

I assent.

(L.S.)

GEORGE VELLA
President

4th August, 2020

ACT No. XXXIX of 2020

AN ACT to amend the Voluntary Organisations Act, Cap. 492, and to make consequential amendments to the Second Schedule of the Civil Code, Cap. 16, and the Trusts and Trustees Act, Cap. 331.

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

1. The short title of this Act is the Voluntary Organisations and other Laws (Amendment) Act, 2020. Short title.

Part I
Amendments to the Voluntary Organisations Act

2. This Part amends the Voluntary Organisations Act and it shall be read and construed as one with the Voluntary Organisations Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Voluntary Organisations Act. Cap. 492.

3. In article 2 of the principal Act, the definition "the Minister" shall be substituted by the following new definition: Amendment of article 2 of the principal Act.

" " Minister" means the Minister responsible for voluntary organisations;"

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Amendment of
article 3 of the
principal Act.

4. Article 3 of the principal Act shall be amended as follows:

(a) in paragraph (b) of sub-article (2) thereof, for the words "any other person." there shall be substituted the words "any other person:"; and

(b) immediately after paragraph (b) thereof there shall be added the following new proviso:

"Provided that administrators shall be vested solely with one administrative role and may not exercise the position of President, Vice President, Treasurer and Secretary concurrently."

Amendment of
article 8 of the
principal Act.

5. Article 8 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "to regulate and support volunteers." there shall be substituted the words "to regulate and support volunteers:";

(b) immediately after sub-article (1) thereof there shall be added the following new proviso:

"Provided that the Commissioner shall meet or communicate with the members or the administrators of the organisation, or those alleging to be members or administrators of the said organisation, as soon as possible, regarding any matter whatsoever, and where the Commissioner has exhausted all possible means of communication with the mentioned members or administrators of the voluntary organisation unsuccessfully, he may publish such communication in one local newspaper, or by means of a notice in the official website of the Office of the Commissioner for Voluntary Organisations, or in the Gazette, as the Commissioner may consider appropriate in the circumstances.";

(c) sub-article (3) thereof shall be re-numbered as sub-article (4) and immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(3) The Commissioner shall refuse an administrator or a voluntary organisation based on confidential information disclosed by competent authorities, if the Commissioner is satisfied that such refusal is justified."

6. In sub-article (1) of article 10 of the principal Act, for the words "by not later than six weeks" there shall be substituted the words "by not later than twelve (12) weeks".

Amendment of article 10 of the principal Act.

7. Sub-article (3) of article 12A of the principal Act shall be amended as follows:

Amendment of article 12A of the principal Act.

(a) in paragraph (c) thereof, the word "or" shall be deleted;

(b) in paragraph (d) thereof, for the words "under this Act," there shall be substituted the words "under this Act; or"; and

(c) immediately after paragraph (d) thereof there shall be added the following new paragraph:

"(e) although subject to mandatory enrolment does not have a social purpose,".

8. In paragraph (c) of sub-article (1) of article 12C of the principal Act, the words "with the prior consent of the sub-committee of the Council set up in terms of article 35(13) and" shall be deleted.

Amendment of article 12C of the principal Act.

9. Sub-article (1) of article 12D of the principal Act shall be amended as follows:

Amendment of article 12D of the principal Act.

(a) in paragraph (c) thereof, the word "or" shall be deleted;

(b) in paragraph (d) thereof, for the words "under this Act," there shall be substituted the words "under this Act; or"; and

(c) immediately after paragraph (d) thereof there shall be added the following new paragraph:

"(e) although subject to mandatory enrolment do not have a social purpose,".

10. Article 34 of the principal Act shall be amended as follows:

Amendment of article 34 of the principal Act.

(a) in sub-article (1) thereof, the words "in the cases referred to in article 19(2)" shall be deleted;

(b) in sub-article (2) thereof, immediately after the words "as aforesaid," there shall be added the words "within ten (10) days of being requested to do so,"; and

(c) immediately after sub-article (9) thereof there shall be added the following new sub-articles:

"(10) Saving the provisions of sub-article (9), the Commissioner is entitled to obtain any information from other entities or authorities including, but not limited to, the Registrar for Legal Persons, the Malta Security Service, Jobsplus, the Commissioner of Police, the Commissioner for Revenue, the Financial Intelligence Analysis Unit, the Asset Recovery Bureau, the Malta Financial Services Authority and the Courts of Justice, and also to disclose any information to such other entities or authorities:

Provided that such information may include any other information from the Registrar of Courts and, or the Office of the Attorney General or the Office of the State Advocate respectively, relating to any pending criminal or civil proceedings, with particular reference to any information concerning the attachment, freezing, confiscation and seizure of assets:

Provided further that any privileged information obtained by the Commissioner upon such request, shall be used exclusively for the purposes of the powers vested in him in terms of this article and shall not be made accessible to the public.

(11) The Commissioner may also request any member or administrator of the voluntary organisation, or those claiming or alleging to be members or administrators of the voluntary organisation concerned, to submit a conduct certificate issued under the Conduct Certificates Ordinance, and may refuse to issue an enrolment certificate or withdraw any issued enrolment certificate to such member or administrator of the voluntary organisation who fails to provide such conduct certificate.

(12) Subject to the provisions of sub-article (3) of article 3 of the Conducts Certificate Ordinance, the Commissioner may, in the course of his investigations, request a complete record of criminal convictions of any member or administrator of a voluntary organisation. The Commissioner may refuse to issue an enrolment certificate, or withdraw any issued enrolment certificate, if the person to whom the record of criminal convictions relates refuses to give his consent as required under sub-article (3) of article 3 of the Conducts Certificate Ordinance."

11. Article 35 of the principal Act shall be amended as follows:

Amendment of article 35 of the principal Act.

(a) in the Maltese version of the third proviso to paragraph (d) of sub-article (3) thereof, for the words "mal-Kumitat għall-Affarijiet Barranin" there shall be substituted the words "mal-Kumitat għall-Affarijiet Soċjali"; and

(b) immediately after sub-article (13) thereof there shall be added the following new sub-article:

"(14) The term of office of the Council shall be of three (3) years and the said Council may be eligible for re-appointment.".

12. In sub-paragraph (iii) of paragraph (h) of sub-article (2) of article 38 of the principal Act, immediately after the words "an innovative technology arrangement" there shall be added the words "as defined in the Malta Digital Innovation Authority Act; and".

Amendment of article 38 of the principal Act.

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Part II

Amendments to the Civil Code

13. This Part amends the Second Schedule to the Civil Code and it shall be read and construed as one with the Second Schedule to the Civil Code, hereinafter in this Part referred to as the "Second Schedule".

Amendments to the Civil Code.

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14. Sub-article (4) of article 1 of the Second Schedule shall be amended as follows:

Amendment of article 1 of the Second Schedule.

(a) in paragraph (b) thereof, for the words "in sub-paragraph (i)" there shall be substituted the words "in sub-paragraph (a)(i)"; and for the words "whether for a private benefit or not, in which case it is referred to as a "private benefit organisation"." there shall be substituted the words "in which case it is referred to as a "private benefit organisation"; or"; and

(b) immediately after paragraph (b) thereof there shall be added the following new paragraph:

"(c) to promote any lawful purpose, in which case it is referred to as a "private interest organisation".".

15. Paragraph (b) of sub-article (3) of article 10 of the Second Schedule shall be amended as follows:

Amendment of article 10 of the Second Schedule.

(a) for the words "is not already regulated" there shall be substituted the words "is not regulated";

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(b) for the words "the following shall apply:" there shall be substituted the words "the following rules shall apply, unless the legal organisation opts that accounts are drawn up, prepared, reviewed and published for each financial period in accordance with generally accepted accounting principles and practice, as defined in the Accountancy Profession Act, or subject to the advice of a certified public accountant and auditor, by some other principles and practices, as may be chosen from time to time by the administrators:";

(c) in sub-paragraph (ii) thereof, the words "in the case of organisations, which promote a form of private benefit" shall be substituting by the following:

"(ii) in the case of private interest foundations:";

(d) paragraph B of sub-paragraph (ii) thereof shall be substituted by the following:

"B. in the cases mentioned in article 31C, any guidelines as may be issued from time to time by the competent authorities, relating to trusts and trustees;"

(e) in paragraph C of sub-paragraph (ii) thereof:

(i) the words "promoting a form of private benefit" shall be deleted; and

(ii) for the words "sub-paragraphs A and B", there shall be substituted the words "paragraph A";

(f) paragraph D of sub-paragraph (ii) thereof shall be substituted by the following:

"D. in all other cases of associations where the members are not all limited liability companies, sub-article (1) and (2) and any relevant regulations shall apply and, in the absence of specific regulations, the accounting rules and conventions relating to civil partnerships shall apply."; and

(g) the proviso of sub-paragraph (ii) thereof shall be deleted.

16. Sub-article (3) of article 20 of the Second Schedule shall be amended as follows:

Amendment of article 20 of the Second Schedule.

(a) in paragraph (a) thereof, for the words "for public benefit purposes and, or public interest beneficiaries" there shall be substituted the words "exclusively for public benefit on a non-profit making basis, or other legitimate purpose excluding private interest and may include public interest beneficiaries"; and

(b) paragraph (b) thereof shall be substituted by the following:

"(b) in the case of a private interest foundation, for private purposes including any commercial, administrative, security or transactional purposes, including purposes ancillary thereto, in particular those referred to in article 31B of this Schedule."

17. In sub-paragraph (ii) of paragraph (c) of sub-article (4) of article 29 of the Second Schedule, for the words "private foundation" there shall be substituted the words "private interest foundation".

Amendment of article 29 of the Second Schedule.

18. Article 31 of the Second Schedule shall be amended as follows:

Amendment of article 31 of the Second Schedule.

(a) in paragraph (a) of sub-article (1) thereof, for the words "private foundation" there shall be substituted the words "private interest foundation"; and

(b) in sub-article (9) thereof, for the words "private foundation" there shall be substituted the words "private interest foundation".

19. In sub-article (d) of article 31A of the Second Schedule, for the words "private foundation" there shall be substituted the words "private interest foundation".

Amendment of article 31A of the Second Schedule.

20. Article 31B of the Second Schedule shall be amended as follows:

Amendment of article 31B of the Second Schedule.

(a) in the marginal note thereof for the words "Private foundations" there shall be substituted the words "Private interest foundations";

(b) in sub-article (1) thereof, for the words "Private foundations" there shall be substituted the words "Private interest foundations"; and in the paragraph immediately following the proviso of paragraph (b) thereof:

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(i) for the words "a private foundation" there shall be substituted the words "a private interest foundation";

(ii) in the Maltese version, for the words "li la tikkwalifika bħala" there shall be substituted the words "Għall-fini ta' dan l-artikolu, fondazzjoni privata tfixxer fondazzjoni li la tikkwalifika bħala"; and

(iii) for the words "for a lawful purpose as defined in terms of the provisions of the Voluntary Organisations Act." there shall be substituted the words "for a legitimate purpose and any reference to a foundation in terms of this article shall be construed as a reference to a private interest foundation.";

(c) in sub-article (2) thereof, for the words "a private foundation:" there shall be substituted the words "a private interest foundation:";

(d) in sub-article (3) thereof:

(i) for the words "a private foundation may:" there shall be substituted the words "a private interest foundation may:"; and

(ii) in paragraph (d), immediately after the words "an innovative technology arrangement" there shall be added the words "as defined in the Malta Digital Innovation Authority Act;";

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(e) sub-article (5) thereof shall be amended as follows:

(i) in paragraph (e), the word "or" shall be deleted;

(ii) paragraph (f) shall be renumbered as paragraph (g); and

(iii) immediately after paragraph (e) there shall be added the following new paragraph:

"(f) to issue tokens and carry out any trading activity resulting from such foundations owning, administering or otherwise operating an innovative technology arrangement, as defined in the Malta Digital Innovation Authority Act; or".

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21. In paragraph (b) of sub-article (2) of article 32A of the Second Schedule, immediately after the words "an innovative technology arrangement" there shall be added the words "as defined in the Malta Digital Innovation Authority Act".

Amendment of article 32A of the Second Schedule. Cap. 591.

22. In sub-article (21) of article 33 of the Second Schedule, for the words "a private foundation" there shall be substituted the words "a private interest foundation".

Amendment of article 33 of the Second Schedule.

23. In sub-article (2) of article 38 of the Second Schedule, for the words "to a private foundation" there shall be substituted the words "to a private interest foundation".

Amendment of article 38 of the Second Schedule.

24. In sub-article (3) of article 62 of the Second Schedule, for the words "a private foundation" there shall be substituted the words "a private interest foundation".

Amendment of article 62 of the Second Schedule.

25. In sub-article (3) of article 64 of the Second Schedule, for the words "a private foundation" there shall be substituted the words "a private interest foundation".

Amendment of article 64 of the Second Schedule.

26. Article 69 of the Second Schedule shall be amended as follows:

Amendment of article 69 of the Second Schedule.

(a) for the words "of the Voluntary Organisations (Amendment) Act, 2018", wherever they occur, there shall be substituted the words "Act XXXVI of 2018"; and

(b) for the words "of the Voluntary Organisations Act" there shall be substituted the words "Act XXXVI of 2018".

Part III

Amendments to the Trusts and Trustees Act

27. This Part amends the Trusts and Trustees Act and it shall be read and construed as one with the Trusts and Trustees Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Trusts and Trustees Act. Cap. 331.

28. Sub-article (12) of article 43 of the principal Act shall be amended as follows:

Amendment to article 43 of the principal Act.

(a) in paragraph (b) thereof, for the words "private foundation," there shall be substituted the words "private interest foundation,"; and

(b) in the last paragraph thereof, for the words " "private foundation" "there shall be substituted the words " "private interest foundation" ".

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Passed by the House of Representatives at Sitting No. 366 of the
29th July, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

