

MALTA

ATT Nru. XIII ta' l-2007

ACT No. XIII of 2007

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

AN ACT enacted by the Parliament of Malta.

ATT biex ikompli jemenda l-Kodiċi Ċivili, Kap. 16.

AN ACT to further amend the Civil Code, Cap. 16.

Arrangement of articles

Article 1	Short title and commencement.
Article 2	Addition of new article 1A to the Code.
Article 3-12	Other amendments to the Code.
Article 13	Addition of new schedule to the Code.
Article 14	Amendment to the Notarial Profession and Notarial Archives Act.
Article 15	Amendment to the Income Tax Act.
Article 16	Amendment to the Interpretation Act.
Article 17	Amendment to the Duty on Documents and Transfers Act.
Article 18	Amendment to the Trusts and Trustees Act.
Article 19	Amendment to the Second Schedule of the Traffic (Regulation) Ordinance.

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SECOND SCHEDULE

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I assent.

(L.S.)

EDWARD FENECH ADAMI
President

24th July, 2007

ACT No. XIII of 2007

AN ACT further to amend the Civil Code, Cap. 16.

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:

Short title and
commencement.

Cap. 16.

1. (1) The short title of this Act is the Civil Code (Amendment) (No. 2) Act, 2007, and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as "the Code".

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

Addition of new
heading and
new article 1A
to the Code.

2. Immediately after article 1 of the Code and after the heading "BOOK FIRST - OF PERSONS" there shall be added the following new heading and new article:

"PRELIMINARY

Persons.

1A. (1) Persons may either be natural persons or legal persons.

(2) When used in any law the term "person" shall include both natural persons as well as legal persons, unless the context otherwise requires.

(3) Natural persons are regulated by Title I to Title VIII of Book First of this Code.

(4) Legal persons are regulated by the Second Schedule to this Code.

(5) Legal persons enjoy all rights and powers pertaining to natural persons except those excluded by their very nature, by their constitutive act or by an express provision of law."

3. Wherever the word "legitim" appears in the articles of the Code, it shall be substituted by the words "reserved portion"; and wherever the word "legitimary" appears in the articles of the Code, it shall be substituted by the words "the person entitled to the reserved portion".

General amendments to the Code.

4. Article 380 of the Code shall be amended as follows:

Amendment of article 380 of the Code.

(a) the present article shall be renumbered as subarticle (1) of the said article; and

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

"(2) When a right of usufruct is settled under trusts in favour of a trustee, including a corporate trustee, or is endowed to a private foundation for the benefit of beneficiaries who are natural persons, for the purposes of this article, the usufruct shall be considered as being constituted in favour of the beneficiaries who are named and who have a right to enjoy the property and, unless expressly stated otherwise, shall operate for the lifetime of such beneficiaries."

5. Immediately after subarticle (2) of article 761 of the Code there shall be added the following new subarticle:

Amendment of article 761 of the Code.

"(3) Subarticle (1) shall not apply to dispositions in favour of persons called to benefit under a trust or a foundation."

Amendment of
article 922 of
the Code.

6. In article 922 of the Code, after the words "paying his debts" there shall be added the words "or a benefit under a foundation or a trust".

Amendment of
article 958B of
the Code.

7. Article 958B of the Code shall be amended as follows:

(a) paragraph (a) of subarticle (9) shall be substituted by the following new paragraph:

"(a) a person claiming the reserved portion from a trustee, the heirs or any other person, in relation to property settled in trust, shall lose any benefit under the trust";

(b) subarticle (11) shall be amended as follows:

(i) paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) the beneficiary shall not be entitled to demand the reduction of the trust settled in his favour and claim the reserved portion from the trustee or from the heirs or any other person except that if the property settled in trust is not equal to or more than the reserved portion, such person may request against any person other than the trustee that the sum due to him by way of reserved portion be placed under the trust settled in his favour; and"; and

(ii) for the word "settlor." in paragraph (b) thereof, there shall be substituted the words "settlor; and" and the following new paragraph shall be added immediately thereafter:

"(c) the trustee shall be deemed to have the power and legal interest to pursue any claim for the reserved portion due to the beneficiary against any other person and to receive any sum due into the trust established for the purposes of this subarticle."; and

(c) the following new subarticle shall be added after subarticle (13):

"(14) The settlement and holding of property under trusts shall not be considered to be in breach of the mandatory provisions of law relating to the reserved portion of any person if the trust is to hold property:

(a) temporarily and unconditionally for a person entitled thereto under fixed trusts; or

(b) until a calculation is made to establish the reserved portion and thereafter to hold the same under fixed trust for or to distribute the said reserved portion to the person entitled thereto; or

(c) for a person who suffers from a mental or physical disability in terms of subarticle (11).".

8. Immediately after subarticle (3) of article 1696 of the Code there shall be added the following new subarticle (4):

Amendment of article 1696 of the Code relating.

"(4) When the creditor is a foundation or a trustee, it shall however be lawful for the parties to the contract to establish the terms for redemption of any annuity governed by Title XI of Book Second of this Code, including the fixing of the rate of redemption, the period before which it may not be redeemed, at whose option it may be redeemed and similar matters and may even prohibit such redemption by express terms.".

9. Immediately after subarticle (2) of article 1698 of the Code there shall be added the following new paragraph:

Amendment of article 1698 of the Code.

"Furthermore, but subject to any contrary agreement pursuant to the provisions of article 1696(4), the same rule shall apply if the annuity has been constituted for the benefit of a social purpose foundation or of a charitable trust.".

10. Immediately after article 1740A of the Code there shall be added the following new article:

Addition of new article to the Code.

"Gratuitous transfer made without *animus donandi*.

1740B. Any gratuitous transfer made without *animus donandi* on the part of the transferor to the transferee, including -

(a) any settlement of property under trusts, or

(b) any gratuitous assignment, transfer or contribution of capital or assets by a parent undertaking to its subsidiary undertaking, the consideration of which being the investment in or the funding of a subsidiary undertaking or the corporate or commercial benefit of a group of companies of which the said parent undertaking and the subsidiary undertaking form part:

Provided that such assignment, transfer or contribution shall on the pain of nullity be expressed in writing; for the purpose of this paragraph, "subsidiary undertaking" shall be deemed to include any subsidiary undertaking or undertakings of a subsidiary undertaking; or

(c) any transfer or assignment of property by way of security for the performance of an obligation,

shall not be governed by the provisions of this Title and in particular shall not be subject to the formalities required by article 1753."

Substitution of article 1785 of the Code.

11. Article 1785 of the Code shall be substituted by the following new article:

"1785. A donation can only be revoked in virtue of a resolute condition, express or implied, according to the provisions of articles 1066, 1067, 1068 and 1069, or for ingratitude or, in case of endowments to organisations established in accordance with the Second Schedule, in virtue of the provisions regulating the revocation of foundations and of endowments made to an organisation."

Amendment of article 2095D of the Code.

12. In article 2095D of the Code for the words "relating to trusts." there shall be substituted the words "relating to trusts unless the trust instrument (or any written agreement entered into by the trustee) expressly states that a particular annuity shall be governed by the provisions of the said Title."

Addition of new schedule to the Code.

13. (1) The Schedule to the Code shall be retitled as the "First Schedule" and all references to the said Schedule in any provision of the Code or in any other law shall be amended accordingly.

(2) Immediately after the First Schedule, as retitled, there shall be added the "Second Schedule" which appears in the Schedule to this Act.

14. The Notarial Profession and Notarial Archives Act shall be amended as follows:

Amendment to
the Notarial
Profession and
Notarial
Archives Act.
Cap. 55.

(a) article 50 shall be amended as follows:

(i) in paragraph (l) of subarticle (1), for the words "as defined in the said Act." there shall be substituted the words "as defined in the said Act;" and immediately thereafter there shall be added the following new paragraph:

"(m) any act whereby a private foundation is established."; and

(b) immediately after subarticle (8), there shall be added the following new subarticle (9):

"(9) In the case of a deed creating a private foundation, the note shall only contain the date and nature of the act and the designation of the founder in accordance with article 28(1)(c):

Provided that the Notary shall have no obligation and shall not register such note if the founder has exempted him from so doing in the deed establishing the foundation and the administrator is a person who is authorised or not required to be authorised to act as an administrator for a private foundation in terms of article 43 of the Trusts and Trustees Act.";

(c) immediately after article 68A, there shall be added the following new article:

"Notarial
deed creating
a private
foundation.

"68B. The provisions of article 68A shall apply *mutatis mutandis* to a notarial deed creating a private foundation."; and

(d) immediately after article 84A, there shall be added the following new article:

"Notarial
deed creating
a private
foundation.

"84B. The provisions of article 84A shall apply *mutatis mutandis* to a notarial deed creating a private foundation.".

Addition of new articles to the Income Tax Act. Cap. 123.

15. Immediately after article 27D of the Income Tax Act there shall be added the following new articles:

"Regulations in relation to tax treatment of a foundation.

27E. The Minister may make regulations in relation to the tax treatment of a foundation, including the application of the provisions of this Act relating to trusts, settlors and beneficiaries of trusts to foundations, their founders and beneficiaries thereunder, as well as to any persons who are donors of property to foundations, and generally for the better application of this Act to foundations.

Regulations in relation to the conversion of a legal person into another legal form.

27F. The Minister may make regulations in relation to the tax treatment of any conversion of a legal person into another legal form or into a trust as is referred to in article 21 of the Second Schedule to the Civil Code."

Amendment to the Interpretation Act. Cap. 249.

16. Paragraph (d) of article 4 of the Interpretation Act shall be substituted by the following new paragraph:

"(d) the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not."

Addition of new articles to the Duty on Documents and Transfers Act. Cap. 364.

17. Immediately after article 32B of the Duty on Documents and Transfers Act there shall be added the following new articles:

"Foundations treated as trusts.

32C. (1) The administrators of a foundation may elect that the foundation be treated as a trust in so far as relates to transactions of the same type as those referred to in article 32B between the founder and the foundation and between the foundation and any beneficiaries. In such case the provisions of this Act relating to trusts shall apply to foundations *mutatis mutandis*.

(2) The Minister may make regulations generally for the carrying out of the provisions of this article including the application of the provisions of this Act relating to trusts to a foundation as aforesaid as well as to any persons who are donors of property to such foundation or are beneficiaries under or administrators of such foundation.

Regulations
in relation
to transfers.

32D. The Minister may make regulations in relation to the application of this Act to any transfers required for or incidental to any conversion of a legal person of one form into another legal form or into a trust as is referred to in article 21 of the Second Schedule to the Civil Code."

18. The Trusts and Trustees Act shall be amended as follows:

Amendment of
the Trusts and
Trustees Act.
Cap. 331.

(a) in subarticle (1) of article 2 thereof, for the definition of "charitable purpose" there shall be substituted the following new definition:

" "charitable purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes in particular:

(a) the advancement of education, including physical education and sports;

(b) the advancement of religion;

(c) the advancement of health;

(d) social and community advancement;

(e) the advancement of culture, arts and national heritage;

(f) the advancement of environmental protection and improvement, including the protection of animals;

(g) the promotion of human rights, conflict resolution, democracy and reconciliation;

(h) the promotion or protection of the interests of other social purpose organisations,

including federations of such organisations; or

(i) any other purpose as may be prescribed by the Minister by means of regulations made by virtue of this Act;

but does not include a political purpose. For the purposes of this definition "political purpose" means the promotion of the interests of a political party or a political candidate, whether at local, national or international level, or to seek or oppose changes in the law or governmental policy or decisions except when such law or government policies or decisions directly concern the achievement of charitable purposes;"

(b) subarticle (15) of article 9 thereof shall be substituted by the following new subarticle:

"(15) (a) The provisions of this article shall apply to dispositions in wills in favour of trustees whether appointed *inter vivos* or by testamentary disposition notwithstanding the provisions of articles 688, 693 and 695 and other provisions of the Civil Code.

(b) A disposition in a will in favour of -

(i) a named trust, or

(ii) the trustee of a named trust, or

(iii) a named trustee or in his stead the *pro tempore* trustee in relation to a named trust,

whether created *inter vivos* or by means of a will, shall be valid whether the trustee is in office or yet to be appointed in accordance with the terms of a trust.

(c) Any disposition in a will shall be valid even if, at the time of the opening of succession -

(i) the named trustee is no longer the trustee of the trust indicated in the will; or

(ii) there is no trustee in office,

and any such disposition shall be construed as referring to the trustee *pro tempore* of the trust indicated in the will.

(d) Without prejudice to the right of a trustee to accept an inheritance with the benefit of inventory, a trustee may not renounce to a benefit under a will pursuant to a disposition in his favour as trustee or in favour of the trust except with the consent of all the beneficiaries or the Court.

(e) The refusal to accept to act as a trustee under a trust or the resignation of a trustee from office shall not in any way affect the operation of a testamentary disposition in favour of a trust and, in such case, the provisions of articles 19 and 20 shall apply."; and

(c) immediately after subarticle (3) of article 19 thereof there shall be added the following new subarticle:

"(4) In the case of a trust created in a will, when the trustee does not act either in terms of subarticle (2) or in terms of subarticle (3) within three months of the date of the death of the settlor, the heirs may, and the notary who published the will, or the Notary keeper of his deeds shall, apply to the Court for the appointment of a trustee in accordance with the terms of the trust and this Act."

19. In the Second Schedule of the Traffic (Regulation) Ordinance, for the words:

Amendment of
the Second
Schedule of the
Traffic
(Regulation)
Ordinance.
Cap. 65.

"Driving at an excessive speed 30"

there shall be substituted the words:

"Driving at an excessive speed:

up to 15 kilometres per hour over the limit 15

over 15 kilometres per hour over the limit 30".

Schedule

"SECOND SCHEDULE

Title I

OF LEGAL ORGANISATIONS

Sub-Title I

Preliminary and Definitions

Preliminary and definitions.

1. (1) For the purposes of this Schedule, an organisation means a universality of persons who associate or a universality of things which are appropriated to achieve a lawful purpose having a form recognised by law, and which is capable of being a legal person in terms of law.

(2) Legal personality is the status granted by law to an organisation which is established for a lawful purpose stated in writing in a constitutive instrument, which has a patrimony of assets and liabilities, separate and distinct from that of any other person and the legal powers to achieve such purpose through the administration of its own governing body.

(3) Legal personality exists when an organisation is recognised or is established as a legal person by a special law or it is registered in terms of the provisions of this Schedule or any other special law which grants legal personality.

(4) In confirmation of the freedom of association guaranteed by the Constitution and the laws of Malta, an association of persons shall not be required to qualify as a legal person as a pre-condition for such association of persons to carry on any lawful activities pursuant to any purpose for which it has been established.

(5) Any person has a right to establish legal organisations as long as that person complies with the prescribed rules as to form and content.

(6) Organisations may be public or private.

(7) Public organisations and their administrators are governed by the law applicable to the State and the public service, and any other special laws applicable to the particular organisations. When the State makes use of forms of legal organisations governed by Title III of this Schedule or by the provisions of any special law, the provisions applicable to the particular legal form shall apply.

(8) Private organisations are governed by the provisions of Title III of this Schedule, as may be applicable, and the special laws which may be applicable to their legal form and their purpose.

(9) In this Schedule -

(a) any reference to "the Court" shall be deemed to be a reference to the Civil Court in its voluntary jurisdiction unless it is otherwise expressly stated;

(b) the terms "non-profit making" and "social purpose" shall have the meaning as assigned to them in the Voluntary Organisations Act, 2007;

(c) the term "public organisation" shall mean any organisation which is controlled, directly or indirectly, by the Government and an organisation is "controlled by the Government" where the Government enjoys the power to appoint or remove a majority of the administrators of the organisation;

(d) "relevant date" means the 31st March 2007;

(e) "special law" means an Act of Parliament or a part of this Code which regulates a particular legal form or forms of legal organisations.

Sub-Title II

Of Foreign and International Organisations

2. (1) Foreign organisations having legal personality under the laws by which they are established shall be recognised as legal persons for all purposes of law.

Foreign and
international
organisations.

(2) International organisations which are afforded legal personality in any multilateral or bilateral treaty to which the State is a party shall be recognised as legal persons for all purposes of law. The Minister responsible for justice shall, from time to time, publish a list of such organisations in the Gazette.

(3) The law applicable to the establishment of such foreign or international organisations shall apply to all matters regarding such legal persons, including their existence, the construction and effects of their deed of establishment and their administration and, to the extent that an international organisation is the subject of a special law following the ratification by the State of the treaty establishing such organisation, such organisation shall also be governed by such law or

treaty.

(4) Unless exempted by express provision of law, any foreign or international organisation, whether vested with legal personality or not, which carries on an activity in Malta on a regular basis is required to register with the Registrar for Legal Persons, appointed under article 11 of this Schedule, prior to commencing its activities. For the purposes of this article "regular activity" means activity having a duration of more than three months or which is carried out through a permanent establishment in Malta.

TITLE II

OF LEGAL PERSONALITY

Sub-Title I

Of Legal Persons

Recognition of
legal persons.

3. (1) Legal persons are organisations endowed with legal personality. Legal personality is acquired through the formal recognition of the State. Recognition by the State requires a specific act of recognition and no other administrative act of the State in relation to an organisation or activity shall constitute recognition. Legal personality shall be granted on the registration of an organisation in the Public Registry in accordance with article 12 of this Schedule.

(2) When organisations are created by voluntary act, they shall be established in accordance with such legal forms as the law provides for.

(3) An organisation shall only be recognised as a legal person if it complies with such formalities as are applicable to the legal form selected for its establishment and registration.

(4) Organisations created by voluntary act, whether registered or not, are primarily governed by the laws applicable to their particular legal form or to their purpose or both and, where the provisions of special laws or provisions of other parts of this Code do not provide on any matter provided for in this Title, also by the provisions of this Schedule.

(5) Organisations which do not enjoy legal personality shall only have such rights and powers as are granted to them by or in pursuance of the express provisions of law.

4. (1) Every legal person has a patrimony which shall, to the extent provided by law, be appropriated to a purpose or purposes which shall be lawful, possible, and not immoral or against public policy. Such purpose may be a private benefit or purpose or may be non-profit making with a social or other purpose. When the purpose is a private benefit it must be, on pain of nullity, for the benefit of a person or class of persons who can be ascertained or are ascertainable. In the absence of a specified purpose, the purpose of the legal person shall be deemed to be the private benefit of the founders thereof or their successors in title.

General rules
applicable to
legal persons.

(2) Every legal person must be identifiable by a unique name which is assigned to it on the date on which it is constituted, and under which it exercises rights and performs its obligations. Such name may be changed following the procedure established by law. Any name must conform to law and include, where required, a denomination that clearly indicates the legal form assumed by the legal person.

(3) Every legal person shall have an address in Malta where communications can be received and information requested about its activities.

(4) Legal persons act through their organs, such as a board of administrators, directors or trustees and, to the extent that it has members, the general meeting of members on matters designated to such organ.

(5) Legal and judicial representation of a legal person shall be vested in the manner stated in the statute of the organisation or the applicable law and the administrators shall be deemed to enjoy the power to delegate such powers of representation by means of a written resolution or written power of attorney in favour of any third parties. The administrators of a legal person bind it to the extent of the powers vested in them by law, the constitutive act and any bye-laws or as otherwise stated in the law applicable to their particular legal form:

Provided that any limitation in the powers of the administrators shall not be relied upon as against third parties in good faith irrespective of whether such limitation, published or not, arises from the deed of constitution or from any internal decision, unless it is proved that such third party was aware that the act was in breach of the limitation.

(6) Every legal person must have at least one administrator who may act on its behalf and in the absence of at least one

incumbent in the office of administrator, the Attorney General or any other interested person shall be entitled to request the Court to appoint an administrator for such purposes, for such time and under such conditions as the Court considers appropriate.

(7) Any person acting in the name of a legal person which does not exist shall be bound personally to perform the obligations undertaken, except as otherwise stated in any special law, a legal person may ratify any act done in its name before it was registered. Upon ratification the legal person is bound by the obligations entered into by the person who acted in its name and shall be entitled to all rights. The ratification shall not constitute a novation unless the other party to the transaction expressly releases the person acting in the name of the legal person from the obligations assumed by it:

Provided that a person acting for a legal person before it is constituted shall not be bound personally if the contract stipulates otherwise or includes a statement to the effect that the agreement is conditional upon the legal person coming into existence or that the legal person might not be constituted or may not assume the obligations undertaken in the contract.

(8) Legal persons may not exercise tutorship or curatorship to a person. They may, however, to the extent that they are authorised by law to act as such, hold office as trustee or curator of property. They may also act as a liquidator or executor of a will, an official consignee, a judicial sequestrator, a trustee or an administrator of another legal person.

(9) Legal persons may be the beneficiaries of dispositions under wills as well as donations subject to the following provisions:

(a) testamentary dispositions in favour of unregistered organisations shall not come into effect, and to the extent performed shall be revocable on demand of any person interested in the will unless an application for the registration of such organisation is made in terms of the applicable law within one year from the day of the opening of succession;

(b) donations made to an organisation shall be deemed to be made on the assumption that it is registered or will be registered and shall not come into effect, and to the extent performed shall be revocable on demand of the donor, unless an application for the registration of such organisation is made in terms of the applicable law within one year from the donation;

(c) the administrators who have been informed of their

engagement and accept the same shall effect such registration within the period above stated; and

(d) the Court shall have the power to extend such time limit on application of any administrator or other interested party at its discretion.

(10) The provisions of subarticle (9) shall not apply to pious foundations and marriage legacies governed by article 6(4) of this Schedule.

(11) Legal personality may not be set up against a person in good faith in order to perpetrate fraud.

5. (1) A legal person exists in perpetuity unless otherwise provided by law or its constitutive act. Duration of legal persons.

(2) Legal persons constituted directly by or in terms of a special law exist from the date of the coming into force of the law or from the date prescribed therein. In other cases, legal persons exist from the date of registration or from such other date provided for in the laws that are applicable to their particular legal form.

(3) Legal persons cease to exist with effect from the date when they are struck off from the relevant register in accordance with the laws applicable to their particular legal form or as stated in any special law.

(4) Without prejudice to the rules applicable to legal persons of a particular legal form, on the application to the Court of any interested person or the Registrar, the Court may, failing the taking of such relevant actions by the legal person or its officers according to the applicable law, order the striking off from the register of the legal person in the following cases:

(a) when the persons vested with such authority so determine in accordance with the constitutive act; or

(b) upon the happening of the events expressly stated to have such effect -

(i) in the constitutive act; or

(ii) in the laws that are applicable to their particular legal form; or

(c) when the purpose for which they have been established has been achieved, exhausted or has become

impossible; or

(d) when there is no administrator in office for a period exceeding six months; or

(e) when there are no longer any registered members in case of an association or no beneficiary in case of a private foundation.

Legal persons
existing prior to
relevant date.

6. (1) Notwithstanding that they are not registered in a register which results in legal personality, organisations which were recognised as being legal persons prior to the coming into force of this Act, hereinafter referred to as the "relevant date", in terms of customary law or in terms of any final judgement delivered by any Court, shall continue to be recognised as legal persons indefinitely unless -

(a) such continuing status is subject to registration in terms of this Schedule or any special law, is required in a notice issued by the Minister responsible for justice and published in the Gazette and registration is not effected within the time provided for in such notice, in which case they shall cease to be recognised as legal persons with effect from the lapse of such date, or

(b) they otherwise cease to exist according to law.

(2) All foundations, hereinafter referred to as an "existing foundation", created by public deed and existing on the relevant date shall be deemed to have had legal personality from the date of their establishment but shall be bound to register as legal persons in terms of this Schedule within two calendar years of the relevant date.

(3) Notwithstanding that an existing foundation fails to register as required by subarticle (2), such existing foundation shall continue to enjoy legal personality in accordance with subarticle (1) but such foundation, as well as its administrators, shall be governed by the provisions of this Schedule applicable to unregistered organisations with effect from the lapse of the two-year period referred to in subarticle (2).

(4) Pious foundations and marriage legacies shall not be bound to register and shall continue to enjoy legal personality until they are wound up. These foundations shall be governed by the provisions of this Schedule applicable to unregistered organisations with immediate effect, unless registered.

(5) Associations, hereinafter referred to as "existing associations" established in writing before the relevant date which are considered to be legal persons in accordance with the provisions of the Interpretation Act shall continue to be considered as legal persons although they are not registered; however existing associations which do not register as legal persons, as well as their administrators, shall be governed by the provisions of this Schedule applicable to unregistered organisations with effect from the lapse of one calendar year from the relevant date. Cap. 249.

(6) In this Schedule the reference to "pious foundation" comprises -

(a) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as juridical persons by the competent ecclesiastical or other religious authorities;

(b) non-autonomous pious foundations, that is, temporal goods given in any way to a public juridical person established by the competent ecclesiastical or other religious authorities and carrying with it a long term obligation, such period to be determined by the relevant canon or other religious law or rule and where the obligation consists of binding the juridical person, from the annual income, to celebrate Masses or other religious ceremonies, to perform other determined ecclesiastical functions, or in some other way to fulfil the pious or religious purposes as defined by the applicable religious laws or rules;

and "pious or religious purposes" are understood to be those which concern acts of piety, of the apostolate or of charity, whether spiritual or temporal.

Sub-Title II

Of Administrators

7. (1) Every organisation shall be managed by one or more administrators who shall be responsible for maintaining possession and control of the property of the organisation, safeguarding such property and ensuring compliance with the statute of the organisation, the provisions of this Schedule and any special law applicable to its particular legal form. Appointment of administrators.

(2) For the purposes of this Schedule, "administrator" means an officer or a person who is appointed to control and administer an organisation including a governor, a director, a trustee or a committee member and any person who carries out such functions even if under

another name.

(3) The statute shall designate the first administrators or, if not designated, how administrators are appointed and removed.

(4) Subject to the terms under which they are engaged, administrators are bound by fiduciary obligations as stated in article 1124A of the Code.

Disqualification
for appointment.
Cap. 9.

8. (1) Persons convicted of any of the crimes mentioned in Titles V, VI and IX of Part II of Book First of the Criminal Code in the previous ten years shall not be eligible for appointment or election to:

(a) the office of treasurer, deputy treasurer or assistant treasurer or a similar office of an organisation; or

(b) any other office in such organisation the holder of which is responsible for the collection, disbursement, custody or control of the assets of the organisation or for its accounts; or

(c) an auditor of such organisation.

(2) Persons who are subject to a disqualification order issued by the Court in terms of subarticle (3) shall not act in such capacities and for such times as are stated in the order.

(3) The Court may disqualify any person from activity as an administrator of an organisation, or rehabilitate such person in accordance with regulations which may be made by the Minister responsible for justice from time to time.

Removal of
administrators.

9. (1) Administrators may be removed in cases of misconduct, failure to declare conflicts of interest, breach of duty or failure to comply with the statute or any provisions of this Title:

Provided that, notwithstanding any provision of the statute of an organisation, any action intended to remove an administrator on such grounds shall be preceded by a notice in writing to such person stating the alleged reasons for such removal and providing such person with a reasonable opportunity to defend himself and rebut the allegations.

(2) Removal of an administrator shall take place in accordance with the statute of the organisation. After exhausting all applicable remedies within the organisation, any person who demonstrates an interest may apply to the Court with a request for removal of an administrator and the Court shall issue such orders as it deems

necessary after hearing the applicant and the administrator and considering any other relevant evidence.

(3) The Court may, when it orders the removal of an administrator, name a temporary or definitive administrator or administrators in substitution when it appears to the Court that the method of appointment as stated in the statute will not result in an effective and immediate appointment of a substitute administrator or administrators.

(4) Any provision in a statute to the effect that an administrator may not be removed for the reasons mentioned in subarticle (1) shall be null and void.

(5) The Court may impose disqualification in terms of article 8 of this Schedule in any case where it orders the removal of an administrator.

(6) The powers of the Court referred to in this article may be exercised by any Court appraised of proceedings involving an administrator.

10. (1) Administrators shall keep records of -

- (a) all assets and liabilities; and
- (b) all income and expenditure,

Records,
accounts and
reports.

of the organisation for annual financial periods.

(2) Administrators shall prepare such accounts and reports at such times and with such form and content as may be prescribed or as may be applicable to their particular legal form. Such accounts and reports shall be reviewed as may be prescribed or as may be required by applicable law.

(3) Such accounts, reports and records shall be held for a period of ten years after the relevant annual period to which they refer, or for such other period imposed in relation to an organisation under any special law applicable to its legal form.

Sub-Title III

Of the Registrar

11. (1) There shall be a Registrar for Legal Persons who shall be appointed by the Minister responsible for justice for that purpose and who shall perform the duties and exercise the powers

Power of the
Minister to
appoint
Registrar.

imposed and conferred by this Schedule or by any regulations made under subarticle (3).

(2) The Minister may also appoint persons as Deputy Registrars to assist the Registrar conferring on such persons all or any of the powers of the Registrar under this Title.

(3) The Minister may make regulations laying down the functions and powers of the Registrar.

(4) The Registrar shall be bound to notify decisions he may take refusing applications to register organisations in writing, providing the reasons for his decision. Any person or organisation which is aggrieved by any decision of the Registrar may appeal to the Court from the decision within thirty days of receipt thereof or where there is no response to an application to the Registrar to register an organisation, after forty-five days from the date of application to register.

Sub-Title IV

Of Registration of Organisations

Registration.

12. (1) Organisations may be registered in such manner as may from time to time be provided in this Schedule or in the law that is applicable to their particular legal form.

(2) In the absence of provisions on registration in relation to any form of organisation which may be granted legal personality by any law, organisations shall be registered at the Public Registry in accordance with the provisions of this Title or of any regulations.

(3) Where an organisation may acquire legal personality through registration in a public registry under any other law applicable to its form, it shall not be lawful to register such an organisation in terms of this Sub-Title.

(4) Except for public organisations and other organisations which are already registered and have legal personality as a result thereof, the enrolment of an organisation with or the issue of a certificate or licence by the State which, in terms of any applicable law, grants legal personality to the organisation shall be interpreted as requiring, as an additional condition thereof, the registration of such organisation in terms of this Schedule.

(5) It shall be a condition for registration of any organisation the administrator or administrators of which are not ordinarily resident in Malta, to appoint and retain at all times, a person who is

ordinarily resident in Malta to act as judicial representative of such organisation in Malta and this for all purposes of any law in Malta.

(6) A certificate of registration given in respect of an organisation is conclusive evidence that the requirements of this Schedule in respect of registration and of matters precedent and incidental to it have been complied with and that the organisation is duly registered in terms of this Schedule.

Sub-Title V

Of Unregistered Organisations

13. (1) An unregistered organisation is an organisation having a form recognised by law, which is constituted by an instrument in writing and which, being registerable in terms of this Schedule or any other special law, is not so registered. Unregistered Organisations.

(2) The instrument in writing establishing an unregistered organisation shall contain, on pain of nullity, an express statement of a specific purpose or purposes for which the organisation has been established, which purposes shall be construed restrictively.

(3) Without prejudice to the right of association of any person and the right of any person to establish an organisation, an association of persons or the appropriation of property to a purpose which is not in written form is not recognised for the purposes of this Schedule.

(4) The following organisations shall not be treated as unregistered organisations for the purposes of this Schedule although they are not registered:

(a) any organisation which is already registered pursuant to a special law regulating its form resulting in legal personality;

(b) public organisations, except those public organisations which have been established in a legal form which requires registration, if they are not registered; and

(c) international organisations not obliged to register in Malta,

each of which shall be regulated by any special law applicable to their particular form.

14. (1) Unregistered organisations are not legal persons but, pursuant to this Sub-Title, they enjoy limited recognition and legal Powers of an unregistered organisation.

powers to achieve the specific purposes for which they are constituted.

(2) An unregistered organisation may enter into transactions in relation to movable or immovable and other registerable property, may open bank accounts and may engage persons and contractors to provide services it may require, strictly for the achievement of the express purposes of the organisation.

(3) An unregistered organisation may enter into contracts in its own name.

(4) An unregistered organisation may be sued in its own name and is represented in legal proceedings by any administrator. An unregistered organisation may sue in its own name and is represented by the person who, in terms of the statute, enjoys such power or in the absence of such appointment, by the sole administrator or, if there is more than one, by any two administrators.

(5) An unregistered organisation may not establish another organisation unless the other organisation is registered.

(6) The powers of an unregistered organisation shall be construed as being limited strictly to what is necessary for the administration of the organisation and the fulfilment of the purposes for which it is expressly established and only to achieve such purposes.

Management
and property
rights in
unregistered
organisations.

15. (1) The internal management and administration of an unregistered organisation is regulated by its statute. Legal representation of the organisation shall be vested in the person who, in terms of the statute, enjoys such power or, in the absence of such appointment, by the sole administrator or, if there is more than one, by any two administrators.

(2) The contributions of the promoters and assets acquired by such contributions constitute the patrimony of the unregistered organisation. Any obligations undertaken by the unregistered organisation may be enforced against such patrimony without prejudice to the liability of other persons for such obligations.

(3) Any property acquired by an unregistered organisation shall, unless otherwise stated in its statute, be deemed to be held in co-ownership between the promoters according to the rates of contribution:

Provided that a promoter may only demand the division of such patrimony and withdraw his contribution from an unregistered

organisation when the organisation is terminated and all obligations towards third parties are performed.

(4) In the case of an unregistered organisation established for a social purpose or otherwise as a non-profit making organisation, any property appropriated or endowed to such purpose shall be held by the administrators as fiduciaries and shall be available only for the social or other lawful purpose stated in the statute. On dissolution of the organisation, the property must be applied in favour of such social or other purpose or as provided in its statute, failing which it shall devolve in favour of such organisation as may be designated by the Minister responsible for social policy by notice published in the Gazette which shall apply the same to a similar purpose or as may be provided in applicable law.

Sub-Title VI

Of Responsibility of Persons involved in Organisations

16. (1) The promoters and members of a registered organisation, or in case of a registered foundation, the founders, the donors or the beneficiaries, shall not be liable for the obligations of such an organisation, except to the extent they expressly agree to be so liable or as expressly stated in any provision of this Schedule or any special law.

Responsibility
of persons
involved in
registered
organisations.

(2) The promoters and members of a registered organisation are liable towards the legal person for anything they have bound themselves to contribute to it in writing, unless otherwise provided by law.

(3) In case of unlawful acts, a Court may, on the application of any interested party, declare the founders, promoters, administrators or members who have consented to or otherwise have knowingly taken part in the unlawful act to the detriment of the legal person, as personally liable for any damage suffered by the legal person.

(4) The administrator of a registered organisation shall not be personally liable for the obligations of the organisation except in the following cases:

(a) to third parties for the obligations of the organisation if -

(i) he is guilty of fraud or bad faith in entering into any obligations;

(ii) he has entered into obligations in favour of

third parties at a time when he knew or ought to have known that there was no reasonable prospect that the organisation would avoid being wound up due to insolvency;

(b) to the organisation for the performance of the obligations that he has entered into on its behalf, without being entitled to the benefits, and for any benefit which accrues to him personally, if he has failed to declare a personal interest or a conflict of interest;

(c) to the organisation to account for any loss if he has acted in breach of duty as stated in the statute or this Schedule in bad faith or has been negligent in the carrying on of his duties;

(d) to the beneficiaries of an organisation or the Attorney General on their behalf, if he has acted as stated in paragraph (c) or in a situation where there is a conflict of interest:

Provided that nothing in this subarticle shall render an administrator liable more than once for the same act.

(5) In those cases where an organisation has more than one administrator, the responsibility of the administrators shall be joint and several unless some particular duty has been exclusively entrusted to one particular administrator, in which case only he shall be liable.

(6) An administrator shall not be liable for the acts of another administrator if he shows that he was not aware of the breach at the time of its occurrence and on becoming aware of it he signified his dissent in writing without delay and took all reasonable measures to hinder the continuation of the breach or knowing of the intended breach he took all reasonable measures to avoid its occurrence.

(7) Any provision in the statute of the organisation or any agreement exonerating an administrator from liability for wilful misconduct, gross negligence or breach of duty shall be null and void.

17. (1) The promoters and administrators of an unregistered organisation shall be jointly and severally liable -

(a) to keep the property of the unregistered organisation identified as such and distinct from their own personal property and other property they may be administering;

- (b) for the preservation of any property received;
- (c) for the use of assets to the fulfilment of the purposes expressly stated in the statute of the unregistered organisation; and
- (d) to ensure, to the extent possible, considering their functions, observance of the law applicable to the unregistered organisation and its activities.

(2) Without prejudice to the availability of assets of an unregistered organisation for the fulfilment of its obligations, members and supporters of an unregistered organisation shall only be liable for the obligations expressly undertaken by them in the statute or any subscription document.

(3) The promoters of an unregistered organisation as well as the administrators, whether still in office or otherwise, shall be jointly and severally liable among themselves and with the organisation for any of its liabilities incurred after the coming into force of this provision and for the observance of all legal requirements in relation to the activities of such organisation:

Provided that the liability of an administrator shall be limited to liabilities incurred and performance of obligations while such administrator was in office:

Provided further that, except in the case of fraud, the liability of the promoters and the administrators for the obligations of the unregistered organisation shall be *in subsidium* and they shall enjoy the benefit of discussion of the property of the organisation prior to being personally obliged to fulfil obligations. Promoters and administrators may not waive such benefit and any waiver of such benefit shall be unenforceable:

Provided further that the liability of a promoter shall be limited to liabilities incurred until such time as the promoter hands over the management and administration to the administrators of the organisation.

(4) Where the liability of members and administrators of an unregistered organisation having a particular legal form is regulated specifically by a provision of this Schedule or any special law, such provisions shall prevail over the provisions of this article.

18. Any person who claims or purports to act in the name of a legal person which does not exist or an unregistered organisation for which no written instrument exists shall be personally liable to fulfil

Acting in the name of an inexistent organisation.

all the obligations undertaken and shall be liable for any damages caused through such actions. Such person shall be personally bound to return to the grantor any property received for the purported purposes of the organisation.

Sub-Title VII

Of Liability of Organisations

Liability of an organisation.

19. (1) Legal persons are distinct from their promoters, founders, administrators and members, if any. The acts of legal persons bind no one but themselves except as provided by law.

(2) An organisation shall be liable for the fulfilment of its obligations with all its present and future assets and shall not be liable for the obligations of any other person except to the extent that it expressly agrees to be so liable.

(3) An endowment of property shall be subject to reduction or revocation to the extent it is in conflict with any rules of mandatory application or in terms of article 1144 of the Code if it is detrimental to the rights of a creditor:

Provided that an administrator who has acted in good faith shall not be liable to account for any assets paid out, distributed or expended in accordance with the statute of the organisation without knowledge of the claim by the third party.

(4) The rules in subarticles (2) and (3) shall *mutatis mutandis* apply to unregistered organisation, without prejudice to the personal liability of its administrators or other persons as stated in this Schedule.

(5) A registered organisation may, unless prohibited by its statute, establish other organisations, of any legal form, to achieve all or any of the purposes for which it has been established, whether the latter constitute legal persons or not.

(6) When a registered organisation establishes other organisations which are registered as legal persons and maintains control over them, the organisations shall constitute a group of organisations for the purposes of this Schedule. An organisation shall be deemed to control another organisation if the administrators of the first have the power to appoint or remove the administrators of the second, or if this power has been vested in another person, persons or organ of the second organisation, if the administrators of the first have the power to amend or revoke the vesting of such power.

(7) An organisation forming part of a group of organisations, whether as founder or as a member of the group, shall not be liable for the obligations of other members of the group except to the extent it expressly undertakes in writing or as otherwise provided in any provision of this Code.

(8) The liability of all foreign or international organisations which are controlled and administered in Malta or whose principal activities are in Malta, as well as that of their administrators, shall be subject to the preceding provision in so far as their administration in Malta is concerned, subject however to any provisions of any special law applicable to them.

Sub-Title VIII

Miscellaneous

20. (1) It shall be lawful for a registered organisation to establish segregated cells within the organisation to achieve particular purposes with particular assets. Where the special law applicable to a particular legal form of registered organisation already provides for segregated cells, or equivalent features, such provisions shall apply to the exclusion of the provisions of this article.

Segregated cells
within
registered
organisations.

(2) A segregated cell within a registered organisation exists when established formally:

(a) by the statute of the organisation on creation of the organisation; or

(b) subsequently, by the administrators pursuant to a power vested in them by the statute,

and in either case shall be established by reference to shares, interests or other rights of the members or beneficiaries of the organisation or, in the absence of any such rights, by reference to purposes as defined in the statute or in resolution of the administrators, or by reference to both such rights and purposes.

(3) A segregated cell shall not be a legal person and nor shall it be eligible for registration as a legal person, but shall have its own distinct name or designation.

(4) A segregated cell is established subsequently to the creation of an organisation when the following conditions are observed:

(a) the organisation is authorised by its statute to

establish segregated cells for the achievement of one or more defined purposes which are consistent with the main purposes of the organisation;

(b) the administrators of the organisation resolve in writing to establish such cell; and

(c) a notice relating to the establishment of a segregated cell is delivered to the Registrar for registration.

(5) When a segregated cell is established -

(a) the assets and liabilities of the cell shall constitute a distinct patrimony which shall be distinct from all other assets and liabilities of the organisation or other cells which may be established;

(b) the assets of such cell shall be available for the fulfilment of any obligations undertaken by the organisation in relation to that cell but not for any other liabilities entered into by the organisation for itself or in respect of other cells;

(c) the general assets of an organisation shall not be available for the fulfilment of the obligations undertaken in relation to the cell; and

(d) there shall be implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by an organisation with segregated cells the following terms that -

(i) no party shall seek, whether in any proceedings or by any other means whatsoever, to make or attempt to use any assets attributable to any cell to satisfy a liability not attributable to that cell; and

(ii) if any party succeeds by any means whatsoever in using any assets attributable to any cell to satisfy a liability not attributable to that cell, that party shall be liable to pay to the organisation a sum equal to the value of the benefit thereby obtained by him; and

(iii) any asset or sum recovered by the organisation under the implied term set out in this paragraph or by any other means whatsoever in the events referred to herein shall, after the deduction or payment of any costs of recovery, be applied by the organisation so as to compensate the cell affected.

(6) When a segregated cell is established the assets of the cell must be segregated from all other assets of the organisation and are held and administered separately and distinct accounts must be maintained in accordance with applicable law in relation to each cell. The existence or termination of each cell must be disclosed in the reports and accounts of the organisation.

(7) The legal effects stated in subarticle (6) shall arise only if -

(a) all activities relating to a cell shall be undertaken in a manner that it is expressly disclosed to third parties that the activities are those in respect of the particular cell:

Provided that such requirement shall be satisfied if third parties are otherwise aware or ought, from the circumstances, to be aware of the fact that the activities undertaken are those in respect of the particular cell;

(b) no statement or representation is made by the administrators of the organisation to the effect that the organisation is liable for the obligations undertaken in respect of the cell;

(c) the cell is established in accordance with this article and all relative procedures and formalities are observed at all times.

(8) When the conditions in subarticle (7) are satisfied, no court shall order the issue of any warrant, precautionary or executive, against the assets of a cell in respect of a claim for which the organisation or another cell is liable. In the event of enforcement on any assets attributable to a cell in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected, the organisation shall -

(a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost by the cell affected; and

(b) transfer or pay to the cell affected, from the assets to which the liability was attributable to the extent available, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(9) The rules, including without limitation the rules applicable to dissolution and winding up, applicable to the legal form of an

organisation within which a cell is established shall apply to the cell as though the cell were itself a registered organisation of the same legal form. The winding up of a cell due to its inability to honour its debts shall not affect the continuing operation of the organisation or other cells in any manner whatsoever and the appointment of a receiver or liquidator for a cell shall not affect the powers of the administrators in relation to the organisation or any other cells.

(10) The provisions of fiscal law which apply to legal persons shall *mutatis mutandis* apply to a cell as though the cell were itself a registered organisation of the same legal form of the organisation within which the cell is established.

(11) The Minister may make regulations to regulate segregated cells, in general or for particular legal forms of organisations, and to regulate any matters related or incidental thereto, including on the dissolution of cells and on the transfer of assets of a cell to another organisation, with or without segregated cells, and the legal effect of such transfer.

Conversion of legal persons of one legal form into another legal form and to trusts.

21. (1) It shall be lawful to convert a legal person in one form to a legal person having a different form by following the procedures which may be laid down in any regulations made by the Minister responsible for justice in terms of this article.

(2) When a legal person in one form is converted into another form it shall not be necessary to dissolve and wind up the legal person and such legal person shall continue to exist as the same legal person with all rights and subject to all obligations existing prior to the conversion.

(3) It shall also be lawful to convert a registered organisation into a trust for the benefit of the persons beneficially interested in the organisation by following the procedures which may be laid down in any regulations made by the Minister responsible for justice in terms of this article.

(4) When a legal person is converted into a trust, the trustee shall succeed to all rights and obligations of the legal person and it shall not be required to dissolve and wind up the legal person as required by the applicable law. The legal person shall be struck off from the register in which it is registered subject to the conditions as may be laid down by regulations.

(5) The conversion of a legal person into another form or into a trust shall not operate to prejudice any creditor or third party in any manner whatsoever.

22. (1) It shall be lawful to amalgamate two or more organisations into one and to divide an organisation into two or more organisations. For this purpose, unless otherwise provided by regulations by the Minister in relation to a particular legal form, the provisions of the Companies Act shall *mutatis mutandis* apply and the functions of the general meeting, in case of foundations, shall be carried out by the administrators and any persons whose consent is required for material decisions to be taken by the administrators.

Amalgamation
and division of
legal persons.

Cap. 386.

(2) In the absence of specific rules or regulations by the Minister on a particular legal form, the provisions of fiscal law which apply to amalgamations and divisions of companies shall *mutatis mutandis* apply to amalgamations and divisions of any other legal form of a registered organisation.

23. (1) Except where permitted in terms of the Voluntary Organisations Act, 2006, organisations may not engage in public collections except when permitted to do so pursuant to the Public Collections Act.

Public
collections.
Cap. 279.

(2) For the purpose of this article "public collection" shall have the same meaning as is assigned to it in the Public Collections Act.

24. In addition to other powers to make regulations as already provided herein, the Minister responsible for justice shall have the power to make regulations to -

Power of the
Minister to
make
regulations.

- (a) establish the contents of statutes of organisations;
- (b) lay down rules to further regulate organisations which are not registered;
- (c) establish the forms for the registration of any organisation, certificates of registration and to establish the powers of the Registrar in relation to registration and all related matters;
- (d) establish forms and content of annual accounts and reports and methods of review;
- (e) regulate foreign or international organisations carrying on activities in Malta and the forms and content for registration and the terms and conditions of registration;
- (f) lay down any rules in connection with foundations when used in commercial transactions including as collective investment vehicles, as securitisation vehicles and as shipping

organisations and for the regulation of all matters ancillary thereto including legal rules applicable to units, umbrella structures and related matters;

- (g) regulate administrators of organisations generally;
- (h) regulate the winding up of organisations;
- (i) regulate the redomiciliation or continuation of organisations;
- (j) lay down any penalties for any breaches of the provisions of this Schedule;
- (k) implement any international convention or any EU Regulation or Directive, to the extent necessary, to which Malta has adhered to in the context of organisations;
- (l) establish the forms and procedures to be used for appeals;
- (m) lay down rules in relation to public collections by organisations;
- (n) regulate the conversion an organisation having one legal form into that having another legal form;
- (o) lay down rules on the powers of the Court in relation to the interpretation or variation of a statute and the administration of an organisation; and
- (p) lay down rules for the better carrying out of any of the provisions of this Schedule.

Interpretation.

25. Unless the context otherwise requires -

- (a) the provisions of this Schedule shall only apply in the absence of rules on the same subject as may be contained in any special laws applicable to particular forms of legal persons and in case of conflict between these provisions and the provisions of any special law, the provisions of the special law shall prevail;
- (b) nothing in this Schedule shall imply the right to register as a legal person in the Register if the organisation is already registered in another public register the effect of which is the grant of legal personality to such organisation, nor the option to register as a legal person with a particular legal form

in a register other than that stated in the special law applicable to that form; and

(c) the Registrar shall not have jurisdiction in relation to legal persons which are the subject of special laws applicable to their particular legal form unless expressly granted such jurisdiction in such special law or regulations made hereunder. The rights and remedies applicable to such legal persons shall be regulated exclusively by the provisions of such special law and nothing in this Title shall grant additional remedies in such cases.

Title III

OF FOUNDATIONS AND ASSOCIATIONS

Sub-Title I

Preliminary and Definitions

26. (1) A foundation is an organisation consisting of a universality of things constituted in writing, including by means of a will, by a founder or founders whereby assets are destined either - Definition of foundation.

(a) for the fulfilment of a specified purpose; or

(b) for the benefit of a named person or class of persons,

and are entrusted to the administration of a designated person or persons. The patrimony, namely assets and liabilities, of the foundation is kept distinct from that of its founder, administrators or any beneficiaries.

(2) For the purposes of this Title, the term "foundation" shall include all organisations, institutes or similarly titled patrimonies which are set up through the bequest, endowment or appropriation of assets, by public deed or otherwise and howsoever named, for a stated purpose or for the benefit of a named person or class of persons, to be achieved through a designated administrator or administrators, but shall not include trusts as defined in the Trusts and Trustees Act.

Cap. 331.

(3) The assets of a foundation may originate from any lawful business or activity and may consist of present or future assets of any nature.

(4) When a testamentary bequest is made having the elements contemplated in subarticle (1), a testamentary executor or the heirs of a deceased person shall be deemed to enjoy the power to convert such

bequest into a foundation having the same aims and purposes as stated in the will, and register the same. The testamentary executor or heirs shall have the power, which shall be exercised with the utmost good faith, to draft the terms and conditions of the statute of the foundation, designate the administrators and regulate all matters which may appear to them to be relevant to comply with the requirements of registration and the wishes of the testator.

(5) Pious foundations established for purposes as defined in applicable religious laws shall not be subject to or in any manner regulated by this Schedule and shall continue to be regulated by the relative religious laws unless they opt to register as foundations in terms of this Schedule in which case they shall be regulated by the provisions of this Code from such date.

(6) Foundations in the form of marriage legacies shall continue to be regulated by the laws in force on the 31st December, 2006 unless they opt to register as foundations in terms of this Schedule in which case they shall be regulated by the provisions of this Schedule from such date.

(7) When a foundation is established exclusively for a charitable, philanthropic or other social purpose or as a non-profit organisation or for any other lawful purpose it shall be referred to as a "purpose foundation" and when it is established for private benefit it shall be referred to as a "private foundation". Unless evident from the statute, a foundation shall be considered to be a private foundation.

Definition of association.

27. (1) An association is an agreement between three or more persons to establish an organisation with defined aims or purposes to be achieved through the dedication of efforts and resources by such persons and others who may join voluntarily, the patrimony, namely assets and liabilities, if any, of the association being distinct from that of the members, its administrators or any beneficiaries.

(2) Associations are not bound to register as legal persons but are entitled to do so.

Hybrid organisations.

28. (1) When an organisation -

(a) is established as a foundation but has features of an association or vice-versa; and

(b) qualifies for registration both as a foundation and an association;

it shall be referred to herein as a "hybrid organisation" and shall be

regulated by the following provisions of this article.

(2) A hybrid organisation shall be bound to register as a foundation unless it amends its statute to that of an association prior to the lapse of two calendar years from the relevant date.

(3) The administrators shall be bound to pay regard to the provisions of this Schedule on both foundations and associations in their administration, and this until such time as the statute of the organisation is amended to clearly elect one form or other of organisation.

(4) Where action to modify the statute of a hybrid organisation is not taken by the founders or members, or it is impossible or impracticable to do so, the administrators of a hybrid organisation may at any time apply to the Court to sanction such modifications as are appropriate to clarify the legal form of such organisation either as a foundation or an association and the Court shall issue such orders as it deems appropriate, including amendments to the statute and the name of the organisation, after considering all evidence submitted to it and after hearing interested parties who may wish to make submissions.

(5) In reaching a decision in terms of the preceding subarticle, the Court shall *inter alia* pay regard to the initial intentions of the promoters, the purposes of the organisation and its current operations, the rights of beneficiaries or members, the future fulfilment of its purposes and management of the organisation.

(6) The Court shall also have the power to order, upon application of the administrators, the re-organisation of the organisation by the creation of other organisations whereby one or more promoters, founders, members or beneficiaries, as the case may be:

(a) cease to be treated as founders or otherwise of a foundation and, or form an association with the sole purpose of supporting the said foundation or enjoying the benefits of membership; or

(b) cease to be treated as members of an association and, or form a foundation to achieve the stated purposes without any benefits of membership; or

(c) direct otherwise so as to ensure the effective achievement of the initial purposes of the organisation.

(7) In making such an order the Court shall ensure that neither the purposes of the organisation nor any vested rights of any person shall be affected, nor shall any obligations other than those freely undertaken by any person arise from such modification or re-organisation.

Sub-Title II

Of Foundations

Form and
content of the
statute.

29. (1) A foundation may only be constituted by virtue of a public deed *inter vivos* or by a will.

(2) The deed of foundation shall contain, on pain of nullity, an endowment of money or property worth at least five hundred liri except in the case of a foundation established exclusively for a social purpose or as non-profit making in which case the endowment shall be worth at least one hundred liri.

(3) When the property endowed is not cash or other asset, the value of which appears on the face of it, the administrators shall declare, in a statement which shall be attached to the application form for registration, that in their considered opinion the property endowed upon or vested in the foundation has a value of at least the amount required by this article:

Provided that a foundation which has been duly registered shall not lose its eligibility to remain registered if, subsequent to registration, the value of its assets is reduced to less than the amount required by this article.

(4) The deed of foundation shall, on pain of nullity, state the following:

- (a) the name of the foundation, which shall include the word "foundation";
- (b) the registered address, in Malta;
- (c) the purposes or objects;
- (d) the constitutive assets with which it is formed;
- (e) the composition of the board of administration and the names of the first administrators, and if not yet appointed, the method of their appointment;
- (f) the legal representation;

(g) the term for which it is established, if any;

(h) in the case of a foundation, the administrators of which are non-residents of Malta, the name and address of a person resident in Malta who has been appointed to act as the local representative of the foundation in Malta; and

(i) in the case of a private foundation, either the names of beneficiaries, or, in the absence of such indication, a declaration that the foundation is constituted for the benefit of beneficiaries. In the latter case the beneficiaries shall be indicated in a written instrument, which need not form part of the public deed, called the "beneficiary statement", signed by the founder and addressed to the administrators, and the same shall be authenticated by the Notary Public who publishes the deed of foundation.

(5) The statute shall be signed by the founders and any person subscribing to the statute after a foundation is established shall be deemed to have consented to all the provisions of the statute and all rules which may have been validly promulgated by the foundation until such date. In the event that more than three founders wish to establish a foundation, a statement may be made of this fact in the statute and the signature of three founders on behalf of all founding members stated in a schedule to the statute shall be sufficient to indicate the consent of all stated founders.

(6) The written consent of the administrators named in the statute to act as administrators of the foundation must be delivered to the Registrar prior to registration of any foundation.

(7) It shall not be lawful to state a term in excess of one hundred years except in case of a purpose foundation, a foundation used as a collective investment vehicle or a foundation used in a securitisation transaction which may be established for an unlimited term. When no term is specified, a foundation shall be valid for one hundred years from its establishment. In the event that a longer term is stated in a deed it shall terminate on the hundredth anniversary from when it came into existence. The limitation on duration also applies in the case a foundation results from the conversion of another organisation or of a trust in accordance with this Schedule and any regulations. In such a case periods of existence shall be considered cumulatively.

(8) Article 1753(1) of this Code shall not apply to endowments in favour of registered foundations.

(9) Foundations established in accordance with this Schedule are not prohibited by articles 331, 757 to 761 and 1776 of this Code.

(10) Article 586 of this Code shall not affect any term of a foundation because it relates to the inheritance of the founder or because the provisions relating to property belonging to the foundation are to take effect after the death of the founder.

(11) (a) The provisions of this Schedule shall apply to dispositions in wills in favour of foundations, whether such foundations are created *inter vivos* or by testamentary disposition, and this notwithstanding the provisions of articles 688, 693 and 695 and other similar provisions of the Civil Code.

(b) The administrators of a foundation may not renounce to a benefit to the foundation under a will pursuant to a disposition in its favour except with the prior consent of the beneficiaries or the court. In such an event, if the administrator is not willing to accept to act as an administrator or to continue in such office, the provisions of article 35 of this Schedule shall apply.

(12) The provisions of this Title shall apply to all foundations existing on the coming into force of this provision but existing foundations will not be obliged to comply with the requirements in subarticle (2) and shall comply with the requirements of subarticle (3) only upon registration. Nothing in this Schedule shall render invalid anything done prior to the coming into force of this law which was valid when done.

Obligation to register.

30. It shall be the obligation of all designated administrators of any foundation, other than pious foundations and marriage legacies, established after the coming into effect of this Title to register such foundation in terms of this Schedule within the periods stated in this Title.

Registration of foundations.

31. (1) For the purpose of registration of a foundation -

(a) in the case of a purpose foundation an authentic copy of the constitutive instrument is to be delivered to and filed with the Registrar by the persons mentioned in subarticles (2), (3), and (4); and

(b) in the case of a private foundation the constitutive deed without the beneficiary statement, if any, and a note of reference referring only to the founder shall be filed with the Registrar.

(2) Where the foundation is created by a public deed an

authentic copy thereof is to be delivered by -

- (i) the founder; or
- (ii) after having accepted to act as such, the administrators appointed in the said deed; or
- (iii) the Notary publishing the deed.

(3) Where the foundation is created by a will, an extract of the relevant part, duly authenticated, is to be delivered by a testamentary executor or by the heirs:

Provided that a testamentary executor may deliver the same even before being confirmed by the Court to act as such.

(4) Where the foundation is created by a secret will the said extract is to be delivered by the Notary publishing the secret will or by the heirs.

(5) The heirs mentioned in subarticles (3) and (4) who do not intend to declare or who have not yet declared their intention to accept the inheritance or who have accepted the inheritance with the benefit of inventory shall nonetheless be liable for the delivery of the said extracts but such delivery shall not of itself be evidence of the acceptance or the unconditional acceptance of the inheritance.

(6) The said delivery is to be effected within three months which period is to run -

- (a) if the foundation is created by a public deed, from the date of such deed;
- (b) if it is created by a public will, from the date of death of the founder; and
- (c) if it is created by a secret will, from the date of the publication of the will.

(7) The said delivery may be made by any one of the persons mentioned in subarticles (2), (3) and (4), either personally or by an authorized agent.

(8) On receipt of the documents mentioned in subarticle (1), the Registrar shall -

- (a) register the foundation, on being satisfied that all the provisions of this Sub-Title have been complied with; or

(b) refuse to register the foundation, informing the applicant in writing of the reasons for such refusal.

(9) The Registrar shall have the right to require any information from any person, if such information is deemed by him to be necessary for registration of a foundation but, in the case of a private foundation, shall not be entitled to request a copy of the beneficiary statement from the administrators or the Notary Public:

Provided that nothing in this subarticle shall limit any powers of the Malta Financial Services Authority under applicable law.

(10) If the delivery prescribed in subarticle (1) is not made within the period established in subarticle (6), the persons mentioned in subarticles (2), (3) and (4) shall be liable to a penalty, payable to the Registrar, of one hundred liri each:

Provided that no person shall be liable for failure to observe this obligation if he is unaware of the death of the founder or any other relevant fact.

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(11) The provisions of article 636(2) and (3) of the Code of Organization and Civil Procedure shall apply to the extracts contemplated in this article.

(12) Without limiting the accessibility by persons with a legitimate interest of the registration records of a private foundation and all information therein contained as well as any changes thereto, the Registrar shall implement procedures to ensure the privacy of private foundations, their assets, activities and beneficiaries.

(13) The documents of private foundations, other than those which are registered, which may be in the possession of the Registrar shall not be made available to third parties without the prior written consent of the administrators, the supervisory council, if any, or the Court and only when it is satisfied that such third parties have a legitimate interest in the information.

Purpose
foundations.

32. (1) A foundation may be established for the achievement of a lawful purpose, including a social purpose, without beneficiaries as provided in article 26(7). The Registrar shall not register such a foundation unless the purpose is indicated in clear terms.

(2) The founder, or if permitted by the statute, an other body or person, may amend or add to the purpose of a foundation by means of an additional public deed. After the death of the founder, the Court

may authorise such amendment or addition to the purpose on the application of any administrator, supervisory council or other interested party.

(3) The deed of foundation may indicate the way in which the moneys or property of the foundation may be used for the attainment of the purpose for which the foundation is established and when no such indication is made the administrators may exercise their discretion.

(4) The deed of a foundation may indicate how the assets of the foundation are to be applied if its purpose is achieved, exhausted or becomes impossible and when no such indication is made, the administrators or the supervisory council may make specific proposals to the Court for authorisation to use or dispose of the assets, unless the founder amends the purpose in terms of subarticle (3). Any disposal of assets shall be made only to another purpose foundation with similar purposes.

(5) When the dominant purpose of a foundation is to support a class of persons which constitute a sector within the community as a whole, because of a particular social, physical or other need they may have or disability they may suffer from, the indication of such a class of persons or one or more members of such a class shall not render it a private foundation but it shall be treated as a purpose foundation in terms of this article.

32A. (1) A foundation may not be established to trade or carry on commercial activities, even if the proceeds of such efforts are destined to social purposes, except that:

Foundations not to be established for trade.

(a) a foundation may be endowed with commercial property or a shareholding in a profit making enterprise, a franchise, a trade mark or other asset which gives rise to income, as well as a ship as long as the organisation is only the passive owner of such assets;

(b) a foundation may, subject to such authorisations as may be necessary under applicable laws, be used as a collective investment vehicle, and issue units to investors therein, for the passive holding of a common pool of assets, the management of which is delegated to a third party, including a pension or employee benefit arrangements; and

(c) a foundation may be used as a vehicle for the purpose of a securitisation transaction, borrow monies against the issue of bonds and do all relative and ancillary acts.

(2) Nothing in this article shall hinder or limit in any way the administrators from protecting the rights of the foundation in relation to such assets or to delegating the management of such assets to a third party.

Private
foundations.

33. (1) A foundation may be established for the private benefit of one or more persons or of a class of persons and such beneficiaries shall enjoy such benefits, and shall have legally enforceable rights against the foundation, as may be stated in the terms of the foundation and the provisions of this Schedule. Foundations imply fiduciary obligations under this Code upon all persons administering them.

(2) The interest of the beneficiary under a foundation shall be deemed to be movable property even if it includes immovable property.

(3) The benefit under a foundation is personal to the beneficiary and subject to any applicable laws and only as stated in the terms of the foundation, creditors, spouses, heirs or legatees of the beneficiary may have rights only to the extent of the beneficiary's entitlements under the foundation and have no other rights in relation to the assets of the foundation. Unless otherwise provided for in the deed of foundation expressly, by the type of benefit granted to the beneficiary or otherwise, upon the death of the beneficiary the beneficiary's entitlement under a foundation shall not devolve to his heirs but shall terminate. If the foundation terminates for any other reason at law the assets of the foundation shall, subject to the terms of the foundation, devolve on the founder or his heirs at law.

(4) Private foundations must name:

(a) the class of persons entitled to benefit as clearly and as fully as possible; or

(b) the person or persons entitled to benefit as clearly and as fully as possible, by specifying first names, surnames, identity card numbers, father's name, mother's name and maiden surname and other relevant personal or family factors to eliminate any doubt as to who the intended beneficiary is,

and if there are no beneficiaries identifiable or ascertainable as aforesaid the foundation, the foundation shall be deemed to be for the private benefit of the founders or their successors in title.

Such identification need not be made in the deed constituting the foundation but may be made in a separate beneficiary statement in accordance with article 29(4)(i) of this Schedule.

(5) Persons who are not yet conceived at the time of the creation of a foundation may be named as beneficiaries or form part of a class of beneficiaries but their rights arise only once they are born viable.

(6) The founder of a foundation may also be a beneficiary.

(7) Subject to the terms of the deed of foundation, if the founders are still alive and capable of acting they may freely amend the deed and substitute, add or remove beneficiaries:

Provided that no decision of a founder shall affect the validity of anything lawfully done by the administrators prior to such decision, before he receives notice of such amendment, nor shall it affect or interrupt lawful acts in progress or lawful commitments made and not yet fulfilled by the administrators.

(8) A beneficiary may be appointed -

- (a) subject to a condition; or
- (b) for a specified time; or
- (c) up to a specified value of benefit,

as a founder shall deem appropriate:

Provided that, if the founder is deceased, a beneficiary may apply to the Court requesting it to eliminate any condition or requirement which is considered to be unreasonable paying regard to all the circumstances:

Provided further that persons unworthy of receiving under a will cannot receive as beneficiaries under a foundation.

(9) The terms of the foundation may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit at the discretion of the administrators.

(10) The terms of a foundation may make the interest of a beneficiary -

- (a) liable to termination; or
- (b) subject to restriction on alienation or dealing; or
- (c) subject to diminution or termination in the event of the beneficiary becoming bankrupt, or insolvent, or any of his

property becoming liable to seizure for the benefit of his creditors; or

(d) not liable to attachment under a garnishee order issued against the administrator or to termination without the prior consent of the Court, when the interest is expressed to be for the maintenance of the beneficiary or as a pension.

(11) Where the benefit consists in an annuity or pension or the use and enjoyment of property and the enjoyment of fruits therefrom, the terms of the foundation may make the interests of the beneficiary -

(a) subject to restriction on alienation or dealing;

(b) not liable to attachment under a garnishee order served on the administrators as garnishees; or

(c) not liable to termination without the prior consent of the Court.

(12) When the administrator is granted the power to add a beneficiary at his discretion, such power shall be valid on condition that sufficient indication be given in the deed of foundation or in the beneficiary statement as to the class of which the beneficiary forms part. In the absence of such indication the power shall be null and void.

(13) A person who may be appointed a beneficiary in terms of a power or discretion granted to the administrator shall not enjoy any rights in relation to the foundation or vis-à-vis the administrator and shall not be considered a beneficiary in any manner until appointed as a beneficiary by the administrator.

(14) It shall be lawful for an administrator to be granted the power to decide at his absolute discretion, which beneficiaries are to benefit, the quantity of any benefit, at what time and in what manner beneficiaries are to benefit and such other powers relating to the appointment, application or advancement of property of the foundation.

(15) A beneficiary in whose favour a discretion to distribute or appoint property may be exercised shall have no rights to specific property of the foundation until such time as such discretion is exercised by the appointment, application or advancement of such property in his favour.

(16) A beneficiary may disclaim his whole interest in writing

and such a disclaimer shall be irrevocable.

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

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

(19) Subject to the terms of the foundation, the following rules shall apply where a foundation, or an interest under a foundation, is in favour of a class of persons:

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

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

(c) where any class interest relates to income and for any period there is no member of the class in existence, the income shall be accumulated and, subject to article 29(7), shall be retained until there is a member of the class in existence or the class closes.

34. (1) The founder, or any other person with his consent, may add to the assets of a foundation by additional endowments at any time. Augmentation
of fund.

(2) Third parties, with the concurrence of the founder, the supervisory council, the administrators or, in default of such persons, with the concurrence of the Court, may augment the endowment of a purpose foundation by a new endowment:

Provided that, when such augmentation by third parties is made by means of a will, failing concurrence by the founders, the administrators or the Court, such a testamentary disposition is to be deemed to require the creation of a new foundation and the nominated administrators shall proceed accordingly.

(3) The administrators shall be bound to file with the Registrar, within three months from any grant, an inventory or descriptive note of the assets added to a foundation but in the case of

cash endowments, only a certified copy of the relative bank deposit statement shall be filed with the Registrar.

(4) In case of a purpose foundation, endowments made to such foundations shall be deemed to be received for the purposes of the foundation. In the event that endowments are received by such foundation in a regular manner in terms of a scheme which is registered with the Registrar, it shall not be required that the administrators file a descriptive note on each occasion that an additional endowment is made but that they shall file documentation on endowments on an annual basis.

(5) Endowments may be granted under a condition, for a fixed time or in accordance with express rules of a foundation. In the absence of any indication every endowment shall be deemed to have been made unconditionally.

(6) Endowments to purpose foundations shall be irrevocable notwithstanding any term to the contrary in the deed of constitution.

(7) Unless expressly stated otherwise, endowments to foundations shall be deemed to be irrevocable. The fact that an endowment is stated to be revocable, unless otherwise stated in the deed of constitution, shall not imply any limitation on the use or appointment of the capital or income by the administrators. In the case of revocation, the grantor shall only be entitled to the balance of capital which may remain unutilised.

(8) Where an endowment is made by two or more grantors jointly and expressed to be revocable such endowment may only be revoked with the express consent of all the grantors.

(9) Revocation of an endowment shall not affect or invalidate acts already carried out or interrupt acts in progress, nor affect commitments made and not yet fulfilled. Revocation of an endowment shall be suspended until such time as the administrators certify to the Registrar that all commitments have been fulfilled and shall be deemed to refer only to such amount as shall not have been utilised in fulfilment of such commitment.

(10) The revocation of an endowment shall not imply the termination of a foundation unless the effect of such revocation shall result in the exhaustion of all the property of the foundation.

(11) If a foundation is the beneficiary of an endowment which is granted for specific purposes different from those of the recipient foundation, the administrators shall seek new instructions from the

grantor and if that is not possible they shall apply to the Court for directions.

(12) The term "endowment" for the purposes of this Title shall mean any grant of money or other property, including rights to money or other property, existing or which may arise in the future.

35. (1) The persons named to be administrators of a foundation may be juridical persons provided they have at least three directors. Administrators of foundations.

(2) Purpose foundations shall have at least three administrators or at least one juridical person acting as administrator.

(3) If the person nominated as an administrator in the constitutive deed is unwilling or unable to accept such responsibility, then he shall, within fifteen days, notify his intentions in writing to the Registrar, the founder or his heirs and the persons named as succeeding, if any. The taking of possession of any assets of a foundation shall imply acceptance to act as an administrator thereof and in such a case the administrator is bound to confirm his acceptance in writing to so act on demand of any interested person or the Registrar. Failure to do so within thirty days from a written request shall be a breach of duty by the administrator.

(4) Any person named or appointed to succeed in administration shall enter into the same obligations as if he were the person named in the first place and shall notify the Registrar in writing upon taking up office. It shall be lawful for an administrator upon taking up office, but not later than thirty days after, to notify in writing the Registrar and any interested parties of any reservations he may have regarding anything relating to the foundation or the actions of the previous administrators and he shall not be liable for any matters so reserved until such time as the reservations are operative.

(5) When administrators, both those originally named or those succeeding, have made any acts of administration, they are bound to submit an account of their administration on relinquishing the administration in addition to such accounts as are required to be submitted in accordance with applicable law. Such account shall be submitted to the succeeding administrators or in their absence to the Registrar.

(6) Unless the deed of foundation provides otherwise, administrators may be remunerated from the income or capital of the foundation. Such remuneration shall be in such amounts and in such manner as may be stated in the deed of foundation or in any

agreement between the founder and the administrator or in accordance with applicable law. Remuneration may also be established by the Court on application of the administrator or any interested party.

(7) Subject to the provisions of subarticle (8), an administrator may resign from office by notice in writing to his co-administrators and in case of there being no other administrator, to the founder or to the beneficiaries or, if impracticable, to at least one beneficiary, or if there are none to whom notice can be given, to the administrator's duly appointed successor and the resignation shall take effect on delivery of the aforesaid notice.

(8) A resignation -

(a) given in order to facilitate a breach of duty, or

(b) which would result in there being no administrator for the foundation,

shall have no effect; provided that an administrator may resign office notwithstanding the provisions of paragraph (b), if, before the resignation takes effect, application is made to the Court for the appointment of a new administrator and a new administrator is so appointed.

(9) An administrator shall cease to be an administrator immediately upon -

(a) the removal of the administrator by the Court;

(b) the coming into effect of a condition in the deed of foundation in terms of which such administrator is removed from office; or

(c) steps are taken for the winding up of the administrator when a legal person.

(10) An administrator ceasing to be an administrator shall, in addition to the duty to account under subarticle (5), be bound to immediately deliver all property of the foundation which may be in his possession to the remaining or successor administrators and to take all such formal or other actions as may be necessary in the interest of the foundation.

Rights of the founder.

36. (1) The founder, and such other persons who may be designated in the deed of foundation, may exercise supervision over the administration of a foundation, obtain a copy of the accounts held

by the administrators, a copy of the inventory or descriptive notes of property, and may intervene in the matter of appointment of administrators or in the disposal of the assets, when these issues are being dealt with by the Court.

(2) A founder may be an administrator of a foundation.

(3) The founder may also be the beneficiary of a private foundation during his lifetime:

Provided that when the founder is a beneficiary, such founder may not at the same time act as the sole administrator of such a foundation.

37. (1) The terms of the foundation may provide for the establishment of a supervisory council consisting of at least one member or for the office of a protector or protectors with similar functions.

Supervisory
structure or
protectors.

(2) The members of the supervisory council or protectors shall be appointed by the founder in the statute of the foundation or subsequently. The deed of foundation may also provide for eventual substitution or replacement of the members of the supervisory council or protectors.

(3) The supervisory council or protectors shall not be considered to be administrators.

(4) Subject to the terms of the foundation, the supervisory council or protectors shall have the power to exercise supervision over the acts of the administrators and may be vested with the power of appointment, removal, substitution or addition of administrators.

(5) The exercise of any action or discretion on the part of the administrators may be subject to the express consent of the supervisory council or the protectors.

38. (1) An administrator shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the foundation property, including the accounts of the foundation, and subject to subarticle (2), the conduct of the administration to -

Rights of the
beneficiaries.

(a) the founder;

(b) the Court;

(c) the supervisory council or protectors;

(d) any other person who is vested with such right in the deed of foundation;

(e) subject to the terms of the foundation, any beneficiary of the foundation who is of full age and capacity, or if a minor, to his lawful guardian or representative;

(f) subject to the terms of the foundation, any other purpose organisation or charitable trust referred to by name for the benefit of which the foundation was established; and

(g) in case of a foundation established for a purpose, the Attorney General or the relevant authority under applicable law.

(2) Subject to the terms of the foundation and to any order of the Court given for special reasons, an administrator or any other person shall not be required to disclose to any person any document or information relating to a private foundation which -

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

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

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

(3) Unless the terms of the foundation expressly determine the time when and the method how beneficiaries are to be informed of their entitlement under the foundation, the administrator shall be obliged to inform any beneficiary of his entitlement, in writing, within a reasonable time of his accepting to act.

(4) When the terms of the foundation grant a discretion in terms of article 33(9) of this Schedule, the terms of the foundation may suspend, until such time as a discretion is exercised in their favour, the duty of the administrator to inform such beneficiaries that they may benefit under the foundation or that they form part of a class of beneficiaries which may so benefit. The terms of the foundation may also indicate the time when and the method of how such beneficiaries are to be informed.

(5) If the deed of foundation expressly provides for the notification of information to beneficiaries or to those persons that form part of a class from among which beneficiaries may be appointed, without reference to any point in time, ascertained or ascertainable, such term shall be construed as implying a duty of the administrator to inform such beneficiaries within a reasonable time after the death of the founder.

(6) Should the administrator consider providing information as required by the preceding subarticles to be prejudicial to the beneficiaries of the foundation or any of them, the administrator may apply to the Court and the Court may release the administrator from the obligation to inform under such conditions as it may consider appropriate.

(7) The duty to inform as above provided shall not arise if the administrator is in possession of information which reasonably demonstrates that those entitled to such information have already been informed or are already aware of such information.

(8) In the case of a purpose foundation, the duty to inform either unnamed beneficiaries forming part of a class or persons forming part of a class of persons who may be appointed as beneficiaries in terms of a power of the administrator, shall not arise notwithstanding the terms of the foundation unless, in case of the unnamed beneficiaries the administrator establishes that there exist less than ten beneficiaries appertaining to such class of beneficiaries. Furthermore, in the absence of any indication to the contrary, the unnamed beneficiaries or persons who may be added as beneficiaries in terms of a power shall be assumed to be persons who carry on relevant social or other activities principally in Malta.

(9) The administrator shall carry out the duty to inform to the best of his abilities and at the expense of the foundation and in the event it appears to the administrator that such exercise will be too costly or burdensome, the administrator may apply to the Court for directions and the Court shall be empowered to release the administrator from such duty under such conditions as it considers appropriate.

(10) The suspension of the duty of an administrator to inform beneficiaries as provided in this article shall not reduce the rights of beneficiaries or the duties and liability of the administrator towards such beneficiaries in terms of this Schedule or other applicable law.

(11) Persons who may be added as beneficiaries in terms of a power referred to in article 33(12) of this Schedule shall have no right

of information until such time as they are appointed beneficiaries by the administrator pursuant to such power.

Multi-founder foundations.

39. (1) When there is more than one founder, initial or subsequent, rights shall be exercised in accordance with the statute. When the statute is silent, in case of two founders, decisions will be taken unanimously and when there are more than two founders, in accordance with the decision of the majority.

(2) In multi-founder foundations the rules on general meetings according to the provisions of article 52 of this Schedule shall *mutatis mutandis* apply.

Revocation of a foundation.

40. (1) Subject to subarticle (2) unless expressly provided otherwise in the statute or in this Title, a foundation shall not be subject to revocation prior to the term for which it is established.

(2) Unless the founder has expressly excluded such a right, a private foundation may be terminated on the demand of all the beneficiaries of the foundation provided they are all in existence, have been ascertained and no one of them is an interdicted or a minor. If the founder is still alive his consent shall be required for revocation by the beneficiaries. The founder may subject termination to the consent of a person stated in the statute.

(3) Notwithstanding anything stated in the statute, after the death of the founder, the Court shall have the power to dissolve and wind up any private foundation when requested by all the beneficiaries of the foundation if it is satisfied that the continuance of the foundation is no longer necessary to achieve the intentions of the founder.

(4) The statute of a foundation may provide that it is revocable:

Provided that revocation shall not affect or invalidate acts already lawfully carried out or interrupt lawful acts in progress. Nor shall revocation affect lawful commitments made and not yet fulfilled. Termination upon revocation shall be suspended until such time as the administrators certify to the Registrar that all lawful commitments have been fulfilled.

(5) The express reservation by the founder of the right to revoke a foundation shall not be exercisable by the heirs or spouse of such founder unless expressly provided otherwise in the deed of foundation. Without prejudice to any other remedies available at law, creditors of the founder may not exercise the right to revoke a foundation.

(6) Purpose foundations may only be constituted in an irrevocable manner and any clause in the statute reserving the right to revoke the foundation shall be disregarded:

Provided that a power of the administrators to apply the proceeds to another purpose when the stated purpose has been achieved or is no longer possible shall be valid:

Provided further that the reservation by the founder of a right to maintenance for himself and his immediate family, in case of need, from the funds of the foundation established by such founder shall also be valid and in such case the Court shall have the exclusive right to determine whether the funds of the foundation may be used for such maintenance.

(7) When a foundation is terminated, the procedures in article 59 of this Schedule for voluntary winding up of an organisation shall be observed.

(8) Except in cases contemplated in article 47(2), where a foundation is converted into a trust, termination of registration shall imply termination of the foundation and upon notice or upon otherwise becoming aware thereof, the Registrar shall proceed to strike off the foundation.

(9) The administrators shall have a duty to maintain the registration of a foundation in the absence of any of the circumstances provided for in this article.

41. The Court shall have jurisdiction in relation to foundations, their administrators, beneficiaries and other parties having an interest therein.

Powers of the Civil Court in its voluntary jurisdiction in relation to foundations.

42. (1) Subject to the provisions of subarticle (3) the Court may, if it thinks fit, by order approve on behalf of -

Variation of the terms of the deed of foundation by the Court and approval of particular transactions.

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

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

(c) any person unborn; or

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

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

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

(3) Where in the management or administration of a foundation, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the administrator by the terms of the foundation or by law, the Court may confer on the administrator, either generally or in any particular circumstance, a power for that purpose on such terms and subject to such provisions and conditions, if any, as it thinks fit, and may direct in what manner and from what property any money authorised to be expended, and the costs of any transaction, are to be borne.

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

Other powers of
the Court.

43. (1) An administrator may apply to the Court for directives concerning the manner in which he may or should act in connection with any matter concerning the foundation and the Court may make such order, if any, as it thinks fit.

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

(a) make an order concerning:

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

(ii) the administrator of any foundation, including an order relating to the exercise of any power, discretion or duty of the administrator, the appointment or removal of an administrator, the remuneration of an administrator, the

submission of accounts, the conduct of the administrator and any payments into the Court; or

(iii) any beneficiary or any person having any connection with the foundation;

(b) make any declaration as to the validity or enforcement of a foundation;

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

(3) An application to the Court for an order or declaration under subarticle (2) may be made by the administrator or by any beneficiary or by the Attorney General or by any other person having a lawful interest:

Provided that in cases where the duty to inform a beneficiary of his interest in a foundation has been suspended in terms of article 36 of this Schedule and until such suspension is in force, and in the absence of any other person appointed to supervise the administration of a foundation, the founder of a foundation may also make an application to the Court in terms of this subarticle. Whilst dealing with such application the Court may determine whether the suspension of rights to information as aforesaid be maintained in force in full or in part for all or some of the beneficiaries.

(4) Where the Court makes an order for the appointment of an administrator or administrators it may impose such conditions as it thinks fit.

(5) Subject to any order of the Court, an administrator appointed by the Court under this article shall have the same powers, discretion and duties as if he had originally been appointed an administrator by the deed of foundation.

(6) Where any Court makes an order on the demand of a beneficiary who has been prejudiced as a result of bad faith on the part of the administrator in the operation of a foundation, the Court shall have the power to restore the position to what it would have been had the action complained of not been taken or otherwise to protect his interests.

(7) When a person domiciled in Malta is obliged to pay maintenance in terms of this Code and is a beneficiary under a foundation, the Court shall have such powers as are necessary to

review the exercise of discretion by the administrator to give due consideration to the rights of persons entitled to claim maintenance.

Appeals,
enforcement and
hearings.

44. (1) There shall be no appeal from any decree, order, declaration or direction of the Court given under the provisions of this Schedule.

(2) Such decrees, orders, declarations or directions shall remain in force until they are substituted or varied by the Court in either its voluntary or contentious jurisdiction.

(3) During the hearing of an application before the Court the administrator or applicant shall at the earliest opportunity disclose to the Court all material facts known to him which may be relevant to the application including the existence of any *res judicata* or pending judicial action given or commenced in Malta or before a foreign court.

(4) All applications to the Court shall be notified to the administrator and the applicant shall furthermore notify all persons who he considers having an interest in the subject matter of the application. The Court shall have the power to order notification to all other persons who it considers may have an interest as it deems fit.

(5) The Court shall hear the administrator and any interested parties as it considers appropriate.

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

Confidentiality.

45. (1) All proceedings under these articles in relation to a private foundation shall be held *in camera* and only the parties to the proceedings, the administrators, the beneficiaries, if they prove they have an interest in the proceedings to the satisfaction of the Court, and their respective advocates and legal procurators shall be allowed in Court during the hearings.

(2) Any decree or judgement of the Court shall preserve the confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by

the parties and the administrators.

(3) All applications, responses, affidavits, opinions, statements and other documents or evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except with the written consent of the Court.

(4) When information, or a document or information therein, is considered to be confidential by a party to any proceedings in relation to other parties to the proceedings it shall be lawful for the Court to hear only such party prior to ordering the disclosure or otherwise of such information and if the Court is satisfied that the other party or parties to the proceedings have no interest in the information considered to be confidential or that it has no bearing on the matter being addressed by the proceedings, the Court shall order that such information shall not be disclosed in the proceedings.

46. The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court concerning applications made under or in terms of this Sub-Title.

Rules of Court.
Cap. 12.

47. (1) It shall be lawful to convert a foundation into a trust and a trust into a foundation:

Conversion of
foundations into
trusts and vice
versa.

(a) with the consent in writing of:

(i) all trustees or administrators, as the case may be; and

(ii) all beneficiaries with fixed interests under the trusts or having similar rights under the foundation; and

(iii) any other person appointed in the trust instrument or deed of foundation, as the case may be, whose consent may be required for the taking of material decisions in relation to the relevant assets; and

(b) by executing a deed of foundation or instrument of trust in the appropriate form and with content so as to faithfully reflect the intentions of the settlor of the trusts or the founder of the foundation and the rights of beneficiaries as the case may be.

(2) When a foundation is converted into a trust, the trustees of the trust shall be bound to cancel the registration of the foundation within thirty days of the receipt of all consents required in the preceding subarticle and this by the filing with the Registrar of a notice as may be prescribed.

(3) When a trust is converted into a foundation, the administrators of the foundation shall be bound to execute a public deed and register the foundation within thirty days of the receipt of all consents required by this article and this by the filing with the Registrar of the documents required by this Schedule.

Sub-Title III

Of Associations

Types of
associations and
applicable law.

48. (1) An association may be established:

- (a) for the purposes of promoting private interests;
- (b) for the purposes of promoting a trade or profession;
- (c) for the achievement of a social purpose; or
- (d) for the carrying on of any lawful activity on a non-profit making basis.

(2) When established for the promotion of a private interest an association of persons shall be regulated by -

- (a) the provisions of Title X of Part II of Book Second of this Code relating to civil partnerships;
- (b) the special laws relating to commercial partnerships;
- (c) the special laws relating to particular professions;
- (d) the special laws relating to unions and employer associations; and
- (e) the special laws relating to co-operatives,

as the case may be.

(3) When an association is established for the promotion of other private interests which are identified in any special law regulating the form or purpose of such association, such association shall be regulated by the provisions of such special law.

(4) When established for the achievement of a social purpose or as a non-profit making organisation, an association shall be regulated by the provisions of this Title and the provisions of any special law relating to voluntary organisations.

(5) Subject to article 6 of this Schedule, all associations shall

be eligible to register under the provisions of this Title.

49. (1) An agreement establishing an association shall be in writing, on pain of nullity.

Form and
contents of the
statute.

(2) The statute shall state the following for the association to be eligible for registration:

- (a) the name;
- (b) the registered address, in Malta;
- (c) the purposes or objects;
- (d) the method or process by which membership of the association is granted to applicants;
- (e) the mode of procedure during general meetings;
- (f) the composition of the board of administration and the names of the first administrators;
- (g) the manner in which administrators are elected to and removed from office;
- (h) the legal representation;
- (i) in case of an association, the administrators of which are non-residents of Malta, the name and address of a person resident in Malta who has been appointed to act as the local representative of the association in Malta; and
- (j) the term for which it is established, if any.

(3) The statute shall be signed by the associating persons and any person subscribing to the statute after an association is established shall be deemed to have consented to all the provisions of the statute and all rules which may have been validly promulgated by the association until such date. In the event that more than three persons wish to establish an association, a statement may be made of this fact in the statute and the signature of three persons on behalf of all associating members stated in a schedule to the statute shall be sufficient to indicate the consent of all stated persons.

(4) The written consent of the administrators named in the statute to act as administrators of the association must be delivered to the Registrar prior to registration of any association.

50. (1) The statute of an association must clearly specify a

Purposes.

purpose.

(2) The assets of an association may originate from any lawful business or activity and may consist of present or future assets of any nature.

(3) Failure to specify a purpose shall result in the nullity of the agreement and the Registrar shall not accept to register such an association until such time as the purpose is clear and unambiguous.

(4) The members of an association may add to the purpose for the achievement of which the association was originally created, by extending it to cover such other purposes of a similar nature as are clearly set down in a second written instrument consented to by such number of members as is necessary to amend the statute.

(5) A social purpose association may not have its purpose changed or extended to other purposes which are not also social purposes and a non-profit-making association cannot change its statute to an organisation promoting a private interest.

(6) A restriction on the number of members which is proportionate to the physical and other resources of an association from time to time or the existence of a membership committee with the power to accept or refuse new members in an association, shall not, on its own, imply that such association is one for private benefit.

Registration of
associations.

51. (1) For the purpose of registration of an association an authentic copy of the constitutive instrument is to be delivered to and filed with the Registrar by the administrators.

(2) Where the association is created by a public deed an authentic copy thereof may be delivered by the administrators provided for in the said deed (when they have accepted to act as such) or the Notary publishing the said deed and the delivery by any one of them shall suffice.

(3) On receipt of the documents mentioned in subarticle (1), the Registrar shall register the association on being satisfied that all the provisions of this Sub-Title have been complied with.

General
meetings.

52. (1) A general meeting for all members shall be convened at least once every year. At this meeting the annual report and the accounts of the association as approved by the administrators, as well as the report of the auditors or reviewers, shall be presented and discussed.

(2) Other meetings may be convened by the administrators

whenever they consider it necessary or when they have a request in writing signed by at least ten per cent of the members. If the administrators fail to convene a meeting when so requisitioned, the Court can order the meeting to be held and shall state the time and place of the meeting which shall be binding on the administrators.

(3) In the absence of specific provisions in the statute, at meetings of the members, decisions shall be taken by the majority of those present at the meeting except that:

(a) when decisions are taken on the amendment of the statute such decisions must be supported by at least fifty-one per cent of all the registered members on the basis of one vote per member;

(b) when decisions are taken to terminate the association or to donate to another organisation all of its assets, such decision must be supported by at least seventy-five per cent of all the members; and

(c) when decisions are taken on the approval of accounts or matters involving the role or responsibilities of the administrators, the administrators shall not be entitled to vote.

(4) Members may appoint proxies to attend a general meeting on their behalf and such proxy shall have the right to vote in addition to his own if he is a member.

(5) When any members use their right to request a meeting in terms of this article, it shall not be lawful for the administrators or the association to dismiss, retire or otherwise limit or reduce the rights of those members until after the holding of the requested meeting.

53. (1) Unless otherwise stated or implied by the statute it shall be presumed that the administrators must be members of the organisation except in the case where the administrators are engaged under a contract of employment. Administrators.

(2) The provisions of article 35 of this Schedule shall *mutatis mutandis* apply to administrators of associations.

54. (1) Members of associations are those persons who: Members.

(a) subscribe to the purposes of the association;

(b) meet the personal status or qualifications for membership as set out in the statute;

(c) provide the necessary membership details;

(d) pay such membership fee as may be applicable or otherwise fulfil such conditions on participation as may be required by the statute or rules of the organisation; and

(e) are otherwise admitted by the membership committee or a committee authorised by the general meeting of members to admit new members, if any.

(2) Every person who is a member of an association shall be free to leave the association and such member cannot be subjected to any liability, other than for unpaid fees, on leaving an association:

Provided that in an unregistered association, when a member leaves the association, this does not affect his liability under the applicable law for the period while he was a member but he shall not be liable in relation to any activities of the association after such time.

(3) If the number of paid up members of an association falls below three, the administrators are bound to proceed with a written call for payment of dues to the members informing them that non-payment will lead to termination under this provision and on the lapse of the said period, with the termination of the registration of such association in terms of this Title.

(4) Any expulsion procedure in a statute, except for failure to pay membership fees or to comply with other purely formal conditions of membership, should cater for:

(a) the non-participation of persons with an interest in a dispute, in the decision to expel;

(b) the right of the member whose expulsion is sought to make submissions to the persons who are empowered to decide.

(5) If the statute of an association does not provide for the procedures mentioned in subarticle (4), the administrators shall be bound to implement a procedure which respects the rules stated in the previous subarticle:

Provided that when an organisation's administrators are involved in the dispute and cannot find independent members to adjudge a motion of dismissal, reference shall be made to the Court on such issue.

(6) The membership of a person in an association established for a social purpose or as non-profit making is not transferable or subject to inheritance.

(7) Members may not have patrimonial rights to the assets of an association established for a social purpose or as non-profit making and are not entitled to any compensation on retirement or expulsion or on winding up of the association.

55. (1) The provisions of article 34 of this Schedule shall apply to endowments to associations. Endowments.

(2) Membership fees are not endowments and shall not be treated as such nor shall they be refundable except as expressly stated in the statute.

56. (1) An association shall exist until it is terminated in accordance with the provisions of its statute or in terms of this Title unless the members, upon being given thirty days' written notice of termination by the administrators, amend the statute to establish other purposes to which the property of the association may be dedicated. Termination.

(2) The termination of an association shall not affect or invalidate lawful acts already carried out nor interrupt lawful acts in progress. Nor shall termination affect lawful commitments made and not yet fulfilled. Termination shall be suspended until such time as the administrators certify to the Registrar that all lawful commitments have been fulfilled.

(3) In the case of associations established for a social purpose or as non-profit making, any assets on termination must be donated by the administrators to another organisation with similar purposes and failing such action, subject to the power of the Court to give directions, they shall be disposed of in favour of such organisation as may be designated by the Minister responsible for social policy by notice published in the Gazette which shall apply the same to a similar purpose or as may be provided in applicable law.

(4) Termination of registration shall not imply the termination of the association which shall occur only upon the express determination to that effect by the members in accordance with the statute of the association or, in the other cases of termination, as is provided for in this Schedule.

Title IV

OF WINDING UP OF ORGANISATIONS

Termination of
registration.

57. (1) An organisation may request the termination of its registration by means of a written request signed by all its administrators or as otherwise required by its statute, and rendering a statement of accounts, declaring the assets and liabilities of the organisation and stating how they are to be dealt with on termination of registration.

(2) The termination of registration shall not imply the winding up of an organisation. Organisations may continue as unregistered organisations subject to the application of the relevant rules of this Schedule.

(3) Any interested party or any competent authority may, in accordance with the provisions of this Title, apply to the Court for the termination of registration and, or the cessation of an organisation.

(4) The termination of registration of an organisation on the order of the Court, on the basis of grounds which imply that the organisation may no longer operate, shall include an order by the Court requiring the cessation of such organisation as a legal person and as an organisation. In such a case such organisation may not continue to exist as an unregistered organisation.

Winding up.

58. (1) An organisation may be wound up voluntarily or by order of the Court.

(2) In this Sub-Title, the term "organisation" includes both those organisations which are registered and those which are not.

Winding up
voluntarily.

59. (1) An organisation is wound up voluntarily by following the procedures laid down in the statute of the organisation. Unless otherwise stated, the winding up of an organisation shall require the support of a majority of all members, in case of an association, or a majority of all administrators, in case of a foundation.

(2) A certified copy of a winding up resolution shall be delivered to the Registrar within fourteen days from when it is passed.

(3) An organisation may be wound up voluntarily only if its assets exceed its liabilities and all its debts have been paid. The administrators shall prepare a scheme of distribution of the remaining assets of the organisation which shall be notified to the Registrar and all interested parties. It shall require approval by members, or in case

of foundations, by the founder or the beneficiaries, as the case may be, or in their absence the Registrar, before being implemented.

60. (1) In the absence of a clear statement in the statute of a purpose organisation, as to how assets are to be disposed of on termination of the organisation, the administrators may apply for directions and shall dispose of the assets as ordered by the Court.

Disposal of assets on winding up.

(2) In case of dissolution and winding up of any private organisation and in the absence of an indication in the constitutive act how assets are to be distributed in case of winding up, the assets shall be paid to the beneficiaries or returned to the founder's estate, after payment of all expenses, as may be determined by the Court after hearing the proposals of the administrators, the beneficiaries and any other interested persons, keeping in view the intentions of the founder. Unless the Court is satisfied that the founder intended the assets to be available to the beneficiaries, the assets shall be returned to the founder or his heirs at law.

61. The administrators of an organisation shall be bound to dissolve and wind up an organisation when the term for which it has been created, if any, has expired or if its purpose has been achieved or becomes impossible. The founder or members may amend the statute at any time, even after such event, to remove the reason for dissolution as stated by this article, in which case any determination of the administrators and any dissolution proceedings shall be terminated and shall have no effect.

Dissolution and winding up when term expires, etc.

62. (1) An organisation shall be wound up on order of the Court, upon the application from any interested party, for reasons valid at law in terms of its statute or this Schedule.

Winding up by order of the court.

(2) The Court may order the winding up of an organisation on an application to this effect if it considers it necessary in the public interest or if the provisions of this Schedule or any other laws are not being observed by the organisation and the Court considers the situation to be so grave as to merit such an order, the ordinary remedies for breach of laws not being sufficient in the circumstances.

(3) In the case of a private foundation, the power to request its winding up in terms of this article shall be exercisable also by the Malta Financial Services Authority.

(4) In the case of a purpose foundation which makes public collections, the power to request its winding up in terms of this article shall be exercisable by any member of the public.

63. The Court shall outline the reasons for any order given

Appeal.

under the preceding article and steps to be taken in relation to all assets of any relevant organisation, including the appointment of a liquidator for such organisation. The administrators and any person interested shall be entitled to appeal to the Court of Appeal within fifteen days of any such order.

Winding up due to insolvency or other serious difficulties.

64. (1) If an organisation becomes insolvent or is undergoing serious difficulties which impede the organisation from operating and achieving its aims, the administrators shall cease operations and notify the Registrar who shall immediately co-operate with the administrators to appoint a liquidator to wind up the affairs in the interest of creditors, the promoters or beneficiaries of the organisation and the organisation itself.

(2) In this Title "insolvency" shall mean the inability to pay its debts when due and for three months after a debt is judicially acknowledged or admitted or if it is proved to the satisfaction of the Court that the organisation is unable to pay its debts, account being taken of its assets and liabilities, including contingent and prospective liabilities.

(3) If the organisation does not have any administrators for more than six months and suitable persons are not appointed by the Court on the application of any interested person, the Registrar shall proceed to demand from the Court an order for the winding up of the organisation and the appointment of a liquidator. In the case of a private foundation such power to apply to the Court shall also be vested in the Malta Financial Services Authority.

(4) Upon such order, the liquidator shall take over all assets of the organisation and shall notify all creditors, if necessary by means of public notices, and shall seek appropriate solutions to any issue which may arise. The liquidator shall have the power to dispose of all assets and pay all debts, observing the ranking order of creditors as provided by law in making payments to creditors.

(5) The liquidator shall consult the Court which shall give directions from time to time for the resolution of disputes and the distribution of assets. The liquidator and any creditor may apply to the Court at any time for orders in the liquidation. The Court shall have the power to give any orders it deems appropriate.

(6) The same rules shall *mutatis mutandis* apply in cases where organisations have been found to be operating illegally or are abandoned and the Registrar is unable to obtain the co-operation of the administrators or other interested persons for the formal winding up of the organisation.

65. On receipt of a declaration by the administrators or liquidators or on otherwise being satisfied that all assets have been appropriately exhausted as required by law and that all assets have been distributed in accordance with the approved scheme of distribution, the Registrar shall cancel the registration of the organisation which shall thereby be struck off the Register and the organisation shall thereafter cease to exist.

Cancellation of registration.

66. Should it result that the assets or liabilities of an organisation which has been cancelled were not determined or dealt with, distributed, paid out or otherwise liquidated, the Court shall have all necessary powers to revive the organisation, and any cell thereof, only for the purpose of determining and dealing with or distributing or liquidating such assets or liabilities.

Revival of registration.

67. The winding up of an organisation shall not affect the continuing validity or effect of another organisation established by it. In such a case the role of the founding organisation, if any, shall be carried out by the successor in title of the organisation or by such person or persons as may be appointed by the Court. For an organisation to be wound up any segregated cells which may be in existence must be wound up prior to the winding up of the organisation.

Effects of winding up on groups of organisations and cells.

Passed by the House of Representatives at Sitting No. 552 of the 17th July, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives