

CHAPTER 463**MALTA ENTERPRISE ACT**

To make provision for the establishment of a corporation in Malta, to determine the functions and powers of the Corporation in order to promote enterprise and related business undertakings in Malta, to encourage the establishment of new business undertakings and the expansion of existing business undertakings in Malta, to provide for the development and administration of incentives, schemes and other forms of support for such ventures and to provide for matters ancillary or in relation thereto and to provide for powers to rationalise and update the relevant legislation in the sector.

*Substituted by:
XXIII. 2007.2.*

11th August, 2003

ACT VIII of 2003, as amended by Act XXIII of 2007.

PART I**Preliminary**

1. The short title of this Act is the Malta Enterprise Act.

*Short title.
Substituted by:
XXIII. 2007.2.*

2. In this Act, unless the context otherwise requires -

"beneficiary" means any person who is entitled to benefit under an incentive scheme or arrangement in terms of this Act;

*Interpretation.
Amended by:
XXIII. 2007.3.*

"the Board" means the Board of Directors of the Corporation established under article 6;

"the Chairman" means the Chairman of the Board of Directors appointed under article 7;

"the chief executive officer" means the chief executive officer of the Corporation appointed under article 9;

"committee" means a committee of the Corporation established under articles 12 and 13;

"the Corporation" means Malta Enterprise, a corporation established under article 7 and where any other authority or person is designated by regulations prescribed by the Minister to be the competent authority to exercise any of the functions of the Corporation under this Act, includes such other authority or person to the exclusion of the Corporation;

"directors" means the members appointed to the Board of Directors of the Corporation under article 6;

"effective date" means the date, established by the Minister, for the coming into force of this Act;

"enterprise" means the carrying on of any economic activity in Malta;

"existing projects" means any project already approved by the Corporation and entitled to or benefiting from any grants or incentives under the Business Promotion Act;

Cap. 325.

"financial year" means any period of twelve months ending on the 31st day of December of each year or such other date as may be determined by the Board with the concurrence of the Minister;

Provided that the first financial year of the Corporation shall commence on the coming into force of this article and shall end on the 31st day of December of the next following year;

"guidelines" means the set of rules issued by the Corporation from time to time for the further implementation of the provisions of this Act, and any regulations issued hereunder, including the definition, application, administration, grant and revocation of schemes, incentives and other arrangements for the promotion of enterprise in Malta;

"Incentive Entitlement Certificate" means a certificate issued in terms of Part VI of this Act;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"the Minister" means the Minister responsible for Malta Enterprise and includes, to the extent of the authority given, any person authorised in that behalf for any purpose of this Act;

"relevant legislation" means -

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S.L. 325.06

(i) the Business Promotion Act, and regulations made thereunder, and in particular the Business Promotion Regulations;

Cap. 202.

(ii) the Malta Development Corporation Act, and any regulations made thereunder;

Cap. 397.

(iii) the Small Enterprises (Loan Guarantee) Act, and any regulations made thereunder;

Cap. 159.

(iv) the Aids to Industry Ordinance, and any regulations made thereunder; and

Cap. 53.

(v) the Encouragement of New Industries Act, and any regulations made thereunder;

"secretary" means the secretary of the Board appointed in terms of article 14;

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"State Aid Monitoring Board" means the State Aid Monitoring Board constituted under article 57 of the Business Promotion Act;

"tax" shall have the same meaning as assigned to it in the Income Tax Acts;

"undertaking" means any individual or body of persons, whether having a distinct legal personality or not, who or which carries on any form of enterprise including the exercise of any trade or business, profession or vocation and includes any association or other body of persons which promotes or supports the goals and objectives of such undertakings.

PART II

*Added by:
XXIII. 2007.5.*

Guiding Principles underlying the Act

3. The Government shall co-operate with the private sector to promote private enterprise in Malta.

Co-operation in the promotion of enterprise.
*Added by:
XXIII. 2007.5.*

4. (1) The Government shall from time to time determine Malta's principal economic policies and objectives and shall appropriate such funds and provide such incentives as it considers necessary to achieve such aims.

Establishment of key economic objectives.
*Added by:
XXIII. 2007.5.*

(2) The Government shall endeavour to achieve such economic objectives and policies through:

- (a) increased investment;
- (b) increased employment;
- (c) increased entrepreneurship;
- (d) improved international competitiveness;
- (e) diversification of the local industry base;
- (f) the development of enterprise networking and inter sector linkages;
- (g) the development of human resources; and
- (h) the promotion of industrial research, technology development and innovation, and such other strategies as may from time to time be conducive to the achievement of such objectives and policies.

(3) In order to better achieve the goals set out above, the Government shall establish all such support measures as may be necessary and, without prejudice to the generality of the foregoing, shall in particular establish support measures in one or more of the following areas:

- (a) access to all forms of finance;
- (b) employment generation;
- (c) environment protection and renewable energy initiatives;
- (d) regional development;
- (e) research and development and innovation;
- (f) information technology, e-business and e-commerce;
- (g) the development of small and medium sized undertakings ("SMEs");
- (h) the promotion of clustering, networking and internationalisation;
- (i) the optimal use of property to cater for the physical and infrastructural requirements for the development of enterprise;
- (j) the regeneration of the island of Gozo and addressing handicaps associated with its double insularity; and

- (k) generally, the introduction of such other enterprise development measures, methodologies, schemes, policies and goals which are conducive to the above and related and similar objectives.

(4) Where the Minister, on the recommendation of the Corporation, is satisfied that a project to be undertaken by an undertaking may make a substantial contribution to the development of the economy as is consistent with the aims and objectives of the Government and this Act, the Minister may, after consultation with the Corporation as may be necessary, approve that support, in any form as may be approved, be given by the Corporation to such an enterprise subject to such conditions as the Minister or the Corporation may impose; provided that no assistance shall be granted to the extent that it is inconsistent with applicable law on state aid.

Power to make regulations.
Added by:
XXIII. 2007.5.

5. (1) In order to achieve the purposes of this Act, the Minister may make regulations to give effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may include provision with respect to:

- (a) the establishment of policies for implementation by the Corporation as to the undertakings eligible to receive the benefit of incentives and other arrangements, the types of incentives, the range of support and other related matters;
- (b) the introduction of measures of a fiscal nature whereby the tax payable by any undertaking may be absorbed by tax credits or otherwise reduced;
- (c) the introduction of such other support measures as are considered appropriate and subject to such conditions as the Minister may deem fit, which measures may include, but shall not be limited to, the measures provided for in article 4(3);
- (d) the designation of any authority or person to exercise any of the functions of the Corporation under this Act;
- (e) the definition and interpretation of terms and concepts to be used in regulations and guidelines;
- (f) the deletion or the transposition of any provisions in the relevant legislation into regulations with such modifications as the Minister may consider appropriate or necessary:

Provided that in so far as existing projects are concerned, nothing in any regulations made pursuant to this power shall affect any right, benefit or incentive currently in force in favour of any undertaking or beneficiary nor impose any more onerous conditions or obligations than currently in force and in case of conflict between the regulations and the relevant legislation, the provisions of the relevant legislation shall prevail.

- (2) Where the Minister proposes to make or modify regulations

in accordance with the provisions of this Act and those regulations provide that an undertaking may be wholly or partly exempted from being liable to any tax which, but for the provisions of such regulations, would have been payable, the power of the Minister to make such regulations shall only be exercised with the concurrence of the Minister of Finance.

(3) Where the Minister proposes to make or modify regulations which provide for the granting of any assistance, a copy of such proposed regulations shall be forwarded to the State Aid Monitoring Board which shall communicate its opinions on the proposed assistance in accordance with applicable law.

6. (1) Notwithstanding any provisions of the Income Tax Act or of any other applicable fiscal law, incentives, benefits and grants in terms of schemes that may be developed by the Corporation to give effect to this Act, shall be exempt from tax in the hands of the relevant beneficiary, provided that such grants do not take the form of income substitution.

Rules on tax treatment of benefits and certain undertakings.
Added by:
XXIII. 2007.5.
Cap. 123.

(2) The Minister may make regulations to lay down the conditions relating to accounting, record keeping and reporting to the Corporation for the enjoyment of the exemption stated in the preceding subarticle.

(3) Where any benefit provided by these regulations or by the Act is due to a partnership or other undertaking and, in accordance with the Income Tax Acts, the partners or members thereof and not the partnership or undertaking itself are assessable to tax on any income of such partnership or undertaking, any benefit provided in terms of this Act to a partnership or undertaking shall be due to the partners or members of any such partnership or undertaking.

PART III

Establishment and Functions of the Corporation

7. (1) There shall be a corporation, to be called Malta Enterprise, to perform the functions assigned to it under this Act.

Establishment of the Corporation.
Amended by:
XXIII 2007.4.

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

8. (1) The Corporation shall have the following functions:

- (a) to originate, lead and further initiatives relating to the economic and social development of Malta in line with the objectives, policies and goals set out by Government in terms of article 4;
- (b) to lead Malta's strategy as relates to all forms of enterprise, ensuring the implementation of such activity through a co-ordinated and coherent approach

Functions of Corporation.
Amended by:
XXIII 2007.4, 6.

developed and implemented with other Government bodies, national constituted bodies and the private sector;

- (c) to develop, and to provide the required assistance and support services to enterprise in Malta;
- (d) to promote Malta as a location for enterprise, to assist and co-ordinate its promotion as such a location;
- (e) to promote, assist and develop the establishment, competitiveness and internationalisation of enterprise in Malta;
- (f) to develop the technological, human resource, and skills bases, and to strengthen the capacity of undertakings, to undertake strategic assessment and formulation, to innovate, and to undertake research, development and design activities;
- (g) to provide and manage land, sites, premises, services, and facilities for business enterprises;
- (h) to administer schemes, grants and other financial facilities requiring the disbursement of funds, including funds originating from foreign sources;
- (i) to advise the Minister on any matter relating to the operations and purposes of this Act; and
- (j) to carry out such other functions as may be assigned to it by the Minister from time to time.

(2) In the exercise of the above functions, the Corporation shall have power to:

- (a) make all forms of investment, including direct ownership of undertakings in its own right or in partnership with other persons, grant loans and advances to undertakings, subscribe, underwrite or deal in shares and debentures of companies, guarantee loans and advances to other persons, make grants to undertakings, and manage and control undertakings: provided that in any such transaction as aforesaid the investment or liability of the Corporation shall be made or assumed at fair risk;
- (b) acquire, sell or otherwise dispose of or lease land, plant, machinery and equipment, and other property, and to otherwise make available property for use by other persons;
- (c) manage land, and to develop land, and to carry out works on land, and to maintain works or assist in their maintenance;
- (d) provide advisory or other services or facilities in relation to any of its functions, or to assist in their provision; and
- (e) generally do all such things as may be incidental or conducive to the performance of its functions.

(3) For the better carrying out of the provisions of this Act, the Corporation may, in furtherance of any of its functions and powers, from time to time:

- (a) issue and publish guidelines to establish *inter alia*:
- (i) the terms and conditions of any arrangements, incentives or schemes including the determination of rules for the eligibility of undertakings to any benefits and incentives under any such schemes and all matters related and ancillary thereto;
 - (ii) the applicability of such schemes to particular projects or undertakings; and
 - (iii) any additional requirements and conditions in relation to activities of undertakings, the conduct of their business, their responsibilities to the Corporation, reporting requirements to the Corporation, financial resources and related requirements, and any other matters as the Corporation may consider appropriate;

- (b) pursuant to the delegation by the Minister by means of a relevant regulation, transpose any provisions in the relevant legislation into guidelines with such modifications as the Minister or the Corporation, as the case may be, may consider appropriate or necessary:

Provided that in so far as existing projects are concerned, nothing in any guidelines issued pursuant to this power shall affect any right, benefit or incentive currently in force in favour of any undertaking or beneficiary, nor impose any more onerous conditions or obligations than currently in force, and in case of conflict between the guidelines and the relevant legislation, the provisions of the relevant legislation shall prevail;

- (c) pursuant to the delegation by the Minister by means of a relevant regulation, reflect directives of the European Union which may be relevant or necessary in relation to the functions and areas of responsibility of the Corporation and pursuant to article 4(2) of the European Union Act, to designate the Minister as the relevant Minister and the Corporation as the relevant authority for the purposes as may be prescribed.

Cap. 460.

(4) Guidelines shall be binding on all undertakings in possession of an Incentive Entitlement Certificate and on other persons as may be specified therein in accordance with their terms.

(5) Guidelines shall be issued by the Board only after having obtained the written opinion of the Minister:

Provided that where the guidelines deal with measures of a fiscal nature, the concurrence of the Minister of Finance shall also be required.

(6) Except for amendments to the guidelines which are purely administrative in nature, and are expressly declared to be so by the Corporation, which come into force immediately upon the posting thereof on the official website of the Corporation, any new guidelines or amendments to guidelines shall come into force on the lapse of fifteen days after they are posted on the official website or on such later date as may be stated therein:

Provided that an amendment to the guidelines may not reduce, withdraw or cancel any benefit previously granted except in accordance with the terms of this Act or a regulation in terms of which it is issued.

(7) Where, after the coming into force of the provisions of subarticles (3), (4), (5) and (6), the Corporation proposes to issue guidelines which provide for the granting of any new or increased assistance, a copy of such proposed guidelines shall be forwarded to the State Aid Monitoring Board which shall communicate its opinions on the proposed assistance in accordance with applicable law.

Corporation may function through an agency.
Amended by:
XXIII 2007.4.

9. The Corporation may, with the approval of the Minister, exercise its functions under this Act through the agency of other persons, and may act as agents or otherwise on behalf of other persons.

Amended by:
XXIII 2007.7.

PART IV

Functions and Powers of the Board

Board of Directors of Corporation.
Amended by:
XXIII 2007.7.

10. (1) The affairs of the Corporation shall be directed by and shall be the responsibility of the Board.

(2) (a) The Board shall consist of not less than six and not more than ten voting members as the Minister may from time to time, appoint.

(b) One of the voting members shall be designated by the Minister to be Chairman of the Board and another voting member may be designated as deputy Chairman.

(3) (a) The members appointed by the Minister shall be persons, except as indicated in paragraph (b), not being public officers or staff of the Corporation, who appear to the Minister to have experience of and show ability in matters relating to industry, trade, finance, education, science, the professions, or organisations of employers or of workers.

(b) The Minister may appoint not more than two public officers one of whom to represent the Ministry responsible for industry and the other representing the Ministry responsible for finance.

(4) Two members appointed by the Minister from a list of five persons that are submitted by constituted bodies which in the opinion of the Minister better represent the interests of the commercial sector, which constituted bodies will be declared in a separate legal notice.

(5) There shall be paid to the voting members of the Board such remuneration, if any, as the Minister may from time to time determine.

(6) Each voting member shall hold office for such term and on such terms and conditions as the Minister may deem proper; members of the Board shall be eligible for re-appointment.

(7) A person shall not be qualified to be appointed, or to remain, a member of the Board if he -

- (a) is a member of the House of Representatives;
- (b) is a judge or magistrate;
- (c) is adjudged bankrupt or has entered into any arrangement with his creditors;
- (d) is interdicted or incapacitated;
- (e) is convicted of an offence affecting public trust, theft, or fraud or of knowingly receiving property obtained by theft or fraud;
- (f) is subject to a disqualification under article 320 of the Companies Act.

Cap. 386.

(8) A voting member of the Board may at any time resign his office by letter addressed to the Minister and the resignation shall take effect from the date specified therein, being a date that does not precede the date of the letter of resignation.

(9) A voting member of the Board may at any time, be removed from membership of the Board by the Minister if, in the Minister's opinion to be stated in the instrument effecting the removal, the member has become incapable, through ill-health, or any other reasons of performing his functions, or his removal appears to the Minister to be necessary for the effective performance by the Corporation of its functions.

(10) If a voting member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Board to fill the vacancy so occasioned and the person so appointed shall hold office for the remainder of the period for which the person who occasioned the vacancy was appointed.

11. (1) The Chairman shall hold office for such term and on such terms and conditions as the Minister may deem proper; the Chairman shall be eligible for re-appointment.

Chairman.
Amended by:
XXIII 2007.7.

(2) Where the Chairman ceases to hold office as a member of the Board he shall also cease to hold the office of Chairman.

(3) The Chairman may, at any time, resign from his office as Chairman by letter sent to the Minister and the resignation shall, unless previously withdrawn in writing, take effect on the date specified therein, being a date that does not precede the date of the letter of resignation.

12. Where the Chairman is absent from Malta or is temporarily incapacitated from performing the functions of his office, or is on

Deputy Chairman.
Amended by:
XXIII 2007.7.

vacation, and where the post of Chairman is temporarily vacant, the Deputy Chairman, if appointed, shall act instead of the Chairman and shall exercise the powers and perform the functions of the Chairman during such period.

Chief Executive Officer.
Amended by:
XXIII 2007.7.

13. (1) The Chief Executive Officer shall be appointed by the Board.

(2) The Chief Executive Officer shall be appointed to hold office for a term not exceeding three years: provided that a Chief Executive Officer shall be eligible for re-appointment for further periods each of not more than three years: provided further that in aggregate no person shall hold the post of Chief Executive Officer for more than nine consecutive years.

(3) The Chief Executive Officer shall, subject to the direction of the Board, carry on and manage and control the operations and business of the Corporation and shall perform such other functions as may be determined by the Board.

(4) The Chief Executive Officer shall not hold any other office or position or carry on any business activity without the consent in writing of the Board.

(5) The Chief Executive Officer may from time to time be invited to attend meetings of the Board; however, he shall not have a right to vote.

Meetings of the Board.
Amended by:
XXIII 2007.7.

14. (1) The Board may act notwithstanding any vacancy among its members: provided a quorum is present at each meeting.

(2) (a) The quorum at all meetings of the Board shall be half the number of voting directors for the time being constituting the Board and shall in no case be less than three voting members.

(b) In the absence of the Chairman at any meeting of the Board the Deputy Chairman, if appointed, shall act as Chairman, in the absence of both the Chairman and of the Deputy Chairman the directors present may select from amongst themselves a person to act as Chairman at the meeting.

(3) The decisions of the Board shall be taken by a majority of the votes of the members present and voting. The Chairman or other person presiding at the meeting shall have a second or casting vote.

(4) The Board shall hold such number of meetings as may be necessary for the performance of its functions, and shall meet not less than twice in every six months. The Chairman of his own motion or at the request of any two of the voting directors may at any time convene a meeting of the Board.

(5) The Board shall cause minutes of each meeting to be kept and such minutes shall be confirmed at the next successive meeting. Certified copies of the minutes of any meeting of the Board shall be forwarded to the Minister on his request.

(6) The Board may make standing orders regulating its own

procedure generally, and, in particular, regarding the holding of meetings of the Board, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and audit of accounts: provided that subject to the preceding provisions of this article and of any standing orders made thereunder the Board may regulate its own procedure.

15. (1) The representation of the Corporation shall vest in the Chairman or in such other person or persons as the Board may by resolution designate. Notice of any such resolution shall be published in the Gazette.

Representation.
Amended by:
XXIII 2007.7.

(2) Any document purporting to be an instrument made or issued by the Corporation and signed by the Chairman or by the Chief Executive Officer and by the Secretary, if any, on behalf of the Corporation shall be received in evidence and shall, until the contrary is proven, be deemed to an instrument made or issued by the Corporation.

16. (1) The Board may establish committees, with such terms of reference as may be decided by the Board, to assist and advise it in relation to the performance of any of its functions and may delegate to any such committee any of its functions, whether in whole or in part.

Committees.
Amended by:
XXIII 2007.7.

(2) The members of the committees shall be appointed and removed by the Board and shall consist of such number of members as the Board may deem proper. A committee may include persons who are not members of the Board or officers or employees of the Corporation. Members of a committee may be removed by the Board.

(3) A committee may, at any time, be dissolved by the Board:

Provided that this subarticle shall not apply to the Audit Committee established under article 13.

(4) The Board may regulate the procedure of any committee.

(5) The acts of a committee shall be subject to confirmation by the Board save where the Board dispenses with the necessity for such confirmation.

(6) There shall be paid out of the income of the Corporation to members of a committee such allowances for expenses incurred by them in the discharge of their functions as the Board may determine with the consent of the Minister.

17. (1) The Board shall establish an Audit Committee with written terms of reference which clearly lay down the authority and duties of such committee.

Audit Committee.
Amended by:
XXIII 2007.7.

(2) (a) The Audit Committee shall meet at least four times a year.

(b) Meetings of the Audit Committee shall be chaired by a voting director of the Corporation.

(c) The members of the Audit Committee shall be

appointed on such terms and conditions as may be determined by the Board.

(3) Without prejudice to the generality of the provisions of subarticle (1), the Audit Committee shall have the following functions:

- (a) oversight of the systems of internal control and risk management of the Corporation and to assist and support the Board in discharging its responsibilities in relation thereto;
- (b) to provide the communication link with external auditors and to evaluate and co-ordinate the audit and financial reporting process of the Corporation; and
- (c) to review and assess the effectiveness of management of the Corporation in its compliance with policies and in the discharge of its regulatory and compliance functions.

(4) The Audit Committee shall report to the Board annually and at such other times as may be directed by the Board.

Staff of
Corporation.
Amended by:
XXIII 2007.7, 8.

18. (1) The Corporation may employ, on such terms and conditions as the Board may determine, such number of persons to be members of staff of the Corporation, as it may consider necessary for the proper performance of its functions.

(2) The grades of the staff of the Corporation, the numbers of staff in each grade and the appropriate level of remuneration for each grade shall be determined by the Board, with the concurrence of the Minister who shall consult the Minister responsible for finance.

Disclosure of
interests.
Amended by:
XXIII 2007.7.

19. (1) Where the Chief Executive Officer, a member of the Board, a member of staff of the Corporation, a member of a committee established under articles 12 or 13, or a consultant, advisor or other person engaged by the Corporation, or a member of the Board, has any interest in, or material to, any matter which falls to be considered by the Board, or a committee established under this Act, he shall -

- (a) disclose to the Board or committee, as the case may be, the nature of his interest at the first meeting of the Board or committee after such interest is acquired or in advance of any consideration of the matter, whichever is the earlier,
- (b) neither influence nor seek to influence a decision in relation to such matter,
- (c) take no part in any consideration of such matter,
- (d) if he is the Chief Executive Officer, a member of the Board, a member of the staff of the Corporation or a member of a committee established under articles 12 or 13, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or otherwise act in such capacity in relation to the

matter.

(2) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him to comply with the requirements of subarticle (1), the question shall be determined by the Board and the decision and its motivation shall be recorded in the minutes of the meeting where it was taken.

(3) Where a disclosure is made to the Board or to a committee pursuant to subarticle (1), particulars of the disclosure shall be recorded in the minutes of the relative meeting.

(4) Where a person referred to in this article fails to make the required disclosure, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken:

Provided that where such person is a voting director of the Corporation the matter shall be reported to the Minister.

20. (1) Save as otherwise provided by this Act and subarticle (2) or any other law, a person shall not, except where necessary for the proper performance of his functions, without the consent of the Board, disclose to any person any non-public information obtained while performing (or as a result of having performed) duties as -

- (a) a member of the Board;
- (b) the Chief Executive Officer;
- (c) a member of the staff of the Corporation;
- (d) a member of a committee established under articles 12 or 13; or
- (e) an advisor or consultant to the Corporation or an employee of such person whilst performing duties relating to such advice or consultation.

(2) Nothing in subarticle (1) shall prevent disclosure to the Minister of information in a report made to the Corporation or on behalf of the Corporation.

(3) Saving any disciplinary action which the Board may deem appropriate to take, any person who violates the provisions of this article shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five hundred liri and not more than five thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

21. (1) The Minister may, from time to time after consultation with the Corporation, give to the Corporation directions of a general character, not inconsistent with the provisions of this Act, on the policy to be followed by the Corporation in carrying out its functions under this Act.

(2) The Board shall give effect to the directions received from the Minister under this article.

(3) The Corporation shall provide to the Minister all such information with respect to the property and exercise of the functions of the Corporation, and shall furnish him with returns,

Disclosure of
information.
Amended by:
XXIII 2007.7.

Reports to the
Minister.
Amended by:
XXIII 2007.7, 9.

accounts and other documents with respect thereto, and shall afford him all required facilities for the verification of information furnished in such manner and at such times as he may reasonably require.

Cap. 377.

(4) Save as may be otherwise required or permitted for the purposes of this Act, or in the course of a prosecution of an offence committed in relation to this Act, in carrying out its functions, the Corporation and its staff shall be bound by the provisions of the Professional Secrecy Act and shall not divulge any information about any applicant or any benefits granted to any applicant without the prior written consent of such applicant or as otherwise permitted by law.

(5) Every person having an official duty or being employed in the administration of this Act shall regard and deal with all documents and information relating to matters contemplated by or pursuant to the provisions of this Act as secret and confidential and shall make and subscribe before a Commissioner for Oaths a declaration to this effect in the form prescribed which shall be deposited with the Attorney General. Such persons shall not, unless the Prime Minister otherwise directs in writing, be required to produce to or before any court, tribunal, board, committee of enquiry or other authority, or to divulge to any such court, tribunal, board, committee of enquiry or other authority any matter or thing coming to their notice or being in their possession in the performance of their duties under this Act.

(6) Nothing in this article shall hinder the Corporation or its staff:

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- (a) from providing full access to the auditor of the Corporation to all information which is required for him to perform his duties;
- (b) from providing full access to such other persons or authorities as are entitled to receive such information under provisions of applicable law for the carrying out of their functions;
- (c) from providing full information to the Commissioner of Inland Revenue for the purposes of the Income Tax Act;
- (d) from preparing and publishing reports and statistical reviews which include information about benefits granted to applicants and beneficiaries of benefits which do not divulge specific names or other specific information which will permit the identification of individual applicants.

*Amended by:
XXIII. 2007.10.*

PART V

Financial Provisions

Capital of the Corporation.
*Amended by:
XXIII. 2007.10.*

22. (1) The initial capital of the Corporation shall be one million liri paid in by the Government. Further capital shall be raised in such manner as the Minister responsible for finance may, on the advice of the Corporation, from time to time determine:

Provided that the capital of the Corporation shall be held entirely by the Government.

(2) The Corporation shall, in return for any moneys and any property, rights or interests from time to time, paid or transferred to the Corporation by the Government by way of subscription to the capital of the Corporation, issue to the Minister responsible for finance on behalf of the Government capital stock in the amounts of any moneys so paid and received and in an amount equal in nominal value to the amount agreed between the Corporation and the Government as representing the value of any property, rights and interests so transferred.

23. (1) The Corporation may, with the approval of the Minister responsible for finance, from time to time borrow such sums as it may require for the purpose of meeting any of its obligations or discharging any of its functions.

Borrowing powers.
Amended by:
XXIII. 2007.10.

(2) Notwithstanding the provisions of subarticle (1), the Corporation may without further authority exercise its borrowing powers for the purpose of borrowing temporarily, by way of overdraft or otherwise, sums not exceeding in the aggregate one million liri at any one time outstanding or exceeding such sum established by the Minister responsible for finance by order published in the Gazette.

(3) For the purpose of securing any sums borrowed by the Corporation or any liability assumed by the Corporation in the exercise of its functions, the Corporation may hypothecate or charge its property, or any part thereof, and may issue debentures, debenture stock, bonds or other securities, whether outright or as security for any debt, liability or obligation of the Corporation or of any third party.

24. (1) The Corporation may establish funds as may be required in the running of its operations.

Funds.
Amended by:
XXIII. 2007.10.

(2) Such funds shall be managed by the Corporation in such manner as it may determine; but no part of such funds shall be applied otherwise than for the purposes of the Corporation.

25. It shall be the duty of the Corporation to conserve its assets and to exercise and perform its functions under this Act as to ensure that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its income.

Income to cover
expenditure.
Amended by:
XXIII. 2007.10.

26. (1) The Corporation shall in each financial year cause to be prepared and shall adopt estimates of income and expenditure of the Corporation for the following financial year.

Annual estimates
and accounts of the
Corporation.
Amended by:
XXIII. 2007.10.

(2) The Corporation shall cause to be kept proper accounts and other records in respect of its operations and transactions, and shall cause to be prepared a statement of accounts in respect of each financial year.

(3) The accounts of the Corporation shall be audited by an auditor or auditors appointed by the Corporation from year to year.

(4) The Corporation shall, not later than four months after the

end of each financial year, cause a copy of a statement of its audited accounts to be sent to the Minister and to the Minister responsible for finance together with a copy of the report of the auditor or auditors with respect to such statement.

Annual report.
Amended by:
XXIII. 2007.10.

27. (1) The Corporation shall, not later than four months after the end of each financial year, make and transmit to the Minister a report of its activities during that year, containing such information relating to the functions and to the proceedings of the Corporation as the Minister may, from time to time, require, together with the audited accounts as provided under article 22.

(2) The Minister shall cause a copy of every such report and accounts to be laid on the Table of the House of Representatives within two weeks, or, if at any time the House is not in session, within two weeks from the beginning of the next following session.

Added by:
XXIII. 2007.13.

PART VI

Administration of Incentive Entitlements

Administration of
support to
enterprise.
Added by:
XXIII. 2007.13.

28. (1) In the carrying out of its functions in terms of this Act, any regulations or any guidelines, the Corporation shall:

- (a) determine upon request in writing the eligibility or otherwise of the enterprise being carried out or intended to be carried out by an undertaking;
- (b) receive applications for support of the enterprise and approve or otherwise any form of support; and
- (c) issue an Incentive Entitlement Certificate to any beneficiary, as stipulated in article 29, outlining the support granted and its terms and conditions. Such certificate shall be conclusive evidence of such matters for all purposes of law.

(2) The Corporation shall determine applications in terms of this Act and any regulations and guidelines made thereunder and when imposing terms and conditions it shall apply the principles of good practice and accountability.

Rules on Incentive
Entitlement
Certificates.
Added by:
XXIII. 2007.13.

29. (1) An Incentive Entitlement Certificate shall be issued by the Corporation and shall be deemed to be a contract between the Corporation, the Government of Malta and the beneficiary, guaranteeing the grant and enjoyment of the relative benefit in accordance with the terms and conditions stipulated therein and the provisions of this Act, any regulations and any guidelines.

(2) No incentive or benefit contemplated by this Act shall be enjoyed by any beneficiary for any year or year of assessment if the President of Malta by order in writing declares that the grant or acquisition or continued grant and acquisition of such incentive or benefit is or would be against public policy (*ordre public*), and where such an order is made it shall have effect as from the date therein specified but in no case shall an order have retrospective effect.

(3) Subject to the powers of the Corporation relating to

revocation of benefits in terms of Part VII of this Act and the powers of the President in the preceding subarticle, the guarantee given by subarticle (1) shall not be nullified by any retrospective action, whether by legislation or otherwise.

(4) Subject to any other provision of this Act or of any regulations or guidelines issued pursuant to this Act, in releasing a certificate in accordance with the provisions of article 28(1)(c), the Corporation may impose any conditions it may deem fit for the enjoyment of any particular benefit.

(5) A certificate shall not imply any exemption of such beneficiary from any procedure, duty, obligation, liability, fees or dues unless expressly stated in the certificate or in an express provision of a law, regulation or guideline which is expressly referred to in the certificate.

(6) Any person dealing with an undertaking in possession of an Incentive Entitlement Certificate shall act upon an Incentive Entitlement Certificate issued in terms of this article without the need for any further evidence of its eligibility, existence or status or otherwise, and shall not require any proof of the authenticity of the certificate other than that which appears on the face of it. Such certificates shall, until the contrary is proved, be evidence of their contents:

Provided that in so far as the Incentive Entitlement Certificate refers to fiscal incentives to which an undertaking may be eligible, nothing in this subarticle shall limit the powers of the Commissioner of Inland Revenue under the relevant legislation to monitor compliance with the relevant conditions, and the said Commissioner may make such enquiries and verification as he may deem fit.

(7) The application for support shall identify the undertaking involved in the relevant enterprise (the "relevant undertaking") and it shall be deemed to be the main beneficiary, all other possible beneficiaries being considered to be ancillary to it, and consequently:

- (a) an application may only be made by the relevant undertaking which shall be deemed to be authorised to act on behalf of all other beneficiaries relative to the application;
- (b) all notices and other communications of whatsoever nature by or to the Corporation, shall be made to and by the relevant undertaking and a notice to the relevant undertaking shall be deemed proper notice to all other beneficiaries;
- (c) the relevant undertaking shall be solely responsible for possession and surrender of any certificate issued by the Corporation;
- (d) the revocation of a benefit from a relevant undertaking shall imply the revocation of all related or connected benefits for other beneficiaries; and
- (e) notwithstanding the provisions of any other law, the

refund of the benefits granted which may be due in terms of article 32(4) shall be the primary liability of the relevant undertaking, any other beneficiary being liable to account only in case of failure by the relevant undertaking to do so within one year and in any case only for the actual benefit received by it:

Provided that when a relevant undertaking meets such liability, it shall have a right to demand a contribution from another beneficiary equal to the amount of benefit actually received by such beneficiary.

(8) Reference to an "Incentive Entitlement Certificate" in this Act shall include all terms and conditions which may be applicable in virtue of this Act or any regulation or guideline made thereunder as well as those of other documents which may be attached to the certificate or which may be expressly referred to in the certificate.

(9) Insofar as an Incentive Entitlement Certificate refers to any incentive relating to any tax, a copy shall be sent to the Commissioner of Inland Revenue.

Nature of Incentive Entitlement Certificates.
Added by:
XXIII. 2007.13.

30. (1) Incentive Entitlement Certificates issued by the Corporation shall be deemed to be public instruments, shall only be used for the purposes authorised hereby and shall be surrendered to the Corporation on its simple demand in writing.

(2) In the event of a request in terms of subarticle (1), the beneficiary shall surrender, to the Corporation, the relevant Certificate within seven days of the demand being communicated to him and any person failing to surrender such Certificate within such time shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of one hundred liri and a fine (*multa*) of five liri for every day the default continues.

Forgery, alteration or misuse of certificates.
Added by:
XXIII. 2007.13.
Cap. 9.

31. Any person who, in any manner, forges or alters an Incentive Entitlement Certificate or purports to use it for a purpose not authorised by this Act or seeks to use it after its revocation in terms of this Act, shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code.

Added by:
XXIII. 2007.13.

PART VII

Revocation and Modification of Benefits

Revocation of incentives or benefits.
Added by:
XXIII. 2007.13.

32. (1) Where any beneficiary fails to comply with any of the terms or conditions of an Incentive Entitlement Certificate, the Corporation may by notice in writing require such beneficiary within thirty days of the receipt of such notice -

- (a) to comply with such conditions; or
- (b) to establish to the satisfaction of the Corporation that failure to comply with such conditions was due to some cause beyond its control and that there are prospects of complying with such condition within such time as the Corporation may consider reasonable.

(2) Where a beneficiary complies with the condition in

subarticle (1)(b), the Corporation may authorise reasonable postponement for the purpose of compliance with such conditions, as it thinks fit.

(3) Where a beneficiary fails to comply with the condition in subarticle (1)(b) or, having been allowed a postponement under subarticle (2), fails within the period of such postponement to comply with such terms or conditions, the Corporation may revoke any incentive or benefit granted to the beneficiary and that revocation shall be operative from such date as may be determined by the Corporation.

(4) Where an Incentive Entitlement Certificate is revoked, in full or in part, in accordance with the provisions of this article, the beneficiary shall pay or repay to the Government or to the Corporation, as the case may be, any sums which it would have paid to the Government or the Corporation but for the provisions of this Act, any regulation or guideline or which it had received thereunder, and any sums which the beneficiary is so liable to pay or repay may be set off against any sums which may be due from the Government or the Corporation to the beneficiary for any reason whatsoever, including in the event of insolvency of the said beneficiary, without prejudice to any right of the Government or the Corporation for the recovery of any balance remaining due.

(5) In the circumstances contemplated in this article, the Corporation may, in its sole discretion, in lieu of revoking a certificate, in full or in part, agree to modify the terms and conditions of an Incentive Entitlement Certificate so as to reflect the conditions which are more appropriate on the basis of the circumstances then known to it. The Corporation shall so proceed only if the relevant undertaking has agreed in writing to such modifications as may be proposed by the Corporation and to any conditions under which they are offered.

PART VIII

*Added by:
XXIII. 2007.13.*

Offences and Penalties

33. Any person who without reasonable excuse prepares any incorrect statement or gives any incorrect information in relation to any matter or thing falling under this Act, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than three hundred liri and not exceeding two thousand liri.

Penalty for making incorrect statements, etc.
*Added by:
XXIII. 2007.13.*

34. (1) Any person who wilfully with intent to obtain any incentive or benefit under this Act or to assist any other person to do so -

Provisions relating to fraud, etc.
*Added by:
XXIII. 2007.13.*

- (a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under this Act, any matter which should be included therein; or
- (b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under this Act; or
- (c) gives any false answer, whether verbally or in writing,

- to any question or request for information asked or made in accordance with the provisions of this Act; or
- (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
 - (e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence, and shall for each such offence be liable on conviction to a fine (*multa*) of not less than five hundred liri and not exceeding five thousand liri or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

(2) Upon any person admitting to or being found guilty of any of the above offences, the Corporation may revoke any Incentive Entitlement Certificate issued by it by notice in writing without following the procedures outlined in article 32.

General penalty.
Added by:
XXIII. 2007.13.

35. If any person contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no special punishment is provided, he shall be guilty of an offence and shall for each offence be liable, on conviction, to a fine (*multa*) of not less than one hundred liri and not more than five hundred liri.

Provision with
respect to offences.
Added by:
XXIII. 2007.13.

36. The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the same acts or omissions and shall not, in particular, affect the application of any higher punishment under any other law.

Prescription of
proceedings for
offences.
Added by:
XXIII. 2007.13.

37. Proceedings for an offence under this Act may be commenced at any time within five years from the date of commission of the offence.

Amended by:
XXIII. 2007.11.

PART IX

Transitory Provisions

Transfer of
undertakings.
Amended by:
XXIII. 2007.11.

38. (1) With effect from the effective date and subject to the provisions of article 41, all the undertakings to which this article applies shall, by virtue of this Act and without further assurance, be transferred to, and shall vest in the Corporation under the same title by which they were held by the Malta Development Corporation or by the Malta External Trade Company Limited or by the Institute for the Promotion of Small Enterprise Ltd, immediately before such date.

- (2) (a) The Minister may by order from time to time direct that any undertaking held by any organisation or entity referred to in the order shall by virtue of the order, subject to the provisions of article 27 vest in the Corporation in the same manner as they were held immediately before the effective date of the order by

such organisation or entity.

- (b) The provisions of paragraph (a) shall apply with regard to an organisation or entity which is wholly owned, directly or indirectly, by the Government or a corporation established by law.
- (c) The provisions of articles 25 and 26 shall *mutatis mutandis* apply to any undertaking in respect of which an order is made by the Minister in virtue of paragraph (a).

(3) For the purposes of this Part of the Act, "undertakings" shall include all stocks and other property movable or immovable, assets, powers, rights, privileges held or enjoyed in connection therewith or appertaining thereto, as well as all liabilities and obligations affecting or relating to any of the aforesaid undertakings or other thing included therein as aforesaid.

39. Subject to article 27 and to the other provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, advances, contracts, agreements, instruments, documents, warrants and working arrangements, subsisting immediately before the appointed day, affecting or relating to the Malta Development Corporation or by the Malta External Trade Company Limited or by the Institute for the Promotion of Small Enterprise Ltd, or to which any of the said entities was a party, shall be of as full force and effect against or in favour of the Corporation, and shall be enforceable as fully and effectually as if, instead of the said entities, the Corporation had been named therein or had been a party thereto.

Construction of existing laws, contracts, etc.
Amended by:
XXIII. 2007.11.

40. (1) Subject to the provisions of article 27, where anything has been commenced by or under the authority of the Malta Development Corporation or the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd, prior to the effective date and such thing is in relation to any of the transferred undertakings, such thing may be carried on and completed by or under the authority of the Corporation.

Transitory provisions.
Amended by:
XXIII. 2007.11.

(2) Where immediately before the effective date any legal proceeding is pending to which the Malta Development Corporation or the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd is or is entitled to be a party, and such proceeding refers to any of the transferred undertakings, the Corporation shall, with effect from the effective date, be substituted in such proceeding for the relative entity, as the case may require, or shall be made a party thereto in like manner as any of the said entities, as the case may be, would have become, and such proceeding shall not abate by reason of the substitution.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of securing and giving full effect to the transfer of any undertaking to the Corporation by or under this Act and may make such orders as may be necessary to make any powers and duties exercised by the Malta Development Corporation, the Malta External Trade Company Limited or by the Institute for the

Promotion of Small Enterprise Ltd, in relation to any of the transferred undertakings, exercisable by and on behalf of the Corporation.

Exclusions.
Amended by:
XXIII. 2007.11.

41. (1) The following matters which relate to the specific entity indicated hereunder shall not be transferred to the Corporation:

- (a) title to the premises from which the Malta Development Corporation, was operating prior to the effective date;
- (b) all court proceedings and pending litigation commenced, prior to the effective date, between any one of Malta Development Corporation, the Malta External Trade Company Limited, or the Institute for the Promotion of Small Enterprise Ltd, and any of the employees of any one of the said entities, whether former or then current;
- (c) obligations arising out of:
 - (i) all contracts of employment with any employees, and
 - (ii) all contracts for service with any agents, advisors or any service providers entered into and effective prior to the effective date, between any of the persons mentioned in subparagraphs (i) and (ii) and any one of the Malta Development Corporation, the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd.

(2) All rights and proceedings relative to any of the matters referred to in subarticle (1) hereof shall upon the effective date be exercised by, instituted or continued by or against the Attorney General or such other public officer in the name of the Government or the Minister may from time to time by notice in the Gazette determine.

Amended by:
XXIII. 2007.12.

PART X

Miscellaneous

Winding up of Corporation.
Amended by:
XXIII. 2007.12.

42. The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

Repeal, etc.
Amended by:
XXIII. 2007.12.
Cap. 202.

43.* (1) The Malta Development Corporation Act is hereby repealed and subject to the provisions of articles 24 to 27 any reference in any law to the Malta Development Corporation shall be deemed to be a reference to the Corporation established under this Act.

(2) The Malta External Trade Company Limited, the Institute for the Promotion of Small Enterprise Ltd and the Malta Enterprise Ltd. are without the requirement of any further formality required

*Not yet in force.

by any other law wound up and dissolved.

44.* Article 3 establishing the Corporation shall be deemed to have come into force on 1st May 2003 limitedly for the purpose of recruiting such members of the staff as may be required for the running of the Corporation upon the coming into force of the other provisions of this Act and for such purpose until the coming into force of article 6 the Board of the Corporation shall consist of the Board of Directors of Malta Enterprise Ltd who for the purposes stated in this article shall be deemed to have all the power, duties and obligations of the Board of Directors under the foregoing provisions of this Act.

Transitory
provision.
Amended by:
XXIII. 2007.12.

45. Nothing contained in this Act shall affect the provisions of any other law whatsoever except to the extent solely that the provisions of this Act replace or supersede the provisions of that law, and no incentive, exemption, reduction of taxation or other benefit or privilege provided for under the provisions of this Act shall modify any obligation to furnish returns, statements, particulars or documents as may be required by any other law.

Effect on other
laws.
Added by:
XXIII. 2007.14.

*Deemed to have come into force on 1st May, 2003.