CHAPTER 536

ENEMALTA (TRANSFER OF ASSETS, RIGHTS, LIABILITIES AND OBLIGATIONS) ACT

To make provision for the transfer of all the assets, rights, liabilities and obligations of Enemalta Corporation to Enemalta plc, to regulate the functions of distribution system operators, to repeal the Enemalta Act, and to make provision with respect to matters ancillary thereto or connected therewith.

25th August, 2014;
27th August, 2014*

ACT XXXIV of 2014.

1. The short title of this Act is the Enemalta (Transfer of Assets, Rights, Liabilities and Obligations) Act. Short title.

2. In this Act, unless the context otherwise requires: Interpretation.

"apparatus" in relation to electrical energy, includes all machines, consuming devices and fittings in which conductors are used or of which they form part;

"Authority" means the Malta Resources Authority established by the Malta Resources Authority Act;# Cap. 423.

"conductor" means an electrical conductor arranged to be electrically connected to a system;

"Corporation" means the Enemalta Corporation established by the Enemalta Act; Cap. 272.

"Company" means Enemalta plc (a public limited liability company registered under the laws of Malta) bearing company registration number C 65836 or its successors in title from time to time;

"disposal" shall have the same meaning as under the Disposal of Government Land Act when used with reference to any land under Part I of this Act; Cap. 268.

"distribution system operator" shall have the same meaning as under the Electricity Market Regulations; S.L. 545.13

"electrical energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of any communication or signal;

"energy" means all forms of commercially available energy,

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* Article 4 came into force on 25th August, 2014 - see article 1(2) of the Act as originally promulgated and Legal Notice 292 of 2014. The remaining articles came into force on 27th August, 2014 - see article 1(2) of the Act as originally promulgated and Legal Notice 301 of 2014.

\# since the enactment of this Act, references to the Malta Resources Authority should be construed as references to the Regulator for Energy and Water Services (*vide* Act XXV. 2015.41); however due to the 'historical' aspect of this Act, the original references to the Malta Resources Authority in this Act have not been changed.

including electricity, natural gas (including liquefied natural gas and liquefied petroleum gas), any fuel for heating and cooling (including district heating and cooling), coal and lignite, peat, and biomass as defined in Directive 2001/77/EC of the European Parliament and of the Council of 27th September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market;

"Engineering Resources Ltd" means Engineering Resources Ltd (a private limited liability company registered under the laws of Malta) bearing company registration number C 65835 or its successors in title from time to time;

"Government" means the Government of Malta;

"installation" means the whole of any plant or apparatus, designed for the acquisition, supply, storage, use or distribution of any electrical energy, together with all necessary plant, buildings, land and pipelines whether surface, underground or marine in connection therewith, and, in relation to electrical energy, includes prime movers, supply lines and consuming apparatus, if any;

"Minister" means the Minister responsible for energy;

"supply line" means a conductor or conductors or other means of conveying, transmitting or distributing electrical energy, together with any casing, coating, covering, tube, pipe insulator or part enclosing, surrounding the same or any part thereof, or any building or apparatus connected therewith, for the purpose of transforming, conveying, transmitting or distributing electrical energy.

Part I

Transfer of Assets and Liabilities of Enemalta Corporation

Transfer of assets and liabilities.

3. (1) With effect from the date of the coming into force of this article, all assets and rights of whatever nature of the Corporation whether in Malta or outside Malta, and including but not limited to all real or other rights under any contract, all monies due by any person to the Corporation, and all shares in, stocks, or other interests of or in any other bodies held by it on the said day, shall, without the need of any formalities other than this Act vest in the Company, and all obligations and liabilities of the Corporation on the said day, shall by virtue of this Act be deemed to be liabilities and obligations of the Company without the need of any formalities other than this Act.

(2) All actions pending before any court, tribunal, arbitral tribunal, or any other adjudicating body, instituted by or against the Corporation shall be continued by or against the Company without the need of any formalities other than this Act.

Cap. 386.

(3) Notwithstanding the provisions of the Companies Act, with effect from the date referred to in sub-article (1), the Corporation shall for all purposes of law and by virtue of this sub-article be deemed to have been amalgamated into the Company and the provisions of sub-article (1) or article 354 of the Companies Act shall, *mutatis mutandis* apply, without the need of and to the

exclusion of any formalities other than this Act, and for such purpose:

(*a*) the Corporation shall cease to exist as a separate legal entity at law, and this without prejudice to any other provisions of this Act;

(*b*) the Company shall be deemed to be the "acquiring company", and the Corporation shall be deemed to be the "company being acquired" for the purposes of article 354(1) of the Companies Act. Cap. 386.

(4) On the date referred to in sub-article (1), the Company shall issue new shares in favour of the Government of Malta as its shareholder, on such terms and conditions and at a value as may be specified by the Minister by notice in the Gazette, provided that the provisions of articles 73 and 74 of the Companies Act shall not Cap. 386. apply to the aforesaid issue of shares by the Company and to the transfer of the assets and rights to the Company contemplated in sub-article (1).

(5) On the date referred to in sub-article (1), any guarantee, mandate, pledge, title transfer, privilege, hypothec or any security whatsoever granted by any third party, including but not limited to guarantees given by the Government, to secure any obligation or liability of the Corporation towards any of its creditors shall continue to have full effect, without the need of any formality other than this Act, to secure the liabilities and obligations which by virtue of this article shall become liabilities and obligations of the Company towards the same creditors.

(6) The provisions of this article and the vesting of all assets and liabilities, rights, interests and obligations in the Company from the Corporation:

(*a*) shall not operate as a novation in any right, liability or obligation, and any such right liability or obligation shall continue to have effect as if there were no change in the holder, creditor or debtor thereof, and as if they had always been rights, liabilities or obligations of the Company;

(*b*) shall not operate as a breach of covenant or condition, whether statutory or contractual or give rise to any forfeiture;

(*c*) shall not invalidate, release from or discharge any contract, guarantee, security or obligation undertaken for the benefit of, or by any third parties;

(*d*) shall not give rise to the payment of any laudemium, premium, penalty or other payment whatsoever.

(7) Nothing in this article shall preclude the Company from causing the entry in any appropriate register in the Public Registry or the Land Registry, or in any note registered or enrolled in those registries, such reference or other annotation as may be appropriate in the circumstances.

Employees of the Corporation.

4. (1) Notwithstanding the provisions of any other law, all persons in the employment of the Corporation immediately before the coming into force of this article shall, upon the coming into force of this article, be transferred to and become employees of Engineering Resources Ltd by virtue of this article and without the need of any other formalities.

(2) Engineering Resources Ltd shall take on all the rights and obligations which the Corporation had towards the employees prior to the transfer of the employees in virtue of this article, and each of such employees shall, for all intents and purposes of any law, be deemed to have been in the employment of Engineering Resources Ltd since the date on which he took up the employment with the Corporation, and each of such employees shall, for all intents and purposes of any law continue to enjoy the same rights and conditions held immediately before the coming into force of this article, including but not limited to pension rights or rights relating to the computation of any pension or of any pensionable service under the Pensions Ordinance or of any other law.

Cap. 93.

Application of the Disposal of Government Land Act.
Cap. 268.

5. Notwithstanding the provisions of the Disposal of Government Land Act:

Cap. 268.

(*a*) the disposal of any land in favour of the Company in virtue of this Act shall be valid and shall have effect without the need of any further authorisation other than this article, and the provisions of the Disposal of Government Land Act shall not apply to any disposal of any land by the Company or any of its successors in title (including any land transferred to the Company by virtue of this Act) to any person, and such disposals shall not require any further authorisation in terms of the Disposal of Government Land Act;

Cap. 268.

(*b*) the Minister may by order in the Gazette remove any restrictive conditions imposed by the Government on the Corporation in any public deed by virtue of the application of article 3(1)(*e*) of the Disposal of Government Land Act in respect of the disposal of any land made by the Government in favour of the Corporation where such land is subsequently transferred to the Company by virtue of paragraph (*a*);

(*c*) the Government may make available any land used by the Corporation for the purpose of generation of electricity immediately prior to the coming into force of this article for use by the Company or to any other entity in which the Company has any shareholding, as subject to any conditions as the Government may deem fit.

Part II

Regulation of Distribution System Operators

Installations.

6. For the purposes of any of its functions, a distribution system operator may, subject to the provisions of this Act and to any requirement under any other law, install any installation in

public roads, and open and break up the surface of any street:

Provided that any of these powers may not be exercised without the approval of the Authority for Transport in Malta.

Duties of a distribution system operator in relation to the supply of electrical energy.

7. (1) A distribution system operator may reduce, as it thinks fit, the quantity of energy supply to any consumer if, by reason of any unforeseen circumstances beyond the control of the distribution system operator, it appears that the supply of electrical energy generated is insufficient to enable the full quantity to be conveniently supplied.

(2) Where the quantity of energy supplied has been reduced as aforesaid no liability shall be incurred by the said distribution system operator in respect of any loss or damage caused by such reduction.

Limitation of liability of distribution system operator.

8. A distribution system operator shall not be liable for any loss or damage, whether material or consequential, to any person or property, for any cessation of the supply of energy, which may be due to unavoidable accident, fair wear and tear or overloading due to unauthorised connection of apparatus, or to the reasonable requirements of the electrical system, or to the defects in any electrical installation not provided by the distribution system operator.

Prices, fees, and other charges by a distribution system operator.

9. The prices to be charged by a distribution system operator for the supply of electrical energy and related services shall be in accordance with such tariffs as may, from time to time, be prescribed by the said distribution system operator following the written approval by the Authority.

Contracts of supply or works.

10. (1) A distribution system operator may only enter into contracts for the procurement of goods, services or materials, other than petroleum, or for the execution of works, in accordance with the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations.

S.L. 174.06

(2) A distribution system operator may obtain petroleum, for the exercise of its functions, in such manner and under such terms and conditions as it may deem fit.

Power of entry for ascertaining condition of installations, etc.

11. Any distribution system operator may, unless otherwise instructed by the Authority, nominate any persons to enter any premises, at all reasonable times, to which electrical energy is, has been or is to be supplied by the distribution system operator, or in which any installation, apparatus, instrument, plant or accessories are, have been or are to be installed, or otherwise exist, for or in connection with the supply, storage, distribution, sale or other disposal of electrical energy by the distribution system operator, for the purpose of:

(*a*) inspecting, maintaining and, if need be, repairing any of the items mentioned above, as well as any electric lines, meters, fittings, works or apparatus belonging to the distribution system operator or installed therein;

(*b*) ascertaining such data or information as the distribution system operator may require in connection

with the services given by the distribution system operator;

(*c*) removing all or any installations, apparatus, instruments, plant or accessories belonging to the distribution system operator, whenever any service provided by the said distribution system operator is no longer required or where the distribution system operator is authorised to withdraw its services:

Provided that the distribution system operator shall repair all damage caused by any such entry, inspection or removal:

Provided further that the power of entry into any private property in terms of this article shall only be exercised in the presence of a Police officer and under the supervision of such Police officer.

Offences relating to precautions in execution of works.

12. (1) The execution of all work in connection with the services given by a distribution services operator shall be carried out in such manner as may be prescribed by or under this Act or by or under any other law, and without prejudice to the public safety or private safety.

(2) Any person who, without lawful excuse, contravenes or fails to comply with the provision of this article shall be guilty of an offence under this Act.

Offences relating to installations, etc., supplied.

13. (1) No person shall use any electrical energy or any installation, apparatus, instrument or their accessories, supplied by a distribution system operator, or any petroleum supplied for sale or other disposal by or on behalf of the distribution system operator, whether directly or indirectly, for purposes other than that for which it is supplied; and any declaration or clear indication by a distribution system operator as to the purpose for which any thing as aforesaid has been supplied shall be conclusive evidence of such purpose.

(2) Any person who contravenes the provision of this article shall be guilty of an offence against this Act.

Other offences.

14. Any person who -

(*a*) obstructs or impedes a member of a distribution system operator in the exercise of his duties under this Act or under any regulations made under this Act; or

(*b*) contravenes or fails to comply with any of the provisions of this Act or of any such regulations as aforesaid or any order lawfully given under the provisions of this Act or of such regulations; or

(*c*) where any licence or permission is required under the provisions of this Act or under any regulations made under this Act, for the use of the services or facilities of a distribution system operator, makes use of such services or facilities without such a licence or permission or contravenes or fails to comply with the conditions of any such licence or permissions,

shall be guilty of an offence under this Act.

Penalties for offences.

15. (1) Any person guilty of an offence against this Act or against any regulations, rules or orders made under this Act, shall, without prejudice to his liability under the Criminal Code or any other law, be liable, on conviction, to imprisonment for a term not exceeding six months, or to a fine (*multa*) not exceeding one thousand two hundred euro (€1,200), or to both such imprisonment and fine.

Cap. 9.

(2) Where an offence against this Act as is referred to in article 14(*c*) has been committed, any installation, apparatus, instrument, plant, equipment or other thing used in or for the purpose of the commission of the offence shall be forfeited to the Government.

Part III

Miscellaneous

Power to make regulations.

16. The Minister may, either on the recommendation of the Authority, or on his own initiative after consultation with the Authority, make regulations to give better effect to the provisions of this Act and, without prejudice to the generality of the foregoing, in particular to:

(*a*) provide for ancillary matters in relation to and in connection with the transfer of assets and liabilities, and the rights and obligations of the Corporation to the Company in accordance with the provisions of article 3;

(*b*) regulate the manner in which a distribution system operator is to install any installations, and how these are to be installed, operated, maintained, protected or controlled and the technical standards or specifications to be observed with respect to such installations;

(*c*) provide for the measures to be taken to ensure compliance with international and other standards used in the distribution of electricity and for the means to be used and the measures to be adopted to ensure safety and prevent danger, damage or nuisance in relation to any aspect of the distribution of electricity;

(*d*) provide for any transitory, consequential, ancillary or related measures.