??? ?????????? ?????????????? ?????????? ?????? ?????????????? ???
????????????? ??????? ??? ?????? ?????????????? ??????????????, ?? ?????? ??? ??????????
???? ?????? ??? ?????? ?????.

56 ??????????, ???????, ??? ?????? ??????????? ?? ??????????? ?? ? ??????????
?????????? ?????? ?? ???? ? ?? ?????? ?? ?????? ?????? ?? ?????????? ?????????? ??
????????? ??????????? ?? ???? ??????????????? ?? ???? ?????????? ?????? ?????? ?????? ??????
???' ??????? ??????????..»

23 ?????? ??? ??????? ??? ?????????????????? ?????????? Test Claimants in the FII Group
Litigation, ?? ?????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? High
Court of Justice (England & Wales), Chancery Division, ???????? ??????????????????????
????????????? ?? ?????????? ???, ??? ?????????? ??? ??????????, ?? ??????????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????? ?????????? ??? ?
????????? ??? ??? ???????, ??????, ?? ?????????? ??? ??????????.

24 ?? ?????? ?? ??????????? ?? ?????? ?? ?????? ?? ??????????????? ?? ??????????????? ?? ??????????????? ?? ??????????
?? ??????????????? ?? ?????? ?? ?????? ?? ??????????? ?? ?????? ?? ??????????????? ?? ?????? ?? ??????
?????????. ???, ??????????, ?? ??????? ?? ????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ????????? ?? ??????
??????????, ??????? ?? ??????? 56 ?? ??????????????? ?? ??????? Test Claimants in the
FII Group Litigation, ??????? ????????? ?? ?????????? ??????? ?????????? ??????????????. ??????????????
????? ?? ??????????? ?? ??????? ?? ???????, ?? ?? ?????? ??????? ??????????????? ?? ??????? ?? ??????
?? ???????????, ?? ??????????? ?? ??????? ?? ??????? ??????????????? ?? ??????? ?? ??????? ?? ??????????
?????????? ??????????? ?? ??????? ?? ??????? ???????????????, ?? ??????? ??????????????? ?? ?? ??
????? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??????????????? ?? ??????????
?????????? ??????????? ?? ???????, ???????, ?? ?? ??????????????? ??????????? ??????????? ?? ??????????
????????? ??, ???????, ?? ?? ??????????? ??????????? ??????????? ??????????? ???????????
????? ?? ??????????? ?? ???????.

26 ????????, ?? ?????? ??????????? ?????? ??????????????? ??? ???? ??????? 2 ??? 4 ???

????????????? ??? ?????????????????? ?????????? Test Claimants in the FII Group Litigation.
????? ?? ??????????????? ?? ?? ?????? ??? ?????????? ?????????? ?????? ??? ??????????
????????? ??????????????? ?? ?? ?????? ??? ?????????? ?????????? ?????????? ?????????? ???
????????? ??????????, ? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????????, ? ???? ? ??????
?????????, ??????, ?????????? ??? ?????????? ?????? ??? ?????? ? ?????????? ?????????? ???
????????? ? ??? ?????? (?) ?????????? ?????? ?????), ?????? ?? ?????????? ?????????????? ???
????? ??? ?????? ?????????????????? ?????????? ?????????????? ??? ?????????? ??? ??????????
??? ?????? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ??????????
????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

27 ?? ?????? ?????????? ??????, ??????, ??? ? ?????? ?????????? ?????????? ????
????????? ??? ?????? ?????? ?????????????? ??? ??? ?????? ?????? ??? ?????? ??? ????
????????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ????. ??? ?????? ??????????
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???,
?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ????. ??
????? ??? ?????? ?????? ?????????????? ?????? ?? ?????? ?????? ?????????????? ?????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??????????
?????.

28 ??????, ?? ?????? ?????????? ?????? ?? ?????????????? ?? ?? ?????? 2 ???
????????? ??? ?????????????? ?????? Test Claimants in the FII Group Litigation ????
????? ??? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ??????????
????????? ?????? ?????? ? ??? ACT ??? ? ?? ?????? ??? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ?????????? ???
????????? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
? ACT ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????. ?? ??????
????????? ???, ?????, ?? ?????????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????
????????? ??? ?? ?????????? ?? ?? ?????? 10 ??? ?????????????? ?????????? Test
Claimants in the FII Group Litigation, ?????? ?? ?????????? ?????????? ??? ?????? ???
????? ?? ??????????, ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ??? ??????
?? ?? 9?? ?????????? 1983, 199/82, San Giorgio (?????? 1983, ?, 3595), ?? ??????????
????????? ?????????? ??? ACT ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????.

29 ????????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???, ? ACT ???
????????? ?? ?????????? ? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ????
????? ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
???????????, ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???
????? ??? ??? 5?? ?????? 1996, C-46/93 ??? C-48/93, Brasserie du pêcheur ??? Factortame
(?????? 1996, ?, I-1029).

30 ????????, ?? ?????? ?????????? ?????????? ??? ?? ?????? ?????????????? ????
?? ?????????? ??? ?????? ??? ?????????????? ?????? Test Claimants in the FII Group
Litigation ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????. ??????????, ??? ? ?????? ?????????? ??? High Court of Justice (England & Wales),
Chancery Division, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???, ???
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ???, ?????, ?????? ??? ?? ?????? 63 ???, ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ????????????, ?? ?????? 63 ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????????????????? ????? ?????????????????? ?? ?????? ?????? ?????? ?????????????? ??????????.

31 ?? ?????? ????????, ??????????, ??? ?? ????? 63 ??? ?????? ???. ?????????? ????????????, ??? ?
????????????? ???. ?????????? ?????? ?????? ?????? ?????????? ?????????? ?????????????? ???
????????? ????. ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ????. ?????????? ????.
????????????? ????. ????. ????. ???. ?????? ?????? ????????????, ???. ?????????? ????. 24?? ???. 2007, C-
57/05, Holböck (?????? 2007, ?. I-4051), ??? 18?? ?????????? 2007, C-101/05, A (??????
2007, ?. I-11531), ??? ??? 17?? ?????????? 2009, C-182/08, Glaxo Wellcome (?????? 2009,
?. I-8591), ?????????? ????. ????. ?????? ????. ?????????? ?????? ?????? ?????? ????.
??????.

32 ???????, ?? ?????? ??????????? ?????? ??????????????? ??????? ?? ?? ?????? 3 ???
?????????? ?? ?????????????????? ?????????? Test Claimants in the FII Group Litigation ???
????? ?? ??????? ACT, ?? ?? ?????? ?????? ??????? ?? ?? ?????? 6 ?? ??????
?????????, ? ?????? ??????? ?? ??????? ??????? ??????????????? ?? ??????? ??????? ??
?????????? ?? ?????????? ?? ????????? ACT ??? ??????? ?????????? ???, ??? ? ACT ??
?????? ?? ??????????? ?? ?? ?????? ??????? ?? ??????? ?? ?????????? ??????. ??
????????????? ??? ??????? ?? ?????? ?????? ?????? ?????????????? ??? ? ??????? ??? ??????????
??? ??? 49 ??? ?? ?????? ??? ? ?????????? ??? ?????????? ??? ??? ?????????? ??? ??????????????
??? ??????? ??????? ????????. ?? ?????????????? ??? ?????? ??? ??????? ??? ?? ??????
??????, ?????????? ?? ??????? ??? ?? ???????, ?????? ?? ?????????? ??????
??????????, ??? ? ?????????? ??? ACT, ? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????????? ??
??? ?????? ??????? ?? ?????? ??????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??
?????????.

33 ?? ?? ?????? 115 ?? ?????????????????? ?????????? ?? Test Claimants in the FII Group
Litigation, ?? ?????????? ??????? ?? ?????? ??? ?????????????????? ??? «[...] ? ??????????
????????? ?? ?????????????? ?????????????? ??? ?????? ??? ?????? ??? ??? ?????? ?????????? ???
????????? ?? ?????????? ??? ?????????? ACT ?? ?????????? ??????????, ??? ?????? ??? ?? ???
????????????? ?? ??? ??? ????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ???
????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??????».

34 ? ?????????? ??? ?????? ?? ?? ?????? 139 ??? ?? ?????? 3 ??? ?????????????? ??? ?? ???
????????? ??? ?????, ???????, ??? ?????????? ??? ?????? ??? ?????? ? ?????? ?????? ???????
????????? ??? ?? ??? ?????????? ??? ?????? ?????? ??? ?????????????? ????. ?? ??????
????????? ????, ?? ?? ??????, ?? ?????????????? ?? ? ?????????? ??? ?? ?????????? 3 ???
????????? ??? ?????????????? ?????? Test Claimants in the FII Group Litigation
????????? ?? ??? ?????????????? ?? ?????????? ??? ?? ?????????? ???????????, ??? ?? ??????
??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ACT, ??? ?????????????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????????????? ? ?????? ???????.

«1. ? ?????? ??? ??? “????????????? ??????????????” ??? “????????? ??? ?????????????? ??????????????” ??? ?????????? ??? 56 ??? ?????????????? ?????????? Test Claimants in the FII Group Litigation:

?) ?????????????? ?????????????????? ?????? ?? ??? ?????? ?????????????????? ? ??????????????
????????????? ??????????????, ?

?) ?????????? ??? ???? ?????????????? ?????????????? ?????? ??? ?????? ??????????????

? ? ?????????????? ??? ???? ???? ?? ??? ???? ?????????????? ? ??????????????
????????????? ??????????????, ?

?) ???? ? ???? ?????????? ??? ???? ?????? ???, ?? ?????????? ?????????????? ?????????????? ???
?? ??? ???? ??????, ??? ???? ? ???? ???;

2. ?? ??? ???? ?????????????? ? ?????????? ??? ?????????????? ??? ?????????? ??? ??? ???? ????
????????? ??? ?????????????? ??? ?????????? ??? ?????????? [??? ??? ?????? ?????? ?????????? ?
????????????? ?????? Test Claimants in the FII Group Litigation] ???:

?) ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? (? ??? ??????????????
??? ?????? ???) ??? ??? ?????????? ???????, ? ????? ?????????? ?????????? ??? ??????????
????????, ??? ? ???? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ??????????????????
????????? ?????????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ?????? ??? ??
????? ?????? ?????, ???/?

?) ? [ACT] ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ???????, ??? ? ???? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ???????, ??? ???
????????? ??????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????????? ???
????? ??? ?????? ??? ? ???? ?????? ??????;

3. ??? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??,
????? ? ?????????????? ??? ACT ?????? ?????? ?????????? ??? ?????????? ??? ??????????????
????????????? ??? ([?????????????] ?????? San Giorgio) ? ?????? ?????? ??????????
????????????? ([?????????????] ?????? Brasserie du Pêcheur ??? Factortame);

4. ??? ? ?????????? ?????? ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ???
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
63 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???
????? ??? ?????? ??? ??????;

5. ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?? ????
????????? ??? ?????? ??? ?????? [??? ??? ?????? ?????? ??? ?????? ??? ?????? ???]
????? Test Claimants in the FII Group Litigation], ??? ?????? ??? ?????? ??? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???;»

??? ??? ?????????????? ??????????

??? ??? ?????? ??????????

36 ?? ?? ??? ?????? ???, ?? ?????? ?????????? ???, ???' ????, ?? ??????????????
?? ?? ??? 49 ??? 63 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???' ??? ?????? ??????????
????? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ??????????.

37 ?????? ?? ?????????? ???, ?? ?????? ?????? ?????????? ???, ??? ? ?????????? ???
????? ??? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

????????????? ??? ?????????????? ??????, ? ?????????? ????? ?????????? ?????? ??? ?????????
????????? ??????? ?????????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??????
??? ??????? ?????????? ??????? ???????????, ??? ?????? ???, ?? ?????????? ???
??????????, ?? ?????????????????? ?????? ?????????, ???????, ?? ?????????? ???????????
????????? (????????? Test Claimants in the FII Group Litigation, ??????????????, ??? 62,
??? ??? 10?? ?????????? 2011, C-436/08 ??? C-437/08, Haribo Lakritzen Hans Riegel ???
Österreichische Salinen, ?????? 2011, ?. I-305, ??? 59).

38 ??? ?? ???? ??????? ??, ?? ???? 49 ??? ?? 63 ??? ??????????? ?? ?? ?????? ??
?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ??????????, ??
????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ??
????????, ?? ?? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??
???????? ?? ?? ?????????? ??????? (?. ?????????????? ??????? Test Claimants in the FII
Group Litigation, ?? 72, ?? ??? Haribo Lakritzen Hans Riegel ??? Österreichische Salinen,
????? 60).

39 ???????, ??????????, ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????
????? ???, ???????, ??????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ??????? ?? ???????, ?????????? ?? ?????????? ??? ?????????? ???
????? ??? ?? ??????? ?? ???????, ?????????? ??? ?????????? ??? ?????????? ???, ??? ??
????? ??? ?? ?????????? ??? ?? ???????, ?????????? ??? ?????????? ??? ?????????? ??? ??
????? ??? ?? ???????, ???' ?????? ?????????, ?????? ??? ? ?????????? ?????????? ???
??? ?????????? ??? ???????, ?????????? ??? ???????, ?????? ??? ? ?????????? ?????????? ???
??? ?? ?????????? ??? ???????, ?????????? ??? ???????, ?????? ??? ? ?????????? ?????????? ???
????????? ??? ?? ??? ?? ??? ?? ?????????? ??? ???????, ?????? ??? ? ?????????? ?????????? ???
????????? ???, ??? ?? ??? ?? ??? ?? ?????????? ??? ???????, ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? (???. ?????????????? ?????????? Test Claimants in
the FII Group Litigation, ?????? 48 ??? 57, Haribo Lakritzen Hans Riegel ??? Österreichische
Salinen, ????? 86, ?????? ??? 15?? ?????????? 2011, C-310/09, Accor, ?????? 2011, ?. ?-
8115, ????? 88, ??? ?????? ??? 23?? ?????? 2008, C-201/05, Test Claimants in the CFC
and Dividend Group Litigation, ?????? 2008, ?. I-2875, ????? 39).

40 ???????, ???????, ?? ??????????????? ???, ?????? ?? ??????? ??? ???????, ??? ????
?????? ?????????? ???, ??? ??????? ?????? ?????? ?????? ?????? ??? ???? ??????? ???
????????????? ???, ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????????? ??? ?????? (????????? ??? 14?? ?????????? 2006, C-513/04, Kerckhaert ???
Morres, ??????? 2006, ?. I-10967, ??? 22, ??? ??? 8?? ?????????? 2011, C-157/10, Banco
Bilbao Vizcaya Argentaria, ??????? 2011, ?. ?-13023, ??? 31 ????? ??? ??? ??????????????
?????????), ??? ?????? ?????? ?????? ?????? ?????????? ?? ?????????? ?? ??? ??? ??????
????????????? ??? ?????????????? ???, ?????? ??? ???? ?????? ??? ??? ??????
????????????? ??? ?? ??????? ??? ?????????? ??? ?????????? . ? ???????, ?? ????? ??? ?????? ???
??? ?????? ?????? ?????????????? ? ?????????? ??? ?????????? ?????????? ??????????, ??? ??????????
????????? ??? ?? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ???
??? ?????????? ??? ?????? ?????????? ???, ?????? ??? ?????? ??? ?????? ?????????? ???

41 ????? ?????????? ??? ?? ????? 54 ??? ?????????????????? ?????????? Test Claimants in the
FII Group Litigation, ?? ?????????????? ??? ?????????? ??? ??????? ??? ?????? ?????? ?????????????? ???
????????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???, ????
??? ?????????? ??? ??????? ??? ?????????? ??????????, ??? ?????????? ??? ?????????? ??? ??????????
????????? ???????????????. ?? ?????????? ??? ?????????????? ??? ??? ?????????? ???

????????? ?? ?????????? ??????? ?????????????? ??? ?????? ?? ?????????? ? ?????????? ?
???????, ????, ?????? ?????????????? ??? ???? ? ?????????? ??????, ??? ??????????
????????????? ??? ?????????? ??? ?????? ????? ? ?????????? ?????? ?????? ?????? ??
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ????.

42 ?? ?????????? ??????, ??? ???? ????, ?? ?? ?????? 56 ??? ??????????????????
????????? ??? Test Claimants in the FII Group Litigation, ?? ?????? ?????????? ??
????????? ?? ? ?????????? ?????????? ?????? ???? ? ?????? ?? ?????? ?????? ?????? ??
????????? ?????????? ??? ???? ?????? ?????? ?????????? ?????? ?????????????? ???
????????? ?????? ?????? ?????? ?????? ???' ?????? ?????????? ?????????? ??????????.

43 ??????, ???????, ?? ?????? ?????? ??? ? ?????????? ?????? ?????????? ??? ??????????
????????? ?????????? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ??
????????? ?????? ?????????? ??? ???? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
????? 39 ??? ?????? ?????? ??? ???, ??????, ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?????? ??? ??? ?????????? ???, ??? ??? ?????????? ??????????.

44 ??????, ??? ? ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ?? ??????????
????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ??
????????? ?????? ??? ?????????? ?? ???? ?????? ??????, ? ?????????? ?????? ?????? ???
????????? ?????? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ??? ? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??????, ??? ???? ?????? ?????? ??? ?????? ???
????????? ? ?????? ??????, ??????, ?? ?????? ?????????? ??? ?????? ???, ?????? ??? ????
????????? ?????? ?????? ?????? ?????? ??????.

45 ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ?????????? ?? ??????????
??? ?????????? ??? ?????? ?????? ?????? ?????????? ?? ?????????? ?????? ?????????? ???
????? ?????? ??? ???? ?????? ?????? ??????, ??? ???? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??????.

46 ??????, ?????????? ??? ?????? ? ?????????? ?????? ??? ?????????? ?????? ??? ??????????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ? ?????, ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ??????.

47 ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ???? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ???? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ???? ???? ???? ???? ????
??? ??????.

48 ?????????? ??? ???? ?????? ??? ??????????, ? ?????? ??? ?????????? ??? ??????,
??????, ?? ?????????? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??????.

49 ??? ??? ??????? ????, ?? ?????????? ??? ?????? ?? ?????? ???????????, ?? ?? ??? 56
??? ?????????? ??? Test Claimants in the FII Group Litigation, ??
????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ??
????????? ?????? ?????????? ??????????.. ???????, «? ?????????? ??????????» ??? ??
????? ??? ? ?? ??? ??? 56 ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?
«?????? ??? ?????????? ?????????? [...] ??? ?????????????? ??? ?????????? ???»
????? ?? ?????????? ?????? ??????????.. ??????? ??? ?????? ?????????? ??? ?
????????? ?? ?????????? ???, ?? ?????????? ?????? ?????????? ?????? ?? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????????? ?????? ?????????? ????.

50 ??? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??????????
????????? ??? ?????? ?????????? ? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ??? ?
????????? ??? ?????? ?????????? ???, ??? ?? ??? 56 ??? ?????????? ?????????? ??????????
Test Claimants in the FII Group Litigation, ???????, ???????, ??? ? ?????????? ??? ??????
??? ?????????? ??? ??? ?????????? ??? ?????????? ???, ?? ?????????? ??? ??????????
????????? ??? ?????????? ???, ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????????
????????? ??? ?? ??? ??? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ?????????? ???, ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ??????.

51 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?????? ???
????????? ??? ??? ?????? ?? ?????????? ?? ?? ??? 56 ??? ?????????? ?????????? ??? ??????
Test Claimants in the FII Group Litigation. ??????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ???
??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ??? ?????? ??? ??????
????????? ??? ?? ??? ?????? ?????????? ??? ?????????? ???, ??? ??? ?????? ??? ?
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????
46 ??? ?????????? ??? ?????? ??? ?? ???' ???????, ?????????? ???, ??? ?? ??? ??????
????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???.

52 ?? ?? ??????, ? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ???, ??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ??????????.

53 ??????, ??? ?????????? ???, ??? ? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ?? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
(??. ?????????? ??? Test Claimants in the FII Group Litigation, ??? 62, ???

Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, ?????? 59), ? ?????????????
?????????? ????????????? ?????? ??? ????????????? ????????????? ?????????????? ??? ?????????????????? ???
??? ?????? ?????????????? ??????????????.

54 ??? ??????????, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? , ? ??????
????????? ?????????? ??? ?? 49 ??? ?? 63 ???.

55 ??? ?????? ??????????, ??? ?????? ?????????? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??
????????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ?????? (??.. ?????????? ??? 29?? ?????????? 2011, C-371/10,
National Grid Indus, ?????? 2011, ?. ?-12273, ????? 42, ??? ?? 1?? ?????????? 2011, C-
250/08, ?????? ??? ??????, ?????? 2011, ?. ?-12341, ????? 51).

56 ???????, ? ?????????? ??? ??????? ?????????? ?????????? ?????????? , ??? ?????? ??? ??
?????? ?????????? ? ?????????????? ?????? Test Claimants in the FII Group Litigation, ??? ?
?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????????? ?????????????? ???
?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????????.

57 ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ?????????? ???
?????? ??? ?????????? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ??? ??
??? ?????????? ?????????? ??? ?????? ?????? (????????? ??? 28?? ?????????? 1992, C-204/90, Bachmann,
?????? 1992, ?. I-249, ????? 21, ??? 7?? ?????????? 2004, C-319/02, Manninen, ?????? 2004, ?. I-7477, ????? 42, ??? 23?? ?????????? 2008, C-157/07,
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ?????? 2008, ?. I-8061, ????? 43, ???
????????????? ?????? ?????? ??? ?????? ??????, ??? 70).

58 ?????????? ??????, ??? ?????? ??????????, ?? ?????????? ? ?????? ?????? ??????????
?????? ??? ?????? ?????????? ?????????? ?????? ??? ?????????? ?????? ??? ??
????????????? ?????????? ?????? (????????? ?????? ?????? ?????? ?????? ?????? ?????? ,
????? 71 ??? ?????? ?????????? ??????), ? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? (????????? ??? 27?? ??????????
2008, C-418/07, Papillon, ?????? 2008, ?. I-8947, ????? 44, ??? ?? 18?? ?????? 2009, C-
303/07, Aberdeen Property Fininvest Alpha, ?????? 2009, ?. I-5145, ????? 72).

59 ?????????? ?????? ??? ?????? ??? ?????????? ? ?????? ?????? ??? ?????? ?????????? ???
????? ???????, ?????????? ?????? ?????????? ???????, ???????, ??? ?????????? ?????
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ???, ???????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

60 ????? ?????? ??? ??????? ?????????? ??? ???????????, ?????? ?? ??????????? ???,
?????? ? ??????? ??? ??????? ??? ?????????? ??? ?????????? ?????????? ??????????
??? ??? ??????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??????? ?? ???
????????????? ??? ??? ??? ?????????? ?????????, ??? ?? ?????????? ??? ??????? ??? ??????
??????????, ??? ??? ?????? ?????????? ?????????, ??? ?? ?????????? ??? ??????? ??? ??????
?????????? ??????????, ?? ?????????? ?????, ?????, ?? ?????????? ??????
?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???, ???????,
????? ? ?????????? ?????? ?????????? ?????? ?????? ??? ?? ?????????? ??? ?????? ???
?????? ??? ??????? ??? ???????.

61 ???????, ? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??????
????????? ??????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??????
?????????? ??? ?????? ??? ?? ?????? ?????????? ?? ?????????? . ?? ??? ?????? ???????,
??? ?????? ??? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????????
??????, ?????????? ?????? ??? ?????? ??? ?? ?? ??? ?????? ??? ??????????
????????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????????? ??????????
??????????, ???????, ?? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?? ???
?????????? ?????????? ??????????.

62 ?????? ?????? ?????????? ??? ?????? ???, ?????????? ?? ?????????????? ? ?????? ???
????????? ?????????? ?????????? ??? ???????, ??? ??? ?????? ??? ?????? ??? ?????????? ???
?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????????? ?? ?????????? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??????
????????????? ??? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ??????
??? ?????????? ?????????? , ?????????? ?????????? ??? ?????? ?????????? ?????????? ??????
????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????????.

63 ?????, ?????, ?? ?????????? ???, ?? ?? ??? 99 ??? ??????????????
????????? ??? Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, ?? ?????????? , ???
????????? ??? ?????????? , ???' ???, ??? ?????? ??? ?? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????????? ?????? ??? ?? ?????? ??? ?????????? ???
????????? ?????? ?????????? , ?????????? ??? ? ?????? ?????? ?????? ?????? ??????????
????, ??? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? , ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ? ?????????? ?????????? ??????.

64 ?????? ?????? ??? ? ?????????? , ??? ?????? ?????????? ??? ?????? ???
????????? , ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ???
????? ?? ?? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ???
????? ?? ?????????? ?? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ???
????????? ?????????? , ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????????? , ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ?????? ???
? ?????? ?????? ??? ?????? (??., ?????? , ?????? Kerckhaert ??? Morres,
????????????? , ??? 20, ??? ?? 15? ?????? 2010, C-96/08, CIBA, ?????? 2010, ?. I-
2911, ??? 25).

65 ?????? ??? ?????????? , ??? ?????? ?????? ?????? ?? ??? ? ?????? ? ?????? ??? ??
????? 49 ??? 63 ??? ?????? ??? ?????? ??? ?????????? ?' ??? ?????? ?????? ??????

?????? ?????????????? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ??
?????? ??? ?????????? ??? ?????????? ?????????? ??????????, ?????? ??????????????,
??????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ???
?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ???, ????????, ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???????
????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ????????

???? ???? ?????????? ??????????

66 ?? ?? ??????? ??????? ???, ?? ?????? ??????????? ??????, ???' ?????, ??
?????????????? ?? ???? ?????????? ??? ??????? ??? ??????????? ?? ???? ??????????????
?????? Test Claimants in the FII Group Litigation ??? ??????? ??? ??? ??????? ??????????????
?????? ??????? ??????, ?????, ??? ? ??????????? ??? ??????????? ????? ??????????? ???
??? ?????? ??? ??????????? ?? ?????????? ??? ??????????? (? ??? ??????????? ???
?????? ???) ??? ??? ??????? ??????? ? ????? ??????????? ?? ?? ??? ????? ??????????? ???
?????? ??????, ??? ??? ?????????????? ?? ?????? ?????? ??? ? ????? ??????????? ???
?????? ??????? ???, ???????, ??? ? ACT ??? ??????????? ??? ??? ????? ??????? ???
?????? ?? ??????? ??????? ???????, ??? ??? ??? ??????? ??????? ???
?????? ?? ??????? ??????? ??????? ??? ???????.

67 ?? ???. ????????????????. ??????? ???. Test Claimants in the FII Group Litigation, ??
???????????. ????? ???. ????????. ??? ???. ????????. ????????. ????????. ??? ???. ????????. ??? ???.
?????? 43 ???. ???. 56 ??:

— ?????????? ??????? ??????? ??????? ??????? ???? ??????? ? ??????? ??????? ??????? ??? ???????
?????? ?????? ??? ?? ?????? ??????? ??????? ?????????????? ?? ??????? ??? ?? ??????? ??????? ??????
?????? ??? ?? ??????? ??? ?????????????? ??? ?? ??????? ?????????????? ? ??????? ???????,
???, ??? ?? ?????????? ??????? ??????? ??? ?? ??????? ?????????? ??? ?? ??????? ??????? ???????,
??? ?????????? ?????? ??????? ??? ?????????? ??? ?? ?????????????? ??? ?? ?????????????? ??? ?? ?????
?????? ??? ?? ??????? ??????? ??? ?? ??????? ?????????????? ???.

- ??????? ?????????? ? ?????, ??? ?????????? ??? ??? ?????????? ?????????????? ?????????????? ?????
????????? ??? ?????????? ?????????? ??? ?????????? ????? ?????????? ????? ?????????? ????? ??????????
??? ?????????? ?????????? ??????????????, ?????????? ??? ?????????? ?????????? ??? ??????????
????? ?????????? ??? ????? ?????????????? ??? ?????????? ?????????? ?????????? ?????????? ??
????????? ?? ?????????? ?? ???????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????? ?????????? ??? ?????????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ??? ??????????
????, ???, ???, ???, ?????????? ??? ?????????? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?? ??? ?? ???
??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ???, ?????????, ??? ?????????? ??????????
????????? ??? ????? ??? ????? ?????????? ???, ??? ?????? ?? ?????? ?????????? ?????? ?????????? ??
????????? ???????, ??? ?????? ???????, ?????? ?????????????? ??? ?????????? ?????????? ??????????
?????????.

68 ???????, ??????? ?? ??????????? ???, ??????? ??? ?????????? ??? ?????????? ??? ???????
????? ????????, ???? ?? ??????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???
????? ????????, ? ?????????? ?? ?? ??? ?????????? ??????? ??????? ??????? ??
????????? ??? ACT, ? ?????? ??? ?????? ????? ?????????????? ?????? ??????. ????????,
?? ?????????? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???
????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ???
????? ?????????? ?????? ??? ?????? ?????? ?? ??? ?????????? ACT. ? ?????? ???
????????? ?? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??

69 ? ?????????? ??? ???????? ?????????? ?????? ??? ?? ?????????? ??? ?????? 49 ????
??? 63 ??? ?????? ??? ?????? ??? ?????? ? ?????? ??????? ??? ?????? ?? ?????? ???
????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?? ?????????? ?? ?????? ???
????????? ?? ?????????? ?? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ?? ????? ACT
??? ?????? ? ?????????? ??? ?????? ?????? ?????????? ?????? ??????, ????, ??? ?
????????? ?? ?????? ?? ?????? ?????? ?????????? ???, ? ?????? ?????? ?? ?????????? ???
????????? ?? ?????? ?????? ?????????? ???????, ??? ?????????? ? ??? (???
????????? ??? ?????? ???) ??? ?????? ?????????? ??? ?????? ?????????? ???????, ??? ? ???
????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ?????? ?????? ? ?????? ??????
??? ?????? ???????. ??? ? ?? ?????? ?????????? , ??? ? ?????????? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ? ??? ??????
??? ??? ??? ?????? ??? ?????? ?????????? ???????, ??? ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??????????
?????????.

70 ? ?????????????????? ??? ???? ???? ???? ???? ???? ????.

71 ??????? ?? ????????????, ???????, ??? ??? ??????? ??????? ??? ??????? ???????
?????? ?????? ??????????? ???????, ?? ??? ??? ?????? ??? ??????? ??? ??????? ??? ??????
?????????? ??????????? ??? ?????????? ? ??????? ?????? ??? ??????? ??? ?????? ????
??????, ?? ?????????? ??????? ?? ??????? ??????? ??? ??????? ??????? ??? ??????? ???????
?????????. ??????????? ?????? ??? ?????? ???, ??? ??? ??????????? ??? ??????? ??? ?????? ???
?????? ??? ??? ?????? ??????? ??? ??????? ??? ?????????????? ?????????? Test
Claimants in the FII Group Litigation ??????? ??? ?????????? ??? ?????? 49 ??? ?? 63
???? ??????? ??????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
??????????, ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??
?????????? ????

72 ????? ?????????? ??? ?? ????? 62 ??? ?????????? ??????????, ? ?????????? ??? ??????
???? ??????? ???????, ????? ?????? ?????????? ??? ? ??????? ??? ?????? ??? ??????
??????, ?? ?????????? ??? ACT ??? ?? ?????? ?????? ?????????????? ??? ??????????
????????? ?????????? ?????????????? ?????????????? ???' ??????, ??? ?? ?????? ??? ? ?? ???
????????????? ??? ????? ?????????? ?? ??? ?? ?????? ??? ?? ?????? ?? ?????????????? ???
????????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ?????????????? ?? ???
??? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????.

73 ????????, ??? ???? ??????? ?? ? ?????????? ??????? ??? ?????????? ?????????? ???
?????? ??????? ??????? ??? ?????????? ? ??? ?????? ??? ????? ?????? ??? ??? ??????????
?????????, ??? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????????.

74 ?? ??????????? ???. ??????? ???. ??????? ???. ??? ??????? ???. ???????, ?? ???.
?????????? ???. ??????? ???. ??????? ???. ??????? ???. ??????? ???. ??????? ???.
?????? Test Claimants in the FII Group Litigation, ??????? ??????????? ???. ?? ???.
?? ? ??????????? ???. ??????? ???. ??????? ???. ??????? ???. ???. ???. ??????? ???.
?????? ???. ??????? (? ???. ??????? ???. ???. ??????? ???.) ???. ???. ??????? ???.
? ???. ??????? ???. ???. ???. ??????? ???. ???. ??????? ???. ???????, ???. ???.
?? ?. ??????? ???. ??????? ???. ??????? ???. ??????? ???. ??????? ???.

75 ????????, ????, ?? ?????? ?????????? ?????????????? ???, ??? ?????? ??????????, ???, ?? ??????
???? ?????? ??? ?????? ?????, ????, ?? ?????? ?????????? ???, ??? ?????? ?????????????? ??????????
??? ?????? ?????? ??? ?????? ???, ?? ?????? ?????????? ???, ?? ?????? ?????????? ???, ?? ????
????????? ??? ?????? ?????????? ?????????? ACT ??? ??? ?????????? ?? ??????????????
????????? ??? ?????????? ??? ?????????? ?????????? ???, ?? ??????????.

76 ?????? ??????? ???, ?????? ?? ?????????? ?????????????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ACT, ??? ? ?????? ??????
????????? ?????????? ?? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????, ???
????????? ??? ?????? ??????, ??? ?????? ?? ?????? ?? ?????????? ?? ??? ?????? ??? ?? ??
????????? ??? ACT ??? ??????, ???????, ?? ?????????? ??? ACT ??? ??? ??????
?????????. ?? ?????????? ??? ?????????? ??? ACT ???????, ??????????, ??? ?? ???
????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ?????????? ACT ???
????????? ?????????? ??? ??? ?? ??? ?????????? ?? ?? ?????????? ?????????? ??????????
?? ?????? (?. ?????? ?? 8?? ?????? 2001, C-397/98 ?? C-410/98, Metallgesellschaft
??., ?????? 2001, ?. I-1727, ?????? 21 ?? 25).

77 ?????? ??? ??????????? ???? ?????????? ???????????, ? ??????? ??????? ??????? ??????? ?? ??
?????? ??????????? ??? ?????? ??????? ??????? ??? ?? ?????? 49 ???? ??? 63 ????,
????? ? ??????? ??????? ??? ??????? ??????? ??? ??????? ??????? ??? ??????? ??????? ??????????
????????? ??? ??? ACT. ??????? ??????????? ??????????? ?????????? ACT ?? ?????? ???
?? ??? ??????? ???????, ?? ??????? ??? ??????? ?????? ?????? ?????? ??????????? ??????????.

78 ???????, ?????? ?? ??????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ???????
????? ?? ?????????? ?? ??????? ??? ?????????? ????? ACT, ?????? ???
????????????? ?? ??????, ??? ?????? ?????????? ??? ?????????? ??? ??????. ???
????? ??? ?????????? ???, ? ????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?? ?????????? ?????????? ?????????? ?????? ?? ????? ??????????
????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ?????? ??????????
ACT ???? ?? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

79 ?????????, ? ?? ?????? ??? ??????? ?????????? ?????????? ?????????? ?????????? ??? ??????
????????? ??? ACT ??? ??? ?????? ??? ?????????????? ?? ?????????? ?????????? ?????????? ??????????
???? ?? ??????????, ??? ?????????????? ?? ?????????????? ??? ?????????? ????? ?????? ??? ??????
????? ??? ? ?????????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ????. ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??????????
????????? ??? ?????????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ????. ??????????, ?? ??????
????????? ????, ? ???????? ACT ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?? ?????????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????
????????? ???.

80 ?????????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????????????? ??????????????
??? ?????????? ? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ?????? ?? ?????? ??? ?????? ???
??? ?????????? ?????? ??? ?????? 49 ???? ??? 63 ??? ?????? ?????? ???? ? ?????? ??? ?????? ???

????????? ??? ??????? ??????, ??? ?????? ??? ?????????? ??????, ??? ??????? ??? ?????????? ??????.
?????????? ??? ?????? ???????, ??? ?????? ?? ?????????? ?????????? ?????????? ??????, ???
???? ??????? ??? ??? ??? ?????????? ??? ?????? ?????????? ??????.

81 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????, ?? ????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??????? ? ?????????????? ???
?????? Test Claimants in the FII Group Litigation, ??????, ??????, ??? ??? ?????????? ???
? ACT ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????? ??????????
?????????, ??? ?????????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??????.

82 ??? ??? ??????? ??????, ??? ?????? ?????? ?????? ?? ?????? ? ??????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????, ??
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ? ??????????????
?????? Test Claimants in the FII Group Litigation, ?????? ??? ???:

– ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ? ?????? ?????? ?? ?????? ???
????????? ?? ?????????? ??? ?????????? (? ??? ?????????? ??? ?????? ???) ??? ???
????????? ?????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??????, ???
??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ? ?????? ?????????? ??? ??????
?????????,

– ? ACT ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??
????????? ???????, ??? ??? ??? ?????? ?????? ?????? ??? ??? ??? ?????? ???
????????? ?????????? ??? ?????? ??????.

??? ??? ?????? ??????????

83 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ???, ???' ????, ?? ??????????????
?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ? ??????, ??? ??????
??? ?????????? ?????????? ??? ?????? ?????? ??????, ??????????, ??? ?????? ?????? ???
?????? ?????? ??? ??????, ?? ?????????? ??? ACT ??? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???.

84 ???????, ?????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????????? ?????? ??????. ?? ?????? ??? ?????? ??????, ????,
???' ???? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
????? (?????? ??? 6?? ?????????? 2011, C-398/09, Lady & Kid ?.??., ?????? 2011, ?. ?-
7375, ??? 17 ??? ??? ?????????? ???).

85 ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???????, ????
?????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
?????????, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
?????????.

86 ??? ?????????? ??? ??? ?????? 62 ??? 72 ??? ?????? ??????????, ? ?????????? ???
?????? ??? ?????? ?????? ??? ?????? ??? ACT ??? ?? ?????? ??????

????????????? ??? ??????? ?????????? ?????????? ?????????????? ?????? ??? ?????? ???
? ?? ??? ?????????????? ??? ????? ?????????? ?? ??? ???? ?? ?????? ??? ?? ?????? ??
????????????? ??? ?????????? ?????????? ?????????? ?????????? ?????? ??? ??????
????????????? ?? ?????? ??? ?????????? ?????????? ?? ?????????? ?????????? ?????????? ?? ??????
?? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??????
?????????.

87 ??? ?????? ???????, ???????, ?? ?????? ? ??????? ??? ?? ?????? ??? ??????
????? ??? ?????? ??? ? ?????????????? ?? ??????? ?????? ?????? ?????? ?????? ??? ??????,
??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
??? ?????? ??????, ???????????, ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????, ??
????????? ??? ACT ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??????????
????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????????
????????? ???, ??? ?????? ??? ? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ?????? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??????
?????????.

??? ??? ??????? ??????????

88 ?? ?? ??????? ??????? ???, ?? ?????? ?????????? ?????, ???' ?????, ??
????????????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????????????? ?? ??????????
????? ?????? ?????? ??? ?????? ?? ?????? ?????????? ?? ?????? ?????? ?????????????? ??
????? ??? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ???
?? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? 63 ??? ?????? ?????????? ?? ?????? ?????? ?? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????????? ?????????? ???, ? ?????? ??? ?????????? ?????? ??? ?? ?????????? ???
??? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?????????.

89 ??????, ?????? ?? ?????????? ??? ? ?????????? ?????????? ??? ??????????
????? ?? ?????? ??? ?????? 49 ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? 63
????? ??? ?????? ?????? ?????? (????????????? ?????? Haribo Lakritzen
Hans Riegel ??? Österreichische Salinen, ??? 33, ??? Accor, ??? 30).

90 ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?? ??? ???? ?? ??????????
?????????, ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?????? ??
????????? ??? ?? ?????? ?????? (????????? ??? 12?? ?????????? 2006, C-196/04,
Cadbury Schweppes ??? Cadbury Schweppes Overseas, ?????? 2006, ?. I-7995, ?????? 31
??? 33, ??? 12?? ?????????? 2006, C-374/04, Test Claimants in Class IV of the ACT Group
Litigation, ?????? 2006, ?. I-11673, ?????? 37 ??? 38, ??? 13?? ?????? 2007, C-524/04,
Test Claimants in the Thin Cap Group Litigation, ?????? 2007, ?. I-2107, ?????? 26 ??? 34,
Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, ???????????, ??? 34, ???
Accor, ???????????, ??? 31).

91 ??? ?????? ?????????? ??? ?????? 49 ??? ?????? ?????? ?????????? ?????????? ???
????? ?????? ? ?????? ?????????? ??? ?? ?????? ?????? ?????????? ?????????? ???
????? ?? ?????????? ?????? ?????? ?????????? ?????? ??? ?? ?????? ?????? ???
????? ??? ?????????? ??? ?????????? ??? (?. ?????? Test Claimants in the FII
Group Litigation, ???????????, ??? 37, ??? 21?? ?????? 2010, C-81/09, ???).

?????, ?????? 2010, ?. I-10161, ???? 47, Accor, ?????????????, ???? 32, ??? ?? 19??
????? 2012, C-31/11, Scheunemann, ???? 23).

92 ??????????, ?????? ?????????? ?? ?????? ?????????? ?????????? ?? ??????????
????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ??????????
?????????, ?????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
?????????, ?????? ?? ?????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ??? ?????? (????????????? ?????? Haribo Lakritzen Hans Riegel ???
Österreichische Salinen, ???? 35, Accor, ???? 32, ??? Scheunemann, ???? 23).

93 ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
????????? ??? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??
????? ?????????? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??, ??? ?? ?? ??
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?? ?????????? ?? ??????????
????????? ??????. ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ???, ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ??????, ???,
?? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 49 ??? ? ???
????? 63 ???.

94 ??? ??? ?????????? ???, ?? ?????????? ?????? ??? ?????? ?? ??????????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??
????? ?? ??? ?????? ?????? (??., ??????, ?????? Test Claimants in the FII Group
Litigation, ???????????, ?????? 37 ?? 38, ??? 26?? ?????? 2008, C-284/06, Burda,
????? 2008, ?. I-4571, ?????? 71 ?? 72, ??? ?? 21?? ?????? 2010, C-311/08, SGI,
????? 2010, ?. I-487, ?????? 33 ?? 37).

95 ??? ?????????? ?? ?????????? ?? ?? ?????? 37 ??? ?????????????? ?????????? ??
Test Claimants in the FII Group Litigation, ?? ?????????? ?? ?????????? ??
«?????????????», ??? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??????????
????????, ?????? ?????????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ??
????????? ?? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? 100
%. ?????? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?? ?????????? ??
????????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?? ?????? ??
??? ?????????????? ??, ?? ?????????? ?????? ?? ?????? ?? ?????? «?????????????»
????????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ??
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96 ???????, ?? ??????, ??? ?? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ??
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????? ?? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ?????????? ?? ? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ??
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97 ???????, ?????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????????????? ??
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????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ??
????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? (??, ?????? Holböck,
????????????, ?????? 28, ??? 3?? ?????? 2006, C-452/04, Fidum Finanz, ?????? 2006,
. I-9521, ?????? 25, ??? Scheunemann, ???????????, ??? 33, ?????? ??? ?????? ??
10?? ?????? 2007, C-102/05, A ??? B, ?????? 2007, ?. I-3871, ?????? 29, ??? Test Claimants in
the CFC and Dividend Group Litigation, ???????????, ??? 88), ??? ?????? ?????? ??

????????????? ?? ?????????? ?????????????? ?????????????? ?????????????? ??? ?????? ?????? ???
?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? 49 ????.

98 ??? ???? ??? ?? ?????????????? ??? ?????? ?????????? ?????????? ?????????? ??? ???
????????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ??????????
????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ???, ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? 49 ????.
????? 63 ??? (????????????? ?????? Test Claimants in the Thin Cap Group Litigation,
????? 33, 34, 101 ??? 102, ?????? ??? 10?? ?????? 2007, C-492/04, Lasertec, ??????
2007, ?. I-3775, ?????? 22 ??? 27? ??., ??????, ?????????????? ?????? A ??? B, ?????? 4
??? 25 ??? 28).

99 ??????????, ??? ?????? ?????? ??? ?????? ?? ?????????? ?????????????? ?????????? ???
????????????? ??? ?????? ???, ? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
????? ? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 63 ????. ??? ?????????? ??? ?? ??????????
????? ?????? ??????, ??????, ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??????, ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? 11 ??? 27).

100 ?????? ?? ?????? ?????????? ??? ?????????? ?????????????? ??? ?????????? ???
??? ?????? ??? ?????? ?????? ??????, ?????? ?? ?????????? ?? ?????????? ? ?????????? ???
????? 63, ?????? 1, ????, ?? ???? ??? ?????? ?? ?????? ??? ?????? ???, ?? ?????? ???
????????? ?, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?, ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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101 ??????, ??????, ?? ?????????? ??? ? ?????????????? ??? ?????????? ???
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????????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? 64, ?????? 1, ????.

102 ???????, ??? ???? ?????? ??? ?????? ?????? ???, ???' ??????, ?????????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ? ?? ?????? ?????? ????. ?' ?????? ?????????? ??? ?????? ??? ?????? ???
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????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??, ?????????? ???
????????? Glaxo Wellcome, ??? 40, ??? ?????? ???, ??? 48).

103 ??? ???? ??????, ?? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???
????????? ? ?? ?????? ?????? ???, ??? ???? ?????? ??? ?????? 64, ?????? 1, ????,
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??.

????????????????? ?????????? Test Claimants in the FII Group Litigation, ???? 183, ??? Holböck, ???? 36).

104 ??????? ?? ????????????????, ??? ??????? ??????? ??????? ?? ?????? ? ??????? ?? ??
?????? ?? ?????? ??? ?????? ??? ?????? ??? ? ??????????????? ?? ?????????? ??????? ??
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?????? ?? ??????????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ??
?? ??? ?????? ??????? ?? ?? ??????????? ??????????? ?? ??????????? ?? ??????????? ?? ?? ???
?????? ?? ???, ? ??? ?????? ??? ??????????? ?? ??? ?? ??????????? ?? ??? ?? ??? ??????? ??
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105 ?? ?? ??????? ??????? ???, ?? ??????? ??????????? ??????, ???' ?????, ??
?????????????? ?? ? ??????? ?? ??????? ?? ? ??????? ?? ? ??????????? ?? ?????? ???????, ?? ??????
?????????? ?? ? ??????? ?? ??????????? ?? ? ??????? ??????? ?? ? ???????????????
?????? Test Claimants in the FII Group Litigation, ?????? ?? ??????????? ?? ?
?????????????? ?? ??? ????? ????? ????? ???????????, ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??
????? ??? ????? ??????? ACT, ??? ??????????????? ?? ? ?????? ??? ?????? ??? ?????? ??? ???????
?????????????? ? ??????? ???????.

107 ?? ?????????????? ????. ?????? ?????? ???. ?????? ?????? ?????? ?????? ?????? ?????? ??. ? ?????? ?????? ???.
???. ?????? ???. ??. ?????? ???. ?????? ???. ?????? ?????? ???. ?????? ???. ??. ?????? ???. ?????? ???.
???. ?????? ???. ??. ?????? ACT ???. ?????? ?????? ???. ??. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???.
???. ?????? ???. ??. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???. ??. ?????? ???.
???. ?????? ???. ??. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???. ??. ?????? ???.
???. ?????? ???. ??. ?????? ACT ???. ?????? ???. ??. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???. ??.
???. ?????? ???. ??. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???. ??.
???. ?????? ???. ??. ?????? ???. ?????? ???. ??. ?????? ACT ???. ?????? ???. ??. ?????? ???. ??. ?????? ???.
???. ?????? ???. ??. ?????? ???. ?????? ???. ??. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???.
???. ?????? ???. ??. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ??. ?????? ???. ??. ?????? ???.

108 ???????, ??????, ??? ?????????????? ? ???????, ?? ????? ?????????? ?????? ??? ACT
??? ?????????? ?????????? ??? ?? ?????? ??????, ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ? ??????, ??? ??? ACT ? ??????, ??? ?????????? ??? ??? ?????? 62 ??? 72
??? ??????? ????????, ??????? ??????? ?? ?????????? ?? ?????? ??????? ??????? ???
????? ??????? ??????? ???????, ?????? ?????????? ??? ?????? ??????? ??? ?????? ??????? ???
????? ??????? ??? ?????????? ?????????? ???????, ????? ?????????????? ??? ?????? ??????? ???
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????????? ?????????? ?????????????? ?? ???? ?? ??? ?????????? ?????????? ?????????? ??????????
?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??????????.

109 ??? ??? ???????? ??? ?????? ??? ????? ??????? ??? ???????? ?????????? ??? ?????????
 ??? ? ACT ??? ?????????? ?????????? ??????? ?? ??????????.

111 ???.???????.???????.??????., ????????, ?? ?????.? ????????. ??? ? ????????. ??? ? ????????. ??? ? ????????.
???.???.???????.???????.??????., ?? ?????.?????????????. ??? ? ????????. ??? ? ????????.
???.???.???????.???????.? ??????????????.???????. Test Claimants in the FII Group
Litigation, ???.???????.???????.? ??????????????.???????.? ??????.???????.? ??????.???????.
???.???????.???????.? ??????.???????.? ??????.???????. ACT ???.?????????????. ??? ?????.
?????.???.???????.???????.? ??????????????.? ??????.???????.

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112 ?????????? ??? ? ??????? ?????????? ??? ?? ????? ????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ?????? ?????????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ?????????? ?????????????? ??? ???????????, ??? ??? ?? ??? ??????????, ??? ???????????.
??? ??? ?????? ????, ?? ?????????? (????? ??????? ??????????) ??????????:

2) ?? ?????????? ?? ??????? ?? ?? ?????????? ?? ??????? ?? ?? ??????? ?? ??????? ?? ???????
???????, ?? ????? ?????????? ?? ??????? ?? ??????? ?? ??????? C-446/04 ?? ?? ?? ??????
???????? ? ??????? ?? 12?? ?????????? 2006, Test Claimants in the FII Group
Litigation, ??????? ?? ???:

- ? ?????????????? ????, ?????????? ?????? ?????????? ? ?????? ?????????? ?? ?????? ????
????????????? ?? ?????????? ???, ?????????????? (? ??? ?????????????? ?? ?????? ???)
???, ???, ?????????? ?????????? ? ?????? ?????????????? ?? ?? ?????? ?????????????? ??, ???, ??????
???????, ???, ???, ???, ?????????????? ??, ?????????? ???????, ???, ???, ???, ???, ???,
????????? ??, ???, ???, ???, ???,

— ? ?????????????????? ?????? ?????????? ??? ?????????????? ??? ?? ?????????? ?????? ?????? ?????????? ???????
????? ?????????? ?? ?????????? ?????????? ??????????, ???? ??? ?? ?????? ?????? ?????????? ???????
????????? ??? ?? ?????? ?????????? ??? ?????????????? ?????????????? ??? ?????? ?????? ??????????.

5) ? ?????????? ??? ?????? ??? ?? ??????????? ??? ?????? ???????, ?? ??????
?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?
?????????????? ?????? Test Claimants in the FII Group Litigation, ??? ?????? ???
????????????? ?? ??? ?????? ?????? ??? ???????????, ??? ?????? ?????? ??? ?????? ???
??????? ?? ??? ?????? ?????? ????????? ACT, ??? ??????????? ??? ?????? ?????? ???
????? ?????? ?????????????? ? ??????? ???????.

(???????????)

* ??????? ??????????????: ? ???????.