

MALTA

ATT Nru. IX ta' l-2003

ACT No. IX of 2003

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

AN ACT enacted by the Parliament of Malta.

ATT biex jemenda diversi liġijiet.

AN ACT to amend various laws.

I assent.

(L.S.)

GUIDO DE MARCO
President

2nd September, 2003

ACT No. IX of 2003

AN ACT to amend various laws

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

Part I

1. (1) The short title of this Act is the Various Laws (Amendment) Act, 2003. Short title and commencement.

(2) The provisions of the various Parts of this Act, other than this Part, shall come into force on such dates as therein provided.

Part II

2. (1) This Part of this Act amends, and shall be read and construed as one with, the Commercial Code hereinafter in this Part referred to as “the Code”. Amendment of the Commercial Code, Cap 13.

(2) This Part of this Act shall come into force on such date as the Minister responsible for commerce may by notice in the Gazette establish.

3. For Sub-title IV of Title IV of Part I of the Code, there shall substituted the following: Substitution of Sub-Title IV of Title IV of Part I of the Code.

**“Sub-title IV
OF COMMERCIAL AGENTS**

Application of this Part.

70. (1) The relations between commercial agents and their principals and the activities of commercial agents in Malta are governed by the provisions of this sub-title.

(2) This sub-title shall not apply to:

(a) commercial agents whose activities are unpaid;

(b) commercial agents when they operate on commodity exchanges or in the commodity market; and

(c) persons whose activities as commercial agents are secondary.

(3) The provisions of Part I of the Schedule to this Code shall apply in order to determine the persons whose activities as commercial agents are to be deemed secondary for the purposes of paragraph (c) of subarticle (2).

Definition of commercial agent etc.

70A. In this sub-title:

“commercial agent” means a person not being a person in the employment of the principal, who has continuing authority to negotiate the sale or purchase of goods or services on behalf of another person (the principal), or to negotiate and conclude such transactions on behalf and in the name of that principal, but does not include:

(i) a person who in his capacity as an officer of a company or association is empowered to enter into commitments binding the company or association;

(ii) a partner who is lawfully authorised to enter into commitments binding on his partners;

(iii) a person acting as an insolvency practitioner in Malta or in an equivalent position in any other jurisdiction;

“commission” means any part of the remuneration of a commercial agent which varies with the number or value of business transactions;

“Minister” means the Minister responsible for commerce;

“regulatory authority” means the Council of the Chamber of Commerce;

“restraint of trade clause” means an agreement or a clause in an agreement restricting the business activities of a commercial agent following the termination of the agency contract.

Licence to
act
as
commercial
agent.

71. (1) No person shall act as a commercial agent, whether alone or in partnership with any other person, without a licence from the regulatory authority.

(2) Such licence shall not be granted unless –

(a) an application in writing is made to the regulatory authority in such form as the regulatory authority shall prescribe, containing the full name and surname, age, private and business addresses of the applicant and such other particulars concerning his business or occupation as the regulatory authority shall require. In the case of a person applying for licence to carry on the business of a commercial agent in partnership, a reference shall be made in the application to the statement published in the Gazette in terms of the Companies Act showing the date of registration of the partnership and the date on which the relative certificate of registration was issued;

(b) the applicant satisfies the regulatory authority, by bankers’, trade, or other references, that he is a fit and proper person to act as a commercial agent and that he has an adequate knowledge of the commercial laws and customs relating to the functions, rights and duties of commercial agents;

(c) the applicant produces to the said regulatory authority a certificate of good conduct from the Police authorities of his jurisdiction.

(3) A licence under this article shall not be granted to any person who is in the employment of the Government of Malta or of any financial institution, or to any person holding a warrant to practise a profession in Malta and actually practising such profession, or to stockbrokers or to any person who whether in Malta or abroad has been found guilty of fraudulent bankruptcy.

(4) An appeal, by means of an application, shall lie to the Court of Appeal in its Inferior Jurisdiction against any refusal to grant a licence under this article.

(5) Notice of any licence granted under this article shall be published in the Gazette. In the month of January of each year, a complete list of licences then in force shall likewise be published in the Gazette.

(6) Any licence issued under this article may be withdrawn or suspended by the Court of Appeal in its Inferior Jurisdiction on the application of the Attorney General, if the holder of the licence –

(a) is convicted of any crime against property;

(b) is adjudged bankrupt;

(c) accepts employment under the Government of Malta, or with any financial institution, or becomes the holder of a warrant to practise a profession and actually practises such profession or becomes a stockbroker;

(d) is proved, to the satisfaction of the court, not to be a fit and proper person to act as a commercial agent.

(7) Such withdrawal or suspension shall be published in the Gazette.

(8) Any proceedings under this article may be conducted *in camera*, if the court shall so direct.

Power of the
Minister to
prescribe
fee for
licence.

72. The Minister after consulting the regulatory authority may, by regulation, prescribe the fee to be charged by the regulatory authority in respect of the grant of a licence to act as a commercial agent under the provisions of the last preceding article. Any such regulation may prescribe the payment of an annual fee in addition to the fee payable on the issue of the licence and may provide that in default of payment of any such annual fee, the licence shall cease to be in force.

Penalties.

73. Any person who, without a licence in force at the time, represents himself to be, or acts or undertakes to act as a commercial agent, shall be liable:-

(a) on a first conviction to a fine (*multa*) not exceeding one thousand liri;

(b) on a second or subsequent conviction, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding two thousand liri or to both such imprisonment and fine.

No grant or non-renewal of licence pending settlement of fine.

73A. Where any court has imposed a fine under this sub-title, and such fine has not been paid, the regulatory authority shall not grant or renew licence on the expiry thereof until such time as the payment of the fine is effected.

Duties of commercial agent to his principal.

74. (1) In performing his activities a commercial agent shall look after the interests of his principal and act dutifully and in good faith.

(2) In particular, a commercial agent shall –

(a) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;

(b) communicate to his principal all the necessary information available to him;

(c) comply with reasonable instructions given by his principal.

Duties of a principal to his commercial agent.

75. (1) In his relations with his commercial agent a principal shall act dutifully and in good faith.

(2) In particular, a principal shall –

(a) provide his commercial agent with the necessary documentation relating to the goods concerned;

(b) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify his commercial agent within a reasonable period where he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.

(3) A principal shall, in addition, inform his commercial agent within a reasonable period of his acceptance or refusal of, and of any non-execution by him of, a commercial transaction which the commercial agent has procured for him.

Prohibition on derogation from articles 74 and 75 and consequence of breach.

76. (1) The parties may not derogate from articles 74 and 75.

(2) The law applicable to the contract shall govern the consequence of breach of the rights and obligations under articles 74 and 75 above.

Form and amount of remuneration in absence of agreement.

77. (1) Without prejudice to the application of any enactment or rule of law concerning the level of remuneration of commercial agents, in the absence of any agreement as to remuneration between the parties, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carries on his activities and, in the absence of such customary practice, a commercial agent shall be entitled to such reasonable remuneration taking into account all the aspects of the transaction to be agreed to between the parties or in default by the court.

(2) Where the remuneration of a commission agent is not fixed in whole or in part as a commission the provisions of articles 77A to 77F shall not apply.

Entitlement to commission on transactions concluded during agency contract.

77A. (1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract –

(a) where the transaction has been concluded as a result of his direct or indirect intervention; or

(b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

(2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract where he has an exclusive right to a specific geographical area or to a specific group of

customers and where the transaction has been entered into with a customer in that area or group.

Entitlement to commission on transactions concluded after agency contract has terminated.

77B. Subject to article 77C, a commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated if –

(a) the transaction is mainly attributable to his efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or

(b) in accordance with the conditions mentioned in article 77A above, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Apportionment of commission between new and previous commercial agents.

77C. (1) A commercial agent shall not be entitled to the commission referred to in article 77A if that commission is payable, by virtue of article 77B, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

(2) The principal shall be liable for any sum due under subarticle (1) above to the person entitled to it in accordance therewith, and any sum which the other commercial agent receives to which he is not entitled shall be refunded to the principal.

When commission due and date for payment.

77D. (1) Commission shall become due as soon as, and to the extent that, one of the following circumstances occurs:

(a) the principal has executed the transaction; or

(b) the principal should, according to his agreement with the third party, have executed the transaction; or

(c) the third party has executed the transaction.

(2) Commission shall become due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have.

(3) The commission shall be paid not later than on the last day of the month following the quarter in which it became due, and, for the purposes of this sub-title, unless otherwise agreed between the parties, the first quarter period shall run from the date the agency contract takes effect, and subsequent periods shall run from that date in the third month thereafter.

(4) Any agreement to derogate from paragraphs (2) and (3) above to the detriment of the commercial agent shall be void.

Extinction of right to commission.

77E. (1) The right to commission can be extinguished only if and to the extent that it is established that the contract between the third party and the principal will not be executed for a reason not attributable to the fault of the principal.

(2) Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

(3) Any agreement to derogate from the provisions of subarticle (1) to the detriment of the commercial agent shall be void.

Periodic supply of information as to commission due and right of inspection of principal's books.

77F. (1) The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due, and such statement shall set out the basis used in calculating the amount of the commission.

(2) A commercial agent shall be entitled to demand that he be provided with all the information (and in particular an extract from the books) which is available to his principal and which he requires in order to check the amount of the commission due to him.

(3) Any agreement to derogate from subarticles (1) and (2) shall be void.

(4) Nothing in this article shall remove or restrict the effect of, derogate from the provisions of any enactment or rule of law which grants to an agent the right to inspect the books of a principal.

Right to signed written statement of terms of agency contract.

78. (1) The commercial agent and principal shall each be entitled to receive from the other, on request, a signed written document setting out the terms of the agency contract including any terms subsequently agreed.

(2) Any purported waiver of the right referred to in paragraph (1) above shall be void.

Conversion of agency contract after expiry of fixed period.

78A. An agency contract for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period.

Minimum periods of notice for termination of agency contract.

78B. (1) Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

(2) The period of notice shall be –

(a) 1 month for in first year of the contract;

(b) 2 months after the commencement of the second year but before the commencement of the third year;

(c) 3 months after the commencement of the third year;

and the parties may not agree on any shorter periods of notice.

(3) The parties may agree on longer periods than those laid down in subarticle (2), provided that the period of notice to be given by the principal may not be shorter than that to be given by the commercial agent.

(4) Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

(5) The provisions of this article shall also apply to an agency contract for a fixed period which in virtue of article 78A is converted into an agency contract for an indefinite period and for the purposes of calculating the period of notice the term of the fixed period contract shall be deemed to be part of the agency contract for an indefinite period.

Savings with regard to immediate termination.

78C. This sub-title shall not affect the application of any enactment or rule of law which provides for the immediate termination of the agency contract –

- (a) because of the failure of one party to carry out all or part of his obligations under that contract; or
- (b) where exceptional circumstances arise.

Entitlement of commercial agent to indemnity or compensation on termination of agency contract.

78D. (1) Subject to subarticle (7) and to article 78E, the commercial agent shall be entitled to an indemnity if and to the extent that –

- (a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- (b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

(2) The amount of the indemnity shall not exceed a figure equivalent to indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

(3) The grant of an indemnity as mentioned above shall not prevent the commercial agent from seeking damages.

(4) Subject to subarticle (7) and to article 78E, the commercial agent shall be entitled to compensation for damage he suffers as a result of the termination of his relations with his principal.

(5) For the purpose of this sub-title such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which –

- (a) deprive the commercial agent of the commission which proper performance of the agency

contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or

(b) have not enable the commercial agent to amortize the costs and expenses that he had incurred on the advice of his principal in the performance of the agency contract.

(6) Entitlement to the indemnity or compensation for damage as provided for under subarticles (1) to (5) shall also arise where the agency contract is terminated as a result of the death of the commercial agent.

(7) The commercial agent shall lose his entitlement to the indemnity or compensation for damage in accordance with the provisions of the foregoing subarticles above if within one year following termination of his agency contract he does not make a claim to his principal therefor.

Grounds for excluding payment of indemnity or compensation under article 78D.

78E. The indemnity or compensation referred to in article 78D shall not be payable to the commercial agent where –

(a) the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract in accordance with article 78C; or

(b) the commercial agent has himself terminated the agency contract, unless such termination is justified –

(i) by circumstances attributable to fault of the principal, or

(ii) on grounds of the age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities; or

(c) the commercial agent, with the agreement of his principal, assigns his rights and duties under the agency contract to another person.

Prohibition on derogation from articles 78D and 78E.

78F. The parties may before the expiration of the agency contract, not derogate from articles 78D and 78E to the detriment of the commercial agent.

Restraint of trade clauses.

78G. (1) A restraint of trade clause shall be valid only if and to the extent that –

(a) it is concluded in writing; and

(b) it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by his agency under the contract.

(2) A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

(3) Nothing in this article shall affect any enactment or rule of law which imposes other restrictions on the validity or enforceability of restraint of trade clauses or which enables a court to reduce the obligations on the parties resulting from such clauses.

Disclosure of information.

78H. Nothing in this sub-title shall require information to be given where such disclosure would be contrary to public policy.

Service of notice etc.

78I. (1) Any notice, statement or other document to be given or supplied to a commercial agent or to be given or supplied to the principal under this sub-title may be so given or supplied:

(a) by delivering it to him;

(b) by leaving it at his proper address addressed to him by name;

(c) by sending it by post to him addressed either to his registered address or to the address of his registered or principal office; or by any other means provided for in the agency contract.

(2) Any such notice, statement or document may –

(a) in the case of a body corporate, be given or served on the secretary or clerk of that body;

(b) in the case of a partnership, be given to or served on any partner or on any person having the control or management of the partnership business.

Contracts entered into before coming into force of this subtitle.

78J. The provisions of this subtitle shall also apply to agency contracts concluded before the date of coming into force of this sub-title:

Provided that nothing therein shall effect any right or liability accrued before such date.”.

4. (1) Parts I, II and III of the Schedule to the Code shall be renumbered as Parts II, III and IV respectively.

Amendment to Schedule to the Code.

(2) Immediately before Part II of the Schedule as renumbered there shall be inserted the following new Part I:—

**“PART I
(Article 70(3))**

SECONDARY ACTIVITIES OF COMMERCIAL AGENTS

1. The activities of a person as a commercial agent are secondary where it may reasonably be taken that the primary purpose of the arrangement with his principal is other than as set out in paragraph 2 below.

2. An arrangement falls within this paragraph if –

(a) the business of the principal is the sale, or as the case may be purchase, of goods or services of a particular kind; and

(b) the goods or services concerned are such that –

(i) transactions are normally individually negotiated and concluded on a commercial basis, and

(ii) procuring a transaction on one occasion is likely to lead to further transactions in those goods

or services with that customer on future occasions, or to transactions in those goods or services with other customers in the same geographical area or among the same group of customers, and that accordingly it is in the commercial interests of the principal in developing the market in those goods or services to appoint a representative to such customers with a view to the representative devoting effort, skill and expenditure from his own resources to that end.

3. The following are indications that an arrangement falls within paragraph 2 above, and the absence of any of them is indication to the contrary –

(a) the principal is the manufacturer, importer or distributor of the goods;

(b) the goods are specifically identified with the principal in the market in question rather than, or to a greater extent than, with any other person;

(c) the agent devotes substantially the whole of his time to representative activities (whether for one principal or for a number of principals whose interests are not conflicting);

(d) the goods are not normally available in the market in question other than by means of the agent;

(e) the arrangement is described as one of commercial agency.

4. The following are indications that an arrangement does not fall within paragraph 2 above –

(a) promotional material is supplied direct to potential customers;

(b) persons are granted agencies without reference to existing agents in a particular area or in relation to a particular group;

(c) customers normally select the goods for themselves and merely place their orders through the agent.

5. The activities of the following categories of persons are presumed, unless the contrary is established, not to fall within paragraph 2 above –

- Mail order catalogue agents for consumer goods;
- Consumer credit agents.”.

Part III

5. (1) This Part amends and shall be read and construed as one with the Goldsmiths and Silversmiths Ordinance, hereinafter in this Part referred to as “the Ordinance”.

Amendment of the
Goldsmiths and
Silversmiths
Ordinance,
Cap. 46.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish, and different dates may be so established for different provisions or purposes thereof.

6. For the long title to the Ordinance there shall be substituted the following: “An Act to regulate Goldsmiths and Silversmiths”; and for the short title to the Ordinance, there shall be substituted the following: “Goldsmiths and Silversmiths Act”.

Substitutes long
and short
titles to the
Ordinance.

7. For the words “Goldsmiths and Silversmiths Ordinance” in article 1 of the Ordinance, there shall be substituted the words “Goldsmiths and Silversmiths Act”.

Amendment of
article
1 of the Ordinance.

8. For articles 2 to 20 of the Ordinance, there shall be substituted the following new articles 2 to 18:

Substitution of
articles
2 to 20 of the
Ordinance.

^{“Interpretation.} 2. In this Act, and in any regulations made thereunder –

“an alloy of a precious metal” is a solid solution of a precious metal and one or more other metals;

“authorized” unless otherwise specified, means empowered by the Minister or his equivalent in a Member State or by an appropriate European Union Agency or by any person designated by the aforementioned in accordance with the provisions of this Act;

“authorized hallmarking body” is a person independent of the manufacturer or sponsor of a precious metal article, authorized to imprint an office mark on the said article;

“Consul” means the Consul for Goldsmiths and Silversmiths and includes any public officer whom the Minister may from time to time authorize to carry out the duties of Consul;

“dealer” means any person who deals in precious metal articles or precious stones;

“European Union” means the European Union referred to in the Treaty;

“fineness mark” is a mark in arabic numerals imprinted on a precious metal article representing the standard of fineness of the precious metal article and indicating the type of precious metal used in the alloy of this article;

“Malta” has the same meaning as assigned to it by article 124 of the Constitution of Malta;

“manufacturer” is a person who makes precious metal articles;

“manufacturer’s hallmark” is an imprint which a manufacturer is authorized to apply on a precious metal article comprising the manufacturer’s mark and a standard mark;

“manufacturer’s mark” is the identifying mark on a precious metal article which a manufacturer is authorized to imprint on the precious metal article he manufactures;

“Member State” means a state which is a member of the European Union;

“Minister” means the Minister responsible for finance;

“office hallmark” is an imprint on a precious metal article applied by an authorized hallmarking body comprising at least a standard mark;

“placed on the market” shall mean the first time that a precious metal article is in any way made available on the market for distribution in the territory of Malta or such other territory as may be prescribed;

“precious metal” means gold, platinum, palladium and silver in the pure state and their alloys;

“precious metal article” is any fully manufactured item of jewellery, goldsmith’s or silversmith’s ware or watchmaker’s ware and any other complete object made entirely or in part from a precious metal;

“prescribed” means as prescribed by regulations under the Act;

“sponsor” means a person who undertakes the same responsibilities as the manufacturer;

“sponsor’s hallmark ” is an imprint which a sponsor is authorized to apply on a precious metal article comprising the sponsor’s mark and a standard mark;

“sponsor’s mark ” is the identifying mark which a sponsor is authorized to imprint on a precious metal article;

“standard” is the fractional content by weight of pure precious metal in a precious metal alloy;

“standard of fineness” shall be the number representing the number of parts by weight of pure precious metal in one thousand parts by weight of a precious metal alloy (*millesims*);

“standard mark” is a mark imprinted on the precious metal alloy of a precious metal article representing the standard of the alloy and the type of precious metal therein;

“the Treaty” has the same meaning assigned to it in the European Union Act, 2003.

Nominal standards.

3. The nominal standards for precious metal articles shall be as may be such as prescribed.

Stamping of precious metal articles.

4. No precious metal article shall be placed on the market if -

(i) save as may be prescribed, the said article is imprinted with a standard mark which is superior to the actual standard of the precious metal;

(ii) the said article bears two or more differing standard marks except in cases where it consists of components made of various precious metals;

(iii) the said article does not bear either (a) an office hallmark or (b) a manufacturer's or sponsor's hallmark;

(iv) the marks referred to in subarticle (iii) hereof do not bear such other further characteristics as may be prescribed;

(v) in case the article is made up of various precious metals it is not marked in accordance with subarticles (iii) and (iv) hereof for the various precious metal parts.

Exemptions.

5. The provisions of Article 4 of this Act shall not apply to-

(a) any precious metal article which cannot bear the pressure of the stamp without being broken or losing the necessary solidity or on which it is technically difficult to imprint the required marks;

(b) any precious metal article having an antiquarian value;

(c) objects of precious metal for scientific, technical, musical or medical use;

(d) legal tender made of precious metal and collectors' coins and medals issued by or on the authority of a State;

(e) ingots or granules of precious metal for banking use;

(f) small articles weighing less than one gram in the case of gold and platinum and three grams in the case of silver and palladium or such other weight as may be prescribed;

(g) semi-manufactured precious metal articles;

(h) articles which are not made of precious metal but are plated with precious metal or are otherwise laminated or coated with thin precious metal foil.

Standards of solder.

6. The standards of solder that shall be used for joining component parts of precious metal articles shall be such as may be prescribed.

Labelling of precious metal articles.

7. No precious metal articles shall be placed on the market unless: -

(i) it carries a label indicating the type of precious metal used in its manufacture and the standard of fineness thereof;

(ii) where an article contains a non-precious metal part which is not clearly recognizable, such article does not carry a label or is not accompanied by a document clearly identifying the said part;

(iii) the said article falling under provisions of article 5 of this Act is not accompanied by a document or certificate as may be prescribed.

Manufacturers' responsibility.

8. (1) Manufacturers may not make use of any other manufacturers' or sponsors' marks or hallmarks and they may only imprint their manufacturer's mark or hallmark on precious metal articles they themselves manufacture.

(2) The manufacturer shall be responsible for the accuracy of the standard mark in the manufacturer's hallmark.

Sponsor's responsibility.

9. (1) Sponsors may not make use of other sponsors' or manufacturers' marks or hallmarks and they may only imprint their sponsor's mark or hallmark on precious metal articles of which they are sponsors.

(2) The sponsor shall be responsible for the accuracy of the standard mark in the sponsor's hallmark.

Consul's Office mark.

10. (1) The Consul shall be an authorized independent hallmarking body.

(2) The Consul may imprint the Office hallmark in accordance with the regulations which shall, from time to time, be made by the Minister.

(3) The Office hallmark imprinted by the Consul shall be as prescribed.

(4) The imprinting of an Office hallmark shall be subject to the fees as may be prescribed.

Declaration
of
homogeneity.

11. (1) Any person who incorrectly declares that any precious article or part thereof presented to the Consul for imprinting with the Consul's Office hallmark or for certification is of a homogeneous substance or does not conceal extraneous substances, shall be liable to the punishments established in the Criminal Code for contraventions.

(2) Any person who fraudulently declares that a precious metal article or part thereof presented to the Consul for imprinting with the Consul's Office hallmark or for certification is of a homogenous substance or does not conceal extraneous substances, shall, on conviction, be liable to imprisonment for a term not exceeding eighteen months.

(3) If by means of any such fraudulent declaration any person procures the imprinting or certification of a precious metal article which conceals any extraneous substances, or is not of a homogeneous substance, or if any person alters one or more parts of an imprinted precious metal article, or conceals therein any extraneous substances, such person shall on conviction, be liable to imprisonment for a term not exceeding two years.

(4) No proceedings shall be taken against any person who has made an incorrect or fraudulent declaration that a precious metal article or part thereof presented to the Consul for the imprinting with the Consul's Office hallmark or for certification if is of a homogenous substance, before the lapse of eight days from the day on which a notice to that effect is given to him by the Consul; within which time such person may require that the precious metal article or part thereof so presented be melted down and that of the substance so obtained the Consul shall make a second assay.

Authorization
of
manufacturers'
and
sponsors'
marks.

12. (1) The Consul shall authorize manufacturers' and sponsors' marks and hallmarks in accordance with regulations which shall, from time to time be made by the Minister.

(2) Authorization of a sponsor's mark or hallmark shall be granted without prejudice to the sponsor's obligation to fulfil any requirements in order to align himself with any local or international patent law.

(3) Such authorization shall be subject to a fee as may be prescribed.

Inspections
by
the Consul.

13. (1) The Consul shall at any time, inspect any premises or location where trading or manufacturing of precious metal articles is carried out or where such articles are imprinted in order to ascertain that the provisions of this Act, or of any regulations made thereunder are being observed and to collect any samples or articles for the said purpose.

(2) The procedure to be followed in the collection of samples or articles in terms of subarticle (1) hereof shall be as prescribed.

(3) Any articles or samples collected in accordance with subarticles (1) and (2) hereof, are not subject to compensation.

(4) Any articles or samples collected in accordance with subarticles (1) and (2) hereof and found by the Consul not to be in accordance with the provisions of this Act, shall be delivered to the Commissioner of Police.

Valuations.

14. (1) The Minister shall fix by notice published in the Government Gazette the official prices of precious metals based on the prices prevailing on the international market as prescribed.

(2) The Consul shall be the official valuer for precious metal articles and shall base his valuation on the official price of precious metals which valuation shall be subject to the fees as may be prescribed.

Trade
records.

15. (1) It shall not be lawful for any manufacturer, sponsor, dealer or any trader to purchase any precious metal articles or precious stones, from any person unknown to them without first showing such articles or precious stones to the Consul.

(2) The Consul to whom any such articles or precious stones are presented shall make an entry thereof for that purpose, specifying the weight, quality and value thereof, the day on which the same were presented to him, and the particulars of the person by whom they were so presented.

(3) The provisions of subarticle (1) of this article shall not apply where the purchase is made at a judicial sale or at a sale of pledges of *Il-Monti*.

Return of
stocks.

16. (1) The Consul may, at any time by notice in writing, require from any person who deals in precious metal articles or precious stones a return showing the details set out in the notice regarding the stocks of any such articles or precious stones held by such a person on any date specified in the notice before the opening for business, being either the date of the receipt of the notice or a subsequent date.

(2) The notice referred to in subarticle (1) of this article shall prescribe the time limit, which shall in no case be less than six days from the receipt of such notice, within which the return is to be submitted to the said Consul.

Punishments
for
offences.

17. Saving the provisions of article 11 of the Act and articles 19 and 543 of the Criminal Code, it shall be lawful for any Court of Magistrates, sitting as a court of criminal judicature, to award for any offence against this Act, or against any of the regulations made thereunder, any of the punishments established in the said Code for contraventions or two or more of such punishments cumulatively according to circumstances.

Power to
make
regulations.

18. The Minister may make regulations generally for the better carrying out of the provisions of this Act and may in particular by such regulations make rules regulating the recognition of authorizations of authorized hallmarking bodies and prescribe anything that is or may be prescribed in accordance with this Act.”.

Transitory
provisions.

9. Any article regulation stamped with a mark or marks in accordance with the provisions of the Ordinance as in force before the coming into force of this Part shall be deemed to have been duly stamped in compliance with the Ordinance as amended by this Part.

Part IV

10. (1) This Part amends and shall be read and construed as one with the Supplies and Services Act, hereinafter referred to as “the principal Act”. Amendment of the Supplies and Services Act, Cap. 117.

(2) This Part shall come into force on such date as the Minister responsible for trade may by notice in the Gazette establish.

11. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) subarticle (2) thereof shall be deleted and the present subarticle (1) shall be renumbered as the whole provision;

(b) in subarticle (1) now renumbered as the whole article:-

(i) the definitions “essential goods”, “requisition” and “sale” shall be deleted;

(ii) immediately before the definition ““prescribed” or “specified” ” there shall be inserted the following definitions”:

“ “Director” has the same meaning assigned to in the Competition Act; Cap. 379.

“goods”, “services” and “traders” have the same meaning assigned to them by the Consumer Affairs Act; Cap. 378.

“Minister” means the Minister responsible for commerce;”;

(iii) for the definition “ “prescribed” or “specified” ” there shall be substituted the following definitions:

“prescribed” means prescribed by regulations under this Act;

“price” means the final cash purchase price inclusive of all charge;

(iv) for the definition “undertaking” there shall be substituted the following:

“ “undertaking” means any commercial undertaking, enterprise or business concern, whether of a private or public nature, which is engaged in the manufacture, sale or distribution of any goods or services within the meaning of this Act.”.

Substitution of articles 3 to 11 of the principal Act.

12. For articles 3 to 11 (inclusive) of the principal Act there shall be substituted the following articles 3 to 8:

“Rights of consumers

3. (1) Consumers have the right to be placed in a position to purchase adequate and reasonable quantities of any goods or services that are made available on the market in order to satisfy their normal requirements.

(2) The provisions of subarticle (1) shall not be directly enforceable in any court or tribunal, but shall be adhered to in the interpretation and implementation of this Act and any regulations made thereunder.

Temporary price orders.

4. (1) Where the Minister is satisfied that due to extraneous factors an abnormal or exceptional situation has arisen in any particular sector of economic activity having a relevant social impact, or is satisfied that competition cannot function or is not functioning in a reasonably effective manner in such a sector, he may after consulting the Director by regulation issue a temporary price order in accordance with the provisions of this article to control the price of any good or service falling within that sector.

(2) An order made in accordance with subarticle (1) may specify that particular goods or services, or a particular class or category thereof, shall be subject to a maximum price, or a maximum price mark-up or a maximum percentage of profit as may be specified in the said order.

(3) Any such order may be issued for period not exceeding six months, and shall specify the date when it shall enter into force. An order may be extended for an additional period or periods not exceeding six months each.

(4) An order may not have retrospective effect.

(5) The provisions of this article are without prejudice to the provisions of the Competition Act.

(6) A breach of an order issued under this article shall constitute an offence under this Act.

(7) A temporary price order and any extension thereof shall be published in the Government Gazette.

Power to
make
regulations.

5. (1) The Minister may make regulations for the better implementation of this Act and may by such regulations prescribe anything that is or may be prescribed.

(2) Regulations made under the immediately preceding subsection may impose obligations on traders and may establish controls and other requirements in relation to:

(a) the prices at which any goods or services deemed by the Minister to be essential for the life and well-being of the community may be supplied or sold, and the regulation of the provision, production, storage, distribution, purchase and sale of such goods or services, as may be necessary to ensure the availability of supplies of such goods on the market;

(b) the invoices and other evidence of the calculation of prices of such goods and services offered to consumers and other purchasers.

(3) In pursuance of and for the purposes of the immediately preceding subarticles, the Minister shall, from time to time, by notice in the Gazette, designate the categories of goods and services deemed by him to be essential for the life or well-being of the community.

(4) The Minister may make also regulations requiring traders generally or any class or category thereof to keep such books, accounts and other documents and to make such returns as may be prescribed.

(5) Regulations made under any of the foregoing provisions of this article may assign such functions and responsibilities to the Director as the Minister may consider appropriate for the better implementation of the provisions and objectives of this Act and regulations made thereunder.

Requisitioning
of goods
and
undertakings.

6. (1) The Minister may by order in writing provide for the requisitioning and taking possession and control of goods in relation to which a price order is in force in

accordance with article 4 of this Act, on such conditions as may be prescribed. Where any goods are requisitioned as aforesaid, any officer authorized for this purpose by the Minister may use or deal with such goods for such purposes and in such manner as such officer may consider necessary or expedient and may retain, store or with the specific written authorization of the Minister sell or otherwise dispose of the goods as if he were the owner thereof.

(2) In circumstances of an exceptional nature where he deems it necessary for the protection of consumers and the general public interest so to do, the Minister may in writing authorize the Director to take over the running and management of the whole or part of any undertaking which produces or provides goods or services in relation to which a price order is in force in accordance with article 4 of this Act.

(3) In the course and for the purpose of exercising any of the functions and powers assigned to him by this Act, the Minister may request the assistance of the Police for the purpose of entering and searching premises and for gaining access to and assuming control over premises and goods.

(4) In the exercise of any of the functions assigned or delegated to him under this Act, the Director may exercise all or any of the powers assigned to him under article 12 of the Competition Act.

Offences.

7. (1) Any person who contravenes or fails to comply with any of the provisions of this Act, (including those of subarticle (5) hereof) or of any regulation made thereunder, shall be guilty of an offence against this Act.

(2) Proceedings in respect of an offence against this Act or regulations made thereunder may be commenced within one year from the commission of the offence.

(3) Any person guilty of an offence against this Act shall on conviction be liable to:

imprisonment for a period not exceeding two years or to a fine (*multa*) not exceeding Lm2,000 or both such fine and imprisonment; or

with or without an additional fine (*multa*) of not more than five times the profit made as a result of the offence;

The court may moreover order:

the suspension or cancellation of any licence or other authorization issued by the Director or any licence issued in terms of the Trading Licences Act in the name of the person so found guilty and may moreover order the publication of any sentence, or a statement thereof, passed on the offender. Cap. 441.

(4) The provisions of the Probation Act shall not be applicable to an offence against this Act. Cap. 446.

(5) The provisions of article 23 of the Criminal Code shall apply with regard to the goods to which the offence relates.

Responsibility
of traders.

8. (1) Every trader shall take steps to ensure full compliance with all the provisions of this Act and of regulations made thereunder, and shall exercise due diligence to ensure that the provisions of this Act are not contravened by any person under his authority, control or charge.

(2) Without prejudice to the provisions of the immediately preceding sub-article, where an offence against these regulations is committed by, or an act or omission amounting to an offence may be attributed to, any individual acting in the name, or on behalf or in the interest of a company or other form of partnership or an association or other body or group of persons or where action is taken against an individual by virtue of his liability as a director, manager, secretary or other similar officer of such body, association or group and it results that an act or omission amounting to an offence against regulations has occurred, the provisions of article 8 relating to the suspension or cancellation of any licence held by the offender or other person as aforesaid shall apply also to any licence held by or in the name, or on behalf or in the interest of the company, partnership, association or other body or group of persons of which the offender or other person as aforesaid is a director, manager, secretary or other officer or in whose name or interest or on whose behalf such person was acting, and such licence shall equally be suspended or cancelled accordingly.”.

Transitory provision.

13. (1) Regulations made under the provisions of the principal Act as in force before the coming into force of this part shall be deemed to have been made under the corresponding provisions of the principal Act as amended by this part and may be amended, revoked or substituted accordingly.

(2) Notwithstanding the provisions of subarticle (1) hereof any price order made under the principal Act before the coming into force of this part are hereby repealed.

Part V

Amendment of the Income Tax Act, Cap. 123.

14. (1) This Part amends and shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part of this Act shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

Amendment of article 9B of the principal Act.

15. Article 9B of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof:

(i) immediately before the definition “relevant laws” there shall be inserted the following definitions:

““foreign eligible asset” means such foreign asset as may be prescribed under the External Transactions Act;

“local eligible asset” means such local asset as may be prescribed under the External Transactions Act;”;
and

(ii) in the definition “qualifying asset” for the words “article 39 of the Exchange Control Act”, there shall be substituted the words “the External Transactions Act”;

(b) in subarticle (2) thereof:

(i) in paragraph (a) thereof for the words “qualifying asset” wherever they appear there shall be substituted the words “qualifying asset not being a local eligible asset”;

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

“(b) any income, including capital gains, to the extent that a qualifying asset represents such income or an undeclared part of such income or an accumulation thereof:

(i) with respect to a foreign eligible asset, being income derived by any person during the year immediately preceding any year of assessment in respect of which that person has furnished a return of his income to the Commissioner before the 1st September, 2001, or during the year immediately preceding any year of assessment commencing on or before the 1st January, 2001, in respect of which that person was not required to furnish a return of his income;

(ii) with respect to a local eligible asset, being income derived by any person during the year immediately preceding the year of assessment 2002 or any previous year of assessment in respect of which that person has furnished a return of his income to the Commissioner before the 31st March, 2003, or during the year immediately preceding any year of assessment commencing on or before the 1st January, 2002 in respect of which that person was not required to furnish a return of his income;”;

and

(c) in subarticle (3) thereof, for the words “before the 1st September, 2001” there shall be substituted the words “before the 1st September, 2001 in respect of a foreign eligible asset and 31st March, 2003 in respect of a local eligible asset”, and for the words “before the said date” there shall be substituted the words “before the 1st September, 2001 (in respect of a foreign eligible asset) and the 31st March, 2003, (in respect of a local eligible asset)”.

16. Nothing in article 15 of this Act shall be deemed to prejudice any exemption granted under article 9B of the principal Act as in force before the coming into force of the said article 15. Saving.

Part VI

Amendment of the Cargo Clearance and Transport Act, Cap. 203.

17. This Part amends and shall be read as one with the Cargo Clearance and Transport Act, hereinafter in this part referred to as the “the principal Act”.

Amendment of article 2 of the principal Act.

18. Article 2 of the principal Act shall be renumbered as follows:

(a) in the definition of “cargo clearance and forwarding agent”:

(i) the words from “ “cargo clearance” to the end of paragraph (a) thereof there shall be substituted the following:

“ “cargo clearance and forwarding agent” means any person who is the holder of a customs permit and whose business is the following:

(a) the making of customs declarations and the clearing through the Customs Department of documents relating to cargo; and”; and

(ii) in paragraph (b) thereof for the words “of consignment;” there shall be substituted the words “of consignment; and”;

(b) the definition of “licensee” shall be deleted; and

(c) immediately after the definition of “Comptroller”, there shall be inserted the following new definition:

“ “holder of a customs permit” means a person duly authorised under this Act to act as a cargo clearance and forwarding agent;”.

General amendment of the principal Act.

19. In the principal Act, for the words “licence”, “licenced” and “licensee” wherever they appear including in any marginal note to any article, there shall be substituted respectively the words “customs permit”, “authorised” and “holder of a customs permit”.

Amendment of article 3 of the principal Act.

20. Immediately after subarticle (3) of article 3 of the principal Act, there shall be added the following subarticle:–

“(4) The holder of a customs permit must at all times be in possession of an operator’s permit issued by the Malta Transport Authority.”.

21. Article 9 of the principal Act shall be deleted and articles 10 and 11 of the principal Act shall be renumbered as articles 9 and 10 thereof.

Repeal of article 9 of the principal Act and subsequent renumbering of other provisions.

22. In article 9 of the principal Act as renumbered, for the words “presenting customs document” there shall be substituted the words “making customs declarations”.

Amendment of article 9 (formerly 10) of the principal Act.

23. Subarticle 10 (1) of the principal Act as renumbered, shall be amended as follows:

Amendment of article 10 (formerly 11) of the principal Act.

(a) for the numbers “3,7,9 or 10” there shall be substituted the numbers “3,7 or 9”; and

(b) for the words “two hundred liri” there shall be substituted the words “one thousand liri”.

24. Immediately after article 10, as renumbered, of the principal Act there shall be added the following new article 11:

Addition of new article 11 to the principal Act.

11. Nothing in this Act shall derogate from any of the provisions of the Import Duties Act.”.

“Relation with Import Duties Act, Cap. 337.

Part VII

25. (1) This Part amends the Civil Aviation Act and it shall be read and construed as one with the Civil Aviation Act hereinafter in this Part referred to as “the principal Act”.

Amendment of the Civil Aviation Act, Cap. 232

(2) This Part shall come into force on such date as the Minister responsible for civil aviation may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

26. Article 2 of the principal Act shall be amended as follows:-

Amendment of article 2 of the principal Act.

(a) The present provision shall be renumbered as subarticle (1) thereof;

(b) in subarticle (1) thereof as renumbered:

(i) immediately before the definition of “air service licence” there shall be inserted the following new definition:

Cap. 218.

““air operator’s certificate” means a certificate granted under article 4 of the Civil Aviation (Air Operators’ Certificates) Act;

(ii) immediately after the definition of “air transport service” there shall be inserted the following new definitions:

“ “air transport undertaking” means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;

“Director” means the Director of Civil Aviation;

“effective control” means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:

(a) the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;

“European Union” means the European Union referred to in the Treaty;”;

(iii) immediately after the definition “Malta” there shall be inserted the following new definition:

“ “Member State” means a state which is a member of the European Union;”;

(iv) immediately after the definition “tariff” there shall be added the following new definition:

““the Treaty” has the same meaning assigned to it by the European Union Act, 2003;”;

(c) immediately after subarticle (1) thereof, as renumbered, there shall be added the following subarticle (2):

“(2) The Minister may by order from time to time extend the meaning of Member State to a State associated with the European Union within the European Economic Area or any similar association with the European Union and may by subsequent order amend, revoke or substitute any such order.”.

27. Articles 7 and 8 of the principal Act shall be substituted by the following:

Substitution of articles 7 and 8 of the principal Act.

“Air service licences

7. (1) The power to grant an air service licence, that is to say a licence for any air transport service or other purpose specified in the licence shall be vested in the Director who shall grant to an air transport undertaking such a licence upon his being satisfied that the air transport undertaking meets the requirements of this Act and such other requirements as may be prescribed.

(2) An air service licence may be granted under such conditions including rights of access to specific routes or markets as may be specified in the licence.

(3) An application to the Director for the grant of an air service licence shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(4) An air transport undertaking providing an air transport service shall not be granted an air service licence unless it shows to the satisfaction of the Director, whenever it is required by him so to do, that:-

(a) its principal place of business and, if any, its registered office are located in Malta, and

(b) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft, and

(c) it is owned and continues to be owned directly or through majority ownership by Member States or nationals of Member States, who shall at all times have effective control of the air transport undertaking.

(5) The Director shall only grant an air service licence to an applicant if such applicant is in possession of a valid Air Operator's Certificate specifying the activities to be covered in the air service licence.

(6) The air service licence shall remain valid for as long as the air transport undertaking continues to meet the requirements for the issue thereof. The holder of the licence shall whenever requested by the Director furnish him with all pertinent information that the Director may require to be in a position to ascertain the continued validity of the licence.

(7) As soon as may be practicable after the grant of any licence under this section, the Director shall cause notice thereof to be given in the Gazette.

Revocation, suspension and variation of licences.

8. (1) If, in the case of any person who is the holder of an air service licence, the Director is at any time no longer satisfied that such person:

(a) meets the conditions in and under this Act for the issue and holding of an air service licence; or

(b) is competent and a fit and proper person to operate aircraft for the purposes authorised by the licence;

the Director shall, as may appear to him appropriate in the circumstances, revoke, suspend or vary that licence.

(2) If, as a result of insolvency or similar proceedings against the holder of an air service licence, the Director is satisfied that there is no realistic prospect of a satisfactory financial reconstruction of the holder within a reasonable time, he shall revoke the licence.”.

Amendment of article 9 of the principal Act.

28. In article 9 of the principal Act, immediately after the words “to which such permission may be subject” there shall be added the following words “unless that aircraft is being used in the exercise of traffic rights regarding access of European Union air transport undertakings on air routes in the territory of the European Union”.

Part VIII

Amendment of the Exchange Control Act, Cap. 233.

29. (1) This Part amends and shall be read and construed as one with the Exchange Control Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes thereof.

30. (1) For the long title to the principal Act there shall be substituted the following: Substitutes long and short title to principal Act.

“An Act to establish a framework for the liberalisation of external transactions and to provide for the collection of related information.”.

(2) For the short title to the principal Act there shall be substituted the following:

“External Transactions Act”.

31. The Arrangement of Act appearing before the principal Act, shall be deleted. Deletion of Arrangement of Act.

32. In article 1 of the principal Act for the words “Exchange Control Act” there shall be substituted the words “External Transactions Act”. Amendment of article 1 of the principal Act.

33. For articles 2 to 38 and articles 40 to 45 of the principal Act there shall be substituted the following articles “2 to 10”:

“Interpretation. 2. (1) In this Act unless the context otherwise requires –

“capital transactions” means external transactions arising from the transfer or movement of capital and includes:

- (a) transfers of immovable property;
- (b) direct investments;
- (c) the issue, sale or purchase of securities including shares and stock in the capital of a company, debentures, certificates of deposit and any other similar instrument acknowledging indebtedness;
- (d) the issue, sale or purchase of units in a collective investment scheme, life and annuity long-term insurance policies whether index-linked or not;

(e) lending, borrowing and payment or receipt of amortisation on loans;

(f) granting of guarantees or any other form of security for payment;

(g) warrants, options, futures and other derivatives as well as any other financial instrument entered into for investment purposes;

(h) deposits with credit institutions;

(i) gifts and endowments; and

(j) any other type of transaction which the Minister may, after consultation with the Central Bank, determine by notice in the Gazette;

Cap. 204.

“Central Bank” means the Central Bank of Malta established under the Central Bank of Malta Act;

“current transactions” means external transactions arising from current flows and include:

(a) foreign trade in goods and services including interest payments, dividend, royalties, reinvested earnings and distributed profits;

(b) other current business payments arising from services, short-term banking and credit facilities; and

(c) remittance for family living expenses;

“eligible asset” means deposits as defined in the Banking Act, securities including shares and stock in the capital of a company, debentures, certificates of deposit, bonds, notes and any other instrument acknowledging indebtedness, units in a collective investment scheme, life and annuity long term insurance policies, whether index-linked or not, precious metal, bullion, warrants, options, futures and other derivatives as well as any other financial instruments entered into for investment purposes, and also includes any other asset as may be determined from time to time by the Minister by notice in the Gazette;

“European Union” means the European Union referred to in the Treaty;

“external transactions” includes both capital and current transactions involving operations between resident and non-resident persons or other entities, whether in or outside Malta, and may also include operations involving foreign exchange by a resident or between residents;

“foreign exchange” means any note, coin, cheque, draft, travellers’ cheque, letter of credit, promissory note, bill of exchange, voucher, credit or debit card or other card or means in which value is inputted through electronic or magnetic methods and which any unspecified person is able to use for payment in lieu of currency, or other means of payment expressed in the currency of any country which is not legal tender in Malta and references in this Act to foreign exchange include references to any right to receive on demand foreign exchange in respect of any credit or balance at any credit institution anywhere;

“Member State” means a state which is a member of the European Union;

“Minister” means the Minister responsible for finance;

Cap. 422.

“National Statistics Office” means the National Statistics Office established under the Malta Statistics Authority Act;

“non-resident” means any person, body corporate or other entity which is not a resident;

“payment” means –

(a) any event which, wholly or in part, extinguishes a debt of a sum of money between a resident and a non-resident in connection with an external transaction;

(b) any transfer of funds, on account or in cash, between Malta and a foreign country carried out by a resident who transfers funds to or repatriates funds from his account held by him abroad;

(c) any transfer of funds on an account or in cash between Malta and a foreign country for which the principal and the beneficiary are both residents;

(d) any transfer of funds in foreign exchange carried out in Malta between residents;

“resident” means:

(a) any natural person regardless of nationality, whose place of residence is ordinarily in Malta or who has resided in or has the intention to reside in Malta for a continuous period of one year;

(b) any body corporate incorporated in or under the laws of Malta or of a Member State, or any entity which operates from or is otherwise registered in Malta;

(c) any natural person regardless of nationality, whose place of residence is ordinarily in a Member State or who has resided in or has the intention to reside in a Member State for a continuous period of one year;

(d) any body corporate incorporated in or under the laws of a Member State, or any entity which operates from or is otherwise registered in a Member State;

“the Treaty” has the same meaning assigned to it by the European Union Act, 2003.

(2) The Minister may appoint the Central Bank to act as agent for the said Minister for any one or more of the purposes of this Act, but any such appointment shall be without prejudice to the exercise of any such power by the Minister.

(3) For such time as the Central Bank is appointed as agent for the Minister under subarticle (2), the references in this Act to the Minister shall, to the extent and subject to the terms and conditions of such appointment, be deemed to include references to the Central Bank. Notice of any such appointment, and of any revocation of, or change in the terms and conditions of such appointment, shall be published in the Gazette.

PART II

LIBERALISATION AND SAFEGUARD MEASURES

Liberalisation. 3. Unless otherwise specified by means of regulations or orders issued by the Minister under articles 4 and 5 all external transactions and related payments may be carried out without restriction.

Restrictions in exceptional circumstances. 4. (1) Where exceptional circumstances arise, the Minister may, on the recommendation of the Central Bank, make regulations imposing such restrictions on capital transactions and related payments, whether of a specific or a generic nature, as may be deemed necessary:

Provided that such restrictions shall not be imposed in relation to a Member State.

(2) For the purposes of subarticle (1), exceptional circumstances shall be deemed to exist, where the Minister acting upon the recommendation of the Central Bank, declares that:

(a) there is a sudden crisis in Malta's balance of payments; or

(b) movements of capital to or from Malta cause or threaten to cause serious difficulties for the stability of the financial system.

(3) Regulations made under subarticle (1) shall be revoked by the Minister without delay as soon as the grounds which gave rise to such restrictions cease to exist and, in any case, shall not remain in effect for a period exceeding six months.

Sanctions. Cap. 365. 5. The provisions of articles 4 and 5 are without prejudice to the powers granted by the National Interest (Enabling Powers) Act to impose controls or restrictions on capital or other transactions or related payments in respect of any state, person or group of persons whether arising from Malta's international obligations under the United Nations Charter, the Treaty or otherwise unilaterally to defend Malta's national interests.

PART III

COLLECTION OF INFORMATION AND ACCESS TO RECORDS

Request for information.

6. Without prejudice to any other provision of this Act, the Minister may require any person in Malta to provide such information and, or clarification as the Minister may consider necessary for the purpose of ensuring compliance with any regulations made under Part II of this Act.

Declaration of import and export of currency.

7. The Minister may by regulations require any person to declare to the Comptroller of Customs the import or export by such person of banknotes and coins denominated in Maltese Liri and, or in foreign exchange, and, or precious metals into or from Malta in such amounts as may be specified in such regulation and to disclose such other information as may be prescribed in such regulations regarding such import or export.

Statistical information.

8. Without prejudice to the previous provisions of this Act, the Minister may after consultation with the Central Bank and the National Statistics Office by regulations require any person within such time and in such manner as may be prescribed to furnish the Minister such information, return or other detail relating to external transactions as may be required to collect, compile and disseminate statistical information on external transactions.

Non-dissemination of information.

9. (1) Except for the purpose of any prosecution for an offence against the Act with the written consent of the individual or his representative, no information which can be related to an identifiable person and which is obtained under this Act shall be disseminated, shown or communicated to any person or body.

(2) Notwithstanding the provision of subarticle (1), the Minister may disclose any information provided or obtained under this Act, even where this relates to an identifiable person to any body or authority in Malta responsible for the collection of any tax, and may likewise, on the basis of any agreement with other states which provide for the reciprocal exchange of such information disclose information to similar bodies or authorities in the states:

Provided that:

(a) the bodies or authorities to whom the information is disclosed are subject to obligations of secrecy which are equivalent to those applying under the law of Malta; and

(b) an undertaking is obtained from such bodies or authorities that the information provided will only be used for the purposes for which it was requested and will be kept confidential and will not be communicated to anyone who is not employed by the authorities and who is not subject to a similar duty of secrecy in respect of the said information.

Offences
and
penalties.

10. (1) Regulations under this Act imposing restrictions on any transactions, or any obligation to report, provide statistics or other information may also provide that any person who contravenes any provision thereof shall be guilty of an offence and shall be liable on conviction to such penalty being not more than a fine (*multa*) of not more than twenty thousand liri, and such regulations may moreover provide for administrative penalties in lieu of criminal proceedings, the procedures therefor as well as for appeals from decisions in connection therewith to the Financial Services Tribunal established under article 21 of the Malta Financial Services Authority Act or such other body as may be prescribed.

(2) No criminal proceedings for any offence under such regulations may be commenced without the consent of the Attorney General.”.

34. Article 39 of the principal Act shall be renumbered as article 11 and shall be further amended as follows:-

Amendment of
article 39 of the
principal Act.

(a) subarticles (2),(3) and (4) thereof shall be renumbered as subarticles (1),(2) and (3) respectively;

(b) in subarticle (1) as renumbered, for the words “under subarticle (1), shall be deemed not to have committed an offence under this article” there shall be substituted the words “under subarticle (1) of article 39 of the Exchange Control Act as in force on the 1st July, 2003, or such other law as the Minister may prescribe, shall be deemed not to have committed an offence under the said article 39 or other law as prescribed”;

(c) in subarticle (2) as renumbered -

(i) the words “subarticle (2)” shall be substituted by the words “subarticle (1)”; and

(ii) for the words “without the need to obtain a permit under this Act” there shall be substituted the words “without the need to obtain such permits or to comply with such requirements under this or any other law as may be prescribed”; and

(d) in subarticle (3) as renumbered, for the words “subarticle (3)” there shall be substituted the words “subarticle (2)”.

Transitory provision.

35. The Minister responsible for finance may in the notice made under subarticle 29(2) provide that any restriction or obligation existing under the principal Act as in force before the issue of such notice remains in force in respect of any matter indefinitely or for such time as may be stated in the notice and the provisions of the principal Act as in force before the issue of such notice shall continue to apply with respect to such restriction or obligation.

Part IX

Amendment of the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246.

36. (1) This Part amends and shall be read and construed as one with the Immovable Property (Acquisition by Non-Residents) Act, hereinafter in this part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes of this Part.

Amendment of article 2 of the principal Act.

37. Article 2 of the principal Act shall be amended as follows:—

(a) before the definition “government” there shall be inserted the following new definitions:

““building” includes a plot of land and for the purposes of article 6 the projected cost of its development;

“continuous period” shall be calculated by ignoring any periods totalling less than ninety days in any calendar year during which an individual is not in Malta provided that such periods do not exceed ninety days in any given calendar year;

“European Union” means the European Union referred to in the Treaty;”;

(b) after the definition “Malta” there shall be inserted the following definition:

“ “Member State” means a state which is a member of the European Union;” and

(c) for the definition “Minister” and “non-resident person” there shall be substituted the following definitions:

“ “Minister” means the Minister responsible for finance, and except for the purposes of an order made in terms of article 6 (1) or regulations made in virtue of article 8, includes where delegated in writing by the Minister, and public officer in the Ministry of Finance so delegated by the Minister;

“non-resident person” means and includes:

(a) any individual who is not a citizen of Malta or of another Member State; or

(b) a citizen of Malta or of another Member State, even in either case, if in possession of a valid residence permit, who has not been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition; or

(c) any body or other association of persons, and any authority, institution, organisation, fund, trust, firm and any other entity whatsoever, whether corporate or not, if:

(i) it is constituted, formed, established, incorporated or registered in, or under the laws of, a state other than Malta or another Member State; or

(ii) it has its registered address, principal place of residence or of business in a state other than Malta or another Member State; or

(iii) twenty-five per cent or more of its share or other capital is owned by a non-resident person or is registered in the name of a company licensed to act as a nominee company; or

(iv) it is in any manner and whether directly or indirectly controlled by one or more non-resident persons;

“primary residence” means the dwelling house in which an individual habitually resides in, or intends to habitually reside in, as his principal place of abode, whether in Malta or elsewhere;

“resident of Malta” means an individual who is:

(a) a citizen of Malta or another Member State who has been resident in Malta for a minimum continuous period of five years preceding the date of acquisition;

(b) the spouse, of whatever nationality and wherever resident, of a citizen of Malta or another Member State where such spouses are acquiring together on the same deed;

“residence permit” means a residence permit issued in terms of the Immigration Act;

“secondary residence purposes” means purposes other than for primary residence or for any of the purposes listed in article 3(2) (b) or (3);

“special designated area” means a zone described in the First Schedule and such other zone as the Minister may from time to time by order in the Gazette add to such schedule;

“the Treaty” has the same meaning as is assigned to it in article 2 of the European Union Act, 2003.”.

Renumbering of articles 3 to 7 of the principal Act.

38. Articles 3 to 7 of the principal Act shall be renumbered as articles 4 to 8 respectively.

Addition of new article 3 to the principal Act.

39. Immediately after article 2 of the principal Act there shall be inserted the following new article 3:—

“Persons who may acquire immovable property without a permit.

3. (1) Without prejudice to the other provisions of this Act:

(a) a resident of Malta may acquire by an act *inter vivos* immovable property in Malta by or under any title

without the necessity of obtaining a permit under this Act;

(b) a citizen of Malta and a citizen of a Member State who in either case is not a resident of Malta may not, without the necessity of obtaining a permit under this Act, acquire imovable property for secondary residence purposes by an act inter vivos in Malta.

(2) For the purposes of this Act “immovable property for secondary residence purposes” shall exclude:

(a) any immovable property which is to serve as the primary residence for the person acquiring the immovable property; or

(b) such immovable property the acquisition of which is required for the carrying out of such person’s business activities or the supply of services by such person.

(3) A person, other than a physical or a non-resident person, may acquire by an act inter vivos immovable property in Malta without the necessity of obtaining a permit under this Act where such immovable property is required for the purpose of carrying out the activity for which it has been set up.”.

40. For articles 5 and 7 as renumbered of the principal Act, there shall be substituted the following articles 5 and 7:

Substitution of articles 5 and 7 of the principal Act.

“Exception in certain cases.

5. (1) The provisions of article 4 shall not apply in respect of:

(a) any immovable property devolving cause mortis on any person, wherever resident, provided that the person from whom the property devolves had acquired such immovable property, where applicable, in accordance with the provisions of this Act; or

(b) the acquisition of immovable property by any person, wherever resident, in a special designated area; or

(c) the acquisition of any further divided or undivided share in immovable property by any person, wherever resident, where such person had previously acquired a share in such immovable property in accordance with the provisions of this Act; or

(d) the transfer of immovable property in an inheritance between co-heirs; or

(e) the partition of immovable property between co-owners; or

(f) the acquisition of immovable property by a company or other commercial partnership, not being a non-president person, from one or more of its members holding over fifty per cent interest in, or of its share capital; or

(g) the donation of immovable property to a spouse, descendant or an ascendant in the direct line and their relative spouses, or in the absence of descendants to a brother or sister and their descendants, provided such immovable property had been acquired in accordance with the provisions of this Act, where applicable.

(2) The party acquiring the property or on whom the property is assigned in a partition or devolves in accordance with any one or more of the exceptions listed under subarticle (1) shall declare on the deed that such transfer is so covered, and the notary publishing the deed shall warn the said person of the importance of the truthfulness of such declaration and include such declaration in the said deed.

(3) Any notary who receives any deed which does not contain a declaration as is required under the provisions of this article, or who fails to warn the parties particularly as to the importance of the truthfulness of such declaration or to record in the deed he has compiled with such requirement, shall be guilty of an offence under this Act, and shall on conviction be liable to a fine (*multa*) of not less than one thousand liri and not more than ten thousand liri.

Immovable property to be used only for the purpose indicated.

7. (1) It shall not be lawful for any person, without the consent in writing of the Minister, to make use, or to permit the use, of any immovable property acquired by virtue of a permit granted under article 6, in any manner or for any

purpose other than that indicated in the application for such permit.

(2) Any person authorised to acquire immovable property in Malta in accordance with the provisions of article 3 shall, on the deed transferring title, declare that he qualifies to acquire such property and shall further state the reasons for such qualification as well as, where required to do so by this Act, the purpose of such acquisition, and the notary publishing the deed shall warn the said person of the importance of the truthfulness of such declaration and include such declaration in the said deed.

(3) Any notary who receives any deed which does not contain a declaration as is required under the provisions of this article, or who fails to warn the parties particularly as to the importance of the truthfulness of such declaration or to record in the deed that he has complied with such requirement, shall be guilty of an offence under this act, and shall on conviction be liable to a fine (*multa*) of not less than one thousand liri and not more than ten thousand liri.

(4) If any act is committed or omitted in contravention of any of the provisions of subarticles (1) or (2) or of any condition, restriction, limitations or qualification contained in any permit or consent given under this Act, the person to whom the permit or consent was last granted and any other person committing or omitting or permitting the commission or omission of any such act as aforesaid, shall be guilty of an offence under this Act and shall be liable, on conviction, to a fine (*multa*) not exceeding ten thousand liri (LM10,000) or double the market value of the immovable property so acquired, whichever is the higher amount, and, in the case of a continuing offence, to a further fine (*multa*) of not less than one hundred liri and not exceeding one thousand liri (LM1,000) for each day, excluding the first one hundred and eighty days, during which the offence continues:

Provided that no proceedings shall be instituted against such person within one hundred and eighty days from the date of acquisition, and no proceedings shall be taken if, within such period of one hundred and eighty days, such person has remedied the contravention and has conformed with the provisions of this Act or has otherwise lawfully transferred the property:

Provided further that should any permit or consent be required to conform with the law and such permit or consent is refused, no proceedings shall be instituted against such person, and those already commenced shall be withdrawn, if such person transfers the immovable property within one hundred and eighty days from the date of such refusal.

(5) Saving the provisions of the provisos to subarticle (4), nothin in the said subarticle shall be construed as validating anything does not in conformity with any condition, restriction, limitation ro qualification contained in a permit or consent given under this Act.”.

Amendment of
article 6 of the
principal Act.

41. Article 6 of the principal Act as renumbered shall be amended as follows:

(a) in subarticle (1) thereof:

(i) for the words “grant permission” there shall be substituted the words “grant a permit”;

(ii) for the words “in the permission” there shall be substituted the words “in the permit”;

(iii) for the words “such permission” there shall be substituted the words “such permit”;

(iv) for the words “by a non-resident” there shall be substituted the words “by a non-resident person”;

(v) for the words “in such form and in such manner, if any, as may be prescribed and such information as may be prescribed or as the Minister may require has been given,” there shall be substituted the words “in line with such policies, such form and in such manner, if any, as may be established by regulations made under this Act, and such information as may be prescribed by regulations has been given”;

(vi) in paragraph (a) of the proviso thereto the words “in the case of any person mentioned in paragraph (b) of the definition of a non-resident person in section 2 of this Act” shall be deleted;

(vii) in paragraph (b) of the proviso thereto for the words “(or such other sum as the Minister may from time to time by order in the Government Gazette establish)” there

shall be substituted the words “(which sum shall be adjusted in line with an immovable property price index that shall be published annually in the Gazette by the National Statistics Office)”;

(viii) for the words “other immovable property in Malta” in paragraph (b) of the proviso thereto, there shall be substituted the words “other immovable property in Malta other than immovable property the acquisition of which is exempted under article 4(2) or 5”;

(ix) immediately after paragraph (b) of the proviso thereto, there shall be added the following new paragraph (c);

“(c) the immovable property is either:

(i) a garage situated within five hundred metres from the applicant’s previously acquired residence; or

(ii) an adjoining parcel of land or building intended to serve as an extension to and be integrated with, the applicant’s previously acquired residence;”;

(x) for the words “the Minister may withhold his permission” in the further proviso thereto, there shall be substituted the words “the Minister may withhold the granting of a permit”;

(b) in subarticle (2) thereof for the word “will” wherever it occurs, there shall be substituted the word “succession” and for the word “permission” there shall be substituted the word “permit”;

(c) for subarticle (3) thereof there shall be substituted the following:

“(3) The conditions, restrictions, limitations and qualifications under which the permit referred to in this article is granted shall be those listed in the Second Schedule.”;

(d) for the words “permission” and “permissions” wherever they occur in subarticles (4) and (5) thereof, there shall be

substituted respectively the words “permit” and “permits” and for the words “article 3” wherever they occur in subarticle (4) there shall be substituted the words “article 4”.

Amendment of article 8 of the principal Act.

42. Article 8, as renumbered, of the principal Act shall be amended as follows:

(a) subarticles (2) and (3) thereof shall be deleted, and subarticle (1) shall be renumbered as the whole article 8;

(b) for the word “permission” wherever it occurs, there shall be substituted the word “permit”;

(c) paragraphs (b) to (d) shall be renumbered as paragraphs (c) to (e) respectively, and immediately after paragraph (a) there shall be inserted the following new paragraph (b):

“(b) amend, cancel or substitute any of the Schedules to this Act;”;

(d) for the word “5” in paragraph (c) there shall be substituted the word “6”;

(e) in paragraph (d) for the words “one thousand liri and not exceeding fifty liri”, there shall be substituted the words “ten thousand liri or double the market value of the immovable acquired and not exceeding one thousand liri”;

(f) in paragraph (e) the word “non-resident” shall be deleted.

Addition of new article 9 to the principal Act.

43. Immediately after article 8 as renumbered of the principal Act, there shall be added the following new article:—

“Colourable transactions.

9. The provisions of this Act shall also apply where a person acquires shares or other equitable interest in a commercial partnership in order to circumvent and evade the requirement of a permit under this Act, and where any person so acquires such shares or equitable interest for such purpose without first obtaining a permit, the provisions of this Act, including, without prejudice to the generality hereof, the provisions of articles 4 and 7 thereof, shall apply to the acquisition of such shares or equitable interest as if such acquisition were of the immovable property held by such partnership.”.

44. Immediately after article 8 of the principal Act as renumbered, there shall be added the following schedules:

Addition
of Schedules to the
principal Act.

FIRST SCHEDULE

List of scheduled zones in terms of article 2

1. FORT CHAMBRAY

Fort Chambray in the limits of Ghajnsielem in the Island of Gozo, shown outlined in red in a plan marked as Document X enrolled in the records of Notary Public in the Lands Department Dr. Vincent Miceli by Deed No. 121 dated 13th April, 1993.

2. PORTOMASO DEVELOPMENT

Portomaso Development situated on a plot of land at Spinola, St. Julians, Malta, shown outlined in blue in a plan marked as Document B annexed to a deed in the records of the Assistant Notary to Government, Doctor Anthony Attard, by Deed No. 83 dated 19th May, 1964.

3. COTTONERA DEVELOPMENT

Cottonera Development consists of the immovable property, as per Plans LD 23/99, LD 23A/99; LD 23B/99; LD 24/99; LD 24A/99; LD 24B/99 and LD 24C/99 marked as Documents “X”, “Y”, “F”, “W”, “P”, “O” and “K” respectively annexed to a deed in the records of Notary Doctor of Laws Vincent Miceli by Deed No. 100 of the 2nd June, 1999.

4. MANOEL ISLAND/TIGNÈ POINT

Manoel Island/Tignè Point in the limits of Gzira and Sliema in the Island of Malta, as per plans Property Drawing number fifty four stroke two thousand (PD 54/2000) and Property Drawing number fifty five stroke two thousand (PD 55/2000) in respect of lands at Manoel Island/Tignè Point respectively marked “X” and “Y” respectively enrolled in the records of Notary Public in the Lands Department Vincent Miceli of the 3rd March, of the year two thousand (2000).

SECOND SCHEDULE

Conditions, restrictions, limitations and qualifications for the grant of a permit under article 6.

1. Any non-resident person wishing to acquire immovable property in terms of article 6 of the Act shall submit a form as shown on Annex A or B hereto duly completed and containing such particulars and accompanied by such documents, as are prescribed in the said form.

2. The Minister may refuse to issue a permit to a person who is not of good conduct.

3. In issuing a permit in terms of article 6 of the Act, the Minister shall impose the following conditions:

A. In the case of a dwelling house:

(i) that the immovable property is solely used as a residence by the applicant and his family and for no other purpose;

(ii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for;

(iii) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department); and

(iv) that the immovable property may not be sold in part, or otherwise converted into more than one dwelling house.

B. In the case of a garage or other adjoining property:

(i) that the immovable property is used solely as a garage by the applicant and his family or as an extension to be integrated with the applicant's existing dwelling;

(ii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for;

(iii) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department); and

(iv) that the immovable property covered by this permit may not be sold or otherwise disposed of separately but only together with the applicant's original dwelling house.

C. In the case of a plot of land:

(i) that the applicant is to develop the plot into one complete single residence ready for occupation within a period of two years from the date of issue of this permit;

(ii) that the immovable property is eventually to be used solely as a residence by the applicant and his family and for no other purpose;

(iii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for; and

(iv) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department).

4. The fees payable shall be Lm 100 for each permit, or such fees as may, from time to time, be prescribed by Order of the Minister.

ANNEX A

APPLICATION TO THE MINISTER RESPONSIBLE FOR FINANCE BY A BODY OF PERSONS TO ACQUIRE IMMOVABLE PROPERTY IN MALTA IN TERMS OF THE IMMOVABLE PROPERTY (ACQUISITION BY NON-RESIDENTS) ACT (CAP. 246)

PART I

A. Particulars of applicant falling under paragraph (c) of the definition of "non-resident person" in article 2 of the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246, (hereinafter referred to as the Act).

1. Name of body, association, authority etc. or other entity which is making the application:

2. Whether corporate or not:

3. Where or under the laws of which country is it constituted, formed, established, incorporated or registered: (a certified copy of any relevant deed of constitution or incorporation is to be attached)

4. Whether it has its principal place of residence or of business outside Malta:

5. (a) A list of all shareholders showing the number of shares held by each, the citizenship of each shareholder and the place of residence; and

(b) Where the shareholder is a body, association, authority etc., all the particulars relating to it as at (a) above:

(A separate list may be attached to the application duly signed and dated by applicant, and a note to this effect made in the above space).

6. Whether it is in any manner directly or indirectly controlled by one or more non-resident persons as defined by the Act:

(Full particulars are to be given as necessary)

B. Particulars of immovable property to be acquired by non-residents.

1. Detailed description of immovable property including the type of property, the locality and other particulars necessary to identify it and the area of the property in square metres:

.....

2. Price or other consideration being paid:

.....

3. If for development, details of cost of works and estimated period for completion of same:

.....

4. Under what title is the immovable property to be acquired:

(Applicant is to submit a copy of the preliminary agreement and other related documents in connection with the acquisition of the property).

5. Purpose for which the immovable property is to be acquired:

6. Source of funds for acquisition of immovable property:

.....

7. Any other particulars:

.....

.....

C. Particulars of person from whom immovable property is being acquired.

1. Name:

2. Address:

.....

D. Details of any immovable property in Malta already held or owned by applicant under any title whatsoever:

.....

.....

.....

I hereby declare that the above particulars are true and correct and that the immovable property is intended to be used for the purpose above mentioned.

Date

Signature of Applicant

NOTE: Applicant is warned that any information given in the application material to the granting of a permit by the Minister which is incorrect or misleading would amongst other things as contemplated in the Act render any pertinent deed or act null and void.

PART II

For official use only.

ANNEX B

APPLICATION TO THE MINISTER RESPONSIBLE FOR FINANCE BY AN INDIVIDUAL TO ACQUIRE IMMOVABLE PROPERTY IN MALTA IN TERMS OF THE IMMOVABLE PROPERTY (ACQUISITION BY NON-RESIDENTS) ACT (CAP. 246)

PART I

A. Particulars of applicant:

1. Name and surname:

2. Place and Date of Birth:

3. Parents' names including mother's maiden surname:

4. Profession or trade:

5. Citizenship:

6. Place of residence: (full address)
.....
.....

7. Mailing address of residence if different from above:
.....

Two passport size photos of the applicant and a photocopy of the applicant's passport showing the personal details is to be attached to this application.

B. Particulars of immovable property to be acquired by non-resident

1. Detailed description of immovable property (i) type of property, the locality, boundaries (where necessary) and other particulars needed to identify it and (ii) size of the property giving overall area of land in square metres, details of buildings, and all other appurtenances, (iii) whether or not property is of historical importance or situated in a historical area:

.....
.....
.....
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.....
.....

2. Price or other consideration being paid:

3. If for development, details of cost of works and estimated period for completion of same:

.....

4. Under what title is the immovable property to be acquired:

(Applicant is to submit a copy of the preliminary agreement and of any documents in connection with the acquisition of the property).

5. Purpose for which the immovable property is to be acquired:

.....

6. Source of funds for acquisition of immovable property:

.....

7. Any other particulars:

C. Particulars of person or body of persons from whom immovable property is being acquired:

1. Name:

2. Address:

.....
3. Citizenship or in case of body of persons, whether
“resident” in terms of the Act

.....
D. Particulars of immovable property already owned or
held:

1. Details of any immovable property in Malta already
owned or held under any title whatsoever by applicant:
.....

2. Details of any immovable property in Malta already
owned or held under any title whatsoever by applicant’s
family:
.....
.....

3. Details of any immovable property in Malta disposed
of by applicant or any member of his family during the last
10 years:
.....
.....

I hereby declare that the particulars are true and correct.

Date

Signature of Applicant/Attorney

NOTE: Applicant is warned that any information given
in the application material to the granting of a permit by the
Minister which is incorrect or misleading would amongst other
things as contemplated in the Act render any pertinent deed,
will or act null and void.

PART II

For official use only.

Transitory
provision.

45. Until such time as the National Statistics Office publishes
the adjustments in accordance with article 6 of the principal Act, the
amounts established in Legal Notice 98 of 1999 shall continue to apply.

Part X

46. (1) This Part amends and shall be read and construed as one with the Interpretation Act, hereinafter referred to as “the principal Act.”

Amendment of the Interpretation Act, Cap. 249.

(2) This Part shall come into force on such date as the Prime Minister may by notice in the Gazette establish.

47. Immediately after article 15 of the principal act there shall be added the following new article:

Addition of new article 16 to the principal Act.

“Electronic publication.

16. Where any act or document is required to be published in the Gazette, it shall be sufficient that such act or document is published in electronic format on CD Rom or is made available at a publicly accessible website on the internet and notice of such publication in electronic format on CD Rom or the availability of the document on the website is published in the Gazette:

Provided that where an act or document is so published in electronic format on CD Rom or is so made available on a publicly accessible website on the internet, a hard copy thereof is made available for public inspection during normal office hours at a government department or office and notice of such availability is also published in the Gazette.”.

Part XI

48. (1) This Part amends and shall be read and construed as one with the Extradition Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the Extradition Act, Cap 276.

(2) This Part shall come into force on such date as the Minister responsible for Justice may by notice in the Gazette establish.

49. Article 7 of the principal Act shall be amended as follows:

Amendment of article 7 of the principal Act.

(a) in subarticle (1) thereof, immediately after the words “any country with which an arrangement” there shall be inserted the words “(including any arrangement, decision, direction or other act of the European Union made under or pursuant to the Treaty)”; and

(b) immediately after subarticle (4) thereof there shall be added the following subarticle:

“(5) For the purposes of this article “the Treaty” has the same meaning as is assigned to it by the European Union Act, 2003.”.

Part XII

Amendment of the Tobacco (Smoking Control) Act, Cap. 315.

50. (1) This Part amends and shall be read and construed as one with the Tobacco (Smoking Control) Act, hereinafter referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for health may by notice in the Gazette establish.

Amendment of article 2 of the principal Act.

51. Subarticle (2) of article 2 of the principal Act shall be deleted and subarticle (1) thereof shall be renumbered as the whole provision thereof, and the article as renumbered shall be amended as follows:

(a) immediately before the definition of “cigarette” there shall be inserted the following new definitions:

“ “advertising” means any form of commercial communication with the aim of directly or indirectly promoting tobacco products;

“authorised officer” includes any person attached to the Department of Health and duly authorised by the Superintendent to exercise any power of the Superintendent under this Act and includes police officers;”;

(b) immediately after the definition of “cigarette” there shall be inserted the following new definition:

“ “information society services” means services within the meaning of Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services as amended by Directive 98/48 EC (published in the Official Journal of the European Union under reference OJ L 204, 21.7.1998 1937 and OJ L 217, 5.8.1998, respectively;”;

(c) immediately after the definition of “smoking requisites”

there shall be inserted the following new definition:

“ “sponsorship” means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product;”;

(d) in the definition of “tobacco” for the words “for tobacco” there shall be substituted the words “for tobacco, and includes any tobacco product”; and

(e) immediately after the definition of “tobacco” there shall be inserted the following new definition:

“ “tobacco product” means products for the purposes of smoking wholly or partly of tobacco.”.

52. Article 4 of the principal Act shall be amended as follows:- Amendment of article 4 of the principal Act.

(a) the whole article 4 as presently appearing shall be renumbered as subarticle (1) of article 4; and

(b) immediately after subarticle (1) as renumbered, there shall be added the following new subarticles (2),(3) and (4):-

“(2) Radio, television and other programmes broadcast by other mediums shall not be sponsored by undertakings whose principal activity is the manufacture or sale of tobacco products.

(3) No tobacco product shall bear the brand name, trade mark, emblem or other distinctive feature of any other product or service, unless the tobacco product has been traded under that brand name, trade mark, emblem or other distinctive feature previously to such other project.

(4) The brand name, trade mark, emblem and any other distinguishing feature of the product or service shall be presented in a manner clearly distinct from that used for the tobacco product.”.

53. Article 5 of the principal Act shall be renumbered as article 7 thereof. Renumbering of article 5 of the principal Act.

54. For article 6 of the principal Act there shall be substituted the following new articles 6 and 6A: Substitution of article 6 of the principal Act.

“Prohibition of free distribution or other method of promotion.

6. (1) Advertising in the press and other printed publications shall be limited to publications intended exclusively for professionals in the tobacco trade and to publications which are printed and published in third countries, where those publications are not principally intended for the local market.

(2) Other advertising in the press and other printed publications shall be prohibited.

(3) Advertising that is not permitted in the press and other printed publications shall not be permitted in information society services.

Sponsorship.

6A. (1) The sponsorship of events or activities involving or taking place in more than one Member State of the European Union or otherwise having cross-border effect shall be prohibited.

(2) Any free distribution of tobacco products in the context of sponsorship of events as are referred to in subarticle (1), having the purpose or the direct or indirect effect of promoting such products shall be prohibited.”.

Renumbering of article 7 of the principal Act.

55. Article 7 of the principal Act shall be renumbered as article 5 thereof.

Substitution of articles 8 and 9 of the principal Act.

56. For articles 8 and 9 of the principal Act there shall be substituted the following:

“Health warnings.

8. (1) Each packet of cigarettes and any other tobacco product imported, sold, distributed or supplied, by way of compensation or otherwise, shall contain such information including information as to the ingredients and quantities thereof.

(2) For the purpose of subarticle (1) and for any other purpose of this Act, the Superintendent may request manufacturers and importers of cigarettes and tobacco products to submit a list of all ingredients and the quantities thereof as are used in the manufacture of such cigarette or tobacco products.

Regulations.

9. The Minister may make regulations for the better carrying out of the provisions of this Act and for reducing harm resulting from the consumption of tobacco or tobacco products, and in particular and without prejudice to the

generality of that power, may make regulations for all or any other following purposes:

(a) to prescribe that health warnings as are referred to in article 10 shall be affixed in prominent positions in any public place and inside any vehicle licensed or used for public transport, and that it shall be the duty of the licensee and the driver, as the case may be, to comply with such regulation;

(b) to prescribe the maximum permissible tar, nicotine and other content which cigarettes or other forms of tobacco or tobacco products may contain, and the maximum yield of any such substances which may be obtained therefrom;

(c) to prescribe the conditions under which the sale or distribution of cigarettes, cigars or other tobacco products shall be prohibited or restricted;

(d) to prohibit or control any advertisement directly or indirectly connected with tobacco or with tobacco smoking;

(e) to control the number of cigarettes which may be offered for sale as any one retail packet and to prohibit the sale of single cigarettes:

Provided that the Minister shall not make regulations prohibiting the sale of cigarette packets containing such number of cigarettes as the cigarette packets as are on sale on the day of the coming into force of this paragraph;

(f) to control the presentation of cigarettes, cigars and other tobacco products;

(g) to prohibit or control smoking in any place or part thereof; and

(h) to prescribe any other matter which may be or is required to be prescribed by this Act.”.

57. In article 10 of the principal Act, the words “language,” shall be deleted.

Amendment of article 10 of the principal Act.

Amendment of
article 11 of the
principal Act.

58. In subarticle (1) of article 11 of the principal Act, for the words “a correct declaration of the content of tar and nicotine in each cigarette” there shall be substituted the words “such information as the Superintendent may from time to time by regulations require”.

Amendment of
article 12 of the
principal Act.

59. Article 12 of the principal Act shall be renumbered as subarticle (1) thereof, and immediately after subarticle (1) as renumbered there shall be added the following new subarticle:

“(2) No person may sell or authorise the sale of tobacco products in or from -

(a) hospital grounds, clinics, pharmacies or any other health care establishments;

(b) school grounds, colleges, or any other educational institution;

(c) sports or athletic facilities.”.

Amendment of
article 13 of the
principal Act.

60. Article 13 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “age of sixteen years” there shall be substituted the words “age of eighteen years”;

(b) in subarticle (2) thereof, for the words from “in restaurants” to “which sales from” there shall be substituted the words “where”; and

(c) in subarticle (3) thereof, for the words “under sixteen years” there shall be substituted the words “under eighteen years”.

Amendment of
article 14 of the
principal Act.

61. Article 14 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, immediately after the words “or pre-recorded;” there shall be added the words “or in any other place or establishment or part thereof as the Minister may from time to time prescribe;”, and for the words “under sixteen years” there shall be substituted the words “under eighteen years”;

(b) subarticle (2) thereof shall be deleted; and

(c) subarticle (3) thereof shall be renumbered as subarticle (2) thereof.

62. For subarticle (2) of article 18 of the principal Act there shall be substituted the following: Amendment of article 18 of the principal Act.

“(2) Any person guilty of an offence against this Act or against any regulations made under this Act, shall, without prejudice to his liability under any other law, be liable, on a first conviction, to a fine (*multa*) of not less than one hundred liri and not exceeding five hundred liri, and where the act or omission constituting the offence subsists for more than a day, the Court shall in addition impose a fine (*multa*) of not less than ten liri and not more than fifty liri for each day in which such act or omission subsists, and on a second or subsequently conviction, in addition to such fines, and, at the request of the prosecution, to imprisonment for a term not exceeding three months, and to suspension of the licence of the premises or public transport means where the offence took place, for a period of not less than one week and not exceeding one month.”.

63. Subarticle (1) of article 19 of the principal Act shall be amended as follows: Amendment of article 19 of the principal Act.

(a) in paragraph (a) thereof, for the words “as Chairman” there shall be substituted the words “or his representative, as Chairman”;

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

“(d) the Director of Health Promotion, or his representative;” and

(c) for subparagraphs (i) and (ii) of paragraph (e) there shall be substituted the following:

“(i) a health promotion officer from the Department of Health;

(ii) one member of a Consumer Association;”.

Part XIII

64. This Part amends and shall be read and construed as one with the Eurocontrol Act hereinafter in this Part referred to as “the principal Act”. Amendment of the Eurocontrol Act, Cap. 333.

65. Article 2 of the principal Act shall be amended as follows:

(a) the present provision shall be renumbered as subarticle (1) thereof;

(b) in subarticle (1) thereof, as renumbered:

(i) in the definition of “Agency” the words “Air Traffic Services” shall be deleted;

(ii) for the definition of “Air Navigation Order” and the words “L.N. 10 of 1963” in the marginal note there shall be substituted the following:

“L.N. 176 of 1990. “Air Navigation Order” means the Air Navigation Order, 1990, or any Order substituting the same;”;

(iii) the definitions of “Commission”, “Contracting State”, “Multilateral Agreement”, “State addressed” and “State of origin” shall be deleted;

(iv) immediately after the definition of “Air Navigation Order” there shall be inserted the following definitions:

“ “Contracting Party” means a State which is or becomes a party to the Convention;

“Contracting Party addressed” in relation to a decision means the Contracting Party in which the decision is sought to be enforced;

“Contracting Party of Origin” in relation to a decision means the Contracting Party in which the decision was given;”;

(v) for the definition of “Convention” there shall be substituted the following:

“ “Convention” means the Convention relating to Co-operation for the Safety of Air Navigation (Eurocontrol) signed in Brussels on the 13th December, 1960, as amended by the Additional Protocol thereto signed at Brussels on the 6th July 1970, in its turn amended by the amendment to the Additional Protocol signed at Brussels on the 21st November, 1978, and as amended by the Protocols amending the Convention

signed in Brussels on the 12th February, 1981 and the 27th June 1997, which Convention and Protocols are deposited in the Archives of the Kingdom of Belgium; a consolidated text of the Convention and Protocols is reproduced in the Schedule to this Act;”;

(vi) in the definition of “Eurocontrol” for the words from “the Permanent Commission” to the words “in that Organisation”, there shall be substituted the words “the General Assembly, the Council and the Agency comprised in that Organisation”;

(vii) in the definition of “manager” for the words from “article 61” to the words “Aviation Act;”, there shall be substituted the words “article 69 of the Air Navigation Order, or the corresponding provision of any order substituting the same;”; and

(viii) in the definition of “relevant authority” for the words “contracting state” there shall be substituted the words “Contracting Party”; and

(c) immediately after subarticle (1) thereof as renumbered, there shall be added the following subarticle (2):

“(2) In the case of inconsistency between the text of the Convention as reproduced in the Schedule to this Act and the text of the Convention deposited in the Archives of the Kingdom of Belgium, the latter shall prevail.”.

66. In article 3 of the principal Act, the words “or in the Multilateral Agreement” shall be deleted. Amendment of article 3 of the principal Act.

67. The marginal note “L.N. 10 of 1963” to article 6(5) of the principal Act shall be deleted. Amendment of article 6 of the principal Act.

68. In article 7 of the principal Act, the words “or the Multilateral Agreement” shall be deleted. Amendment of article 7 of the principal Act.

69. In subarticle (3) of article 10 of the principal Act, for the words “Article 22” wherever they appear, there shall be substituted the words “Article 25”. Amendment of article 10 of the principal Act.

70. For the words “Article 13 of the Multilateral Agreement” in subarticle (1) of article 11 of the principal Act there shall be substituted the words “Article 8 of Annex IV to the Convention”, and the words Amendment of article 11 of the principal Act.

“or the Multilateral Agreement” in subarticle (3) of the said article 11 of the principal Act shall be deleted.

Amendment of article 12 of the principal Act.

71. Article 12 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “Contracting State” there shall be substituted the words “Contracting Party”;

(b) in subarticle (3) thereof, for the words “Article 15 of the Multilateral Agreement” and for the words “Article 16 of the said Multilateral Agreement” there shall be substituted respectively the words “Article 11 of the Annex IV to the Convention” and the words “Article 12 of Annex IV to the Convention”;

(c) in subarticle (4) thereof, for the words “Article 13 of the Multilateral Agreement” and for the words “Article 18 of the Multilateral Agreement” there shall be substituted respectively the words “Article 8 of Annex IV to the Convention” and the words “Article 14 of Annex IV to the Convention”; and

(d) in subarticle (8) thereof, after the words “Code of Organisation and Civil Procedure” there shall be inserted the words “or in any other law relating to the recognition and enforcement of foreign judgements”.

Amendment of article 14 of the principal Act.

72. In article 14 of the principal Act, and in the marginal note thereto, the words “and to the Multilateral Agreement”, wherever they appear, shall be deleted.

Amendment of article 15 to the principal Act.

73. In subarticle (1) of article 15 of the principal Act, for the word “Schedules” there shall be substituted the word “Schedule”.

Substitution of Schedules to the principal Act.

74. For the Schedules to the principal Act, there shall be substituted the following Schedule:

“Schedule

(Articles 2 and 14)

CONSOLIDATED VERSION WHICH INCORPORATES THE TEXTS
REMAINING IN FORCE OF THE EXISTING CONVENTION AND THE
AMENDMENTS MADE BY THE DIPLOMATIC CONFERENCE
OF 27 JUNE 1997

CONSOLIDATED TEXT OF THE ENACTING TERMS
OF THE CONVENTION

Article 1

1. In order to achieve harmonisation and integration with the aim of establishing a uniform European air traffic management system, the Contracting Parties agree to strengthen their co-operation and to develop their joint activities in the field of air navigation, making due allowance for defence needs and providing maximum freedom for all airspace users consistent with the required level of safety in the provision of cost-effective air traffic services, and taking into account the need to minimise, where this is feasible, *inter alia*, in operational, technical and economic terms, any adverse environmental impact.

The pursuit of these objectives shall not prejudice the principle that every State has complete and exclusive sovereignty over the airspace above its territory nor the capacity of every State to exercise its prerogatives with regard to security and defence in its national airspace.

To this end, they agree:

(a) to determine a European policy in the air traffic management field, involving the definition of strategies and programmes whose objective is to develop the capacity needed to meet the requirements of all civil and military users in a cost-effective manner while maintaining the required level of safety;

(b) to commit themselves to the establishment of specific targets regarding the efficiency and effectiveness of air traffic management operations in the Flight Information Regions listed in Annex II to this Convention in which States, pursuant to the relevant provisions of the Convention on International Civil Aviation, have agreed to provide air traffic services without prejudice to the principles of free movement in airspace not subject to the sovereignty of the States which result from conventions, international agreements, and the rules or principles of customary public international law;

(c) to introduce an air traffic management performance review and target setting system;

(d) to implement a common convergence and implementation plan for air navigation services and facilities in Europe;

(e) to adopt and apply common standards and specifications;

(f) to harmonise air traffic services regulations;

(g) to develop the available capacity to meet the air traffic demand and to ensure its most effective utilisation through the joint establishment, operation and development of a common European air traffic flow management system, in the framework of the introduction of a uniform European air traffic management system;

(h) to encourage common procurement of air traffic systems and facilities;

(i) to implement a common policy for the establishment and calculation of charges levied on users of en route air navigation facilities and services, hereinafter called “route charges”;

(j) to implement a mechanism, separate from service provision, for the multilateral development and harmonisation of a safety regulatory regime in the field of air traffic management within a total aviation safety system approach;

(k) to participate in the design, the implementation and the monitoring of a global navigation satellite system;

(l) to identify new possibilities for common actions in the field of design, implementation, monitoring or operation of systems and services in air navigation;

(m) in the context of a “gate-to-gate” concept, to develop an overall policy and an appropriate, efficient and effective process for the strategic design and planning of routes and airspace.

2. For this purpose they hereby establish a “European Organisation for the Safety of Air Navigation (EUROCONTROL)”, hereinafter called “the Organisation”, which shall act in co-operation with the national civil and military authorities and the user organisations. The Organisation shall comprise three organs:

(a) a General Assembly, which shall constitute the organ responsible for the formulation and approval of the Organisation’s general policy, including:

(i) the common policy for route charges and the Organisation’s other charges activities;

(ii) the performance review and assessment functions of the Organisation;

(iii) the setting of objectives for the Organisation, including those of standardisation, planning, performance and safety regulation;

(iv) the technical and financial selection of major framework programmes for co-operation;

(v) external relations with States and organisations and applications for accession to this Convention;

(b) a Council, which shall constitute the organ tasked with implementing the General Assembly's decisions and, subject to the powers conferred upon the latter, ruling on all measures which are addressed to and binding on the Contracting Parties, and supervising the Agency's work;

(c) an Agency, whose Statute is contained in Annex I to this Convention, which shall be the organ entrusted to undertake the Organisation's tasks, in accordance with the provisions of the following articles of this Convention and the tasks assigned to it by the General Assembly or the Council, to initiate relevant proposals and to deploy the technical, financial and staff resources to achieve the objectives laid down.

3. The headquarters of the Organisation shall be in Brussels.

Article 2

1. The Organisation shall undertake the following tasks:

(a) to develop and endorse detailed plans for the harmonisation and integration of the air traffic services and systems of the Contracting Parties, in particular the ground and airborne air navigation systems, with a view to the establishment of a uniform European air traffic management system;

(b) to coordinate the implementation plans of the Contracting Parties so as to secure convergence towards a uniform European air traffic management system;

(c) to examine and coordinate on behalf of the Contracting Parties matters in the field of air navigation studied by the International Civil Aviation Organization (ICAO) and other international organisations concerned with civil aviation and to coordinate and submit amendments or proposals to these bodies;

(d) to define, design, develop, validate and organise the implementation of a uniform European air traffic management system;

(e) to develop and operate a common European air traffic flow management system at a common international centre in the framework of (d) above;

(f) to develop, adopt, and keep under review common standards, specifications and practices for air traffic management systems and services;

(g) to develop and endorse procedures towards a strategy for the common procurement of air traffic systems and facilities;

(h) to coordinate the Contracting Parties' research and development programmes relating to new techniques in the field of air navigation, to collect and distribute their results and to promote and conduct common studies, tests and applied research as well as technical developments in this field;

(i) establish an independent performance review system that will address all aspects of air traffic management, including policy and planning, safety management at and around airports and in the airspace, as well as financial and economic aspects of services rendered, and set targets that will address all these aspects;

(j) to study and promote measures for improving cost-effectiveness and efficiency in the field of air navigation;

(k) to develop and endorse common criteria, procedures and methods to ensure the highest efficiency and quality of air traffic management systems and air traffic services;

(l) to develop proposals for the harmonisation of European air traffic services regulations;

(m) to support the improvement of efficiency and flexibility in the use of airspace between civil and military users;

(n) to develop and endorse coordinated or common policies to improve air traffic management at and around airports;

(o) to develop and endorse common criteria for the selection, and common policies for the training, licensing, and proficiency checking of air traffic services staff;

(p) to develop, establish and operate the future common European system elements entrusted to it by the Contracting Parties;

(q) to establish, bill and collect the route charges on behalf of the Contracting Parties participating in the common route charges system as provided for in Annex IV;

(r) to establish and implement a mechanism for the multilateral development and harmonisation of safety regulation in the air traffic management field;

(s) to perform any other task relating to the principles and objectives of this Convention.

2. At the request of one or more Contracting Parties and on the basis of a special agreement or agreements between the Organisation and the Contracting Parties concerned, the Organisation may:

(a) assist such Contracting Parties in the planning, specification and setting up of air traffic systems and services;

(b) provide and operate, wholly or in part, air traffic facilities and services on behalf of such Contracting Parties;

(c) assist such Contracting Parties in the establishment, billing and collection of charges which are levied by them on users of air navigation services and which are not covered by Annex IV to this Convention.

3. The Organisation may:

(a) conclude special agreements with non-Contracting Parties interested in participating in the performance of the tasks provided for in Article 2.1;

(b) at the request of non-Contracting Parties or other international organisations, perform on their behalf any other tasks pursuant to this Article, on the basis of special agreements between the Organisation and the Parties concerned.

4. The Organisation shall, as far as is practicable, ensure that its service provision functions, in particular those provided for in Articles 2.1 (e), 2.1 (g), 2.1 (p), 2.1 (q), 2.2 and 2.3 (b), are exercised independently of its regulatory functions.

5. In order to facilitate the execution of its tasks, the Organisation may, by decision of the General Assembly, create undertakings governed by specific articles of association governed either by public international law or by the national law of a Contracting Party, or acquire majority shareholdings in such undertakings.

Article 3

1. This Convention shall apply to en route air navigation services and related approach and aerodrome services for air traffic in the Flight Information Regions listed in Annex II.

2. (a) Any amendment which a Contracting Party wishes to make to the list of its Flight Information Regions in Annex II shall be decided upon by the General

Assembly by unanimity of the votes cast if it would result in a change in the overall limits of the airspace covered by this Convention.

(b) Any amendment which does not result in such a change shall nevertheless be notified to the Organisation by the Contracting Party concerned.

3. For the purposes of this Convention the expression “air traffic” shall comprise civil aircraft and those military, customs and police aircraft which conform to the procedures of the International Civil Aviation Organization.

On the basis of a special agreement, as provided for in Article 2.2(b), a Contracting Party may request that the expression “air traffic” shall apply to other air traffic operating within its territory.

Article 4

The Organisation shall have legal personality. In the territory of the Contracting Parties it shall have the fullest legal capacity to which corporate bodies are entitled under national law; it shall *inter alia* have the right to acquire or transfer movable or immovable property and to go to law. Except as otherwise provided in this Convention or the Statute at Annex I, it shall be represented by the Agency, which shall act in its name. The Agency shall administer the property of the Organisation.

Article 5

1. The General Assembly shall be composed of representatives of the Contracting Parties at Ministerial level. Each Contracting Party may appoint several delegates in order, in particular, to allow the interests of both civil aviation and national defence to be represented, but shall have only a single voting right.

2. The Council shall be composed of representatives of the Contracting Parties at the level of the Directors General for Civil Aviation. Each Contracting Party may appoint several delegates in order, in particular, to allow the interests of both civil aviation and national defence to be represented, but shall have only a single voting right.

3. On matters relating to the common route charges system, the General Assembly and the Council shall be made up of representatives of the Contracting Parties participating in the common route charges system under the conditions stipulated in Annex IV.

4. The representatives of international organisations which can contribute to the work of the Organisation shall, where appropriate, be invited by the General Assembly, or the Council, to participate as observers, in bodies of the Organisation.

Article 6

1. The General Assembly shall take decisions with regard to the Contracting Parties, the Council and the Agency, in particular in the cases referred to in Article 1.2(a).

In addition, the General Assembly shall:

(a) appoint the Director General of the Agency, on the Council's recommendation;

(b) authorise recourse on behalf of the Organisation to the Permanent Court of Arbitration of The Hague in the cases referred to in Article 34;

(c) establish the principles applied for the operation of the common European air traffic flow management system provided for in Article 2.1(e);

(d) approve amendments to Annex I in conformity with the voting conditions provided for in Article 8.1;

(e) approve amendments to Annexes II and IV in conformity with the voting conditions provided for in Article 8.3;

(f) periodically review the tasks of the Organisation.

2. To formulate the common policy for route charges, the General Assembly shall, *inter alia*:

(a) establish the principles governing the assessment of the costs chargeable by the Contracting Parties and the Organisation to the users in respect of the en-route air navigation facilities and services provided to them;

(b) determine the formula to be applied in calculating route charges;

(c) determine the principles governing exemption from the route charges and may further decide that for certain categories of flights thus exempted from the payment of route charges governed by Annex IV, the costs incurred in respect of en-route air navigation facilities and services may be recovered directly by the Contracting Parties;

(d) approve reports by the Council relating to route charges.

3. The General Assembly may:

(a) refer to the Council for examination any matter falling within its competence;

- (b) delegate to the Council, where necessary, the power to take decisions in the matters falling within its general competence, referred to in Article 1.2(a);
- (c) establish other subsidiary bodies as it may consider to be necessary.

Article 7

1. The Council, pursuant to the powers conferred on it by this Convention, may take decisions with regard to the Contracting Parties, in the tasks referred to in Article 2.1.

2. The Council, pursuant to its supervisory powers as conferred on it in regard to the Agency by this Convention:

(a) shall approve, after having consulted representative organisations of airspace users recognised by the Council, the Agency's five-year and annual work programmes submitted to it by the Agency for the accomplishment of the tasks referred to in Article 2, together with the five-year financial plan and the budget, including the financial obligations, the Agency's activity report and the reports submitted pursuant to Articles 2.2 (c), 10.3 and 11.1 of the Statute of the Agency;

(b) shall approve the principles governing the general structure of the Agency;

(c) shall supervise the activities of the Agency in the field of air navigation charges;

(d) shall determine, after having consulted the representative organisations of airspace users and airports recognised by the Council, the general conditions for the operation of the common European air traffic flow management system provided for in Article 2.1 (e), taking due account of the prerogatives exercised by the States in regard to management of their airspace. These general conditions shall specify, *inter alia*, the rules applicable as well as the procedures for recording non-compliance with these rules;

(e) shall issue directives to the Agency on the basis of regular reports from the latter or whenever it deems it to be necessary for the accomplishment of the tasks assigned to the Agency, and shall approve arrangements for co-operation between the Agency and national organisations concerned to enable the Agency to initiate the appropriate proposals;

(f) shall appoint, on a proposal by the Director General, the firm of consultant auditors to assist the Audit Board in the examination of the accounts of all receipts and expenditure;

(g) may require that the Agency's services be the subject of administrative and technical inspections;

(h) shall give the Director General discharge in respect of his/her administration of the budget;

(i) shall approve the appointment by the Director General of the Directors of the Agency;

(j) shall approve the Statute of the Director General, the Staff Regulations, the Financial Regulations and the Contract Regulations;

(k) may authorise the opening by the Agency of negotiations related to the special agreements referred to in Article 2, adopt the agreements negotiated before submitting them for approval by the General Assembly or conclude such agreements where the Council has been delegated powers pursuant to the provisions of Article 13.3;

(l) shall approve a Regulation on data protection;

(m) in the performance of the tasks provided for in Article 2.1(f), shall determine the rules and procedures applicable to standards, specifications and practices for air traffic management systems and services.

3. The Council shall establish a Performance Review Commission and a Safety Regulation Commission. These Commissions will initiate relevant proposals to the Council and receive administrative support and assistance from the Agency services which have the necessary degree of independence to exercise their functions.

4. The Council shall establish a Civil/Military Interface Standing Committee.

5. The Council shall establish an Audit Board to which it may delegate duties and, under specific terms of reference, delegate powers.

6. The Council may be assisted by other committees in other fields of activity of the Organisation.

7. The Council may delegate duties and, under specific terms of reference, delegate powers to the Civil/Military Interface Standing Committee and any Committee created after the entry into force of this Convention. Such delegations of duties or powers shall not prevent the Council from being able to raise matters at any time as part of its task of general supervision.

Article 11

1. The weighting referred to in Article 8 shall be determined according to the following table:

The weighting referred to in Article 8 shall be determined according to the following table:

Annual Contribution of a Contracting Party as a percentage of the total annual contributions of all the Contracting Parties

	Number of votes
Less than 1%	1
From 1 to less than 2%	2
From 2 to less than 3%	3
From 3 to less than 4 $\frac{1}{2}$ %	4
From 4 $\frac{1}{2}$ to less than 6%	5
From 6 to less than 7 $\frac{1}{2}$ %	6
From 7 $\frac{1}{2}$ to less than 9%	7
From 9 to less than 11%	8
From 11 to less than 13%	9
From 13 to less than 15%	10
From 15 to less than 18%	11
From 18 to less than 21%	12
From 21 to less than 24%	13
From 24 to less than 27%	14
From 27 to less than 30%	15
30%	16

2. The number of votes shall be initially established with effect from the date of entry into force of the Protocol opened for signature at Brussels in 1997 by reference to the above table and in accordance with the rule in Article 10 above for determining the annual contributions of the Contracting Parties to the Organisation's budget.

3. In the event of the accession of a State, the numbers of votes of the Contracting Parties shall be re-established in accordance with the same procedure.

4. The numbers of votes shall be re-established each year in accordance with the foregoing provisions.

Article 12

The General Assembly and the Council shall establish their rules of procedure, including rules governing the election of a President and Vice-President, and the rules of application of the voting procedures and the quorum.

Article 13

1. The Organisation shall maintain with the appropriate States and other international organisations the necessary relations for the realisation of its aims.

2. The General Assembly shall, without prejudice to the provisions of Article 7.2(k), of paragraph 3 of this article and of Article 15, be alone empowered to conclude on behalf of the Organisation the special agreements which are necessary for the performance of the tasks provided for in Article 2.

3. The General Assembly may, on a proposal from the Council, delegate to the latter the decision to conclude the special agreements which are necessary for the performance of the tasks provided for in Article 2.

Article 14

The special agreements referred to in Article 2 shall stipulate the respective tasks, rights and obligations of the Parties to the agreements, together with the financial arrangements, and shall establish the measures to be taken. Such agreements may be negotiated by the Agency in accordance with the provisions of Article 7.2(k).

Article 15

Within the scope of the directives given by the Council, those relations which are essential for the co-ordination of air traffic and for the operation of the services of the Agency may be established by the Agency with the appropriate technical services, public or private, of the Contracting Parties, of non-Contracting Parties or of international organisations. For that purpose, contracts of a purely administrative, technical or

commercial nature, in so far as they are required for the operation of the Agency, may be entered into by the Agency, in the name of the Organisation, on condition that the Agency so informs the Council.

Article 16

1. The character of public interest shall, where necessary, be recognised, in accordance with national law and with the consequences which result from the provisions of that law relating to expropriation in the public interest, as regards the acquisition of immovable property necessary for the siting of the Organisation's installations, subject to the agreement of the Government concerned. The procedure of expropriation for reasons of public interest may be set in motion by the competent authorities of the State concerned, in accordance with its national law, for the purpose of acquiring such property failing amicable agreement.

2. In the territory of the Contracting Parties where the procedure referred to in the preceding paragraph is not in existence, the Organisation may have the benefit of those procedures for compulsory purchase which can be used for the benefit of civil aviation and telecommunications.

3. The Contracting Parties recognise the right of the Organisation to benefit, in respect of any installations and services established on its behalf in their respective territories, from the application of national law as to those restrictions on the rights of owners of immovable property which may exist in the public interest for the benefit of national services for the same purpose and in particular as to easements in the public interest.

4. The Organisation shall bear the expenses consequent upon the application of the provisions of this Article, including the compensation payable in accordance with the law of the State in the territory of which the property is situated.

Article 17

In the performance of the tasks provided for in Article 2.2(b), the Agency shall apply the regulations in force in the territories of the Contracting Parties and in the airspace in respect of which the provision of air traffic services is entrusted to them under international agreements to which they are Parties.

Article 18

In the performance of the tasks provided for in Article 2.2(b), the Agency shall, within the limits of the powers conferred on the air traffic services, give all the necessary instructions to aircraft commanders. The aircraft commanders shall be bound to comply with those instructions, except in the cases of force majeure provided for in the regulations referred to in the preceding article.

Article 19

1. In the performance of the tasks provided for in Article 2.1(e), the Organisation shall determine, in accordance with the general conditions provided for in Article 7.2(d), the necessary regulatory measures, and shall communicate them to aircraft operators and to the appropriate air traffic services. The Contracting Parties shall ensure that aircraft operators, aircraft commanders and the appropriate air traffic services comply therewith, unless prevented by compelling reasons of safety.

2. Compliance by a Contracting Party's air traffic services with the general conditions and the regulatory measures referred to in paragraph 1 above shall be the sole responsibility of the said Contracting Party.

3. In the event of non-compliance by an aircraft operator or an aircraft commander with the general conditions or the regulatory measures referred to in paragraph 1 above, proceedings may be instituted against the offender at the Organisation's request:

(a) by the Contracting Party where non-compliance was recorded, in its own territory;

(b) by the Organisation in accordance with the grounds of jurisdiction set out in Article 35, if the Contracting Party, where the proceedings are to be instituted, agrees.

4. The Contracting Parties shall incorporate into their national legislation provisions which ensure the observance of the general conditions provided for in Article 7.2(d).

Article 20

In the performance of the tasks provided for in Article 2.1(e) and, where appropriate, Article 2.2(b), infringements of the air navigation regulations committed in the airspace in which the Agency performs these tasks shall be recorded in reports by officers specifically authorised by the Agency for that purpose, without prejudice to the right under national law of officers of the Contracting Parties to report infringements of the same nature. The reports referred to above shall have the same effect in national courts as those drawn up by national officers qualified to report infringements of the same nature.

Article 21

1. The circulation of publications and other information material sent by or to the Organisation in connection with its official activities shall not be restricted in any way.

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2. For its official communications and the transfer of all its documents, the Organisation shall enjoy treatment no less favourable than that accorded by each Contracting Party to comparable international organisations.

Article 22

1. The Organisation shall be exonerated in the territories of the Contracting Parties from all duties, taxes and charges in respect of its creation, dissolution or liquidation.

2. It shall be exonerated from any duties, taxes and charges entailed by the acquisition of the immovable property required for the accomplishment of its task.

3. It shall be exonerated from all direct taxes applicable to it, as well as its property, assets and income.

4. It shall be exonerated from any indirect fiscal charges consequential on the issue of loans and incident upon the Organisation.

5. It shall be exonerated from any taxation of an exceptional or discriminating nature.

6. The exonerations provided for in this article shall not apply to taxes and charges collected as payment for general utilities.

Article 23

1. The Organisation shall be exonerated from all customs duties and taxes or charges of equivalent effect, other than charges in respect of services rendered, and shall be exempt from any import or export prohibition or restriction in respect of materials, equipment, supplies and other articles imported for the official use of the Organisation and destined for the buildings and installations of the Organisation or for its functioning.

2. The goods so imported may not be sold, loaned or transferred, either without payment or against payment, in the territory of the Contracting Party into which they have been introduced, except under the conditions fixed by the Government of the Contracting Party concerned.

3. Any control measures deemed to be expedient may be taken to ensure that the materials, equipment, supplies and other articles referred to in paragraph 1 and imported for consignment to the Organisation have been effectively delivered to that Organisation and are effectively used for its official buildings and installations or for its functioning.

4. The Organisation shall be exonerated from all customs duties and exempt from any import or export prohibition or restriction in respect of the publications falling within the scope of Article 13 of the Statute annexed hereto.

Article 24

1. The Organisation may hold any currency and have accounts in any currency in so far as is necessary for the execution of the transactions required for its purpose.

2. The Contracting Parties undertake to give the Organisation the necessary authorisations for all the transfers of funds, in accordance with the conditions prescribed under national regulations and international agreements as applicable, entailed by the establishment and activity of the Organisation, including the issue and service of loans when the issue of those loans has been authorised by the Government of the Contracting Party concerned.

Article 25

1. The Agency may call upon the services of qualified persons who are nationals of the Contracting Parties.

2. The staff of the Organisation and members of their families forming part of their households, shall enjoy the exemption from measures restricting immigration and governing aliens' registration generally accorded to staff members of comparable international organisations.

3. (a) The Contracting Parties, in time of international crisis, shall accord to the staff of the Organisation, and the members of their families forming part of their households, the same repatriation facilities as the staff of other international organisations.

(b) The provisions of (a) above shall not affect the staff's obligations to the Organisation.

4. No exception may be made to the provisions of paragraphs 1 and 2 of this article except for reasons of public policy, public safety or public health.

5. The staff of the Organisation:

(a) shall be granted exemption from customs duties and charges, other than those in respect of services rendered, in the case of the importation of their personal effects, movable property and other household effects which are not new, which they bring from abroad on first taking up residence in the territory in question, and in the case of the re-exportation of those same effects and movable property, when they relinquish their duties;

(b) may, on taking up their duties in the territory of any one of the Contracting Parties, import their personal motor car temporarily with exemption from duty, and subsequently, but not later than on termination of their period of service, re-export that vehicle with exemption from duty, subject, however, in either event, to any conditions deemed to be necessary in each individual case by the Government of the Contracting Party concerned;

(c) shall enjoy inviolability for all their official papers and documents.

6. The Contracting Parties shall not be obliged to grant to their own nationals the facilities provided for in paragraph 5 (a) and (b) above.

7. In addition to the privileges, exemptions and facilities granted to the staff of the Organisation, the Director General of the Agency shall enjoy immunity from jurisdiction in respect of acts, including words spoken and written, done by him/her in the exercise of his/her functions; this immunity shall not apply in the case of a motor traffic offence or in the case of damage caused by a motor vehicle belonging to or driven by him/her.

8. The Governments concerned shall take all the necessary measures to ensure the unrestricted transfer of net salaries.

Article 26

Representatives of the Contracting Parties shall, while exercising their functions and in the course of their journeys to and from the place of meeting, enjoy inviolability for all their official papers and documents.

Article 27

By reason of its own social security scheme, the Organisation, the Director General and personnel of the Organisation, shall be exempt from all compulsory contributions to national social security bodies, without prejudice to arrangements between the Organisation and Contracting Parties existing at the entry into force of the Protocol opened for signature at Brussels in 1997.

Article 28

1. The contractual liability of the Organisation shall be governed by the law applicable to the contract concerned.

2. With regard to non-contractual liability, the Organisation shall make reparation for damage caused by the negligence of its organs, or of its servants in the scope of their employment, in so far as that damage can be attributed to them. The foregoing provision shall not preclude the right to other compensation under the national law of the Contracting Parties.

Article 29

1. (a) The installations of the Organisation shall be inviolable. The property and assets of the Organisation shall be exempt from any measure of requisition, expropriation or confiscation.

(b) The archives of the Organisation and all official papers and documents belonging to it shall be inviolable, wherever located.

2. The property and assets of the Organisation may not be seized, nor may execution be levied upon them, except by a judicial decision. Such judicial decision shall not be made unless the Organisation has been given reasonable notice of the proceedings in question and has had an adequate opportunity to oppose the making of the decision. The installations of the Organisation shall not, however, be seized nor shall execution be levied upon them.

3. Nevertheless, in order to enable judicial inquiries to be carried out and to ensure the execution of judicial decisions in their respective territories, the competent authorities of the State in which the Organisation has its headquarters and of other States in which installations and archives of the Organisation are located shall, after having informed the Director General of the Agency, have access to such installations and archives.

Article 30

1. The Organisation shall collaborate at all times with the competent authorities of the Contracting Parties in order to facilitate the good administration of justice, to ensure the observance of police regulations and to prevent any abuse to which the privileges, immunities, exemptions or facilities specified in this Convention could give rise.

2. The Organisation shall facilitate, as far as possible, the execution of public works inside or in the vicinity of any immovable property allocated for its use in the territories of the Contracting Parties.

Article 31

In the performance of the tasks provided for in Article 2.1(e) and, where appropriate, Article 2.2(b), international agreements and national regulations relating to the admission to, flight over and security of, the territory of the Contracting Parties concerned shall be binding on the Agency, which shall take all necessary measures to ensure the application of such agreements and regulations.

Article 32

In the performance of the tasks provided for in Article 2.1(e) and, where appropriate, Article 2.2(b), the Agency shall give to those Contracting Parties which so request all necessary information relating to the aircraft of which it has cognisance in the exercise of its functions related to the airspace of the Contracting Party concerned, in order that the Contracting Parties concerned may be able to verify that international agreements and national regulations are being applied.

Article 33

The Contracting Parties recognise that it is necessary for the Agency to achieve financial equilibrium and undertake to make available to it the appropriate financial resources, within the limits and conditions defined in the present Convention and the Statute of the Agency at Annex I.

Article 34

1. Any dispute arising between two or more Contracting Parties or between one or more Contracting Parties and the Organisation relating to the interpretation, application or performance of this Convention, including its existence, validity or termination, which cannot be settled within a period of six months by direct negotiation or by any other means, shall be referred to arbitration of the Permanent Court of Arbitration in The Hague in accordance with the Optional Rules for Arbitration of the said Court.

2. The number of arbitrators shall be three.

3. The place of arbitration shall be The Hague. The International Bureau of the Permanent Court of Arbitration shall serve as Registrar, and shall provide such administrative services as the Permanent Court of Arbitration shall direct.

4. The decisions of the Permanent Court of Arbitration shall be binding on the Parties to the dispute.

Article 35

1. Without prejudice to the application of the provisions of Annex IV for the enforced recovery of route charges, the courts of the Contracting Parties shall have sole jurisdiction to hear disputes arising between the Organisation, represented by the Director General, and any natural person or corporate body, in connection with the application of acts of the Organisation.

2. Without prejudice to the application of the provisions of Annex IV for the enforced recovery of route charges, proceedings shall be instituted in the Contracting Party:

- (a) where the defendant has his/her residence or registered office;
- (b) where the defendant has a place of business, if neither his/her residence nor his/her registered office is situated in the territory of a Contracting Party;
- (c) in the absence of the grounds of jurisdiction set out in sub-paragraphs (a) and (b) above, where the defendant has assets;
- (d) in the absence of the grounds of jurisdiction set out in sub-paragraphs (a) to (c) above, where EUROCONTROL has its headquarters.

Article 36

1. The amendments made in conformity with the conditions prescribed in this Convention, to the Statute of the Agency set out in Annex I, and to Articles 16 *et seq.* of the provisions relating to the common route charges system set out in Annex IV, shall be valid and have effect in the territory of the Contracting Parties.

2. The tax provisions set out in Annex III and Articles 1 to 15 of the provisions relating to the common route charges system set out in Annex IV shall not be subject to amendment by the General Assembly.

3. Each Contracting Party shall be bound by Annex IV for a period of five years from the date on which this Convention enters into force. The five-year period shall be extended automatically for further five-year periods. A Contracting Party which has notified the General Assembly in writing, not less than two years before the expiry of the five-year period, that it does not consent to the extension of the period, shall cease to be bound by Annex IV at the expiry of this five-year period.

4. The rights and obligations of the withdrawing Contracting Party may be determined if necessary in a special agreement concluded between it and the Organisation.

This agreement will require to be approved by unanimity of the votes cast by the General Assembly, with the withdrawing Contracting Party taking no part in the vote.

5. The Contracting Party which is no longer bound by Annex IV may at any time request the General Assembly in writing to be bound once more by Annex IV. The Contracting Party in question shall again be bound by Annex IV six months after the day on which the General Assembly accepts the said request by unanimity of the votes cast by the Contracting Parties participating in the common system. The Contracting Party concerned shall be bound by Annex IV for a period of five years from the day on which it became bound. This period shall be extended automatically subject to the same conditions as those set out in paragraph 3 above.

Article 37

The Contracting Parties undertake to ensure to the Agency the application of current statutory provisions designed to safeguard the continuity of those general utilities required for the proper running of operational services.

Article 38

1. The Convention, as amended by the Protocol of 12 February 1981 and subsequently by the Protocol opened for signature at Brussels in 1997, shall be extended for an indefinite period.

2. Once the Convention as thus extended has been in force for twenty years, any Contracting Party may terminate application, as far as it is concerned, of the Convention by giving written notification to the Government of the Kingdom of Belgium, which shall inform the Governments of the other Contracting States of such notification.

The decision to withdraw shall take effect at the end of the year following the year in which notification of withdrawal is given, provided that the special agreement provided for in paragraph 3 below has been concluded by that date. Failing this, the decision to withdraw shall take effect on the date laid down in the said special agreement.

3. The rights and obligations, in particular of a financial nature, of the withdrawing Contracting Party shall be determined in a special agreement concluded between it and the Organisation.

This agreement shall require to be approved by unanimity of the votes cast by the General Assembly with the withdrawing Contracting Party taking no part in the vote.

4. The Organisation may be dissolved if the number of Contracting Parties is reduced to less than 50% of the Parties signatories to the aforesaid 1997 Protocol, subject to a decision of the General Assembly carried by unanimity of the votes cast.

5. If, in application of the above, the Organisation is dissolved, its legal personality and capacity, within the meaning of Article 4, shall continue to exist for the purposes of winding up the Organisation.

Article 39

1. The accession to the Convention, as amended by the Protocol of 12 February 1981 and by the Protocol opened for signature at Brussels in 1997, of any State not signatory to the latter Protocol shall be subject to the agreement of the General Assembly expressed by unanimity of the votes cast.

2. The President of the General Assembly shall notify the non-signatory State of the decision to accept the accession.

3. The instrument of accession shall be deposited with the Government of the Kingdom of Belgium which shall notify the Governments of the other signatory and acceding States.

4. Accession shall take effect from the first day of the second month following the deposit of the instrument of accession.

Article 40

1. The accession to the Convention, as amended by the Protocol of 12 February 1981 and by the Protocol opened for signature at Brussels in 1997, shall be open to regional economic integration organisations on terms and conditions to be agreed between the Contracting Parties and those organisations, of which one or more signatory States are members, these terms and conditions to be contained in an additional Protocol to the Convention.

2. The instrument of accession shall be deposited with the Government of the Kingdom of Belgium which shall notify the other Parties.

3. Accession of a regional economic integration organisation shall take effect from the first day of the second month following the deposit of the instrument of accession, provided that the additional Protocol referred to in paragraph 1 above has entered into force.

The present consolidated text of the enacting terms of the Convention and its Annexes are drawn up in the German, English, Bulgarian, Croatian, Danish, Spanish, French, Greek, Hungarian, Italian, Dutch, Norwegian, Portuguese, Romanian, Slovak, Slovenian, Swedish, Czech and Turkish languages. In accordance with the final provision of the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, the final provision of the Protocol of 12 February 1981 amending the aforesaid Convention as well as the final provision of the Protocol opened for signature at Brussels in 1997 consolidating the aforesaid Convention, as variously amended, the text in the French language shall prevail, in the event of any inconsistency between the texts.

ANNEX I

STATUTE OF THE AGENCY

Article 1

1. The Agency shall be the organ responsible for achieving the objectives and performing the tasks laid down in the Convention or set by the General Assembly or

by the Council and their subsidiary bodies. It shall initiate and submit proposals to the relevant bodies related to the exercise of the various functions and the performance of the various tasks of these bodies as well as to other tasks delegated to the Organisation. It shall also provide support to the General Assembly and the Council and their subsidiary bodies in the execution of their supervisory functions.

2. In the performance of its tasks, the Agency may be assisted, where necessary, by civil and military experts appointed by States or by the service providers' organisations concerned.

3. The Agency shall act as the focal point for intergovernmental co-operation and coordination in the field of air navigation. It shall submit proposals and provide the necessary support with a view to convergence towards, and implementation of, a uniform European air traffic management system.

4. In particular, it shall provide regulatory, information, support and advisory services to the Contracting Parties, and, on the basis of agreements pursuant to Article 2 of the Convention, to recognised international organisations and to non Contracting States.

5. In particular, the Agency shall:

(a) coordinate the implementation plans of the Contracting Parties to ensure convergence towards a uniform European air traffic management system;

(b) examine matters in the field of air navigation under study by the International Civil Aviation Organization (ICAO) and other international organisations concerned with civil aviation and coordinate and submit amendments to ICAO documents;

(c) develop proposals for detailed planning for the harmonisation and integration of the air traffic services and systems, in particular the ground and airborne components of air navigation systems of the Contracting Parties, with a view to the establishment of a uniform European air traffic management system;

(d) develop proposals concerning the arrangements for the strategic planning and design of routes and supporting airspace structures, in coordination with civil and military experts appointed by States;

(e) develop proposals for the harmonisation of air traffic services regulations, develop coordinated or common policies to improve air traffic management at and around airports and support the improvement of efficiency and flexibility in the use of airspace between civil and military users;

(f) make proposals or play an advisory role in all aspects of policy and planning. Its scope is not limited to en-route air traffic management but enlarged to cater for an integrated “gate-to-gate” approach to air traffic management. It is assisted by national experts in preparing these proposals;

(g) study and promote measures for improving cost-effectiveness and efficiency in the field of air navigation;

(h) develop common criteria, procedures and methods to ensure the highest efficiency and quality of air traffic management systems and air traffic services;

(i) coordinate Research, Development, Trials and Evaluation (RDTE) programmes of national air traffic management organisations, including the collection and dissemination of results;

(j) conduct common studies, tests and applied research as well as other technical developments;

(k) define, design, develop, validate and organise the implementation of a uniform system for European air traffic management under the aegis of the Council.

6. When the Agency provides air navigation services, its aim shall be:

(a) to prevent collisions between aircraft;

(b) to ensure the orderly and expeditious flow of air traffic;

(c) to provide advice and information conducive to the safe and efficient conduct of flights;

(d) to notify appropriate organisations regarding aircraft in need of search and rescue aid, and assist such organisations as required.

7. The Agency shall work in close collaboration with the users’ organisations in order to meet as efficiently and economically as possible the requirements of civil aviation. It shall work in close collaboration with the military authorities to meet, under the same conditions, the special requirements of military aviation.

8. For the accomplishment of its task, the Agency may, among other things, construct and operate the buildings and installations it requires. However, it shall call upon national technical services and make use of existing national installations whenever this is technically and economically justified, in order to avoid any duplication.

Article 2

1. Subject to the powers conferred upon the General Assembly and the Council, the Agency shall be managed by a Director General who shall enjoy wide management independence with regard to the implementation, utilisation and efficient operation of the technical, financial and personnel resources placed at his disposal. To this end, he/she shall take the measures which he/she deems necessary in order to fulfil his/her obligations.

2. Nevertheless, the Director General shall, with a view to submission for approval by the Council in accordance with the provisions of the Convention:

(a) elaborate annual and five-year work programmes stating the impact on the trends in the costs and unit rates;

(b) draw up the five-year financial plan and the budget including the financial obligations, and, as provided for in Annex IV, the unit rates and tariffs;

(c) present an annual report to the Council on the activities and financial position of the Organisation;

(d) present the principles governing the general structure of the Agency, the details of this structure being the sole responsibility of the Director General.

3. Furthermore, the Director General shall:

(a) submit reports at regular intervals and seek instructions from the Council whenever there is a risk of the objectives not being achieved, of the deadlines or financial ceilings being exceeded, or in the event of major changes to programmes;

(b) negotiate the agreements referred to in Article 2 of the Convention, within the framework of the directives issued by the Council.

Article 3

The Director General shall draw up and submit for the Council's approval, the Contract Regulations relating to:

(a) the letting of contracts for the supply of goods and services to the Organisation;

(b) the supply of goods and services by the Organisation;

(c) the sale or disposal of surplus assets.

Article 4

The Director General shall draw up, and submit for the Council's approval, the Financial Regulations, which shall determine, in particular, the conditions governing payment of national contributions, as well as the terms on which loans may be raised by the Agency, and will ensure proper financial management, including internal audit.

Article 5

1. Without prejudice to the right of the Contracting Parties to submit proposals, the Director General shall draw up and submit for the Council's approval, the Agency's Staff Regulations:

(a) they shall include, in particular, provisions relating to the nationality of personnel, selection and recruitment procedures and principles, salary scales, pensions, internal tax, disqualification for office, professional secrecy and continuity of the service;

(b) the Agency's staff shall be recruited from among nationals of the Contracting Parties. Personnel from non-Contracting States may be employed pursuant to the agreements provided for in Article 2.3 of the Convention, or in exceptional cases by duly substantiated decision of the Director General.

2. The Administrative Tribunal of the International Labour Organisation shall have sole jurisdiction in disputes between the Organisation and the personnel of the Agency, to the exclusion of the jurisdiction of all other courts and tribunals, national or international.

Article 6

1. The Director General shall be appointed for a term of office of five years by the General Assembly by a majority of the votes cast, on condition that the said majority attains three-quarters of the weighted votes cast according to the weighting provided for in Article 11 of the Convention and at least three-quarters of the Contracting Parties casting a vote. His/her term of office may be renewed once in the same manner. The Statute of the Director General shall be approved by the Council.

2. The Director General shall represent the Organisation in legal proceedings and for all civil purposes.

3. Furthermore, in conformity with the policies adopted by the General Assembly and the Council, the Director General:

(a) may appoint the staff and may terminate their services in accordance with the Staff Regulations; appointments to Grade A1 and A2 functions for a term

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of office of five years normally, renewable once, shall be subject to approval by the Council;

(b) may borrow money in accordance with the Financial Regulations and within the limits determined for that purpose by the Council;

(c) may enter into contracts in accordance with the Contract Regulations referred to in Article 3 and within the limits determined for that purpose by the Council;

(d) shall draw up and submit for the Council's approval the Regulation on data protection provided for in Article 7.2(1) of the Convention;

(e) shall draw up and submit for the Council's approval the rules and procedures applicable to standards, specifications and practices for air traffic management systems and services.

4. The Director General may discharge the aforesaid functions without prior reference to the Council, but he/she shall keep the Council informed of all measures taken in the exercise of the aforesaid powers.

5. The Council shall determine the conditions under which a substitute for the Director General may be appointed should he/she be unable to perform his/her duties.

Article 7

1. The Budget shall be balanced as between receipts and expenditure.

Estimates of all receipts and expenditure of the Agency shall be prepared for each financial year.

2. The financial year shall begin on 1 January and end on 31 December.

3. The draft budget and draft five-year financial plan shall be submitted by the Director General for the approval of the Council not later than 31 October of the preceding year.

Article 8

1. The Organisation may borrow on the international financial markets in order to obtain the necessary resources for the accomplishment of its tasks.

2. The Organisation may issue loans on the financial markets of a Contracting Party in accordance with national law relating to internal loans, or, in the absence of such law, with the agreement of the Contracting Party.

3. The Financial Regulations shall determine the procedures by which the Organisation raises and repays loans.

4. Each budget and each five-year financial plan shall specify the maximum amount which the Organisation may borrow during the years covered by that budget and the five-year financial plan.

5. In matters falling within the scope of this article, the Organisation shall act in agreement with the competent authorities of the Contracting Parties or with their banks of issue.

Article 9

The budget and the five-year financial plan may be revised during the financial year, if circumstances so require, in accordance with the requirements prescribed for their preparation and approval.

Article 10

1. The accounts of all the Agency budgetary receipts and expenditure, and the Agency's financial management, shall be audited annually by an Audit Board.

2. The Audit Board shall be assisted in its work by external consultant auditors. The outside firm of consultant auditors shall be appointed by the Council for a three-year term in accordance with Article 7.2(f) of the Convention.

3. The purpose of the audit carried out by the Audit Board, with the assistance of external consultant auditors, shall be to establish the regular nature of receipts and expenditure and to ensure sound financial management. The Audit Board shall submit to the Council at the close of each financial year a report incorporating the Agency's comments. The Council may direct the Agency to take any appropriate measures recommended in the audit report, in pursuance of Article 7.2(a) of the Convention.

4. The Audit Board shall ensure that an appropriate internal control mechanism is put in place within the Agency, which is in line with sound corporate practice and management.

5. The Audit Board may review other financial issues relating to the Agency in line with its Terms of Reference.

Article 11

1. Administrative or technical inspections of the services of the Agency may be carried out, if so required by the Council, acting either on its own initiative or at the request of the Director General.

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2. Such inspections shall be made by officers of the administrations of the Contracting Parties, with external assistance if required. Each inspection committee shall consist of at least two persons of different nationalities and should include as far as possible a person who has taken part in a previous inspection.

Article 12

The Council shall determine the working languages of the Agency.

Article 13

The Agency shall issue the publications necessary for its operation.

Article 14

All draft amendments of the Statute shall be submitted for the approval of the General Assembly pursuant to the provisions of Article 6.1(d) of the Convention.

ANNEX II

FLIGHT INFORMATION REGIONS

Federal Republic of Germany

Berlin Upper Flight Information Region

Hannover Upper Flight Information Region

Rhein Upper Flight Information Region

Bremen Flight Information Region

Düsseldorf Flight Information Region

Frankfurt Flight Information Region

München Flight Information Region

Berlin Flight Information Region

Republic of Austria

Wien Flight Information Region

Kingdom of Belgium - Grand Duchy of Luxembourg

Bruxelles Upper Flight Information Region

Bruxelles Flight Information Region

Republic of Bulgaria

Sofia Flight Information Region

Varna Flight Information Region

Republic of Cyprus

Nicosia Flight Information Region

Republic of Croatia

Zagreb Flight Information Region

Kingdom of Denmark

København Flight Information Region

Kingdom of Spain

Madrid Upper Flight Information Region

Madrid Flight Information Region

Barcelona Upper Flight Information Region

Barcelona Flight Information Region

Islas Canarias Upper Flight Information Region

Islas Canarias Flight Information Region

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French Republic - Principality of Monaco (*)

France Upper Flight Information Region

Paris Flight Information Region

Brest Flight Information Region

Bordeaux Flight Information Region

Marseille Flight Information Region (*)

Reims Flight Information Region

United Kingdom of Great Britain and Northern Ireland

Scottish Upper Flight Information Region

Scottish Flight Information Region

London Upper Flight Information Region

London Flight Information Region

Hellenic Republic

Athinai Upper Flight Information Region

Athinai Flight Information Region

Republic of Hungary

Budapest Flight Information Region

Ireland

Shannon Upper Flight Information Region

Shannon Flight Information Region

Shannon Oceanic Transition Area enclosed by the following co ordinates: 51° North 15° West, 51° North 8° West, 48° 30' North 8° West, 49° North 15° West, 51° North 15° West at and above FL55

Italian Republic

Milano Upper Flight Information Region

Roma Upper Flight Information Region

Brindisi Upper Flight Information Region

Milano Flight Information Region

Roma Flight Information Region

Brindisi Flight Information Region

Republic of Malta

Malta Flight Information Region

Kingdom of Norway

Oslo Upper Flight Information Region

Stavanger Upper Flight Information Region

Trondheim Upper Flight Information Region

Bodø Upper Flight Information Region

Oslo Flight Information Region

Stavanger Flight Information Region

Trondheim Flight Information Region

Bodø Flight Information Region

Bodø Oceanic Flight Information Region

Kingdom of the Netherlands

Amsterdam Flight Information Region

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Portuguese Republic

Lisboa Upper Flight Information Region

Lisboa Flight Information Region

Santa Maria Flight Information Region

Romania

Bucuresti Flight Information Region

Slovak Republic

Bratislava Flight Information Region

Republic of Slovenia

Ljubljana Flight Information Region

Kingdom of Sweden

Malmö Upper Flight Information Region

Stockholm Upper Flight Information Region

Sundsvall Upper Flight Information Region

Malmö Flight Information Region

Stockholm Flight Information Region

Sundsvall Flight Information Region

Swiss Confederation

Switzerland Upper Flight Information Region

Switzerland Flight Information Region

Czech Republic

Praha Flight Information Region

Republic of Turkey

Ankara Flight Information Region

Istanbul Flight Information Region

ANNEX III

TAX PROVISIONS

Article 1

1. Without prejudice to the exonerations provided for in Articles 22 and 23 of the Convention, when the Organisation in the exercise of its official activities makes substantial acquisitions of property or employs services of substantial value in respect of which indirect duties, taxes or charges (including such duties, taxes or charges levied on importation other than those referred to in Article 23.1 of the Convention) have been paid or are payable, the Governments of the Member States shall, whenever possible, take appropriate action to offset the effect on the Organisation of such duties, taxes or charges by means of an adjustment of the financial contributions to the Organisation or by means of remission or of reimbursement to the Organisation of the amount of the duties, taxes or charges.

2. With regard to payments by the Organisation to Member States in respect of capital investments made by those States, in so far as the cost thereof is to be refunded by the Organisation, the said States shall ensure that their statements of the amounts in question submitted to the Organisation do not include duties, taxes or charges from which the Organisation would have been exempt or which would be refunded to it or which would be the subject of an adjustment of the financial contributions to the Organisation if the Organisation had made those investments itself.

3. The provisions of this Article shall not apply in respect of duties, taxes or charges collected as payment for public utility services.

Article 2

Property acquired by the Organisation to which Article 1.1 applies may not be sold or otherwise disposed of except in accordance with conditions laid down by the Governments of the States concerned.

Article 3

1. The Director General of the Agency and the Staff members of the Organisation shall be subject to a tax for the benefit of the Organisation on salaries and emoluments paid by the Organisation in accordance with the rules and conditions determined by the General Assembly. Such salaries and emoluments shall be exempt from national income tax.

The Member States may, however, take into account salaries and emoluments exempted from national income tax when assessing the amount of the tax payable on other income of those in receipt of the said salaries and emoluments.

2. Paragraph 1 shall not apply to pensions and annuities paid by the Organisation.

3. The names, titles, addresses as well as remunerations and where appropriate pensions of employees and former employees to whom the provisions of paragraphs 1 and 2 of the present article are applicable shall be communicated periodically to the Member States.

Article 4

For the purpose of this Annex, the Organisation shall act in concert with the relevant authorities of the Member States concerned.

Article 5

1. This Annex shall replace the Additional Protocol to the Convention signed at Brussels on 6 July 1970, as amended by the Protocol signed at Brussels on 21 November 1978, both in turn amended by Article XXXVIII of the Protocol signed at Brussels on 12 February 1981 amending the Convention.

2. Notwithstanding the provisions of paragraph 1 above, obligations under Article 3 of the Additional Protocol of 6 July 1970 shall remain binding until the relevant claims and commitments have been fully discharged.

ANNEX IV

PROVISIONS RELATING TO THE COMMON ROUTE CHARGES SYSTEM

Article 1

The Contracting Parties agree to continue to administer a joint system for the establishment, billing and collection of route charges as a single charge per flight and to use for this purpose the services of EUROCONTROL.

Article 2

The Organisation shall establish, bill and collect the route charges levied on users of en route air navigation services on a proposal from the Contracting Parties participating in the common route charges system.

Article 3

In matters relating to route charges, the Council shall be the body responsible for determining the arrangements for giving effect to the General Assembly's decisions in route charge matters and supervising the Agency's tasks in this field.

The Council shall *inter alia*:

- (a) prepare decisions for the General Assembly in route charge policy matters;
- (b) determine the unit of account in which route charges are expressed;
- (c) determine, in accordance with decisions taken on the basis of Article 6.2 of the Convention, the conditions of application of the system, including the conditions of payment, as well as the unit rates and tariffs and the period during which they are to apply;
- (d) approve reports relating to EUROCONTROL route charges activities;
- (e) adopt the Financial Regulations applicable to the Route Charges System;
- (f) approve the budgetary annexes relating to EUROCONTROL route charges activities.

Article 4

The route charges indicated on the bill issued by the Organisation shall constitute a single charge due in respect of each flight, which shall constitute a single claim by EUROCONTROL, payable at its Headquarters.

Article 5

1. The charge shall be payable by the person who was the operator of the aircraft at the time when the flight was performed. The charge shall attach as a lien to the aircraft which incurred the charge, irrespective of in whose hands it may be, if the law of the Contracting Party concerned so permits.

2. Where an ICAO designator or any other recognised designator is used in identification of the flight, EUROCONTROL may deem the operator to be the aircraft

operating agency to whom the ICAO designator was allocated or was in the process of allocation at the time of the flight or identified in the filed flight plan or identified by use of that ICAO or other recognised designator in communication with air traffic control or by any other means.

3. If the identity of the operator is not known, the owner of the aircraft shall be regarded as the operator unless he/she proves which other person was the operator.

4. The operator and the owner of the aircraft shall be jointly and severally liable to pay the charge, if the law of the Contracting Party concerned so permits.

Article 6

1. Where the amount due has not been paid, measures may be taken to enforce recovery, including detention and sale of aircraft, if the law of the Contracting Party where the aircraft has landed so permits.

2. Measures may also include, at EUROCONTROL's request, the review by a Contracting Party or any competent body of the administrative authorisation connected with air transport or air traffic management issued to a person liable to pay the charge, if the relevant legislation so provides.

Article 7

1. Proceedings for recovery of the amount due shall be instituted either by EUROCONTROL or, at EUROCONTROL's request, by a Contracting Party, or by any body authorised for that purpose by a Contracting Party.

2. Recovery shall be effected by judicial or administrative procedure.

3. Each Contracting Party shall inform EUROCONTROL of the procedures applied in that State and of the competent courts, tribunals or administrative authorities.

Article 8

Recovery proceedings shall be instituted in the territory of the Contracting Party:

- (a) where the debtor has his/her residence or registered office;
- (b) where the debtor has a place of business, if neither his/her residence nor his/her registered office is situated in the territory of a Contracting Party;
- (c) where, in the absence of the grounds of jurisdiction set out in subparagraphs (a) and (b) above, the debtor has assets;

(d) where EUROCONTROL has its headquarters, in the absence of the grounds of jurisdiction set out in sub-paragraphs (a) to (c) above.

Article 9

1. The provisions of Articles 5, 6, 7 and 8 shall not prevent any Contracting Party, or any body authorised by a Contracting Party, acting at the request of EUROCONTROL, from proceeding with the recovery of the amount due by the detention and sale of aircraft in accordance with the administrative or judicial procedure of the relevant Contracting Party.

2. The power so to detain and sell shall extend to the equipment, spare parts, fuel, stores and documents of the aircraft detained or sold.

3. The validity and effect of detention and sale shall be determined by the law of the Contracting Party where the detention has been effected.

Article 10

EUROCONTROL shall have the capacity to institute proceedings before the competent courts, tribunals and administrative authorities of States not parties to the Convention.

Article 11

The following decisions taken in a Contracting Party shall be recognised and enforced in the other Contracting Parties:

(a) final decisions of a court or tribunal;

(b) decisions of an administrative authority which have been subject to review by a court or tribunal, but are no longer so, either because the court or tribunal has dismissed the appeal by a final decision, or because the appeal has been withdrawn, or because the time for lodging the appeal has expired.

Article 12

The decisions referred to in Article 11 shall not be recognised or enforced in the following cases:

(a) if the court, tribunal or administrative authority of the Contracting Party of origin was not competent in accordance with Article 8;

(b) if the decision is contrary to public policy of the Contracting Party addressed;

(c) if the debtor did not receive notice of the decision of the administrative authority or of the institution of the proceedings in sufficient time to enable him/her to defend the case or to appeal to a court or a tribunal;

(d) if proceedings relating to the same route charges have been previously instituted and are still pending before a court, tribunal or an administrative authority of the Contracting Party addressed;

(e) if the decision is incompatible with a decision relating to the same route charges given in the Contracting Party addressed;

(f) if the court, tribunal or administrative authority of the Contracting Party of origin, in order to arrive at its decision, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the Contracting Party addressed, unless the same result would have been obtained by the application of the rules of private international law of that Contracting Party.

Article 13

The decisions referred to in Article 11, if enforceable in the Contracting Party of origin, shall be enforced in accordance with the law of the Contracting Party addressed. If necessary, an order of enforcement shall on request be issued by a court, tribunal or an administrative authority of the Contracting Party addressed.

Article 14

1. The request shall be accompanied by:

(a) a certified copy of the decision;

(b) in the case of a decision of a court or tribunal rendered by default, the original or a certified copy of a document establishing that notice of the institution of the proceedings was duly served on the debtor;

(c) in the case of an administrative decision, a document establishing that the requirements of Article 11 have been met;

(d) a document establishing that the decision is enforceable in the Contracting Party of origin and that the debtor has received notice of the decision in due time.

2. A duly certified translation of the documents shall be supplied if the court, tribunal or administrative authority of the Contracting Party addressed so requires. No legalisation or similar formality shall be required.

Article 15

1. The request can be rejected only for one of the reasons set forth in Article 12. In no case may the decision be reviewed on its merits in the Contracting Party addressed.

2. The procedure for the recognition and enforcement of the decision shall be governed by the law of the Contracting Party addressed insofar as the Convention does not otherwise provide.

Article 16

The amount collected by EUROCONTROL shall be paid to the Contracting Parties in accordance with the decisions of the Council.

Article 17

Where the claim is recovered by a Contracting Party, the amount collected shall be paid without delay to EUROCONTROL, which shall proceed in accordance with Article 16. The recovery costs incurred by that Contracting Party shall be charged to EUROCONTROL.

Article 18

The competent authorities of the Contracting Parties shall co-operate with EUROCONTROL in the establishment and collection of route charges.

Article 19

If the Council decides unanimously to abandon recovery of a charge, the Contracting Parties concerned may take whatever action they deem fit. In such a case, the provisions of the Convention relating to recovery and to recognition and enforcement of decisions shall cease to apply.”.

Part XIV

Amendment of the
Banking Act, Cap.
371.

75. (1) This Part amends and shall be read and construed as one with the Banking Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Amendment of
article 2 of the
principal Act.

76. In article 2 of the principal Act for the definition of “electronic money” there shall be substituted the following:

““electronic money” means the monetary value as represented by a claim on the issuer issuing such money which is:

(i) stored on an electronic device; and

(ii) issued on receipt of funds of an amount not less in value than the monetary value issued; and

(iii) accepted as means of payment by undertakings other than the issuer;”.

Amendment of
article 7A of the
principal Act.

77. Article 7A of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “issuing electronic money institution”, there shall be substituted the words “issuer”; and

(b) in subarticle (2) thereof, for the words “issuing electronic money institution shall clearly indicate” there shall be substituted the words “issuer shall state”, and for the words “redemption, and” there shall be substituted the words “redemption in the contract between the issue and the holder, and”.

Part XV

Amendment of
Excise Duty Act,
Cap. 382.

78. (1) This Part amends and shall be read and construed as one with the Excise Duty Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance may by notice in the Gazette establish.

79. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) immediately after the definition of “excise goods” there shall be added the following new definition:

“ “excise officer” means any officer charged by lawful authority with the performance of any duty or function under this Act;”; and

(b) the definition of “proper officer” shall be deleted.

80. In the principal Act and in any regulations made thereunder, for the words “officer”, “officer of Customs” or “proper officer” there shall be substituted in each case the words “excise officer” and for the words “officers”, “officers of Customs” or “proper officers” there shall be substituted in each case the words “excise officers”. General amendment of principal Act.

81. Articles 19 to 21 of the principal Act shall be renumbered as articles 36 to 38 respectively, and any reference to any of the said articles 19 to 21 or to any subarticle thereof in the principal Act or in any other law shall be substituted by a reference to the same article or subarticle as renumbered by this article. Renumbering of articles 19 to 21 of the principal Act.

82. For article 18 of the principal Act there shall be substituted the following new articles 18 to 35: Substitution of article 18 of the principal Act by new articles 18 to 35.

“Powers to excise officers.

18. (1) It shall be lawful for any excise officer to carry out inspections, at reasonable time, at any tax warehouse or place where excise goods are kept or suspected to be kept.

(2) The person in whose name the tax warehouse is registered, shall provide such excise officers with the necessary assistance for the execution of their duties.

(3) A person other than the person in whose name a tax warehouse is registered, who is in possession of any books, documents including machine readable material or other records shall likewise be under a duty to produce the same to the Comptroller or an excise officer.

(4) Any person who wilfully or maliciously refrains from giving his assistance, or wilfully obstructs, impedes or delays any excise officer in the execution of his duties or powers under this Act or under regulations made thereunder, shall be guilty of an offence under this article and shall be

liable, on conviction, to a fine (*multa*) not exceeding five thousand liri.

Issue of a search warrant.

19. (1) Without prejudice to the provisions of the foregoing article, the Attorney General or a magistrate may, if satisfied on the sworn information by an excise officer that there are reasonable grounds for suspecting that -

(a) anything liable to forfeiture under this or any other law relating to excise, or

(b) any records relating to transactions in contravention of this or any other law relating to excise,

are kept or concealed on or at any premises, place or vehicle issue a search warrant.

(2) A search warrant issued under this article shall be sufficient authority for the excise officer named therein, alone or accompanied by such other excise officers or such other persons as the excise officer considers necessary, at any time or times within one month of the date of issue of the warrant, to enter (if need be by force) the premises or other place or vehicle named or specified in the warrant, to search such premises, place or vehicle, to examine anything found therein or thereat, to inspect any record found therein or thereat and, if there are reasonable grounds for suspecting that anything found therein or thereat is liable to forfeiture under this Act or any other law relating to excise, or that a record found there may be required as evidence in proceedings under this Act or such other law, to detain or seize the thing as liable to forfeiture or, in the case of a record, to detain it for so long as it is reasonably required for such purpose.

Power to stop vehicles.

20. (1) An excise officer in uniform may stop any vehicle in order -

(a) that such excise officer, or any excise officer accompanying such excise officer, may exercise any power conferred on them by article 19 in relation to excise products or any other products chargeable with excise duty under any other law, where there are reasonable grounds to believe that such products are being transported in or on such vehicle, or

(b) to examine and take samples of mineral oil under article 21(1)(c).

(2) Any person in charge of a moving vehicle shall, at the request of an excise officer in uniform or a Police officer, stop such vehicle.

(3) Any person in charge of a vehicle shall, whether such vehicle has been stopped by an excise officer under this article or article 20(1), or is already stationary, at the request of an excise officer -

(a) keep such vehicle stationary for such period as is reasonably required to enable an excise officer to exercise any power conferred on such excise officer by article 19 or by article 20(1), or

(b) where such vehicle is, in the opinion of such excise officer, situated in a place unsuitable for the exercise of any power conferred on such officer by the said articles, take such vehicle or cause it to be taken to such place as such excise officer may consider suitable for the exercise of such power.

Power to examine and search vehicles and to take samples.

21. (1) An excise officer, on production of his authorisation if so requested by any person affected, or any excise officer accompanying such officer, may -

(a) examine a vehicle,

(b) carry out such searches of a vehicle as may appear to the excise officer to be necessary to establish whether -

(i) anything on or in the vehicle or in any manner attached to the vehicle is liable to forfeiture under this Act or any other law relating to excise, or

(ii) any excisable products being transported in or on, or in any manner attached to, the vehicle correspond in every material respect with the description of any such products in a document referred to in paragraph (d) (iii),

(c) take samples, without payment, of any product subject to excise duty in or on, or in any manner attached to the vehicle, and

(d) question the person in charge of the vehicle in relation to the vehicle or anything on or in any manner attached to the vehicle, and require such person -

(i) to give, within such time and in such form and manner as may be specified by the excise officer, all such information in relation to the vehicle as may reasonably be required by such excise officer and is in the possession or procurement of such person,

(ii) within such time and in such manner as may be specified by the excise officer, to produce and permit the inspection of, and the taking of copies of, or of extracts from, all such records relating to the vehicle and any products being so transported, as are reasonably required by such excise officer and are in the possession or procurement of the person, and

(iii) to produce to the excise officer any accompanying document, duty document or exemption certificate accompanying any products subject to excise duty being transported in or on, or in any manner attached to, the vehicle.

(2) An excise officer, on production of his authorisation, if so requested by any person affected, may -

(a) examine and take samples of any mineral oil in any fuel tank or otherwise present on or in any vehicle, or anything attached to any vehicle, for use or capable of being used for combustion in the engine of the vehicle, whether or not the vehicle is attended,

(b) examine or inspect any vehicle or anything attached to any vehicle for the purposes of paragraph (a),

(c) question -

(i) the owner of any vehicle,

(ii) any person who for the time being stands registered as the owner of any vehicle,

(iii) any director, manager or principal officer of such owner where the registered owner is not one or more individuals, or

(iv) the person in charge of any vehicle,

in relation to such mineral oil, and require such owner, person, director, manager or principal officer to give to such excise officer any information in relation to such mineral oil as may reasonably be required and which is in the possession or procurement of such owner, person, director, manager or principal officer, as the case may be.

Entry and
search of
premises.

22. (1) An excise officer may, at all reasonable times, on production of his authorisation, if so requested by any person affected, enter any premises or other place (other than a dwelling) in which -

(a) the production, processing, holding, storage, keeping, importation, purchase, packaging, offering for sale, sale or disposal of any excise goods is being or is reasonably believed by the excise officer to be carried on,

(b) the manufacture, distribution, storage, repair, modification, importation, dealing, delivery or disposal of mechanically propelled vehicles is being, or is reasonably believed by the excise officer to be carried on, or

(c) any records relating to, or reasonably believed by the excise officer to relate to, the products or activities referred to in paragraphs (a) and (b) are being kept or are reasonably believed by the excise officer to be kept.

(2) An excise officer, on production of his authorisation, if so requested by any person affected, may -

(a) enter and inspect any premises or other place (other than a dwelling) for the purposes of this article and bring onto those premises any vehicle being used in the course of his or her duties,

(b) make such search and investigation of such premises or place as such excise officer may consider to be proper.

(3) An excise officer in or on any premises or place pursuant to subarticle (1) hereof may there -

(a) carry out such search and investigation as such excise officer may consider to be proper,

(b) take account of, and without payment, take samples of any product subject to excise duty and of any materials, ingredients and substances used or likely to be used in the manufacture of such product,

(c) in relation to any records referred to in subarticle (1)(c) hereof -

(i) search for, inspect and take copies of or extracts from any such records (including, in the case of any information in a non-legible form, a copy of, or an extract from, such information in a permanent legible form),

(ii) remove and retain such records for such period as may reasonably be required for their further examination, and

(iii) require any person to produce any such records which are in that person's possession, custody or procurement and in the case of information in a non-legible form, to produce it in a legible form or to reproduce it in a permanent legible form,

(d) question any person present in relation to -

(i) any product referred to in subarticle (1)(a) hereof or any materials, ingredients or other substances used or intended to be used in the manufacture of such product,

(ii) any vehicle,

(iii) any records referred to in subarticle (1)(c) hereof, produced or found in or on such premises or place, and such person shall give to such excise officer all information required of such person which is in such person's possession, custody or procurement.

(4) An excise officer in or on any premises or place pursuant to article 21, or any person accompanying an excise officer pursuant to article 20, may require any person present to give to such excise officer or such other person his or her name and address.

Obligation to give information.

23. An excise officer may require any person whom such officer has reasonable cause to believe to be guilty of an offence under subarticle 16(1) or article 17 of the Act, to furnish to such officer -

(a) his or her name, address and date of birth,

(b) all such information in relation to the goods subject to excise duty as may be reasonably required by such excise officer or member and which is in the possession or procurement of such person.

Power to detain.

24. Where an excise officer has reasonable grounds to suspect that a person is committing an offence under subarticle 16(1) or article 17 of the Act, then such officer may detain such person without warrant and as soon as immediately practicable thereafter and in any case not later than two hours after such detention, place such officer in the custody of an officer of the Police force whereupon such officer of the Police force shall either release such person or proceed to present such person before a court and the provisions of the Criminal Code relating to arrest shall *mutatis mutandis* apply to the excise officer and the officer of the Police force.

Detention of goods and vehicles.

25. (1) Where an excise officer or a Police officer reasonably suspects that any products, subject to excise duty or any other goods, are liable to forfeiture under this Act then -

(a) all such excisable products or other goods,

(b) any other thing being made use of in the conveyance of such products or goods, and

(c) any vehicle in or on which or attached to which any such products or goods are found,

may be detained by such excise officer or Police officer until such examination, enquiries or investigations as may reasonably be deemed necessary by such excise officer or

another excise officer, or Police officer have been made for the purposes of determining whether or not such products, goods, thing or vehicle are liable to forfeiture.

(2) When a determination referred to in subarticle (1) of this article has been made in respect of any such products, other goods, thing or vehicle or on the expiry of a period of thirty days from the date on which such products, goods, thing or vehicle were detained under that subarticle, whichever is the earlier, such products, goods, thing or vehicle are to be either seized as liable to forfeiture under the Act, or released.

Seizure of goods or vehicles.

26. (1) Any goods or vehicles that are liable to forfeiture under the Act may be seized by an excise officer.

(2) Any Police officer who has detained any goods or vehicles that are liable to forfeiture under the Act shall deliver the same to an excise officer as soon as is practically possible and in no case later than forty eight hours after such detention.

Notice of seizure.

27. (1) Subject to subarticle (2) of this article, an excise officer shall give notice of any seizure and of the grounds therefor to any person who to the officer's knowledge was at the time of the seizure the owner or one of the owners of the thing seized.

(2) Notice under subarticle (1) hereof need not be given under this article to a person if the articles were detained in the presence of the person, of the person suspected to have committed the offence that occasioned the seizure or in the case of an article seized on any ship or aircraft, in the presence of the master or commander of such ship or aircraft.

(3) Notice under subarticle (1) hereof shall be given in writing and the notice shall include a copy of article 28 and shall be deemed to have been duly given to the person concerned -

(a) if it is delivered to the person personally, or

(b) if it is addressed to the person and left or forwarded by registered post to the person at the usual or last known place of abode or business of the person or, in the case of a body corporate, at its registered or principal office, or

(c) if the person has no known address in Malta or Gozo, by publication of notice of the seizure concerned in the Gazette.

Notice of claim.

28. (1) A person who claims that anything seized is not liable to seizure (such person hereinafter in this article and in article 29 referred to as “the claimant”) shall, within thirty days of the date of the notice of seizure or, where no such notice has been given to the claimant, within thirty five days of the date when the article was first detained, give notice in writing of such claim to the Comptroller.

(2) The claimant shall, within thirty days from the date upon which such notice was given, institute proceedings to declare such articles as not being subject to seizure in the competent civil court, in default of which the claim shall be deemed to have been abandoned.

(3) A notice under subarticle (1) hereof shall specify the name and address of the claimant and, in the case of a claimant who is outside Malta, the name and address of a person in Malta who is authorised by him to act as his attorney and to accept service of any document required to be served on the claimant and to act on behalf of the claimant.

Power to deal with articles seized.

29. (1) The Comptroller may, in his discretion, and if so ordered on writing by the Minister responsible for finance restore anything seized under the Act.

(2) Without prejudice to subarticle (1) of this article, where a notice of claim relating to the thing seized has been duly given under article 28, the Comptroller may as he thinks fit and notwithstanding the pendency of the proceedings wherein the seizure is contested -

(a) deliver it up to the claimant on payment to the Comptroller of such sum as the Comptroller thinks proper, being a sum not exceeding that which in the opinion of the Comptroller represents the value of the thing, including any duty or tax chargeable on it which has not been paid, or

(b) if the thing seized is in the opinion of the Comptroller of a perishable nature, sell or destroy it.

(3) If, where anything is delivered up, sold or destroyed under this article, it is held by the court in proceedings under article 28 that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall, on demand tender to such claimant -

(a) an amount equal to any sum paid by the claimant under subarticle (2) hereof,

(b) if he has sold the thing, an amount equal to the proceeds of sale, or

(c) if he has destroyed the thing, an amount equal to the market value of the thing at the time of its seizure, together with the reasonable costs of any court proceedings to challenge the seizure where the Comptroller is of the opinion that the claim was justified.

(4) If the claimant accepts the amount tendered under subarticle (3), such claimant shall not be entitled to maintain proceedings in any court on account of the seizure, detention, sale or destruction of the thing concerned.

(5) All goods seized by an excise officer or by a Police officer as liable to forfeiture shall, after such seizure has become final either by the lapse of time allowed for contestation or after such contestation has been unsuccessful, be either destroyed, sold or otherwise disposed of in accordance with the provisions of article 38.

(6) Notwithstanding any other provision of this Act relating to goods seized as liable to forfeiture, an excise officer who seizes as liable to forfeiture any spirits or any stills, vessels, utensils, wort or other material for manufacturing, distilling or preparing spirits may at his discretion spill, break up or destroy any of those goods.

Appeals to
Comptroller.

30. (1) Any person who, in the opinion of the Comptroller, is liable to pay excise duty and is called on by the Comptroller to pay such duty may appeal against the decision of the Comptroller.

(2) Any person who believes that he is entitled to a refund of any excise duty paid by him may appeal from any decision of the Comptroller denying him such refund.

(3) Any person who -

(a) has not been approved by the Comptroller as an authorised warehouse keeper under regulation 4 of the Excise Goods Regulations or has been refused approval in respect of any premises as a tax warehouse under article 9, or

(b) has had any such approval revoked under article 11,

may appeal to the Comptroller.

(4) An appeal under subarticles (1), (2) or (3) shall be in writing and shall set forth in detail the grounds of appeal.

(5) An appeal shall be lodged by the person concerned with the Comptroller within the period of two months from the date of -

(a) the payment of the excise duty,

(b) the notification by the Comptroller to pay an amount of excise duty,

(c) any partial refund of the excise duty,

(d) the notification by the Comptroller of a refusal of a refund of excise duty, or

(e) the notification by the Comptroller of any decision referred to in subarticle (3),

or within such longer period as the Comptroller may, in exceptional cases, allow.

(6) An appeal shall, subject to subarticle (12), be determined by the Comptroller within a period of 30 days from its lodgement with him.

(7) The Comptroller may appoint one or more excise officers for the purposes of carrying out his functions under this article but no such officer shall be so appointed to determine an appeal in respect of any matter which such excise officer may have himself determined.

(8) The Comptroller shall in writing notify the appellant of the determination of the appeal and the reasons for such determination.

(9) Where the Comptroller on appeal determines that a refund is due, he shall repay the amount overpaid to the appellant.

(10) Where the Comptroller on appeal determines that any excise duty is due, the appellant concerned shall pay the amount so due.

(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the comptroller for inspection, if so required.

(12) Where an appeal has not been determined by the Comptroller within the time referred to in subarticle (6) the Comptroller shall be deemed to have refused the appeal.

Appeal to
Excise Duty
Appeals
Board.

31. (1) Save as provided for in article 32 an appeal from the decision of the Comptroller under article 30 shall lie to the Excise Duty Appeals Board.

(2) A person who intends to appeal under this article against a determination of the Comptroller shall -

(a) within 30 days of the notification of such determination, or

(b) within 30 days of the expiry of the time limit for such determination,

whichever is the earlier, give notice in writing to him of such intention.

(3) (a) Subject to paragraph (c), where a notice or other document which is required or authorised to be served by this article falls to be served on a body corporate, such notice is to be served on the secretary or other officer of the body corporate.

(b) Any notice or other document which is required or authorised by this article -

(i) to be served by the Comptroller or by an appellant may be served by post, and

(ii) in the case of a notice or other document addressed to the Comptroller, it shall be addressed and sent to the Comptroller of Customs, Custom House, Valletta CMR 02, or such other address as may be determined from time to time by the Minister by notice in the Gazette.

(c) Any notice or other document which is required or authorised to be served by the Comptroller on an appellant under this article may be sent to the advocate, accountant or other agent of the appellant and a notice so served is deemed to have been served on the appellant unless the appellant proves to the satisfaction of the Board, that he or she had, before the notice or other document was served, withdrawn the authority of such advocate, accountant or other agent to act on his or her behalf.

(4) *Prima facie* evidence of any notice given under this article by the Comptroller or by an officer of the Comptroller may be given in any proceedings by production by an officer of the Comptroller of a document purporting to be a copy of the notice and it shall not be necessary to prove the official position of the person by whom the notice purports to be given or, if it is signed, the signature, or that the person signing and giving it was authorised so to do.

Excise Duty
Appeals
Board.

32. (1) There shall be a Board to be designated “the Excise Duty Appeals Board”, hereinafter referred to as the Board, which shall be composed of three members. The chairman shall be a person with experience in the legal field, appointed by the Minister, and of the two other members of the Board one shall be a person who, in the opinion of the Minister, can represent the interests of the Government and the other a person who in the opinion of the Minister can represent the interests of importers, appointed by the Minister after consultation with representatives of the trade.

(2) Should any of the members of the Board have a direct personal interest in any dispute he shall declare such interest and shall abstain from taking cognizance of that dispute, and such members may be challenged accordingly.

(3) The Minister may also appoint substitute members of the Board.

(4) The Board shall give due prompt consideration to any matter relating to excise referred to it by the Comptroller in accordance with the provisions of subarticle (12) of article 30.

(5) The Board shall regulate its own procedure.

(6) No appeal shall lie to Board where the duty in dispute does not exceed one hundred and fifty liri.

(7) After considering the matter referred to it, and any submissions which may have been made to it by the Comptroller and the appellant, the Board shall determine whether the principles set out in article 30 have been followed by the Comptroller in the assessment made by him.

(8) Where the Board decides that the principles referred to in subarticle (7) hereof have been followed, the determination made by the Comptroller in accordance with the provisions of subarticle (6) of article 30, shall be confirmed; where the Board decides that the said principles have not been followed, the Board shall recommend to the Minister to direct the Comptroller to make a fresh determination, which recommendation shall contain the principles which in the opinion of the Board had been overlooked by the Comptroller. The Minister shall thereupon refer the matter to the Comptroller for a fresh determination, which shall then be final.

(9) Notice of the decision on appeal and the reasons therefor shall be given in writing to the appellant who shall also be informed of his rights of any further appeal.

(10) Nothing in this article contained shall be deemed to affect any right of the appellant to contest a decision by the Board before any competent court.

Security for
duty in
dispute.

33. Unless the Board determines otherwise because the provision of such deposit or the giving of such guarantee could impinge the claimant's right of appeal, where an appeal has

been made under article 30 or 32 in respect of an amount of duty which a person is called on by the Comptroller to pay, such appeal shall not be determined by the Comptroller or the Board, as the case may be, unless such amount of duty has been deposited with the Comptroller or adequate security therefor in the form of a banker guarantee has been given.

No appeal pending criminal prosecution.

34. Where criminal prosecution is pending against any person in respect of any offence under this Act in connection with which any seizure has been made under this Act, or where a person has been informed that such proceedings are being contemplated then no appeal under articles 30 to 32 may be entered until the criminal prosecution has been finally concluded or the said person has been informed that no prosecution will be initiated and the terms referred in the said articles for appeal shall be suspended accordingly.

Excise officers may be given powers of Executive Police.

35. (1) It shall be lawful for the President of Malta, by a notice published in the Gazette, to authorise any Excise officer or any officer of customs to exercise, within such limits as shall by a notice published as aforesaid be prescribed by the President of Malta, such functions as by any law or regulations made thereunder, are vested in the officers of the Executive Police.

(2) Before any such officer or person shall exercise any of the functions referred to in subarticle (1) of this article, he shall take the oaths here following:

“I do swear/solemnly affirm that I will bear true faith and allegiance to the people and the Republic of Malta and its Constitution. (So help me God).

“I do swear/solemnly affirm that while holding the office of (*insert description of office*) I will do the best of my knowledge and ability discharge the functions of an officer the Executive Police faithfully and according to law. (So help me God).”.

Part XVI

83. (1) This part amends the Companies Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the Companies Act, Cap. 386

(2) This Part shall be read and construed as one with the principal Act, and shall come into force on such date as the Minister responsible for finance and economic affairs may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article 84 of the principal Act.

84. Article 84 of the principal Act shall be amended as follows:-

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

“(b) furthermore, the memorandum of the company shall limit the object of the company to either one of the following -

(i) the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of spreading investment risk; and giving shareholders of the company the benefit of the results of the management of its funds, and in the fulfilment of that object, it shall be entitled to perform any act which is connected with or ancillary thereto; or

(ii) to act and operate as a Retirement Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act; and”;

(b) immediately after subarticle (10) thereof, there shall be inserted the following new subarticle:

“(11) The Minister, in consultation with the Minister responsible under the Special Funds (Regulation) Act, acting on the advice of the Malta Financial Services Authority, may make regulations to apply and extend *mutatis mutandis* the provisions of this article to investment companies with variable share capital established for the purpose of acting and operating as a Retirement Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act; and without prejudice to the generality of the foregoing may, by such regulations, provide for any matter referred to in the immediately preceding subarticle.”.

Amendment of article 194 of the principal Act.

85. For paragraph (a) of subarticle (6) of article 194 of the principal Act there shall be substituted the following:

“(a) the business of the company consists either of -

(i) investing in funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds; or

(ii) acting and operating as a Retirement Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act;”.

86. In the proviso to subarticle (1) of article 218 of the principal Act for the words “an application in terms of paragraph (a)” there shall be substituted the words “an application in terms of paragraphs (b) or (c)”.

Amendment of article 218 of the principal Act.

PART XVII

87. (1) This Part amends and shall be read and construed as one with the Telecommunications (Regulation) Act, hereinafter in this Part referred as “the principal Act”.

Amendments to the Telecommunications (Regulation) Act, Cap. 399.

(2) This Part shall come into force on such date as the Minister responsible for telecommunication may by notice in the Gazette establish.

88. The title of Part 5 of the principal act shall be substituted by the following:

Re-naming of Part 5 of the principal Act.

“5. Protection of Conditional Access Services and Further Functions of the Authority”.

89. Immediately following article 32 of the principal Act there shall be added the following new article 32A:

Addition of new article 32A to the principal Act.

“Legal protection of services based on or consisting of conditional access.

32A. (1) In this article:

“broadcaster” means the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them, or has them transmitted, complete and unchanged, by a third party;

“conditional access” means any technical measure or arrangement permitting access in an intelligible form, and subject to prior individual authorisation, to one of the services constituting a protected service;

“conditional access device” means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service;

“illicit device” means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service without the authorisation of the service provider;

“programme service” means all the items within a single service provided by a given broadcaster;

“protected service” means any of the following services when provided against remuneration and on the basis of conditional access:

(i) Television programme services;

(ii) Radio broadcasting services including radio programmes intended for reception by the public, transmitted by wire or over the air, including by satellite;

(iii) Information society services offered by electronic means, at a distance and at the individual request of the recipient of the services

or the provision of conditional access to the above services considered as a service in its own right.

Infringing
acts
constituting a
criminal
offence.

(2) Any person who -

(a) manufactures or produces illicit devices for commercial purposes; or

(b) imports illicit devices into Malta for commercial purposes; or

(c) distributes illicit devices in or from Malta for commercial purposes; or

(d) sells or rents out illicit devices for commercial purposes; or

(e) is in possession of illicit devices for commercial purposes; or

(f) installs, maintains or replaces illicit devices for commercial purposes; or

(g) commercially promotes, markets or advertises illicit devices,

shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of ten thousand liri or to both such fine and imprisonment.

Destruction
of illicit
devices.

(3) In proceedings taken under subarticle (2) the Court shall order the Commissioner of Police to destroy goods established to be illicit devices without compensation of any sort to any person and, where a person is found guilty of infringing the provisions of subarticle (2) in respect of the said goods, at the cost of that person.

Civil
proceedings.

(4) A provider of a protected service whose interests are affected by any act mentioned in subarticle (2)(a) to (g) shall have against the perpetrator of any such act and in respect of such act:

(a) a civil action for damages, and

(b) a right to demand a warrant of prohibitory injunction to obtain provisional protection of his interests, and

(c) a right to demand an order from the competent Court for the destruction or, if appropriate, the disposal outside commercial channels of illicit devices.”.

90. In subarticle (1) of article 40 of the principal Act, for the words “under article 39(1)(d)” there shall be substituted the words “under articles 32A and 39(1)(d)”.

Amendment of
article 40 of the
principal Act.

Part XVIII

Amendment of the
Copyright Act,
Cap. 415.

91. (1) This Part of this Act amends and shall be read and construed as one with the Copyright Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for the protection of intellectual property may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

Amendment of
article 2 of the
principal
Act.

92. Article 2 of the principal Act shall be amended as follows:-

(a) immediately before the definition of “artistic work” there shall be added the following definition:-

“ “European Union” means the European Union referred to in the Treaty;”;

(b) immediately after the definition “Malta” there shall be added the following definition:-

“ “Member State” means a state which is a member of the European Union;”;

(c) immediately after the definition of “reproduction” there shall be added the following definition:-

“ “rights-management information” means any information provided by rightholders which identifies the work or other subject-matter referred to in this Act, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information;”;

(d) immediately after the definition of “sound recording” there shall be added the following definitions:-

“ “technological measures” means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightholder of any copyright or neighbouring right or the sui generis rights as provided for by this Act. Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or

protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective;

“the Treaty” has the same meaning assigned to it by the European Union Act, 2003.”.

93. For article 7 of the principal Act there shall be substituted the following:– Substitution of article 7 of the principal Act.

“Nature of copyright in an audiovisual work, database, literary, musical and artistic work.

7. (1) Copyright in an audiovisual work, a database, a literary, musical or artistic work shall be the exclusive right to authorise or prohibit the doing in Malta in respect of the protected material in its totality or substantial part thereof, either in its original form or in any form recognisably derived from the original of any of the following:

- (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part;
- (b) the rental and lending;
- (c) the distribution;
- (d) the translation in other languages including different computer languages;
- (e) the adaptation, the arrangement and any other alteration and the reproduction, distribution, communication, display or performance to the public of the results thereof;
- (f) the broadcasting or rebroadcasting or the communication to the public or cable retransmission;
- (g) display or performance to the public:

Provided that the right to authorise or prohibit the cable retransmission of a television broadcast shall be exercisable only through a collecting society.

(2) The right to authorise or prohibit cable retransmission shall not apply when the transmission is made in Malta:

Cap. 350.

(a) if the retransmission is in pursuance of a “must carry” requirement as per article 40 of the Broadcasting Act; and

(b) if and to the extent that the transmission is made for reception in the area in which the cable retransmission may be received.

(3) The right to authorise or prohibit the cable retransmission of a television broadcast shall be exercisable only through a collecting society.

(4) In the case provided for in subarticle (2) where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Such rightholder shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is so deemed to be mandated to manage his rights as the rightholders who have mandated that collecting society and he may claim such rights within a period of three years from the date of the cable retransmission which includes his work or other protected subject-matter.

(5) Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, either party may call upon the assistance of one or more mediators appointed by the chairman of the Malta Arbitration Centre, unless otherwise agreed to by all the parties. The tasks of the mediators shall be to provide assistance with negotiation. They may also submit proposals to the parties. It shall be assumed that all the parties accept a proposal as referred to in this subarticle if none of them expresses its opposition within a period of three months. Notice of the proposal and of any opposition thereto shall be served on the parties concerned by judicial act, unless otherwise agreed to by the parties. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt."

Substitution of
article 8
of the principal Act.

94. For article 8 of the principal Act there shall be substituted the following:

“Exhaustion
of the
distribution
rights.

“8. (1) The first sale or other transfer of ownership in the market of the original work enjoying copyright or copies thereof, when such sale is effected by or with the consent of the copyright owner himself, shall exhaust the exclusive distribution right in respect of that work or its copy.

(2) For the purposes of this article “market” means the market in Malta and as from the 1st May 2004 the European Union.”.

95. For article 9 of the principal Act there shall be substituted the following:

Substitution of
article 9
of the principal Act.

“Restriction
with
regard to
certain
works.

9. (1) Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit-

(a) temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable:

(i) a transmission in a network between third parties by an intermediary, or

(ii) another lawful use

of a work or other subject-matter to be made, and which have no independent economic significance;

(b) reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders received fair compensation;

(c) reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in subarticles 42 (3) and (4) to the work or subject-matter concerned;

(d) specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

(e) ephemeral recordings or works made by broadcasting organisations by means of their own facilities and for their own broadcasts:

Provided that any reproduction of a work made under this paragraph may, if it is of exceptional documentary character be preserved in official archives;

(f) reproduction of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation;

(g) the performing, playing or showing of a work in a place where no admission fee is charged in respect of such an act by any club whose aim is not profit-making;

(h) the reproduction, translation, distribution or communication to the public of a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the non-commercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated;

(i) the reproduction, translation, distribution or communication to the public of a work for the benefit of people with a disability, which are directly related to the disability and on a non-commercial nature, to the extent required by the specific disability;

(j) the reproduction by the press, translation, distribution or communication to the public of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in

connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is, unless this is impossible, indicated;

(k) the reproduction, translation, distribution or communication to the public of quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, as long as, unless this is impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purposes;

(l) the reproduction, translation, distribution or communication to the public of a work for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;

(m) the reproduction, translation, distribution or communication to the public of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by informatory purposes and provided that the source, including the author's name, is, except where this is impossible, indicated;

(n) the reproduction, translation, distribution or communication to the public of a work for use during religious celebrations or official celebrations organized by a public authority;

(o) the reading or recitation in public by a person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement;

(p) the inclusion in a communication to the public, the making of a graphic representation and the making of a photograph or film, of a work of architecture or sculpture or similar works made to be located permanently in public places;

(q) the incidental inclusion of a work or other subject matter in other material;

(r) the reproduction, distribution or communication to the public of a work for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;

(s) the reproduction or communication to the public of a work by way of caricature, pastiche or parody;

(t) the reproduction, translation, distribution or communication to the public of a work in connection with the demonstration or repair of equipment;

(u) the reproduction, distribution or communication to the public of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;

(v) the communication to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in subparagraph (d) above of works and other subject-matter, not subject to purchase or licensing terms, which are contained in their collections;

(w) in the case of a database, the performance of those acts which are normally necessary in order that the licensed user obtains access to the contents of the database and normal use thereof, in respect of the whole or part of the database which the user is licensed to use; and any contractual provisions running counter to what is prescribed in this paragraph shall be null and void.

(2) Copyright in a computer programme shall not include the right to authorize or prohibit:

(a) the observation, the study or testing of the functioning of the program by the licensed user in order to determine the ideas and principles which underlie any element of the program if this is done whilst performing any of the acts of loading,

displaying, running, transmitting or storing the program which he is entitled to do;

(b) the reproduction by the licensed user of the code and translation of its form where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that these acts are confined to the parts of the original program which are necessary to achieve interoperability and the information necessary to achieve interoperability has not previously been readily available to the licensed user:

Provided that any information obtained from the reproduction of the code and the translation of the form of a computer program made under this paragraph shall not:

(i) be used for purposes other than to achieve the interoperability of the independently created computer program;

(ii) be given to other persons, except when necessary for the interoperability of the independently created computer program;

(iii) be used for the development, production or marketing of a computer program substantially similar in its expression to the original program or for any other act which infringes copyright;

(c) the making of a copy or a back-up copy, the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, in so far as this is necessary for the licensed user to make proper use of the program in accordance with its intended purpose, including the correction of errors; and the right of the licensed user to make a back-up copy of a computer program may not be restricted or excluded by contract in so far as it is necessary for the use of that computer program.

(3) The exceptions and limitations provided for in this article shall only be applied in such particular cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.”.

Substitution of article 20 of the principal Act.

96. For article 20 of the principal Act there shall be substituted the following:

“Exhaustion of distribution rights.

20. (1) The distribution right in respect of fixations of performances, sound recordings, original and copies of audiovisual works and fixations of broadcasts conferred by the preceding articles of this Act on performers, producers of sound recordings, producers of the first fixations of audiovisual works and broadcasting organisations respectively, shall be exhausted by the first sale or transfer of ownership in the market of the originals or copies of such works in regard to that particular original or copy, when such sale is effected by the neighbouring right owner or with his consent.

(2) For the purposes of this subarticle “market” means the market in Malta and as from the 1st May 2004 the market in any other Member State.”.

Substitution of article 21 of the principal Act.

97. For article 21 of the principal act there shall be substituted the following:

“Exceptions to neighbouring rights.

21. The provisions of article 9 shall apply *mutatis mutandis* to the neighbouring rights conferred by this Act in like manner as they apply to copyright in a literary, musical or artistic or audiovisual work, or database.”.

Substitution of article 42 of the principal Act.

98. For article 42 of the principal Act there shall be substituted the following:

“Infringing acts.

42. (1) Copyright, neighbouring rights and sui generis rights are infringed by:

(a) any person who does or causes another person to do, without a licence from the owner or holder thereof, an act the doing of which is controlled by copyright, neighbouring rights or sui generis rights;

(b) any person who, without the licence of the copyright owner or right holder, imports into Malta otherwise than for private and domestic use, or distributes therein by way of trade, hire or otherwise, or by way of trade exhibits in public or is in possession or manufactures in the course of business or offers or exposes for sale or hire an article in respect of which copyright, neighbouring rights or sui generis rights are infringed under the preceding paragraph;

(c) any person who, without the licence of the copyright owner or rightholder does anything which circumvents any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective;

(d) any person who, without the licence of the copyright owner or rightholder manufactures, imports, distributes, sells, rents, advertises for sale or rental, or possesses for commercial purposes, devices, products or components which:

(i) are for the purpose of circumvention of, or

(ii) have only a limited commercially significant purpose or use other than to circumvent, or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective technological measures;

(e) any person who, without the licence of the copyright owner or rightholder provides, promotes, advertises or markets a service which serves for the purpose of circumvention of any effective technological measures;

(f) any person who, without the licence of the copyright owner or right holder, knowingly performs any of the following acts:

(i) the removal or alteration of any electronic rights-management information;

(ii) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Act from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any neighbouring right, or of the sui generis rights as provided by this Act:

Provided that any of these items of electronic rights-management information:

(i) is associated with a copy of a copyright work under the terms of this Act, or

(ii) appears in connection with the communication to the public of a copyright work under the terms of this Act, or

(iii) is covered by a sui generis right under the terms of this Act.

(2) (a) Notwithstanding the provisions of paragraphs (c), (d) and (e) of subarticle (1), where the application of any effective technological measure to a copyright work prevents any beneficiary of an exception provided for in paragraph (b), (c), (d), (e), (f), (i), (l) or (h) of subarticle 9 (1) from benefiting from that exception, the rightholder shall make available to the beneficiary the means of benefiting from that exception, to the extent necessary to benefit from that exception or limitation:

Provided that the beneficiary shall have legal access to the protected work or subject-matter concerned:

Provided further that there is no voluntary measure taken by the rightholder or exclusive licensee or agreement between the rightholder and the other party concerned, the purpose of which is to enable the beneficiary (or persons of a class to which the beneficiary belongs) to benefit from the exceptions specified in the above subparagraph.

(b) The provisions of subarticle (2) (a) do not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.”.

99. Article 53 to 58 of the principal Act shall be repealed.

Repeal of articles 53 to 58 of the principal Act.

100. For article 59 of the principal Act, there shall be substituted the following:

Substitution of article 59 of the principal Act.

“Power to make regulations.

59. The Minister may make regulations for the better implementation of the provisions of this Act and, without prejudice to the generality of the foregoing, may by such regulations:

(a) prescribe any matter that may be prescribed under this Act;

(b) introduce changes to extend the protection granted by this Act to any other form of intellectual property not otherwise protected by this Act as may be provided by any international instrument that is binding in Malta;

(c) change and revive the terms of the duration of protection as may be provided in any international instrument that is binding in Malta;

(d) alter the rights and limitations thereof as may be provided in any international instrument that is binding in Malta.

(e) prescribe the functions of the Copyright Board;

(f) provide for matters relating to collecting societies, in particular their establishment, tasks, manner of operation, setting and approval of fees and their supervision.”.

Part XIX

Amendment of the Trademarks Act, Cap. 416

101. (1) This Part amends and shall be read and construed as one with the Trademarks Act, hereinafter in this part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for the protection of intellectual property may by notice in the Gazette establish.

Amendment of article 2 of the principal Act.

102. In article 2 of the principal Act –

(a) immediately after the definition “Comptroller” there shall be inserted the following definition:

““European Union” means the European Union referred to in the Treaty;”;

(b) immediately after the definition “infringement proceedings” there shall be inserted the following definition:

““Member State” means a state which is a member of the European Union;”;

(c) immediately after the definition “trademark” there shall be inserted the following definition:

““the Treaty” has the same meaning assigned to it by the European Union Act, 2003;”.

Amendment of article 12 of the principal Act.

103. For article 12 of the principal Act, there shall be substituted the following:

“Proprietor may not prohibit use.

12. (1) A trademark shall not entitle the proprietor to prohibit its use in relation to goods bearing that trademark which have been put on the market by the proprietor or with his consent.

(2) The provisions of subarticles (1) of this article shall not apply where there is legitimate reasons for the proprietor to oppose further commercialisation of the goods particularly where the condition for the goods is changed or impaired after they have been put on the market.

(3) For the purposes of this article “market” means the market in Malta and as from the 1st May 2004, the market in any Member State.”.

Part XX

104. (1) This Part of this Act amends and shall be read and construed as one with the Patents Act, hereinafter in this part referred to as “the principal Act”.

Amendment of the Patents Act, Cap. 417.

(2) This Part shall come into force on such date as the Minister responsible for the protection of intellectual property may by notice in the Gazette establish and different dates may be so established for different provisions and purposes thereof.

105. For the long title to the principal Act there shall be substituted the following “An Act to make provision for the registration and regulations of Patents and designs” and for the short title thereto there shall be substituted the following “Patents and Designs Act”.

Substitution of titles of the principal Act.

106. (1) In article 1 of the principal Act for the words “Patent Act” there shall be substituted the words “Patents and Designs Act” and any reference in any law to the Patents Act shall be deemed to be a reference to Part II to XVII of the Act now entitled the Patents and Designs Act.

Amendment of article 1 of the principal Act.

(2) Any reference in the Patents Act to “this Act” shall be deemed to be a reference to Parts II to XVII of the Act now entitled the Patents and Designs Act.

107. For article 2 of the principal Act there shall be substituted the following:

Substitution of article 2 of the principal Act.

“Interpretation.

2. In Parts II to XVII of this Act unless the context otherwise requires:

“biological material” means any material containing genetic information and capable of

reproducing itself or being reproduced in a biological system;

“Budapest Treaty” means “The Treaty for the International Recognition of the Deposit of Micro-organisms for the Purpose of Patent Procedure” done at Budapest on the 28th April 1977;

“the Comptroller” means the Comptroller of Industrial Property and includes any other person delegated by the Comptroller or appointed by the Minister to exercise all or any of the powers and to perform all or any of the duties of the Comptroller;

“essential biological process for the production of plants and animals” means any process consisting entirely of natural phenomena such as crossing or selection;

“European Union” means the European Union referred on the Treaty;

“microbiological process” means any process involving, or performed upon, or resulting in, microbiological material;

“Member State” means a state which is a member of the European Union;

“Minister” means the Minister responsible for the protection of industrial property and “Ministry” shall be construed accordingly;

“patent” means the exclusive right granted by the Comptroller in terms of the provisions of this Act:

“plant varieties” refers to all botanical genera and species, including, inter alia, hybrids between genera or species;

“prescribed” means prescribed by Parts of this Act;

“the register” means the register of patents kept under this Act and includes the register of patents kept under the Industrial Property (Protection) Ordinance, parts of which have been repealed by this Act;

“the Treaty” has the same meaning assigned to it by the European Union Act, 2003;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right or patent are fully met, can be:

- defined by the expression of the characteristics that results from a given genotype or combination of genotypes,

- distinguished from any other plants grouping by the expression of at least one of the said characteristics, and

- considered as a unit with regard to its suitability for being propagated unchanged,

where a plant grouping consists of entire plants or parts of plants as far as such parts are capable of producing entire plants.”.

108. Article 4 of the principal Act shall be amended as follows: Amendment of article 4 of the principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:-

“(1) Inventions which are new, involve an inventive step and are susceptible of industrial applications, shall be patentable:

Provided that such inventions shall also be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used:

Provided further that biological material which is isolated from its natural environment or produced by means of a technical process may be subject of an invention if it previously occurred in nature.”;

(b) in subarticle (5) thereof:

(i) for paragraph (b) thereof there shall be substituted the following:

“(b) the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene:

Provided that an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element;” and

(ii) for paragraph (e) thereof there shall be substituted the following paragraphs:

“(e) plant and animal varieties:

Provided that patents shall not be granted for plant varieties only after a new form of plant variety protection is introduced in such form as may be prescribed:

Provided further that a patent may still be granted for a plant variety in respect of which a patent application is still pending on the date that a new form of plant variety protection is prescribed;

(f) essentially biological process of the production of plants or animals:

Provided that this is without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process;

(g) DNA sequence not containing any technical information and in particular any indication of its function.”; and

(c) subarticle (6) thereof shall be renumbered as subarticle (7), and immediately after subarticle (5) thereof there shall be inserted the following new subarticle:

“(6) Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.”

109. In subarticle (1) of article 13 of the principal Act the words “in duplicate” shall be deleted. Amendment of article 13 of the principal Act.

110. For subarticle (2) of article 15 of the principal Act there shall be substituted the following subarticles (2) to (9):- Amendment of article 15 of the principal Act.

“(2) (a) Where an application refers to an element isolated from the human body or otherwise produced by means of a technical process including the sequence or partial sequence of a gene, the industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

(b) When the application concerns a sequence or a partial sequence of a gene used to produce a protein or part of a protein, it is necessary to specify which protein or part of protein is produced or function or sequence it performs.

(3) Where an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in a patent application in such a manner as to enable the invention to be reproduced by a person skilled in the art, the description shall be considered inadequate for the purpose of this Act unless:

(a) it is supplemented by a deposit of such material with a depository institution as may be prescribed; and

(b) the application as filed contains such relevant information as is available to the applicant on the characteristics of the biological material deposited.

(4) Access to the deposited biological material shall be provided through the supply of a sample:

(a) up to the first publication of the patent application, only to those persons who are authorised under this Act;

(b) between the first publication of the application and the granting of the patent, to anyone requesting it or, if the applicant so requests, only to an independent expert;

(c) after the patent has been granted, and notwithstanding revocation or cancellation of the patent, to anyone requesting it.

(5) The sample shall be supplied only if the person requesting it undertakes, for the term during which the patent is in force:

(a) not to make it or any material derived from it available to third parties; and

(b) not to use it or any material derived from it except for experimental purposes, unless the applicant for or proprietor of the patent, as applicable, expressly waives such an undertaking.

(6) Where an application is refused or is withdrawn, then at the applicant's request, access to the deposited material shall be limited to an independent expert for twenty years from the date on which the patent application was filed, and in such case the provisions of subarticle (5) shall apply.

(7) The applicant's requests referred to in paragraph (b) of subarticle (4) and in subarticle (6) may only be made up to the date on which the technical preparations for publishing the patent application are deemed to have been completed.

(8) If the biological material deposited in accordance with this article ceases to be available from the recognised depository institution, a new deposit of the material shall be permitted on the same terms as those laid down in the Budapest Treaty.

(9) Any new deposit shall be accompanied by a statement signed by the depositor certifying that the new deposited biological material is the same as that originally deposited.”.

Amendment of article 26 of the principal Act.

111. For subarticle (2) of article 26 of the principal Act there shall be substituted the following:-

“(2) The maintenance of a patent shall be subject to the payment of the prescribed fee hereinafter referred to as the maintenance fee. Such maintenance fee shall be due in respect of the fifth year and each subsequent year thereafter calculated from the filing date of the application and shall be paid on or before the prescribed due date.”.

Amendment of article 27 of the principal Act.

112. For subarticles (3) and (4) of article 27 of the principal Act there shall be substituted the following subarticles (3) to (10):

“(3) The protection conferred by a patent on biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(4) The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through the process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(5) Save as provided in article 4 (5) (b), the protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, in which the product is incorporated and in which the genetic information is contained and performs its function.

(6) Notwithstanding subarticles (1) and (2) hereof, the proprietor of a patent shall have no right to prevent third parties from performing the acts referred to in subarticles (1) and (2) (b) in the following circumstances:

(a) where the act is done privately and for non-commercial purposes, provided that such act does not significantly prejudice the economic interests of the proprietor of the patent;

(b) where the act consists of making or using such product for purely experimental purposes or for scientific research;

(c) where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical or veterinary doctor, of a medicine in accordance with a medical prescription or of acts concerning the medicine so prepared;

(d) when an act is done for purposes which can reasonably be related to the development and presentation of information required by the law of Malta or any other country that regulates the production, use or sale of medicinal or phytopharmaceutical products;

(e) when the use of the patented invention is on board vessels of the countries of the Union of Paris for the protection

of Industrial Property in the body of the vessel, in the machinery tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of Malta, provided that the invention is used exclusively for the needs of the vessel;

(f) when the use of that patented invention is in the construction or operation of aircraft or land vehicles of countries of the Union of Paris for the Protection of Industrial Property or of accessories to such aircraft or land vehicles when such aircraft or vehicles temporarily or accidentally enter the territory of Malta.

(7) Notwithstanding the provisions of subarticles (3), (4) and (5) of this article:

(a) the sale or other form of commercialization of plant propagation material to a farmer by the holder of the patent or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm;

(b) the sale of any other form of commercialization of breeding stock or other animal reproductive material to a farmer by the holder of the patent or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose. Such use includes making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity. Such use does not include the sale within the framework of or for the purpose of a commercial reproduction activity.

(8) (a) Subject to paragraph (b) hereof, a patent shall also confer on its proprietor the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means, relating to an element of that invention, essential for carrying out the invention, when the third party knows, or ought to know in the circumstances, that those means are suitable and intended for carrying out that invention. The provision of this paragraph shall not apply where such means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing any acts referred to in paragraphs (b), (c), (d), (e), (f) and (g) of subarticle (6) shall not be considered to be parties entitled to exploit the invention within the meaning of the preceding paragraph.

(9) (i) The propagation of a patent shall have no right to prevent third parties from performing acts referred to in subarticles 1(b) and 2(b) where the act concerns a product which has been put on the market by the proprietor of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market.

(ii) The protection referred to in subarticles (3), (4) and (5) of this article shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market by the holder of a patent or with his consent where the multiplication or propagation necessarily results from the application for which the biological material was marketed:

Provided that the material obtained is not subsequently used for other propagation or multiplication.

(iii) Provided that for the purposes of this subarticle “market” means the market in Malta and from 1st May, 2004, the European Union.

(10) The Minister may make regulations giving effect to any international agreement or obligation entered into by Malta with regard to matters covered by this article and may by such regulations regulate the above rights and limitations to reflect the provisions of any such agreement or obligation.”.

113. For subarticle (8) of article 39 of the principal Act there shall be substituted the following subarticles (8) of (12):

Amendment of article 39 of the principal Act.

“(8) The Civil Court, First Hall, may on a writ of summons filed by the owner of a patent (the second patent) which cannot be exploited without infringing an earlier patent (the first patent), direct the Comptroller to grant a non-exclusive, non-voluntary licence provided that:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.

(9) Where a breeder cannot acquire plant variety protection or exploit a plant variety without infringing a prior patent, he may apply to the Civil Court, First Hall, for a compulsory licence for non-exclusive use of the invention protected by the patent in so far as the licence is necessary for the exploitation of the plant variety to be protected, subject to payment of an appropriate royalty. Where such a licence is granted, the holder of the patent will be entitled to a cross-licence on reasonable terms to use the protected variety:

Provided that an applicant for a licence referred to in above shall demonstrate that:

(a) he had applied unsuccessfully to the holder of the prior patent to obtain a contractual licence;

(b) the plant variety constitutes significant technical progress of considerable economic interest compared with the invention claimed in the prior patent.

(10) Where the holder of a patent concerning a biotechnological invention cannot exploit it without infringing a prior plant variety right, he may apply for a compulsory licence for non-exclusive use of the plant variety protected by that right, subject to payment of an appropriate royalty. Where such a licence is granted, the holder of the variety right will be entitled to a cross-licence on reasonable terms to use the protected invention:

Provided that an applicant for a licence referred to in above shall demonstrate that:

(a) he had applied unsuccessfully to the holder of the prior plant variety right to obtain a contractual licence;

(b) the invention constitutes significant technical progress of considerable economic interest compared with the plant variety protected by the prior plant variety right.

(11) With regard to plant variety protection subarticles (9) and (10) hereof shall only come into force when the relevant form of plant variety protection comes into force as provided in article 4 (5) (e).”.

114. For subarticle (2) of article 61 of the principal Act there shall be substituted the following:- Amendment of article 61 of the principal Act.

“(2) Where an applicant does not have his ordinary residence or principal place of business in Malta, he shall authorise in the prescribed manner an agent who has his ordinary residence or principal place of business in Malta, to represent him:

Provided that this sub-article shall not apply as from the 1st May 2003 in respect of an applicant who has his ordinary residence or principal place of business in any Member State.”.

115. Immediately at the end of subarticle (5) of article 62 of the principal Act there shall be added the following proviso:- Amendment of article 62 of the principal Act.

“Provided further that in the case of a patent which has lapsed and which was granted under the Industrial Property (Protection Ordinance):

(i) that patent if restored shall, subject to the payment of the maintenance fees, enjoy the term of protection stipulated in this Act from the filing date of the patent application; and

(ii) the provisions contained in article 46 of this Act shall apply when a request for a restoration is made.”.

116. Immediately after article 62 of the principal Act there shall be added the following new Parts XVIII to XXIV (containing new articles 63 to 133):- Addition of new Parts XVIII to XXIV to the principal Act.

“Part XVIII Interpretation

Interpretation 63. (1) In Parts XVIII to XXIV of this Act, unless the context otherwise requires –

“complex product” means a product which is composed of multiple replaceable components permitting disassembly and reassembly of the product;

“Comptroller” means the Comptroller of Industrial Property and includes any other person appointed or assigned by the Comptroller to exercise all or any of the powers and perform all or any of the duties of the Comptroller;

“European Union” means the European Union referred to in the Treaty;

“designs” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and, or materials of the product itself and, or its ornamentation;

“Office” means the office responsible for the registration of designs in Malta under the provisions of this Act;

“infringement proceedings” in relation to a registered design, includes proceedings under article 115;

“Locarno Classification” means the Classification contained in the Locarno Agreement establishing an International Classification for Industrial Designs, as revised or amended from time to time;

“made available to public” means made available to the public by the owner of the design or by any other party;

“Member State” means a state which is a member of the European Union;

“Minister” means the Minister responsible for the protection of industrial property;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised or amended from time to time;

“prescribed” means prescribed by this Act or by any regulations made thereunder;

“product” means any industrial or handicraft item, other than a computer program, including inter alia intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces;

“publish” means make available to the public, and references to publication in relation to registration, are to publication under article 95(4);

Cap. 29. “register” means the register of designs kept under this Act and includes the register of designs kept under the Industrial Property (Protection) Ordinance;

“The Treaty” has the same meaning assigned to it by the European Union Act, 2003.

(2) The provisions of Parts II to XVII of this Act do not apply to designs which are regulated by Parts XVIII to XXIV of this Act exclusively.

Part XIX Registrability

Property right. 64. A registered design is a property right obtained by the registration of the design under this Act. The proprietor of a registered design has the rights and remedies provided by this Act.

Requirements for protection. 65. (1) Designs shall be protected by registration, and exclusive rights shall be conferred upon their holders in accordance with the provisions of this Act.

(2) A design shall be protected by a design right to the extent that it is new and has individual character.

(3) A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

(4) The expression “normal use” within the meaning of subarticle (3) (a) means use by the end user, excluding maintenance, servicing or repair work.

Novelty 66. A design shall be considered new if no identical design has been made available to the public before the date

of filing of the application for registration or, if priority is claimed, the date of priority:

Provided that designs whose features differ only in immaterial details shall also be deemed to be identical.

Individual
character

67. (1) A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority.

(2) In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Disclosure

68. (1) For the purpose of applying articles 66 and 67, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, and as from the 1st May, 2004, within the European Union before the date of filing of the application for registration or, if priority is claimed, the date of priority. The design shall not, however, be deemed to have been made available to the public because of the sole reason that it has been disclosed to a third party under explicit conditions of confidentiality.

(2) A disclosure shall not be taken into consideration for the purpose of applying articles 66 and 67 if a design for which protection is claimed has been made available to the public by the designer, his successor in title, or a third party as a result of information provided or action taken by the designer, or his successor in title and such disclosure took place during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

(3) Subarticle (2) shall also apply if the design had been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

Designs dictated by their technical function and designs of inter-connections.

69. (1) A right in a registered design shall not subsist in features of appearance of a product which are solely dictated by its technical function.

(2) A right in a registered design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

(3) Notwithstanding subarticle (2), a right in a registered design shall, under the conditions set out in articles 66 and 67, subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

Designs contrary to public policy or morality.

70. A right in a registered design shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Scope of protection.

71. (1) The scope of the protection conferred by a right in a registered design shall include any design which does not produce on the informed user a different overall impression.

(2) In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

Term of protection.

72. (1) Upon registration, a design which meets the requirements of article 65 (2) shall be protected by a design right for a period of five years from the date of filing of the application.

(2) The right holder may have the term of protection renewed in accordance with article 73 for one or more periods of five years each, up to a total term of 25 years from the date of filing.

Renewal of registration.

73 (1) The registration of a design may be renewed at the request of the proprietor, subject to the payment of the prescribed renewal fee:

Provided that the request is made and the fee is paid before the date of expiry and such action be taken not more than 6 months before such date:

Provided that the request may be made and the fee paid up to 6 months after the date of expiry, in which case any additional renewal fee as may be prescribed is also paid within that period.

(2) Renewal shall take effect from the expiry of the previous registration.

(3) If the registration is not renewed in accordance with the above provisions, the Comptroller shall remove the design from the register.

Grounds for refusal of a registration.

74. A design shall be refused registration:

(a) if the design does not fall within the definition of a design in article 63;

(b) if it consists of or is significantly made up of the national flag or Malta;

(c) if it contains a representation of the national flag of Malta and it appears to the Comptroller to be misleading or offensive;

(d) if it consists of or contains:

(i) the arms, or any of the principal armorial bearings of the arms appertaining to the President or to the Roman Catholic Archbishop of Malta, or any insignia or device so nearly resembling such arms or any such armorial bearing as to be likely to be mistaken for them or it,

(ii) a representation of the Presidential or Episcopal flags,

(iii) a representation of the President or the Archbishop, or any colourable imitation thereof, or

(iv) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Presidential or Episcopal patronage or authorisation,

unless it appears to the Comptroller that consent has been given by or on behalf of the President or the Archbishop;

(e) if it is contrary to public policy or accepted principles of morality; or

(f) if the applicant for the right in a registered design is not entitled to it under Maltese law.

Exclusive rights conferred by the design right.

75. (1) The registration of a design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importation, export or use of a product in which the design is incorporated or to which it is applied, or stocking such a product for such purposes.

(2) Any reference in this Act to the infringement of a registered design shall be deemed to be a reference to any such infringement of the rights of the proprietor.

(3) The rights of the proprietor have effect from the date of registration reckoned in accordance with article 95 (3):

Provided that –

(a) no infringement proceedings may be begun before the date on which the design is in fact registered, and

(b) no offence under article 117 shall be committed by anything done before the date of publication of the registration.

Limitation of the rights conferred by the design right.

76. (1) The rights conferred by the design right upon registration shall not be exercised in respect of:

(a) acts done privately and for non-commercial purposes, or

(b) acts done for experimental purposes, or

(c) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

(2) In addition, the right conferred by a design right upon registration shall not be exercised in respect of:

(a) the equipment on ships and aircraft registered in another country when these temporarily or accidentally enter the territory of Malta, or

(b) the importation into Malta of spare parts and accessories for the purpose of repairing such craft, or

(c) the execution of repairs on such craft.

Exhaustion
of rights.

77. (1) A registered design shall not entitle the proprietor to prohibit the use of a product in which the design is incorporated or to which the design is applied when the product has been put on the market by the proprietor or with his consent:

(2) For the purposes of this article:

“the market” means the market in Malta and as from 1st May 2003, the market in another member state.

“use” includes the offering, selling, buying or export of the product; and

Relationship
to
other forms
of protection.

78. (1) The provisions of Parts XVIII to XXIV of this Act shall be without prejudice to any other provisions of Maltese law relating to unregistered design rights, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability or unfair competition.

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(2) A design protected by a design right registered in accordance with this Act shall also be eligible for protection under the Copyright Act, as from the date on which the design was created or fixed in any form.

Nature of
registered
design.

79. A registered design is the personal property of its owner.

Co-ownership of a Registered design.

80. (1) Where a registered design is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered design.

(2) The following provisions apply where two or more persons are co-proprietors of a registered design, by virtue of subarticle (1) or otherwise.

(3) Subject to any agreement to the contrary, each co-proprietor is entitled, personally or through his agents, to do for his own benefit and without the consent of or the need to account to any other co-proprietor, any act which would otherwise amount to an infringement of the registered design.

(4) Notwithstanding the provisions of subarticle (3) a co-proprietor may not without the consent of the other or others-

(a) grant a licence to use the registered design, or

(b) assign or cede control of his share in the registered design.

(5) Infringement proceedings may be brought by any co-proprietor, but a co-proprietor may not, with the leave of the Court, proceed with the action unless the other, or each of the other co-proprietors, is joined in the suit.

A co-proprietor who is thus joined in the suit shall not be liable for any costs in the action.

Nothing in this subarticle affects the making of any precautionary warrant on the application of a single co-proprietor.

(6) Nothing in this article affects the rights and obligations of trustees or personal representatives, or their rights and obligations as such.

Transmission of a registered design.

81. (1) A registered design is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property.

It is so transmissible either in connection with the goodwill of a business or independently.

(2) An assignment or other transmission of a registered design may be partial and limited so as to apply in relation to the use of the design in a particular manner or a particular locality.

(3) An assignment of a registered design is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, his personal representative.

(4) Nothing in this Act shall be construed as affecting the assignment or other transmission of an unregistered design as part of the goodwill of a business.

Registrations
of
transactions
affecting
a registered
design.

82. (1) On application being made to the Comptroller by a person claiming to be entitled to an interest in or under a registered design by virtue of a registrable transaction, or any other person claiming to be affected by such a transaction, the relevant details of the transaction shall be entered in the register.

(2) The following are registrable transactions:

(a) an assignment of a registered design or any right therein;

(b) the grant of a licence under a registered design;

(c) the transfer of a registered design by testamentary disposition;

(d) an order of a Court or other competent authority transferring a registered design or any right in or under it.

(3) Until an application has been made for registration of a registrable transaction:

(a) the transaction is ineffective as against a person acquiring in good faith a conflicting interest in the registered design, and

(b) articles 86 or 87 shall not apply in respect of a person claiming to be a licensee by virtue of the transaction.

(4) Where a person becomes the proprietor or a licensee of a registered design by virtue of a registrable transaction, he shall not be entitled to damages or an account of profits in respect of any infringement of the registered design occurring after the date of the registrable transaction and before the transaction is registered, unless:

(a) an application for registration of the transaction is made before the end of the period of six months beginning with the date of the transaction, or

(b) the Court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as possible thereafter.

Application
for
Registration
of design
as object of
property.

83. The provisions of articles 79 to 82 apply mutatis mutandis in relation to an application for the registration of a design in the same manner as they apply in relation to a registered design.

Licensing
of a
registered
design.

84. (1) A licence to use a registered design may be general or limited. A limited licence may, in particular, apply in relation to use of the design in a particular manner or a particular locality.

(2) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest, and references in this Act to doing anything with, or without, the consent of the proprietor of a registered design shall be construed accordingly.

(3) Where the licence so provides, a sub-licence may be granted by the licensee; and references in this Act to a licence or licensee include a sub-licence or sub-licensee.

Exclusive
licences.

85. (1) In Parts XVIII to XXIV of this Act an "exclusive licence" means a licence (whether general or limited) authorising the licensee to the exclusions of all other persons, including the person granting the licence, to use a registered design in the manner authorised by the licence.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

General provisions as to the rights of licensees in case of infringement.

86. (1) The provisions of this article shall apply with respect to the rights of a licensee in relation to infringement of a registered design:

Provided that they shall not apply where or to the extent that, in accordance with article 87 (1) an exclusive licensee has a right to bring proceedings in his own name.

(2) A licensee is entitled, unless his licence provides otherwise, to call on the proprietor of the registered design to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor refuses to do so, or fails to do so within two months after being called upon the licensee may bring proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by a licensee by virtue of this article, the proprietor shall be joined in the suit.

(5) In infringement proceedings brought by the proprietor of a registered design any loss suffered or likely to be suffered by licensees shall be taken into account by the Court which shall give such directions as it thinks fit with regard to the disposal and distribution of any sum awarded as a remedy for the infringement.

Exclusive licensee having right and remedies of assignee.

87. (1) An exclusive licence may provide that the licensee shall have, to such extent as may be provided by the licence, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Where or to the extent that such provision is made, the licensee shall be entitled, subject to the provisions of the licence and to the following provisions of this article, to bring infringement proceedings in his own name against any person other than the proprietor.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered design; and references in this Act to the proprietor of a registered design relating to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee under this article a defendant may avail himself of any defence which would have been available to him if the action had been brought by the proprietor of the registered design.

(4) Where proceedings for infringement of registered design are brought by the proprietor or by the exclusive licensee relating to an infringement in respect of which they have concurrent right of action, the proprietor or, as the case may be, the exclusive licensee who are not the plaintiff shall be jointed in the suit.

(5) (a) Where an action for infringement of a registered design relating to an infringement in respect of which the proprietor and an exclusive licensee have concurrent right of action is brought-

(i) the Court shall in assessing damages take into account the terms of the licence, and any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(ii) no account of profits shall be ordered to be made if an award of damages has been made, or an account of profits has been ordered, in favour of either of them in respect of the infringement; and

(iii) the Court shall, if an account of profits has been ordered, apportion subject to any agreement between the proprietor and the exclusive licensee, the profits between them as the Court considers just.

(b) The provisions of this subarticle apply whether action is brought by the proprietor alone, or it is brought by the proprietor and the exclusive licensee; and if they are not both parties the Court may give such directions as it deems fit with regard to the disposal and distribution of any sum awarded as remedy for the infringement.

(6) The proprietor of a registered design shall notify any exclusive licensee who has a concurrent right of action before applying for an order under article 115; and the Court may on the application of the licensee make such order under that article as it thinks fit having regard to the terms of the licensee.

(7) The provisions of subarticles (4) to (6) shall be without prejudice to any agreement to the contrary between the exclusive licensee and the proprietor.

Part XX Applications

Application
for
registration.

88. An application for registration of a design shall be filed with the Comptroller in the Maltese or English language and shall contain the following:

- (a) a request for registration of a design;
- (b) the name and address of the applicant;
- (c) the design which is the subject of the application;
- (d) the name and address of the agent or representative, in cases where one has been appointed; and
- (e) a declaration claiming priority in cases where the applicant wishes to take advantage of an earlier application.

The application shall be subject to the payment of a fee as may be prescribed.

Date of filing

89. (1) The date of filing of an application for registration of a design is the date on which the elements prescribed in article 88 are furnished to the Comptroller by the applicant:

Provided that where the elements are furnished on different days, the date of filing shall be the date on which the last element is so furnished.

(2) References in Parts XVIII to XXIV to the date of application for registration shall be construed as a reference to the date of filing of the application.

Classification
of designs

90. (1) Designs shall be classified for the purpose of the registration of designs according to the Locarno Classification.

(2) Any question arising as to the class within which any design falls shall be determined by the Comptroller, whose decision shall be final.

Claim to
priority of
Convention
application.

91. (1) A person who has duly filed an application for protection of a design in a state which is a member of the World Trade Organisation or a party to the Paris Convention, hereinafter in this Act referred to as a “Convention application”, or his successor in title, has a right to priority, for the purposes of registering the same design under this Act for which such an application has been filed, for a period of six months from the date of filing of the first such application.

(2) If the application for registration under this Act is made within such six-month period:

(a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention application, and

(b) the registrability of the design shall not be affected by any use of the same in Malta in the period between that date and the date of the application under this Act.

(3) (a) Any filing in a state member of the World Trade Organisation or party to the Paris Convention which is equivalent to a regular national filing under its domestic legislation, shall be treated as giving rise to the right of priority.

(b) For the purposes of this subarticle “regular national filing” means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent application.

(4) A subsequent application concerning the same design as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (the filing date of which is the starting date of the period of priority), if at the time of the subsequent application:

(a) the previous application has been withdrawn, abandoned or refused, without having been laid open to public inspection and without leaving any rights outstanding, and

(b) it has not yet served as a basis for claiming right of priority, and the previous application may not thereafter serve as a basis for claiming a right of priority.

(5) Provisions may be made by regulations as to the manner of claiming a right to priority on the basis of a Convention application.

(6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or independently.

Claim to priority from other relevant overseas applications.

92. (1) The Minister may make regulations conferring on a person who has duly filed an application for protection of a design in a country or territory in relation to which the Government of Malta is a party to a treaty, convention, arrangement or engagement for the reciprocal protection of designs, a right to priority, for the purpose of registering the same designs under this Act for any or all of the same goods or services, for a such period as may be specified in the regulations from the date of filing of that application.

(2) Such regulations may make provisions similar to those contained in article 91 in relation to Convention applications or such other provision as appears to the Minister to be appropriate for the purpose of giving effect to the treaty, convention arrangement or engagement.

Examination of application.

93. (1) The Comptroller shall examine whether an application for registration of a design satisfies the requirements of this Act.

(2) If it appears to the Comptroller that the requirements for registration are not met, he shall inform the applicant and give him an opportunity to make representations or to amend the application within such period as the Comptroller may specify.

(3) If the applicant fails to satisfy the Comptroller that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the Comptroller shall refuse the application.

(4) If it appears to the Comptroller that the requirements for registration are met, he shall accept the application as eligible for registration.

Withdrawal,
or
amendment
of
application.

94. (1) The applicant may at any time withdraw his application.

(2) An application may be amended, at the request of the applicant, only by correcting:

- (a) the name or address of the applicant,
- (b) errors of wording or of copying, or
- (c) obvious mistakes,

and then only where the correction does not substantially affect the identity of the design.

Registration.

95. (1) Where an application has been accepted as eligible for registration, the Comptroller shall register the design, unless it appears to him having regard to matters coming to his notice after he accepts the application that it was accepted in error.

(2) A design shall not be registered and the application shall be deemed to be withdrawn unless any fee prescribed is paid within 30 working days from the date of filing.

(3) A design when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration.

(4) On the registration of a design the Comptroller shall issue to the applicant a certificate of registration, and he shall publish in the Gazette the fact that the design has been registered and is available to be viewed by the public at the Office.

Alteration of
registered
design.

96. (1) A registered design shall not be altered in the register, during the period of registration or on renewal.

(2) Notwithstanding the provisions of subarticle (1), the Comptroller may, at the request of the proprietor, allow

the alteration of a registered design where the design includes the proprietor's name or address and the alteration is limited to the alteration of that name or address and does not substantially affect the identity of the design.

(3) Provision shall be made by regulations prescribing the manner of publication of any such alteration and the making of objections by any person claiming to be affected thereby.

Surrender of a registered Design.

97. (1) A registered design may be surrendered by the proprietor by sending notice to the Comptroller including the name and address of any person having a contractual interest in the design, or any other interest under the Act. The proprietor shall also certify that any such person:

- (a) has been sent not less than 90 days' notice of the proprietor's intention to surrender the design, or
- (b) is not affected, or if affected consents thereto.

Grounds for invalidity of registration.

98. (1) The registration of design may be declared invalid on the following grounds:

- (a) if the provisions of article 74 have not been complied with;
- (b) if it does not fulfill the requirements of articles 65 to 70;
- (c) if the design is the same or similar to a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, after the date of priority, and which prior design is protected from a date prior to the said date by a registered design or an application for a registered design in a territory covered by an international agreement to which Malta is a party;
- (d) if a distinctive sign is used in a subsequent design and the rightholder of the sign has the right to prohibit such use;
- (e) if the design constitutes an unauthorised use of work protected under copyright;

- (f) if the design involved the use of:
- (i) the armorial bearings, flags or other emblems, and
 - (ii) the abbreviations and names, of international intergovernmental organisations of which one or more Paris Convention countries are members.

(2) The grounds provided under article 74 (f) may be invoked only by the person entitled to the right under Maltese law.

(3) The grounds in subarticles (1) (c), (1) (d) and (1) (e) above may be invoked solely by the applicant for or the holder of the conflicting right.

(4) The grounds in subarticle (1) (f) above may be invoked solely by the entity associated therewith.

(5) When a design has been refused registration pursuant to article 74, or a design right has been declared invalid pursuant to subarticle (1) above, the design may be registered or the design right maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. Registration or maintenance in an amended form may include registration accompanied by a partial disclaimer by the holder of the right in the registered design or entry in the design register of a court decision declaring the partial invalidity of the design right.

Acts of agent
or
Representative.

99. (1) The following provisions apply where an application for registration of a design is made by a person who is an agent or representative of a person who is the proprietor of the design in a Convention country.

(2) The proprietor may by writ of summons before the First Hall of the Civil Court:

- (a) demand a declaration of invalidity of the registration, or

(b) demand the rectification of the register in order to substitute his name as the proprietor of the registered design.

(3) The proprietor may restrain any use of the design in Malta which is not authorised by him.

(4) Subarticles (2) and (3) shall not apply if, or to the extent that, the agent or representative shows that his actions were authorised by the proprietor.

(5) An application under subarticle (2) must be made within three years of the proprietor becoming aware of the registration; and no order may be made under subarticle (3) in respect of a use in which the proprietor has not taken action for a continuous period of three years or more.

Effect of acquiescence.

100. (1) An action for invalidity may not be initiated when the person bringing the action being aware of the use of a registered design in Malta has acquiesced for a continuous period of five years to such use.

(2) In the case referred to in subarticle (1), where the action is brought on the basis of an earlier registered design or an earlier acquired right the proprietor of the registered design is not entitled to oppose the use of the earlier design or, as the case may be, the exploitation of the earlier right, notwithstanding that the earlier design or right may no longer be invoked against his registered design.

Part XXI

Administrative and Supplementary Provisions

Maintenance and content of Register.

101. (1) (a) The Comptroller shall maintain a register of designs.

(b) Reference in Parts XVIII to XXIV this Act to “the register” are to that register; and references to registration, in particular, in the expression “registered design”, are, unless the context otherwise requires, to registration in that register.

(2) There shall be entered in the register in accordance with this Act:

- (a) registered designs;
- (b) the relevant particulars of registrable transactions affecting a registered design, including:
 - (i) the date of registration as determined in accordance subarticles 89 and 95,
 - (ii) the priority date (if any) to be accorded pursuant to a claim to a right to priority made under article 91 or 92,
 - (iii) the name and address of the proprietor, and
- (c) in the case of an assignment of a registered design:
 - (i) the name and address of the assignee, and
 - (ii) the date of the assignment;
- (d) in the case of the grant of a licence under a registered design:
 - (i) the name and address of the licensee,
 - (ii) where the licence is limited, a description of the limitation,
 - (iii) where the licence is an exclusive licence, that fact,
 - (iv) the duration of the licence if the same is or is ascertainable as a definite period, and
 - (v) the date on which the entry is made;
- (e) in the case of a court or other competent authority transferring a registered design:
 - (i) the name and address of the transferee,
 - (ii) the date of the order, and
 - (iii) the date on which the entry is made;

(f) in the case of a transfer of a registered design by testamentary disposition, or otherwise by inheritance:

(i) the name and address of the person in whose favour the testamentary disposition is made, or the inheritance devolves if any, and

(ii) the date of the testamentary disposition if any, and of the death of the previous holder,

(g) in the case of merger, the requirements specified for the registration of an assignment; and

(h) such other matters relating to registered designs as the Comptroller may deem necessary.

Public
inspection of
register.

102. (1) Without prejudice to the provision of article 105, the register shall be open for public inspection at the Office during such hours as may be determined by the Office.

(2) A search in the register may be conducted in respect of a design or designs in one of the following manners:

(a) an interested person may on payment of the prescribed fee call at the Office and conduct a search for a design or designs. If the person or persons conducting the search request copies of any related record, extracts from the register or copies of the design, whether certified or uncertified, these shall be provided on payment of the prescribed fee;

(b) an interested person may on payment of the prescribed fee submit a request in writing to the Office for a search to be conducted in respect of a design or designs. If the person or persons requesting the search require copies of any related record, extracts from the register or copies of the design, whether certified or uncertified, these shall be provided on payment of the prescribed fee.

Rectification
or correction
of the
register.

103. (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a design.

(2) Provided that an application for rectification may not be made either to the Comptroller or by writ of summons against the Comptroller and any person interested before the Civil Court, First Hall:

Provided that if proceedings concerning the registration in question are pending before a Court:-

(a) the application must be made by application before Court in the acts of the proceedings; and

(b) if the application is made to the Comptroller, he may at any stage of the proceedings direct the applicant to refer the matter to the Court in accordance with subarticle (2).

(3) Except where the Comptroller or the Court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The Comptroller may, on request by the proprietor of a registered design, or a licensee, enter any change in his name or address as recorded in the register.

(5) The Comptroller may remove from the register any matter appearing to him to have ceased to have effect.

Power to require the use of forms.

104. The Comptroller may require the use of such forms as he may direct for any purpose relating to the registration of a design or any other proceeding before him under this Act.

Information about applications and registered designs.

105. (1) After publication of the registration of a design, the Comptroller shall on request provide a person with such information and permit him to inspect all documents filed or kept at the Office relating to the registered design, as maybe specified in the request.

Any such request must be accompanied by such fee as may be prescribed.

(2) Before publication of registration of a design, documents or information constituting or relating to the application shall not be published by the Comptroller or made available to the public except with the consent of the applicant.

(3) The Comptroller shall not be obliged to permit the inspection of any such document as is mentioned in subarticle (1) above until he has completed any procedure or the stage in the procedure which is relevant to the document in question, which he is required or permitted to carry out under the Act.

(4) The right of inspection under subarticle (1) above does not apply to:

(a) any document until fourteen days after it has been filed at the Office;

(b) any document prepared in the Office solely for use therein;

(c) any document sent to the Office, whether at its request or otherwise, for inspection and subsequent return to the sender;

(d) any request for information under this article;

(e) any document issued or received by the Office which Comptroller considers should be treated as confidential;

(f) any document or part of a document which in the opinion of the Comptroller disparages any person in a way likely to damage him; or

(g) any document filed with or sent to the Office before the enactment of the Act.

Exclusion or liability in respect of official acts.

106. (1) Registration by the Comptroller shall not be deemed to be a warranty by him of the validity of the registration of a design under this Act or under any treaty, convention, arrangement or engagement to which Malta is a party.

(2) The Comptroller shall not be liable by reason of, or in connection with, any examination required or

authorised by this Act, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent to such examination.

(3) No action shall lie against an officer of the Comptroller in respect of any matter for which, by virtue of this article, the Comptroller is not liable.

Registration to be prima facie evidence of validity.

107. In all legal proceedings relating to a registered design (including proceedings for rectification of the register) the registration of a person as proprietor of a design shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission thereof.

Certification of validity of contested registration.

108. If in proceedings before the Court the validity of the registration of a design is contested and it is found by the Court that the design is validly registered, the Court shall give judgement accordingly.

Comptroller's Appearance in Proceedings involving the register.

109. (1) In proceedings before the Court involving a demand for:

- (a) the revocation of the registration of a design,
- (b) a declaration of the invalidity of the registration of a design, or
- (c) the rectification of the register,

the Comptroller shall be notified with the proceedings and shall be entitled to intervene in statu et terminis.

(2) Unless otherwise directed by the Court, the Comptroller may, instead of intervening, file in the record of the case a statement in writing signed by him, giving particulars of:

- (a) any proceedings before him in relation to the matter in issue,
- (b) the grounds of any decision given by him affecting it,
- (c) the practice of the Office in like cases, or

(d) such matters relevant to the issues and within his knowledge as he thinks fit,

and the statement shall be deemed to form part of the evidence in the proceedings.

Appeals from the Comptroller's decision.

110. (1) Any decision of the Comptroller under Parts XVIII to XXIV of this Act, may be appealed from, before the Court of Appeal composed in the manner provided in subarticle (6) of article 41 of the Code of Organization and Civil Procedure by application within fifteen days of service of the Comptroller's decision.

(2) For the purposes of subarticle (1) of this article "decision" means any act, other than such acts as may by regulations be prescribed, done by the Comptroller in exercise of a discretion vested in him by or under this Act.

(3) The Minister with the concurrence of the Minister responsible for Justice may make rules governing appeals to the Court of Appeal under Parts XVIII to XXIV of this Act, and presenting a scale of costs and fees in relation to such appeals.

Business hours.

111. (1) The Comptroller may give directions specifying the hours of business of the Office for the purpose of the transaction by the public of business under this Act, and the days which are business days for that purpose.

(2) Business done on any business day after the specified hours of business, or on a day which is not a business day, shall be deemed to have been done on the next business day; and where the time for doing anything under this Act expires on a day which not a business day, that time shall be extended to the next business day.

(3) Directions under this article may make different provision for different classes of business and shall be published in the prescribed manner.

Recognition of agents.

112. (1) Where by Parts XVIII to XXIV of this Act any act has to be done by or to any person in connection with any proceeding or matter under the said parts of this Act, the act may under and in accordance with the regulations be done by or to an agent of that person duly authorised in writing:

Provided that the Comptroller may in any particular case require the personal signature or presence of the agent or the person authorising him to act as an agent.

(2) If an applicant does not have his ordinary residence or principal place or business in Malta, he shall authorise an agent who has his ordinary residence or principal place of business in Malta to represent him in the manner as prescribed in subarticle (1) above:

Provided that this subarticle shall as from the 1st May 2004 with regard to an applicant who has his ordinary residence or principal place of business in a Member State.

Part XXII

Infringement

Action for
infringement

113. (1) Any person who in contravention to article 75 exploits a registered design shall be liable in damages towards the proprietor of the design right or the licensee.

(2) Infringement proceedings shall be brought before the Civil Court, First Hall, and may not be instituted after five years from the date when the injured party has obtained knowledge of the infringement and of the identity of the alleged infringer.

(3) In an action for infringement all such remedies as are in respect of the infringement of any other property right shall be available to the plaintiff.

Order for
delivery
up of
infringing
machinery,
products or
material.

114. (1) The Court may, moreover, on the demand of the plaintiff, order that the machinery or other industrial means or contrivances used in contravention of the design, the infringing products, and the apparatus destined for their production, be forfeited, wholly or partially, and delivered up to the proprietor of the design or such other person as the Court may direct, without prejudice to any other remedy.

(2) An action for an order under subarticle (1) hereof may not be made after the end of the period of five years from the date on which the infringing products were made except as provided in the following subarticle.

(3) While during the whole or part of that period the proprietor of the registered design is prevented by fraud or concealment from discovering the facts entitling him to take action for an order, an application may be made at any time before the end of the period of five years from the date on which he could with reasonable diligence have discovered those facts.

Order as to disposal of infringing machinery, products or material.

115. (1) Where infringing goods, material or products have been delivered up in pursuance of an order under article 114, an action by writ of summons against any person having an interest in the products may be brought before the Court by any party interested:

(a) for an order that they be destroyed or forfeited to such person as the Court may deem fit, or

(b) for a decision that no such order should be made.

(2) In considering its decision, the Court shall consider whether other remedies available in an action for infringement of the registered design would be adequate to compensate the proprietor and any licensee to protect their interests.

(3) Any person having an interest shall be entitled:

(a) to appear in proceedings for an order under this article, whether or not he was served with a notice, and

(b) to appeal against any order made, whether or not he appeared at first instance, and any such order shall not take effect until the end of the period within which an appeal may be filed or, if before the end of that period an appeal is so filed, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in the products, the Court shall make such order as it thinks fit.

(5) If the Court decides that no order should be made under this article, the person in whose possession, custody or

control the products were before being delivered up shall be entitled to their return.

Remedy for
groundless
threats
of
infringement
proceedings.

116. (1) Where a person threatens another with proceedings for infringement of a registered design other than those provided for in this Act, any person aggrieved may bring proceedings for relief under this article by writ of summons before the Civil Court, First Hall.

(2) The relief which may be applied for is all or any of the following:

- (a) a declaration that the threats are unjustified,
- (b) an injunction against the continuance of the threats,
- (c) damages in respect of any loss the plaintiff may have sustained by the threats,

and the plaintiff shall be entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute, or if done would constitute, an infringement of the registered design concerned.

(3) Where the defendant shows that the acts in respect of which proceedings were threatened constitute or would constitute an infringement of the registered design, the plaintiff shall nevertheless be entitled to relief if he shows that the registration of the design is invalid or liable to be revoked.

(4) The mere notification that a design is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this article.

Unauthorised
use
of registered
design.

117. (1) Any person who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor, in contravention of article 75 exploits a registered design shall be guilty of an offence against this article and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine (*multa*) of not more than ten thousand liri or to both such fine and imprisonment.

(2) It shall be a defence for a person charged with an offence against this article to show that he believed on reasonable grounds that the use of the design in the manner in which it was used, or was to be used, was not an infringement of the registered design.

Falsification
of
register.

118. (1) Any person who knowing or having reason to believe that it is false:

(a) makes, or causes to be made, a false entry in the register of designs; or

(b) makes, or causes to be made, anything falsely purporting to be a copy of an entry in the register, or

(c) produces or tenders or causes to be produced or tendered in evidence any such thing,

shall be guilty of an offence against this article.

(2) A person guilty of an offence against this article shall be liable on conviction to imprisonment for a term not exceeding two years or a fine (*multa*) of not more than five thousand liri or to both such fine and imprisonment.

Falsely
representing
a design as
registered.

119. (1) Whoever puts into circulation, or sells any product, falsely representing that a design applied to, or incorporated in any product sold by him is registered, shall be guilty of an offence against this sub-article and, on conviction, be liable to a fine (*multa*) of not less than one hundred liri and not more than five thousand liri.

For the purposes of this article a person who sells a product having stamped, engraved or impressed thereon or otherwise applied thereto the word “registered”, or any other word expressing or implying that the design applied to the products is registered, shall be deemed for the purposes of this article to represent that the design applied to the product is registered.

(2) Any person, who after the right in a registered design is expired, marks any product to which the design has been applied with the word “registered”, or any word or words implying that there is subsisting right in the design under this Act, or causes any such product to be so marked, shall be guilty of an offence against this subarticle and shall on conviction, be liable to a fine (*multa*)

not less than one hundred liri and not more than five thousand liri.

Unauthorised
use of
certain
devices,
emblems,
etc.

120. (1) A person shall not without the authority of the President use in connection with any business any device, emblem or title in such a manner as to be calculated to lead to the belief that he is employed by, or supplies goods or services to, the President.

(2) Any person who contravenes the provisions of subarticle (1) of this article shall be guilty of an offence against this article and shall, on conviction, be liable to a fine (*multa*) of not more than three thousand liri.

Delivery up
of
infringing
machinery,
goods,
etc.

121. The Court may, moreover, in the cases referred to in article 117, on the demand of the prosecution, order that the machinery or other industrial means or contrivances used in contravention of the rights of the proprietors of the designs, the infringing products, and the apparatus destined for their production, be forfeited, wholly or in part, and delivered to the holder of the design, without prejudice to any other right to relief under this Act.

Powers of
Magistrates.

122. Pending any proceedings for any one of the offences referred to in this Part, any Magistrate, if he is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to which the offence has been committed, are in any house or premises of the accused, or are in his possession or under his control in any other place, may, by a warrant under his hand, direct any officer of the Police to be named in the warrant, to enter any house, premises or place, also to be named therein, and there to search for, seize and remove such goods or things.

Where
owner of
goods
is unknown.

123. If the owner of any goods or things, which, if he were convicted of any of the offences referred to in this Part, would be liable to forfeiture, is unknown or cannot be found, any Magistrate may in the like manner and in the circumstances required in article 122 issue the said warrant.

Forfeiture of
things
seized.

124. The goods and things so seized shall be produced before the Court of Magistrates sitting as a court of criminal judicature, and such Court shall determine whether they are liable to forfeiture under this Act.

Procedure where owner is unknown.

125. (1) In the case referred to in article 123, the Court shall order the issue of banns which shall be published twice, with an interval of at least eight days, in the Gazette, and posted up at the entrance of the building wherein the Court sits, and in any other place which the court may deem fit, stating that the goods or things seized shall be forfeited, unless at the time and place named in the banns the owner of such goods or things or other persons interested in such goods or things attends before the Court at the time and place indicated in the banns and shows cause to the contrary. The person from whose possession the goods or things were seized, shall also, where his whereabouts are known, be notified with the banns.

(2) If the owner or any person on his behalf, or other person interested in the said goods or things, fails to attend at the time and place named in the banns to show cause to the contrary, it shall be lawful for the Court to direct that such goods or things or any of them be forfeited.

Award of compensation to parties in good faith.

126. The Court may direct that the goods or things so forfeited be destroyed or disposed of, and may also direct that, out of the net proceeds which may be realized by the disposal of such goods or things and up to the amount thereof, any persons who, being in good faith, were injured by the forfeiture, be awarded compensation for any loss caused to them.

Limitations of criminal actions.

127. Criminal actions under this Act shall be barred by the lapse of three years from the day on which the act constituting the offence was committed, if the person to whose prejudice the act was committed, had no previous knowledge thereof; in all other cases such action shall be barred by the lapse of one year from the day on which such person became aware of that act.

Rights to damages not affected.

128. The provisions of this Part shall apply without prejudice to the right of any person to claim damages in consequence of any act constituting an offence.

Employment and employee.

129. No proceedings shall be instituted against any person in the service of another person, if, he shows that in good faith, he acted in obedience to the instructions of his employer, and, on being questioned by the Police, gives full information relating to his employer and of the facts of the case as known to him.

Part XXIII

General Provisions

Burden of
proving use
of design.

130. In any civil proceedings under this Act if a question arises as to the use to which a registered design has been put, the burden of proof that a particular use has been made shall lie on the proprietor.

Limitations
of
Civil actions

131. Civil actions under Parts XVIII to XXIV of this Act shall be barred by the lapse of five years in all cases in which no other period within which such actions may be brought is fixed in this Act.

Part XXIV

Regulations

Power of
Minister to
make
regulations.

132. (1) The Minister may make regulations for the better administration of Parts XVIII to XXIV of this Act, making such rules as are required by any provisions of the said parts of this Act, prescribing anything authorised or required by any provision to be prescribed, and generally for regulating practice and procedure under the said Parts, and in particular provision may be made:

- (a) with regard to the interpretation of terms used in the said Parts of this Act;
- (b) with regard to the grant, refusal or surrender of a registered design;
- (c) with regard to the terms of renewal of a registered design;
- (d) with regard to the manner of filing of applications and other documents as well as all respective and other fees under the said Parts of this Act;
- (e) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (f) with regard to the service of documents;

(g) with regard to matters relating to the register of designs, in particular as to:

(i) amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence, and

(ii) the removal of such particulars from the register;

(h) with regard to the classification of registered designs;

(i) authorising the rectification of irregularities of procedure;

(j) with regard to procedures, sanctions and anything else relating to the infringement of the provisions of the said Parts of this Act;

(k) prescribing time limits for anything required to be done in connection with any proceeding under the said Parts of this Act;

(l) providing for the extension of any time limit so prescribed, or specified by the Comptroller whether or not the time limit has already expired; and

(m) regulating administrative and other supplementary provisions.

(2) The Minister may also from time to time make regulations not inconsistent with the said Parts of this Act prescribing all matters which byt his Act are required or permitted to be prescribed or which are necessary or desirable to be prescribed for carrying out or giving effect to this Act, or for the conduct of any business relating to the Office of the Comptroller.

(3) The Minister may also make regulations giving effect in Malta to the provisions of any international or regional design registration instrument or any related agreements to which Malta becomes a party.

Repeal of
Industrial
Property
(Protection)
Ordinance,
and
transitory
provision.

133. (1) Subject to the provisions of this article, the Industrial Property (Protection) Ordinance is hereby repealed.

(2) In this article:

“existing registered design” means a design, registered under the Industrial Property (Protection) Ordinance immediately before the commencement of Parts XVIII to XXIV of this Act.

“former register” means the register kept under the Old Law;

“new register” means the register kept under Parts XVIII to XXIV of this Act;

“Old Law” means the Industrial Property (Protection) Ordinance and any other enactment or rule of law applying to existing registered designs immediately before the commencement of Parts XVIII to XXIV of this Act.

(3) For the purposes of this article –

(a) an application shall be treated as pending on the coming into force of Parts XVIII to XXIV of this Act, if it was made but not finally determined before such coming into force; and

(b) the date on which it was made shall be taken to be the date of filing under the Old Law.

Existing
registered
designs.

(4) Existing registered designs shall, on the commencement of this article be transferred to the new register and subject to the provisions of this article, shall have effect as if they were registered under Parts XVIII to XXIV of this Act.

Proceedings
under Old
Law.

(5) Proceedings under the Old Law which are pending on the commencement of this article shall be dealt with under the Old Law and any necessary alteration pursuant to such proceedings shall be made to the new register.

Effects of
registration
infringement

(6) (a) Upon the coming into force of this article, articles 75 and 76 of this Act shall apply in relation to, an existing registered design and subject to paragraph (b) hereof, article 113 of this Act, shall apply in relation to any

infringement of an existing registered design committed after the commencement of this article.

(b) After the coming into force of this article, it shall not be an infringement of:

(i) an existing registered design, or

(ii) a registered design of which the distinctive elements are the same or substantially the same as those of an existing registered design,

to continue with any use which did not amount to infringement of the existing registered design under the Old Law.

Infringing goods, material or products.

(7) Article 114 of this Act shall apply to infringing goods, material or products whether made before or after the commencement of this article.

Rights and remedies of licensee.

(8) Article 86 of this Act shall apply to licences granted before the commencement of this article, but only in relation to infringement committed after its commencement.

Co-ownership of a registered design.

(9) The provisions of article 80 of this Act shall apply as from the commencement of this article to an existing registered design of which two or more persons were immediately before the commencement of this article registered as joint proprietors.

Assignment, etc of a registered design.

(10) (a) Article 81 of this Act shall apply to transactions and events occurring after the commencement of this article in relation to an existing registered design; and the Old Law shall continue to apply in relation to transaction and events occurring before its commencement.

(b) Where, before the commencement of this article a person become entitled by assignment or transmission to an existing registered design but has not registered his title, any application for registration of an assignment after its commencement shall be made under article 83 of this Act.

Licensing of a registered design.

(11) Articles 84 and 85 of this Act shall apply only in relation to licences granted after the commencement of this article.

Pending applications for registration.

(12) An application for registration of a design under the Old Law which is pending on the commencement of this article shall be dealt with under the Old Law, and, when registered, the design shall be treated for the purposes of this article as an existing registered design.

Conversion of pending application.

(13) (a) In the case of a pending application for registration filed before the commencement of this article the applicant may give notice to the Comptroller demanding to have the registrability of the mark determined in accordance with the provisions of Parts XVIII to XXIV of this Act.

(b) The notice must be accompanied by the appropriate fee and be given no later than six months after the commencement of this article.

(c) Notice duly given shall be irrevocable and shall have the effect that the application shall be treated as if made immediately after the commencement of this article.

Design registered according to old classification.

(14) The Comptroller may exercise the powers conferred by this Act to ensure that any existing registered designs which do not conform to the system of classification prescribed under article 90 of this Act are brought in conformity with such system.

Claim to priority from overseas applications.

(15) Article 91 of this Act shall apply to an application for registration under this Act made after the commencement of this Part notwithstanding that the Convention application was made before commencement.

Duration and renewal of registration.

(16) Articles 72 and 73 of this Act shall apply in relation to the registration of a design in pursuance of an application made after the commencement of this article:

Provided that in the case of a design registration under the Old Law, whose term of protection has not yet expired at the coming into force of this article registration may be renewed as provided for in articles 72 and 73 of this Act.”.

Part XXI

117. (1) This Part amends and shall be read and construed as one with the Data Protection Act hereinafter in this Part referred to as “the principal Act”.

Amendment of Data Protection Act, Cap 440.

(2) This Part of this Act shall come into force in such date as the Minister responsible for data protection may by notice in the Gazette establish.

Amendment of article 37 of the principal Act.

118. Article 37 of the principal Act shall be renumbered as subarticle (1) thereof and immediately after the said subarticle (1) as renumbered there shall be added the following new subarticle:

“Commissioner may not hold other offices of profit. Exceptions.

(2) It shall not be lawful for the Commissioner to carry out any other profession, business or trade or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any temporary judicial office on any international court or tribunal or any international adjudicating body, and the office of examiner at a University.”.

Part XXII

Amendment of the Special Funds (Regulation) Act, Cap. 450.

119. (1) This Part amends and shall be read and construed as one with the Special Funds (Regulation) Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for finance and economic affairs may, by notice in the Gazette, appoint, and different dates may be so established for different provisions or different purposes of this Act.

Amendment of article 4 of the principal Act.

120. Immediately after subarticle (4) of article 4 of the principal Act, there shall be inserted the following new subarticle:

“(5) A Scheme or Retirement Fund registered under this Act shall not be subject to any licensing requirements under the Investment Services Act.”.

Amendment of article 50 of the principal Act.

121. Subarticle (1) of article 50 of the principal Act shall be amended as follows:—

(a) in paragraph (a) thereof, for the words “deems fit;” there shall be substituted the words “deems fit; and amend the Schedules to this Act;”; and

(b) in paragraph (b) thereof, for the words “in relation thereto, providing” there shall be substituted the words “in relation thereto; establish the qualifications and other eligibility criteria necessary to act as Retirement Fund Custodian, provide for the payment of such fees and other charges as may be prescribed,

provide for the powers of the Authority in their regard including the imposition of administrative penalties and other measures as well as appeals therefrom to the Financial Services Tribunal, and provide for the issue of Directives establishing other requirements regarding their conduct and activities; and provide”.

Part XXIII

122. (1) This Part amends and shall be read and construed as one with the Employment and Industrial Relations Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Employment and Industrial Relations Act, Cap. 452.

(2) This Part of this Act shall come into force on such date as the Minister for Social Policy may by notice in the Gazette establish.

123. In subarticle (1) of article 30, for the words “three months” there shall be substituted the words “four months”. Amendment of article 30 of the principal Act.

124. (1) In subarticle (2) of article 38 in the English version, for the word “or” there shall be substituted the word “and”. Amendment of article 38 of the principal Act.

(2) In subarticle (4) of article 38 for the words “This article” there shall be substituted the words “Subarticles (1) and (3) of this article”.

125. In subarticle (1) of article 48, after the words “Title I” there shall be inserted the words “and of Title II”. Amendment of article 48 of the principal Act.

126. In subarticle (1) of article 84, after the words “government employees” there shall be inserted the words “unless specifically provided for in terms of subarticle (1) of article 48 of this Act”. Amendment of article 84 of the principal Act.

Part XXIV

127. The Criminal Code (Amendment) Act, 2002, hereinafter in this article referred to as “the principal law” shall be amended as follows: Amendment of the Criminal Code (Amendment) Act, 2002, Act III of 2002.

(a) for paragraph (c) of subarticle (1) which is in article 91 thereof, there shall be substituted the following:

“(c) in all other cases, by the Attorney General.”;

(b) in article 649 which is in article 152 thereof:

(i) in subarticles (1) and (2) thereof, for the words “judicial or prosecuting” wherever they occur there shall be substituted the words “judicial, prosecuting or administrative”;

(ii) in subarticle (5) thereof, immediately after the words “the magistrate” there shall be inserted the words “shall comply with the formalities and procedures indicated by the requesting foreign authority unless they are contrary to the fundamental principles of Maltese law and”; and

(iii) immediately after subarticle (5) thereof there shall be added the following new subarticles:

“(6) Where the request of the foreign authority is for the hearing of a witness or expert by videoconference, the provisions of subarticles (7) to (12), both inclusive, shall apply.

(7) The magistrate shall summon the person to be heard to appear at the time and place equipped with videoconference facilities appointed for the purpose by the magistrate. The magistrate shall give effect to any measures for the protection of the person to be heard which the Attorney General may declare to have been agreed upon with the requesting foreign authority.

(8) The magistrate shall conduct the hearing and where necessary the magistrate shall appoint an interpreter to assist during the hearing. The magistrate present shall ensure that the person to be heard is identified and that the proceedings take place and continue at all times in conformity with the fundamental principles of the law of Malta.

(9) The person to be heard may claim the right not to testify which would accrue to him or her under the law of Malta or under the law of the country of the requesting foreign authority.

(10) Subject to any measures for the protection of the person to be heard referred to in subarticle (7), the magistrate shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document containing the record of the minutes shall be transmitted to the Attorney General to be forwarded to the requesting foreign authority.

(11) The following shall *mutatis mutandis* apply to the person to be heard under the provisions of subarticle (6):

(a) the provisions of article 522, where the person to be heard refuses to testify when required to do so by the magistrate;

(b) the provisions of articles 104, 105, 107, 108 and 109, as the case may be, where the person to be heard does not testify to the truth, for this purpose the proceedings before the foreign authority shall be deemed to be proceedings taking place in Malta and the person to be heard shall be deemed to be a person testifying in those proceedings. For the purpose of determining the applicable punishment as may be necessary in proceedings for perjury under this subarticle the criminal fact being inquired into or adjudicated by the requesting foreign authority shall be deemed to be liable to the punishment to which it would have been liable had the same fact taken place in Malta or within the jurisdiction of the same Maltese criminal courts.

(12) The provisions of subarticles (6) to (11), both inclusive, shall apply where the person to be heard is a person accused in the country of the requesting foreign authority provided that the hearing shall only take place with the consent of the person to be heard and that all the rules of evidence and procedure which would apply to the testimony of a person accused in criminal proceedings in Malta would also apply to the testimony of the person accused to be heard under this article.

(13) The provisions of this article shall also apply *mutatis mutandis* where the request of the foreign authority is for the hearing of a witness or expert by telephone conference. provided that the witness or expert consents to the hearing.”.

Part XXV

128. The Criminal Code, hereinafter in this article referred to as “the principal law” shall be amended as follows:

Amendment
of the
Criminal
Code,
Cap. 9.

(a) in paragraph (a) of subarticle (4) of article 370 thereof, for the words “under sub-article (1) (c)” there shall be substituted the words “under sub-article (1) (b)”;

(b) article 392A thereof shall be amended as follows:

(i) in subarticle (2) thereof, for the words “as provided in subarticle (3) of article 401” there shall be substituted the words “within six working days”; and

(ii) in the English text only of subarticle (5) thereof, for the words “in paragraph (b) of article 392” there shall be substituted the words “in paragraph (b) of subarticle (1) of article 392”;

(c) immediately after article 435D thereof there shall be added the following new article:

“Controlled deliveries and joint investigations with the competent authorities of other countries.

435E. (1) Notwithstanding anything contained in any other law it shall be lawful for the Attorney General to authorise the Executive Police and, where appropriate, the Customs authorities to allow a controlled delivery to take place with a view to identifying persons involved in the commission of any criminal offence under the laws of Malta or under the laws of another country.

For the purposes of this subarticle a "controlled delivery" shall *mutatis mutandis* have the same meaning assigned to it by subarticle (2) of article 30B of the Dangerous Drugs Ordinance so however that the illicit or suspect consignment referred to in that subarticle may for the purposes of this subarticle consist of anything whatsoever and that the consignment may be intercepted and allowed to continue with the original contents intact or removed or replaced in whole or in part.

(2) With the same objective of identifying persons involved in the commissions of a criminal offence under the laws of Malta or under the laws of another country, it shall also be lawful for the Attorney General to authorise the Executive Police or a person under the supervision or direction of the Executive Police, to acquire or procure an illicit or suspect consignment of anything from any person or place.

(3) Pursuant to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may authorise the competent authorities of another country to conduct in Malta, jointly with or under the supervision or direction of the Executive Police, investigations into criminal investigations by officers acting under covert or false identity, provided that the Attorney General is satisfied of the true identity and official capacity of the officers in question and is fully informed of the nature of any documents which purport to guarantee, certify or authenticate the false identity assumed by any such officers. Notwithstanding the provisions of any other law the making or use of such documents by the said competent authorities or by such officers for the purpose or in the course of such investigations authorised as aforesaid shall be deemed to be lawful and shall not entail any liability, civil, criminal or otherwise, on the part of such authorities or officers.

(4) Any official from another country taking part in any of the operations referred to in subarticles (1) to (3), both inclusive, shall, for the purpose of any criminal liability incurred under this Code or any other law by that official or by others for conduct against that official, be deemed to be a public officer.”; and

(d) immediately after article 628 thereof, there shall be inserted the following new title and articles:

“Title VIII

Of Mutual Assistance in Criminal Matters.

628A. (1) The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which makes provision for mutual assistance in criminal matters.

(2) Regulations made under this article may make provision as the Minister may deem appropriate in the circumstances, including the application, with any appropriate modifications, of any of the provisions of this Code or of any other law.

628B. (1) Without prejudice to the generality of the power conferred on the Minister by article 628A the Minister may, in particular, make regulations designating the competent person, body corporate or unincorporated, authority or agency for the purpose of providing the assistance that may be requested under any arrangement referred to in subarticle (1) of article 628A and prescribing the conditions and procedures for the execution of any request for such assistance for all or any of the following purposes –

(a) the questioning of persons being investigated or prosecuted for a criminal offence;

(b) the taking or production of evidence;

(c) the service of any document or act;

(d) the interception of communications;

(e) the temporary transfer of a prisoner for the purposes of identification or for obtaining testimony or other assistance;

(f) the entry into and search of any premises and the seizure of any item;

(g) the taking of fingerprints or of intimate or non-intimate samples;

(h) the exhumation of any body;

(i) the provision of records and documents;

(j) the investigation of proceeds of criminal offences;

(k) the monitoring, freezing or seizing of assets of any kind including bank accounts;

(1) the verification of any evidence or other material.

(2) Any regulations made under this article and article 628A shall contain a reference to the arrangement which those regulations are meant to implement.”.

A 963

Passed by the House of Representatives at Sitting No. 28 of the 21st July,
2003.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives