CHAPTER 630

SOCIAL ENTERPRISE ACT

AN ACT to regulate social enterprise organisations and their administration.

ACT IX of 2022.

(Not yet in force)

ARRANGEMENT OF THE ACT

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Part I
Preliminary

Short title and commencement.

1. (1) The short title of this Act is the Social Enterprise Act.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires:

"acts of trade" shall be those identified in article 5 of the Commercial Code and any transactions ancillary to or connected with any of the said acts; Cap. 13.

"administrator" means any person who controls, supervises or administers a social enterprise organisation such as a director of a company or a partner of a partnership or a member of the committee

of management of a co-operative and includes any other person who carries out such functions even if under another name, but shall not include a manager or an executive while carrying out functions under a contract against remuneration except in so far as he is an administrator and only relating to his functions as an administrator;

"applicant" means an organisation seeking to register as a social enterprise organisation under this Act;

"benefit of the community" means what a reasonable person might consider to be -

(a) for the benefit of the community in Malta as a whole; or

(b) for the benefit of a section of the community in Malta;

and for the purpose of this definition "section of the community" means any group of individuals which:

(i) shares a common characteristic which may be classified as a social purpose and which distinguishes the group of individuals from other members of the community; and

(ii) a reasonable person might consider to constitute a section of the community;

Cap. 123. Cap. 463. Cap. 325.

"benefits" means any assistance or relief granted to a social enterprise organisation in terms of the Income Tax Act, the Malta Enterprise Act, the Business Promotion Act and in terms of any other law or scheme as the Minister may prescribe;

"calendar year" means the period from 1st January to 31st December of each year;

"charitable purpose" means a social purpose;

"Committee" means the Social Affairs Committee of the House of Representatives or any other committee substituting the same;

Cap. 386.

"company" means a company formed in Malta and registered under Part V of the Companies Act, and if not a Maltese company, means a company established in Malta;

"controlled by, related or affiliated to a political party" or similar terms means, in the case of the controlled, related or affiliated organisation -

(a) its statute, financial statements or other documents expressly state that it is controlled by, related or affiliated to the political party; or

(b) it has been established by the political party which supports it financially; or

(c) its assets devolve on the political party upon its dissolution,

and, in the case of a political party, that a political party as defined in the Financing of Political Parties Act, whether registered under the said Act or otherwise: Cap. 544.

(i) has the power, whether directly or indirectly, to nominate, appoint, change or remove more than half of the administrators of the organisation; or

(ii) is a beneficiary, in any manner and at any time, of the income or capital of the organisation; or

(iii) is the beneficiary of the purposes of the organisation, including the promotion of the specific vision, policies and goals of the political party or its candidates;

"controlled by the Government" means that the Government of Malta has the power, whether directly or indirectly, to nominate, appoint, change or remove any of the administrators of the organisation or the organisation is a public agency;

"co-operative" means a co-operative society formed in Malta and registered under the Co-operative Societies Act and if not a Maltese co-operative, means a co-operative established in Malta; Cap. 442.

"Co-operatives Board" means the Co-operatives Board established under the Co-operative Societies Act and includes any person exercising such powers of the Board as may have been conferred upon him by the Board; Cap. 442.

"Court" means the First Hall of the Civil Court unless it is otherwise expressly stated;

"disadvantaged worker" means any person who:

(a) has not been in regular paid employment for the previous six months; or

(b) is between fifteen and twenty-four years of age; or

(c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or

(d) is over the age of fifty years; or

(e) lives as a single adult with one or more dependants; or

(f) works in a sector or profession where the gender imbalance in Malta is at least twenty-five per cent higher than the average gender imbalance across all economic sectors in Malta, and belongs to that under-represented gender group; or

(g) is a member of an ethnic minority within Malta and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment:

Provided that the Minister may by regulations establish, and consistently with applicable European Union Regulations apply, administrative or compliance conditions arising under Maltese law to the above categories or add the following categories of persons to the definition of "disadvantaged worker":

(a) any migrant worker, whether a citizen or resident of the European Community or third country national, who has moved to Malta to take up work and who is registered, enrolled or in possession of any relevant licences, permits or documentation as may be required from time to time by applicable law to work in Malta, including an employment licence or permit or a National Insurance or social security number and registration for the purposes of taxation; or

(b) any person who wishes to enter or to re-enter working life and who has been absent both from work and from education for at least two years, and particularly any person who gave up work on account of the difficulty of reconciling his or her family life with his or her working life; or

(c) any long-term unemployed person, that is, any person who has been unemployed for twelve of the previous sixteen months; or

(d) any person recognised to be or to have been an addict and who is or who was on the Register of Addicts kept by the Superintendent of Public Health in accordance with the Registration of Drug Addicts Regulations; or

S.L. 31.21

(e) any person who has not obtained his or her first regular paid full-time employment on account of serving a period of imprisonment or other penal measure that appears on such person’s Police Conduct Certificate;

"ecclesiastical entity" means an association of persons or a universality of things which are established by the competent ecclesiastical or other religious authority so that they might, in the name of such authority and in accordance with the provisions of the relevant law, fulfil the specific task entrusted to them in view of the public good, including the imparting of religious teaching, the promoting of public worship and the undertaking of projects which are appropriate to their character and governed by their statutes, under the higher direction of the said authority. Such entities include dioceses, parishes and all institutes of consecrated life and societies of apostolic life, and include similar organisations of any religious denomination;

"engagement" means a contract of service other than a contract of employment;

"established" means an organisation which, having a permanent establishment or branch in Malta, is registered under Part XI of the Companies Act or under any other similar provision under applicable law and in the case of a co-operative, is also recognised as an overseas co-operative by the Co-operatives Board; Cap. 386.

"financial year" means the period from 1st January to 31st December of each year unless otherwise determined in the statute of the social enterprise organisation or otherwise in accordance with applicable law;

"Government" includes the Government of Malta, any Local Council, any statutory corporation, public agency and other organisation of whatever legal form controlled by the Government and includes the President of Malta;

"guidelines" means the set of binding rules issued by the Regulator from time to time for the further implementation of the provisions of this Act and any regulations made thereunder, including the definition, application, administration, grant and revocation of benefits, schemes and other arrangements for the regulation and management of social enterprise organisations;

"Minister" means the Minister responsible for enterprise;

"normal market levels" means any remuneration, honorarium, wage, salary or fee which is normally granted:

(a) by social enterprise organisations of the same legal form and operating in the same or in a similar area of activity and under the same or similar conditions; and

(b) to persons in the same or in a similar office or role and under the same or similar conditions and who have the same or similar qualifications.

In applying the above principles, reference shall be made to market levels prevailing in Malta, or, in case of organisations which operate internationally, in the country where the relevant activities or transactions take place;

"partnership" means a commercial partnership formed in Malta and registered under Part III or IV of the Companies Act, and if not a Maltese partnership, means a partnership established in Malta;

Cap. 386.

"philanthropic" means for the relief of poverty, pain and suffering, and other humanitarian needs;

"pious foundation" comprises -

(a) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as a juridical person 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 them a long-term obligation, such period to be determined by applicable law, whether religious or national, and where a long-term 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 and include similar organisations of any religious denomination;

"prescribed" means either prescribed by regulations made by the Minister under this Act or prescribed by binding guidelines issued by the Regulator under this Act, unless otherwise expressly stated, and in the event of a conflict between the regulations made by the Minister and guidelines issued by the Regulator on any particular matter, the regulations shall prevail;

"public agency" means any entity which is established to carry out public administration in terms of the Public Administration Act or any other law and includes a statutory body;

Cap. 595.

"Registrar" means the Registrar of Companies and the Co-operatives Board, or any other Registrar, howsoever named, with whom the organisations which may qualify as social enterprise organisations in terms of this Act may or are required to register;

"Registrar of Companies" means the Registrar of Companies appointed in terms of the Companies Act; Cap. 386.

"Regulator" means the person appointed by virtue of article 11;

"remuneration" means any honorarium, wage, salary, fee or other payment for services, whether under a contract or otherwise, but shall not include the refund of any expenses incurred on behalf of any organisation;

"social enterprise company" means a company which is registered in terms of this Act;

"social enterprise co-operative" means a co-operative which is registered in terms of this Act;

"social enterprise organisation" means a social enterprise company, a social enterprise partnership or a social enterprise co-operative which is registered in terms of this Act;

"social enterprise partnership" means a partnership which is registered in terms of this Act;

"social enterprise sector" includes social enterprise organisations and their employees, the administrators of such organisations and any volunteers supporting such organisations;

"social purpose" is a purpose which is of benefit to the community and which means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes -

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

(b) the advancement of health;

(c) social and community advancement;

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

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

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

(g) 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 and "political party" shall have the meaning assigned to it by any special law regulating political parties, whether it is registered as a political party or not under such law, and for the purpose of this Act shall include any other organisation, of whatever legal form, controlled by, related or affiliated to the political party or its purpose as stated in its statute or constitutive deed in such manner as renders it non-autonomous, and the terms "political candidate" and "political organisation" shall be construed accordingly;

"special law" means an Act of Parliament or any regulations made thereunder which regulates specifically a particular legal form or forms of organisations;

"statute" means the memorandum and articles of association of a company, the deed of partnership or the statute of a co-operative which provides for the setting up of such organisation as the case may be;

"volunteer" means a person who provides unremunerated services through or for a social enterprise organisation but who may receive a refund of any reasonable expenses incurred in connection with these services;

"worker with a disability" means any person who is on the Register of Persons with Disability in terms and for the purposes of the Persons with Disability (Employment) Act.

Cap. 413.

(2) Terms which are not specifically defined in this Act shall have the meaning assigned to them under the relevant law governing the legal form of the organisation qualifying as a social enterprise organisation under this Act.

(3) In the case of social enterprise companies, social enterprise partnerships and social enterprise co-operatives, the Companies Act or the Co-operative Societies Act, as the case may be, shall be interpreted so as to facilitate the application of the provisions of this Act to the particular legal form, and this, irrespective of the specific provisions indicated in the Schedules intended for the same purpose.

Cap. 386.
Cap. 442.

(4) This Act is intended also to reflect the principles in the European Union Commission Regulation No. 651/2014 of 17th June 2014 as the same may be amended or replaced from time to time and this Act shall be interpreted consistently with such Regulation.

Part II
Social Enterprise Organisations

Establishment and regulation of a social enterprise organisation.

3. (1) A social enterprise organisation is one:

(a) which is established in the legal form of a company, a partnership or a co-operative and which complies

with the provisions of the applicable Schedule;

(b) which is established for:

(i) the carrying out of any act of trade or other activity which is principally aimed, through the activity itself, towards the fulfilment of a social purpose for the benefit of the community; or

(ii) the carrying out of any act of trade or other activity with the purpose of integrating into the labour market workers with a disability or disadvantaged workers;

(c) which is not controlled by the Government; and

(d) which is registered with the Regulator in terms of this Act as a social enterprise organisation:

Provided that for the purposes of this Act, the above requirements shall subsist throughout the existence of the social enterprise organisation.

(2) A social enterprise organisation shall:

(a) in the case of a social enterprise company be regulated by the relevant provisions of the Companies Act as modified by the provisions of the First Schedule; Cap. 386.

(b) in the case of a social enterprise partnership be regulated by the relevant provisions of the Companies Act as modified by the provisions of the Second Schedule; and Cap. 386.

(c) in the case of a social enterprise co-operative be regulated by the relevant provisions of the Co-operative Societies Act as modified by the provisions of the Third Schedule. Cap. 442.

(3) Until such time as the Minister makes regulations in this regard, organisations of other legal forms, not being companies, partnerships or co-operatives, may not be registered as social enterprise organisations in terms of this Act:

Provided that such other organisations, including pious foundations, ecclesiastical entities and voluntary organisations, whether enrolled or not under the Voluntary Organisations Act, may be the holder of any or all the shares or interests in a social enterprise organisation. Cap. 492.

4. (1) For the purposes of article 3, a social enterprise organisation shall be considered to be: Qualifications.

(a) carrying out an act of trade or other activity

which is principally aimed, through the activity itself, towards the fulfilment of a social purpose for the benefit of the community when at least sixty per cent of its total income in any financial year is acquired from such act of trade or other activity; or

(b) carrying out an act of trade or other activity with the purpose of integrating into the labour market workers with a disability or disadvantaged workers when not less than thirty per cent of the total number of workers engaged or employed by it on a full-time basis, in any capacity, are workers with a disability or disadvantaged workers.

(2) For the purposes of sub-article (1)(b), the minimum requirement of thirty per cent of full-time workers with a disability or disadvantaged workers may also be satisfied by a greater number of eligible persons working on a part-time basis but cumulatively working the equivalent hours to the required number of full-timers.

(3) A social enterprise organisation may make use of the services of volunteers participating in the activity of such social enterprise organisation.

The income of a social enterprise organisation.

5. (1) Subject to the provisions of sub-article (2), the profits generated from the activities of a social enterprise organisation may be:

(a) used in any manner as may be determined by the administrators to achieve the purposes of the organisation as stated in its statute;

(b) retained and transferred to a reserve account for future use;

(c) used to capitalise its profits; or

(d) used as may be prescribed and in a manner which is consistent with the achievement of the purposes of the organisation.

(2) Notwithstanding anything stated in the statute of a social enterprise organisation or in any other applicable law, only twenty-five per cent (25%) of the profits generated over a three (3) year rolling period by the social enterprise organisation may be distributed and it shall not be permissible for any person, whether a private interest or a non-profit making organisation, to enjoy directly or indirectly more than twenty-five per cent (25%) of the profits through the holding of shares or other interests in such organisation, or in any other manner.

(3) The social enterprise organisation shall be obliged to maintain records of capital contributions to the organisation that are clearly distinct from any profits which are subsequently capitalised including when they are capitalised against the issue of shares or other interest to the shareholders or partners of the social enterprise organisation. Nothing in this article shall prohibit the reduction or return of capital in favour of a person who holds any shares or interest in any social enterprise organisation provided it does not reflect capitalised profits and if it does, does not exceed the limits in sub-article (2) and the organisation has available funds after providing for any losses.

(4) Notwithstanding the provisions of sub-article (2), it shall be lawful for any person, including a shareholder within an organisation or any person having an interest therein, to receive income from a social enterprise organisation for his personal benefit in the following cases:

(a) income under contracts of employment or engagement;

(b) income for the sale of goods or services;

(c) interests on loans granted to a social enterprise organisation to finance the development or operations of such organisation even when such income is payable on a bond or other financial instrument:

Provided that such income or interest shall not be treated as participation in the profits of the organisation and shall not be considered to form part of the maximum of twenty-five per cent of the profits referred to in sub-article (2).

(5) A social enterprise organisation shall not:

(a) remunerate an administrator at a rate which is higher than normal market levels unless the social enterprise organisation is satisfied that the administrator has specific skills which the organisation needs, in which case, the remuneration may exceed normal market levels by such percentage as may be stated in guidelines issued by the Regulator or as otherwise approved by him;

(b) remunerate any person, whether an employee or otherwise, with a salary, wage or a fee which is higher than normal market levels unless the social enterprise organisation is satisfied that in that particular case specific conditions apply;

(c) pay interest or other remuneration on loans or financial instruments raised or acquired from organisations which are not licensed credit or financial institutions other than in accordance with applicable market conditions or, in any case, not in excess of the limits permitted by article 986 of the Civil Code or as otherwise allowed by law; or

Cap. 16.

(d) pay a price for any property acquired which is higher than the generally established market price for such property disregarding special discounted sales or other special arrangements:

Provided that the basis on which a social enterprise organisation satisfies itself of such compliance shall be recorded in sufficient detail in the minutes of a meeting of the administrators when such decision is taken, which minutes shall be submitted to the Regulator on written demand:

Provided further that in the event that any of the above limits are exceeded:

(a) if to the benefit of any holder of any shares or interests, the sum paid to him in excess of the market levels as stated above shall be considered to be an advance on the twenty-five per cent permitted to be paid to him; and

(b) if to the benefit of a third party, the excess shall be brought to the attention of the administrators who shall be entitled to make representations on the matter to the Regulator and, if found to be unjustifiable, the excess shall either be refunded to the organisation within the time stipulated by the Regulator or the Regulator may proceed with the cancellation of the registration and the demand for the reversion of any benefits in accordance with this Act.

(6) In the case of those organisations which are registered as social enterprise organisations under the provisions of article 3(1)(b)(i), the administrators shall seek to maintain a level of expenses for persons who are employed or engaged which shall not materially prejudice the continued functioning of the social enterprise organisation. The Regulator may issue guidelines on the level of these expenses and also on the manner and the time frame in which this obligation shall be assessed.

(7) It shall be the responsibility of the administrators of a social enterprise organisation to ensure compliance with the provisions of this article. When an accountant, reviewer or auditor is engaged to review the accounts of the social enterprise organisation, such accountant, reviewer or auditor shall notify the administrators in writing, with a copy to the Regulator, if the social enterprise organisation has exceeded the limits established by this Act. In such

case, the Regulator shall notify the administrators with a time limit to comply with the provisions of this Act, which shall not be less than ninety days and the maximum of which shall be established by the Regulator on a case by case basis.

(8) The performance of the purposes to which the profits of the social enterprise organisation are applied shall be an express fiduciary duty binding the administrators of the social enterprise organisation and the social enterprise organisation itself.

(9) The provisions of this article shall apply irrespective of the manner in which the persons involved in the social enterprise organisation hold shares or other participation rights therein and in the case of a conflict between this article and the provisions of any other law the provisions of this article shall prevail.

Benefits.

6. (1) A social enterprise organisation may, subject to the observance of this Act and to applicable provisions of law, enjoy the benefits contemplated by this Act and any regulations made thereunder.

(2) Upon receiving benefits, it shall not be possible for a social enterprise organisation to transfer or assign in whole or in part any benefit granted by virtue of this Act to any other person.

(3) When granting benefits to social enterprise organisations, the Government or any other entity shall consult and may rely on the information contained in the Register of Social Enterprise Organisations maintained by the Regulator.

(4) In the event that a social enterprise organisation does not operate as such in the twelve consecutive months following the receipt of any benefit, and is subsequently removed from the Register in accordance with this Act, such social enterprise organisation shall refund any benefits received with reference to the period during which it did not operate and failure to do so shall constitute an offence under this Act. This article shall apply in accordance with regulations and guidelines which may be issued from time to time.

Recognition of social enterprise organisations.

7. The Government, government departments, public agencies and entities controlled by the Government shall act upon a Certificate of Recognition issued in terms of article 18, as evidence of the status of an organisation as a social enterprise organisation, and shall not require any further evidence of its existence or status when dealing with such an organisation:

Provided that such certificate shall not imply any exemption of such organisation from any procedure, duty, obligation, liability, fees or dues unless expressly stated in the applicable law, regulation or policy.

Part III
The Statute of the Social Enterprise Organisation

The contents of the statute.

8. (1) The contents of the statute of a social enterprise organisation shall be regulated by the law which is applicable to the particular legal form with such modifications as are stated in this Act and the relevant Schedule, as the case may be, and in the case of conflict, the applicable provisions of this Act and the relevant Schedule shall prevail.

(2) The statute of an applicant shall comply with the following requirements for it to be eligible for registration as a social enterprise organisation:

(a) the name of the social enterprise organisation shall comply with sub-article (3);

(b) the objects for which the social enterprise organisation is established shall state that the organisation is established for:

(i) the carrying out of an act of trade or other activity which is principally aimed, through the activity itself, towards the fulfilment of a social purpose for the benefit of the community and, in such case, the social purpose shall be expressly stated; or

(ii) the carrying out of an act of trade or other activity with the purpose of integrating into the labour market workers with a disability or disadvantaged workers;

(c) the statute shall also:

(i) state that the organisation is a social enterprise organisation in terms of this Act;

(ii) state that investments in the social enterprise organisation to receive profits shall not entitle any person to participate in more than an aggregate of twenty-five per cent (25%) of the profits of the social enterprise organisation as per article 5;

(iii) restrict the rights of participating shares, or contributions, or any interest as the case may be in the social enterprise organisation so as to comply with the provisions of this Act and a waiver of participating rights on dissolution and winding up;

(iv) provide for the manner in which the remaining assets, if any, of the social enterprise organisation shall devolve on dissolution and winding up, which provision shall comply with article 9.

(3) The social enterprise organisation shall be identifiable by a unique name which shall conform to the applicable law and which shall include the words "Social Enterprise" or "SEO" in its name.

(4) No other organisation shall be permitted to use the words "Social Enterprise" or the letters "SEO" in its name unless it is one which is registered in terms of this Act and any breach of this sub-article shall constitute an offence under this Act.

(5) The Regulator shall refuse registration if, to the best of his knowledge, the name of the applicant is already used by another social enterprise organisation or if the proposed name is offensive or is likely to deceive or be misleading:

Provided that in the event that a social enterprise organisation has been registered with a name which is already used by another social enterprise organisation, the Regulator shall request the social enterprise organisation which has been last registered to change its name.

(6) Additions or alterations to the statute of a social enterprise organisation shall be notified to the Regulator within fourteen days from the date of registration with the Registrar of the resolution or decision, which information shall be submitted to the Regulator together with any consolidated version of the statute filed with the Registrar.

Part IV
Dissolution, Winding Up or Cessation

Dissolution and winding up.

9. On dissolution and winding up of a social enterprise organisation made in accordance with the law applicable to its legal form, any assets after the payment of all liabilities shall be paid out:

(a) to another social enterprise organisation expressly identified in the statute having similar purposes as the social enterprise organisation being dissolved; or

(b) to a social enterprise organisation identified by the members in a decision supported by at least seventy-five per cent of all the members and at least a majority of the administrators present at a meeting of administrators; or

(c) in the case of any obstacle which cannot be overcome in the manner stated above, to a social enterprise

organisation identified by the Civil Court in its voluntary jurisdiction following an application made by any administrators of the social enterprise organization being dissolved; or

(d) in any other manner as may be prescribed:

Provided that in case any profits have been capitalised and not distributed as permitted under this Act to the holders of shares or interests in a social enterprise organisation, the organisation may distribute such capitalised profits to the holders of the shares or interests limitedly up to an amount which does not exceed twenty five per cent of the capitalised profits being an amount which is calculated after the organisation has settled all its liabilities and made adequate provisions for any losses.

Cessation by the organisation.

10. (1) It shall be an obligation on all administrators of a social enterprise organisation which for any reason ceases to operate as such or to qualify as a social enterprise organisation in terms of this Act to bring the facts to the attention of the Regulator within three (3) working days, and, in such case, the Regulator shall cancel the registration of the social enterprise organisation.

(2) The social enterprise organisation may also resolve not to continue to operate as such by a resolution of the holders of the shares or participating interests therein and may, subject to the other provisions of this Act, resolve to continue the operations of the organisation without the benefits under this Act, in which case article 22(2) and (5) shall apply *mutatis mutandis*.

Part V
The Regulator of Social Enterprise Organisations

Appointment of the Regulator.

11. (1) There shall be a Regulator of Social Enterprise Organisations who shall be appointed by the Minister following consultation with the Committee for this purpose.

(2) The Regulator shall be appointed for a period of three years and may be re-appointed upon expiration of the term of office for a further period or periods.

(3) A person shall not be qualified to be appointed or continue to hold office as Regulator if such person:

(a) is a Judge, a Magistrate, a Member of the House or a Local Council, or running for election to the House, a Local Council, or to the European Parliament; or

(b) is legally incapacitated or interdicted; or

(c) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(d) has been convicted of a crime affecting public trust or theft or fraud, or of knowingly receiving property, obtained by theft or fraud, a crime affecting the good order of the family or of an offence against this Act.

(4) During his term as Regulator, such person shall not hold any position which results in a conflict of interest or is incompatible with the correct performance of his official duties as Regulator or with the impartiality expected from this office or with the public confidence therein.

(5) When the office of the Regulator becomes vacant, a person appointed as Regulator shall hold office temporarily until a successor is appointed and, subject to the qualifications in sub-article (3), the Minister may, at any time, during the absence of the Regulator or for any other temporary purpose where the Minister considers it necessary to do so, appoint a person to act in the office of the Regulator, until the resumption of office by the Regulator.

(6) The Minister may also appoint one or more Deputy Regulators to assist the Regulator as directed by him and in the performance of his functions.

(7) The Regulator shall receive such remuneration as the Minister may establish and shall be provided with premises and an adequate number of staff to carry out the functions assigned to him under this Act. The officials and staff appointed to assist the Regulator shall receive such remuneration as the Minister may establish.

Removal from office.

12. (1) The Regulator may, at any time, be removed or suspended from office by the Minister after consultation with the Committee on the grounds of proved inability to perform the functions of the office of the Regulator or due to proved misbehaviour:

Provided that if the Committee is not constituted or if Parliament is not in session, the Regulator may be suspended from office by the Minister, acting in accordance with his own discretion, for proved inability to perform the functions of the office or due to proved misbehaviour to the satisfaction of the Minister, but any such suspension shall not continue to be in force beyond two (2) months after the Committee is constituted and Parliament is in session.

(2) The Regulator may, at any time, resign from office by notice in writing addressed to the Minister.

Functions of the Regulator.

13. (1) The Regulator shall perform the duties and exercise the functions imposed and conferred on him by this Act and by any regulations made thereunder including:

(a) providing registration facilities for applicants which are eligible for registration in terms of this Act;

(b) accepting or refusing applications from applicants to register as social enterprise organisations in terms of this Act;

(c) maintaining and updating the Register of Social Enterprise Organisations;

(d) monitoring the activities of social enterprise organisations in order to ensure that they comply with their statute, with the provisions of this Act, any regulations and any guidelines made thereunder and to ensure that the social enterprise organisation implements the necessary policies, regulations and reporting structures to ensure accountability and transparency in their operations;

(e) monitoring the behaviour of the administrators of social enterprise organisations to ensure the observance of high standards of accountability and transparency and compliance with law;

(f) investigating any complaints relating to social enterprise organisations or organisations purporting to be social enterprise organisations and their activities, investigating *ex officio* any social enterprise organisation for any shortcomings and taking such action as is in his power to redress any justified grievance that may come to his notice, including referring his findings to the Police;

(g) ensuring that the social enterprise organisation achieves its purposes and protects its capital base while developing operational surpluses to ensure sustainability;

(h) co-ordinating and communicating with each Registrar and with any competent authority:

(i) to facilitate the registration processes for social enterprise organisations and to ensure the continuous monitoring and eligibility of social enterprise organisations in terms of this Act;

(ii) to establish procedures to ensure that the Regulator and each Registrar are aware of the status of a social enterprise organisation at all times and of any investigation or action which is being taken in respect of such social enterprise organisation;

(i) promoting the social enterprise sector, developing co-operation between social enterprise organisations and the Government and co-operation between social enterprise organisations amongst themselves;

(j) making recommendations to the Minister on legislation and policies in support of social enterprise organisations and the social enterprise sector in general;

(k) assisting Government, government departments, public agencies, authorities and entities controlled by the Government in preparing and reviewing policies in support of social enterprise organisations and the social enterprise sector in general;

(l) performing any other function or duty that is assigned to him under this Act and any regulations made thereunder as well as such other functions as may be assigned to him under any other law;

(m) the extension of these regulations and obligations to other organisations that he considers as achieving the same objectives set out in the law. In these instances, the Regulator may apply temporary derogation in relation to profit distribution, engagement of volunteers and the employment of disadvantaged workers according to the exigencies of the case.

(2) In the exercise of his functions, the Regulator shall act impartially and shall not be subject to the direction of any other person or authority.

(3) The Regulator may by writing under his hand, delegate to any person specific functions, powers or authorities assigned to or conferred on him by this Act or any other law, and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to divest the Regulator of any of his functions, powers or authorities and he may, if he thinks fit, exercise such functions, powers or authorities collaterally with the person so delegated.

(4) The provisions of article 72 of the Financial Administration and Audit Act shall not apply to the Regulator or any other person carrying out his functions in terms of this Act. Cap. 174.

Other functions of the Regulator.

14. (1) The Regulator shall seek to encourage an environment where the credibility and good reputation of the social enterprise sector is continually enhanced through high standards of operation of social enterprise organisations and their administrators, of transparency and public awareness and of proper accountability.

(2) The Regulator shall promote and facilitate the development of the social enterprise sector by complying with the obligations imposed and conferred on him by this Act and any regulations made thereunder including:

(a) providing assistance with regard to any matter relating to social enterprise organisations; and

(b) promoting and publicising any measures meant to support the social enterprise sector.

(3) The Regulator, in order to better implement and safeguard the principles of this Act, may issue binding guidelines regarding:

(a) the social enterprise sector in general and social enterprise organisations and their activities and the requirements, benefits and responsibilities deriving from registration in terms of this Act;

(b) when a social purpose may be considered to benefit the community or a section of the community;

(c) persons involved in social enterprise organisations, including -

(i) their remuneration, in so far as they act as administrators;
(ii) their employment or engagement and the remuneration payable to them; and
(iii) the supply of goods or services by them under a contract of engagement to the social enterprise organisation, including by volunteers,

and this, for the better performance of their role and for the better achievement of the objectives of the social enterprise organisation in which they serve;

(d) the provision of loans or other financial assistance with or to a social enterprise organisation;

(e) the sale of goods and services to a social enterprise organisation; and

(f) the relevant market rates or margins applicable to social enterprise organisations.

(4) The Regulator may request any information from any Government entity, public authority or department in order to fulfil his duties and such entities shall co-operate with the Regulator as required in the performance of his functions under this Act, and this,

in accordance with any special law which may be applicable:

Provided that information obtained under this article shall only be used to the extent and only for the purposes required for the implementation of the provisions of this Act and the avoidance of any abuse and shall be kept confidential by the Regulator under the same duty of confidentiality binding the other entity providing the information.

Annual report.

15. (1) The Regulator shall, by not later than eight weeks after the end of each calendar year, make and present to the Minister an annual report which shall include:

(a) a report of the Regulator's activities during the preceding year including those relating to the monitoring of social enterprise organisations;

(b) a general description of the circumstances of the social enterprise sector in Malta and any developments which may have affected such sector;

(c) any recommendations regarding legislation, regulation, policies or other matters affecting the social enterprise sector; and

(d) the accounts and other financial records referred to in sub-article (2), duly audited, together with a copy of any report made by the auditor on such accounts.

(2) The Regulator shall cause to be kept proper accounts and other financial records in respect of the operations of his office, and shall cause to be prepared a statement of accounts in respect of each financial year. The accounts of the Office of the Regulator shall be audited by an auditor to be approved by the Minister.

Part VI
Register of Social Enterprise Organisations

Register of Social Enterprise Organisations.

16. (1) There shall be a Register of Social Enterprise Organisations (hereinafter referred to as "the Register") which shall be maintained by the Regulator and shall contain the following information, supported by the documentation referred to in paragraphs (f) to (l), as the same may be amended or updated as may be prescribed:

(a) the name of the social enterprise organisation;

(b) the address of the social enterprise organisation;

(c) the social enterprise label of the social enterprise organisation;

(d) the names, identity card numbers or passport numbers or registration numbers, if any, accompanied by an authenticated copy of a valid identification document or registration certificate, as applicable, and the residential addresses of the administrators of the organisation;

(e) if the administrators of the social enterprise organisation are all not ordinarily resident in Malta, the name, identity card number or passport number or registration number if any, including an authenticated copy of a valid identification document of a person ordinarily resident in Malta who shall act as local representative of such social enterprise organisation in Malta;

(f) an authenticated copy of the statute of the social enterprise organisation and any amendments made thereto;

(g) an authenticated copy of the social enterprise organisation's certificate of registration issued by the Registrar;

(h) the annual accounts of the social enterprise organisation, together with a report of reviewers, accountants or auditors as may be required under applicable law;

(i) the annual reports of the social enterprise organisation;

(j) an organisational chart of the social enterprise organisation;

(k) the social impact report of the social enterprise organisation;

(l) the written consent of the administrators to hold office as administrators of the social enterprise organisation after registration;

(m) a resolution signed by the administrators of the social enterprise organisation indicating that they resolve to register the social enterprise organisation with the Regulator; and

(n) any other information which, in the opinion of the Regulator, should be included in the Register.

(2) The list of names of social enterprise organisations in the Register shall be available upon written request. No other information or contents of the Register other than the name of the social enterprise organisation and its social enterprise label shall be available except to the competent authorities granting benefits as referred to in this Act.

(3) The Regulator shall compile and maintain the Register in accordance with the provisions of the Data Protection Act. Cap. 586.

Application to register.

17. (1) An applicant may apply for registration by submitting the prescribed application form to the Regulator, which form shall be accompanied by:

(a) an authenticated copy of the statute of the applicant;

(b) an authenticated copy of the applicant's certificate of registration or, if not yet registered, an undertaking to provide an authenticated copy of the applicant's certificate of registration issued by the Registrar when the organisation is registered with the Registrar;

(c) an authenticated copy of the identity card or passport or certificate of registration of the administrators of the applicant;

(d) an authenticated copy of the identity card or passport or certificate of registration of the local representative of the applicant, if any;

(e) the annual accounts of the applicant for the last financial year prior to registration, if any, together with a report of reviewers, accountants or auditors as may be required under applicable law;

(f) the annual report of the applicant for the last financial year prior to registration, if any, which must include:

(i) a description of the activities carried out by the applicant; and

(ii) if the applicant is one which may be classified under article 3(1)(b)(i), an indication of the social purpose being fulfilled through the carrying out of the act of trade or other activity; or

(iii) if the applicant is one which may be classified under article 3(1)(b)(ii), information regarding the persons employed or engaged by the applicant particularly the workers with a disability or the disadvantaged workers;

(g) an organisational chart of the applicant which shall be signed by at least one administrator and shall include:

(i) the organisational structure of the applicant;

(ii) an indication of who the ultimate beneficial owners of the shares or interests in the applicant are;

(iii) a depiction of the management and administrative structure of the applicant, showing the responsibility of each board and any working groups, the relationship of each board and any working groups to each other, and the hierarchy of management and administration;

(iv) an indication of who is responsible for the day to day running of the applicant;

(v) to demonstrate the basis of the application of the provisions of this Act, the names and identification numbers of any employees and, in the case of an applicant which may be classified under article 3(1)(b)(ii), the persons who qualify;

(vi) information regarding the number of volunteers;

(h) a social impact report which indicates the primary social objective or objectives of the organisation and the manner in which the applicant intends to achieve these social objectives together with the manner in which the applicant intends to operate so as not to:

(i) prejudice the fulfilment of the social purpose for which it was established, if the applicant is one which may be classified under article 3(1)(b)(i);

(ii) prejudice the integration into the labour market of disadvantaged workers or workers with a disability if the applicant is one which may be classified under article 3(1)(b)(ii);

(iii) grant gratuitous distributions from the profit or bonuses to its administrators, employees or other officers which will lead to the same results indicated in sub-paragraphs (i) and (ii);

(i) the written consent of the administrators to hold office as administrators of the applicant after registration;

(j) a resolution signed by the administrators of the applicant indicating that they resolve to register the applicant with the Regulator;

(k) the application fees due to the Regulator; and

(l) any other document as may be required by this Act or as may be prescribed.

(2) In considering an application, and at any time thereafter, the Regulator may request the applicant to provide further information about or make representations on any matter on which he may have reservations or concerns in relation to the application.

(3) The Regulator may accept or refuse any application for registration on the basis of:

(a) the observance or otherwise of all the formalities required by this Act or as may be prescribed;

(b) the presence or otherwise of any factors which bar registration under an express provision of this Act or as may be prescribed;

(c) the legality or otherwise of the proposed purposes and objects of the applicant having regard to the stated purposes and objects of the applicant and the stated intentions of the promoters relating to its activities;

(d) the fulfilment or otherwise of obligations relating to the payment of social security contributions in accordance with applicable law; or

(e) the fulfilment or otherwise of obligations relating to the payment of taxes due in accordance with applicable law.

(4) The Regulator shall:

(a) pay due regard to all information provided and representations made, but in the event that the applicant fails to provide any requested information or to make representations, the Regulator shall proceed with the determination of the application for registration on the basis of the information available to him;

(b) determine whether the applicant is eligible for registration as a social enterprise organisation;

(c) notify the applicant, in writing, of his determination, and in the case of a decision not to accept an application, the reasons for such determination.

(5) The Regulator shall seek to determine all applications from the date of application.

(6) The Regulator shall issue a confirmation of eligibility to register the applicant as a social enterprise organisation so as to facilitate the registration of the applicant, or of an amendment to its statute so as to comply with this Act, with the Registrar who shall proceed with registration in terms of applicable law on being satisfied

with compliance with such law keeping in view the modifications made in accordance with this Act.

Registration as a social enterprise organisation.

18. (1) Upon being satisfied that the applicant is eligible for registration in terms of this Act, and upon receiving an authenticated copy of the applicant's certificate of registration or an authenticated copy of the applicant's updated statute so as to comply with this Act issued by the Registrar, the Regulator shall proceed to register the applicant as a social enterprise organisation and shall:

(a) allocate a unique registration number to the social enterprise organisation which shall be preceded by the letters "SEO", which letters and numbers shall cumulatively be referred to in this Act as the "social enterprise label";

(b) enter the particulars of the social enterprise organisation in the Register; and

(c) issue a certificate of recognition including the social enterprise label of the social enterprise organisation.

(2) The social enterprise label shall, at all times, be quoted by the social enterprise organisation on any published materials, letters, notices, advertisements and other documents issued by such social enterprise organisation.

(3) Certificates of recognition shall be considered to be public instruments and shall be surrendered to the Regulator on his simple demand in writing. The Regulator shall be bound to provide written reasons for any withdrawal of a certificate of registration when making such written demand.

(4) The certificate of recognition issued in terms of this article shall not determine the fiscal status of a social enterprise organisation or the taxability or otherwise of its income and transactions.

(5) The administrators of a social enterprise organisation may, upon a resolution of the holders of shares or other participating rights therein, request the removal of the organisation from the Register upon giving three months notice to the Regulator and, in such case, the Regulator shall proceed to cancel the registration subject to the issue of any orders under article 22(5) which he may consider appropriate.

Annual Return to be filed with the Regulator.

19. (1) A social enterprise organisation shall submit the annual return found in the Fourth Schedule to the Regulator by the end of each calendar year. In default, there shall be a penalty of twenty-five euro (€25) for each month of delay. In the event of non-compliance for a year, the registration of the social enterprise organisation shall be duly cancelled and all benefits shall be refunded

and reimbursed immediately.

(2) The annual return for social enterprise organisations shall cover a calendar year from the first day of January to the thirty first day of December of each year:

Provided that:

(a) if a social enterprise organisation was registered between the first day of January and the thirtieth day of September of any year, it shall file the annual return normally but such annual return shall, for the first year only, cover a period of less than twelve months since its registration;

(b) if a social enterprise organisation was registered between the first day of October and the thirty-first day of December of any year, it shall not file an annual return for its first year of registration but it shall file, for the second year only, an annual return up to the thirty-first day of December following the year of registration for a period over twelve months but not exceeding fifteen months.

(3) The annual return and all the required documents relating to a social enterprise organisation shall be filed by not later than the thirtieth day of April of the following year.

Powers of the Regulator.

20. The Regulator may request any information and any clarification from the social enterprise organisation, and may also carry out any verification, investigation or audit so as to ascertain to his satisfaction that such social enterprise organisation is in compliance with the provisions of this Act or as may be prescribed. The registered social enterprise organisation shall seek to comply with this request expediently and in default the Regulator may cancel the registration of the social enterprise organisation.

Cancellation of activities.

21. (1) The Regulator may order the cancellation of the registration of a social enterprise organisation by the issue of a cancellation order, which shall come into effect thirty days from the date of notification of such order, to all or any one of the administrators, unless an application is filed within the period provided for in article 26 in which case such order shall only have effect if so determined and from the date established by the Court.

(2) A cancellation order may be issued if the social enterprise organisation:

(a) is not pursuing the purposes stated in the statute;

(b) is carrying out unlawful activities or is acting in contravention of the provisions of any law;

(c) is failing to comply with the provisions of its statute or of this Act or as may be prescribed or the administration thereof is being carried out to poor standards of corporate governance and continues to be so carried out for a period in excess of three months notwithstanding a written warning by the Regulator;

(d) is distributing profits directly or indirectly in excess of the twenty-five per cent permitted under this Act;

(e) appears to have continued operating after it has been formally dissolved;

(f) has not functioned for a period which exceeds twelve consecutive months;

(g) is not seeking to uphold and maintain the objectives of this Act;

(h) is using its certificate of recognition in an incorrect manner or has committed a forgery thereof; or

(i) has obtained registration on the basis of materially incorrect or incomplete information that would have otherwise resulted in a refusal had the correct or complete information been known to the Regulator.

(3) Prior to ordering the cancellation of the registration of a social enterprise organisation by the issue of a cancellation order, the Regulator shall grant the social enterprise organisation a period of time in which to regularise its position and conform with the provisions of this Act. If the social enterprise organisation does not do so within this stipulated time period, which may be extended by the Regulator at his discretion, the Regulator shall order the cancellation of the registration of the social enterprise organisation in accordance with sub-article (1).

(4) The Regulator may appoint any person to assist the social enterprise organisation to regularise its position.

(5) Until a cancellation order comes into effect in accordance with sub-article (1), the affairs of the social enterprise organisation shall continue to be administered by the administrators who shall only carry out acts of ordinary administration or, in case where judicial proceedings are pending, such acts as may be authorised by the Regulator or the Court.

(6) The cancellation order shall include all determinations under such terms and conditions as the Regulator or the Court, as the case may be, may consider appropriate in the circumstances and such order shall not however imply a restriction of the right of association

of any persons involved in the organisation or of the right of said persons to continue to operate the organisation without the continuing benefits of registration under this Act.

(7) The Regulator shall publish, in one local newspaper or by means of a notice in the official website of the office of the Regulator, as the Regulator may consider appropriate in the circumstances of the case, any cancellation orders which have become final with a brief statement as to the effects of the order and such statement shall be re-published regularly for as long as the Regulator may consider necessary to ensure that the necessary public awareness has been achieved.

(8) The registration of a social enterprise organisation shall terminate *ipso iure* if the organisation is struck off the register applicable to its legal form by the Registrar.

Effects of cancellation of registration.

22. (1) In the event of the cancellation of registration of a social enterprise organisation, the administrators shall make all the necessary amendments to the statute of the organisation including amending its name to remove any references to the term "Social Enterprise" or the letters "SEO".

(2) Notwithstanding anything stated in the organisation's statute or in any applicable law, the administrators of a social enterprise organisation which has been cancelled may resolve to retain the organisation in operation and shall be deemed to have all the necessary powers and authority to make any amendments to the statute so as to remove any particular statutory requirements imposed by this Act and to bring it in line with the law applicable to its legal form should it be resolved by the administrators to retain its registration in the relevant register.

(3) In the event of the cancellation of registration of a social enterprise organisation, the administrators shall forthwith surrender, to the Regulator, the certificate of recognition of such social enterprise organisation and any person failing to surrender such certificate within the time stated in the demand, in writing, made by the Regulator, shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of two hundred and fifty euro (€250) and a fine (*multa*) of twelve euro (€12) for every day of default.

(4) In the event of the cancellation of registration of a social enterprise organisation, all benefits granted to such social enterprise organisation by virtue of registration shall cease from the date when the decision to cancel takes effect:

Provided that such loss of benefits shall not apply to the acts required to liquidate and dissolve the social enterprise organisation, including any transfer of property to other social

enterprise organisations as required by the statute of the social enterprise organisation or otherwise in accordance with article 9 or the provisions of applicable law.

(5) Cancellation for the reasons mentioned in article 21 shall entitle the Regulator to demand in writing the refund of, or fair compensation for, any benefits received by the social enterprise organisation or any other person by virtue of its registration in terms of this Act, and that demand, when done by judicial letter, issued in accordance with article 466 of the Code of Organization and Civil Procedure shall constitute an executive title against the organisation or any named administrator in favour of the Regulator, in his own name or as trustee for the person entitled to the refund or fair compensation as aforesaid. Any person aggrieved by such order may file an application in Court within thirty days of receipt thereof:

Cap. 12.

Provided that there shall lie an appeal to the Court of Appeal from any confirmation of liability by the Court in terms of this sub-article.

(6) An order of the Regulator against an organisation or any named administrator shall be enforceable as an executive title once any judgment has become *res judicata* or no proceedings have been filed within the relevant time limits.

Abusive use of certificate of recognition or forgery thereof.

23. (1) Without prejudice to the provisions of any other law, in those cases where the Regulator is of the opinion that a person or a social enterprise organisation is making or has made abusive use of a certificate of recognition issued in terms of article 18 or has made or made use of a forgery thereof, the Regulator may:

(a) prohibit such person from using such Certificate of Registration by giving notice to such person in writing; or

(b) issue public statements on the facts to warn the public about any abuse by the person or social enterprise organisation.

(2) Prior to the taking of any of the actions referred to in sub-article (1)(a) and (b), the Regulator shall notify in writing, any person or social enterprise organisation who appears to him to have abused a certificate of recognition, of his findings and of the actions he intends to take and such person or social enterprise organisation shall be entitled to make submissions to the Regulator within five days from the date of receipt of the written notice.

Part VII
Applications to the Court

Applications to the Court.

24. The Court shall be competent to hear and determine any applications made under this Act and made in terms of article 25. The Court shall have jurisdiction in relation to any breach of the

provisions of this Act or any regulations made thereunder when such breach does not constitute a criminal offence.

Right of review from a decision of the Regulator.

25. (1) Any person or organisation aggrieved by any cancellation order issued by the Regulator may apply to the Court for review of such decision within thirty days of receipt thereof.

Cap. 12.

(2) Applications shall be made in writing and shall be lodged with the Court in accordance with the provisions of the Code of Organization and Civil Procedure or shall be made in the manner as may be prescribed by regulations made by the Minister by virtue of this Act.

(3) All applications shall be made to the Court which applications shall be served on the Regulator by the applicant.

(4) An application to the Court may also be made by an administrator or member of a social enterprise organisation for an order on the affairs of such organisation on the grounds that such organisation is not being administered in accordance with this Act, any regulations or guidelines made thereunder or as provided in the statute of such organisation.

(5) In determining an application, the Court may dismiss the application or annul, revoke or substitute the decision of the Regulator.

Compliance with instructions.

26. Compliance with any instructions of the Regulator shall not be interpreted as a renunciation of the right to seek review of the Regulator's determination.

Part VIII
Offences

Penalties.

27. Where any person acts in breach of any of the provisions of this Act or any regulations or any guidelines made thereunder, and a specific penalty is not provided for the offence under this Act or any regulations or guidelines made thereunder, such person shall, on conviction, be liable to a fine (*multa*) of not less than one hundred and twenty euro (€120) but not more than two thousand five hundred euro (€2,500).

Provision with respect to offences.

28. The provisions of this Act establishing offences and penalties in respect thereof shall not affect the operation of any other law establishing offences and penalties in respect of the same acts or omissions and shall not affect the application of any higher penalty under any other law.

Forgery or alteration of certificates or mis-representation or abusive use of status.

29. Any person who, in any manner, forges or alters a certificate of registration of a social enterprise organisation so as to give the impression that he acts on behalf of a social enterprise organisation, or that an organisation is a social enterprise organisation when it is not, shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code.

Cap. 9.

Purporting to act as an administrator.

30. Any person who knowingly acts or purports to act as an administrator of a social enterprise organisation without having been duly appointed or elected as an administrator of such organisation, shall be guilty of an offence punishable as a contravention unless the actions of the said person constitute a more serious offence under any other law, in which case he shall be punishable accordingly.

Abusive use of certificate of recognition and incorrect statements or information.

31. Any person who -

(a) makes abusive use of a certificate of recognition or of a social enterprise label;

(b) acts or purports to act in the name of a social enterprise organisation which does not exist; or

(c) without reasonable excuse prepares any incorrect statement or gives any incorrect information in relation to any matter falling under this Act,

shall be guilty of an offence under this Act.

Abuse of benefits.

32. (1) Any person who, with the intent of obtaining any benefit under this Act or any regulations or guidelines made thereunder, or who assists any person in doing so -

(a) omits from an annual return or any other document or statement made for the purposes of this Act or as may be prescribed, any matter which should be included therein; or

(b) makes any false statement or entry in any annual return or other document or statement made for the purposes of this Act or as may be prescribed; or

(c) gives any false answer, whether verbally or in writing, to any question or request for information made in accordance with the provisions of this Act or as may be prescribed; or

(d) prepares or maintains or authorises the preparation or maintenance of any false books of accounts or other records or falsifies or authorises the falsification of any books of accounts or records; or

(e) makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence under this Act.

(2) Upon any person admitting to or being found guilty of any of the above offences, the Regulator shall on conviction revoke any Certificate of Registration issued to the social enterprise organisation.

Investigations.

33. (1) The Regulator may investigate the affairs of any social enterprise organisation at any time and may demand from any person, in writing, any relevant information and documentation relating to the operation of a social enterprise organisation or any person involved in the activities of a social enterprise organisation, if he receives what he considers to be a valid compliant in writing or if he has cause to believe that such information is necessary in order to establish whether a social enterprise organisation is acting in compliance with the provisions of this Act or any regulations or guidelines made thereunder.

(2) Any person who fails to provide information and documentation as aforesaid, and destroys or defaces documents, or attempts to destroy or deface documents, required by the Regulator pursuant to this article shall be guilty of an offence.

(3) The Regulator may issue directives demanding compliance with any of the provisions of this Act or any regulations or guidelines made thereunder and failure on the part of any person to comply with such directives shall constitute a breach of duty.

(4) The Regulator may set a period for compliance with any directives he may give or for compliance with any of the provisions of this Act or any regulations or guidelines made thereunder and may impose penalties for non-compliance within such period:

Provided that such penalties shall not exceed two thousand five hundred euro (€2,500) for the breach of a directive and one hundred twenty euro (€120) for each day of non-compliance and such penalties shall be paid to the Regulator.

Cap. 377.

(5) A demand under this article may also be sent to a person who is bound by a duty of professional secrecy under the Professional Secrecy Act and for the purposes of article 6A of the said Act, the Regulator shall be considered to be a public authority. Any information obtained by the Regulator upon such a demand shall be used exclusively for the purposes of this Act.

(6) Any person or organisation may be subject to further investigations and in the event that they transpire to be of a criminal nature, the Regulator shall refer the matter to the Executive Police.

Part IX
General

Powers of the Minister.

34. (1) The Minister may by regulations prescribe regulations to properly implement the provisions of this Act, and may, without prejudice to the generality of the aforesaid, by regulations:

(a) amend the Schedules;

(b) further regulate social enterprise organisations;

(c) establish forms for the notification to the Regulator of changes to the statute of the social enterprise organisation or of its administrators or otherwise; and

(d) further establish the form and content of annual reports and accounts which are to be submitted to the Regulator in order to achieve a satisfactory level of transparency and accountability of social enterprise organisations.

(2) The Minister may, after consulting the relevant Minister depending on the type of benefit or incentive granted, make regulations including different rules for the different types of social enterprise organisations identified in terms of this Act, and may establish the criteria for the granting of any exemptions, in whole or in part, with regards to the activities of social enterprise organisations. Such regulations may also establish the terms, conditions and forms of any fiscal certificates, receipts or other documents which may be necessary for the enjoyment of the above fiscal status and regulations:

Provided that only social enterprise organisations in possession of a valid certificate of recognition may benefit from the incentives or grants prescribed by the Minister.

FIRST SCHEDULE
(Article 3(2)(a))

Social Enterprise Company

Private company.

1. A social enterprise company shall be a private liability company including a single member company, registered under the Companies Act. Article 213 of the Companies Act shall not apply to a social enterprise company for the purposes of this Act.

Cap. 386.

Part V - Limited Liability Company - of the Companies Act shall apply subject to modifications.
Cap. 386.

2. The provisions of Part V - Limited Liability Company - of the Companies Act shall apply to the social enterprise company subject to the following modifications:

Statement regarding legal form to be included in the statute.

(a) the statute of a social enterprise company shall state that it is a social enterprise organisation taking the legal form of a company in terms of this Act;

Contents of the statute.

Cap. 386.

(b) the statute of a social enterprise company shall be drafted in a manner which is consistent with the provisions of this Act regarding the statute and article 75 and the First Schedule - Model regulations for a limited liability company - of the Companies Act shall be construed accordingly. A social enterprise company shall also, insofar as its statute is concerned, comply with the requirements of article 69 of the Companies Act and article 8;

Cap. 386.

(c) notwithstanding anything stated in the Companies Act it shall be permitted that all or a percentage of the shares in the initial share capital of a social enterprise company to be voting but non-participating so as to comply with the requirements of this Act.

Objects of the social enterprise company.
Cap. 386.

3. The reference to the objects of the social enterprise partnership indicated in article 69(1)(8) of the Companies Act shall also include the declaration indicated in article 8(2)(b).

Prohibition of loans, etc. to directors.
Cap. 386.

4. Article 144 of the Companies Act shall prevail over article 5.

Provisions relating to dividends, distributions and to rights of participation in the profits of a company.
Cap. 386.

5. (1) Any provisions in the Companies Act relating to dividends and to rights of participation in the profits of a company shall be interpreted in a way so as to comply with this Act insofar as it relates to the seventy-five per cent of income in a social enterprise company and Chapter XI - Distribution of Profits and Assets - found in Title I of Part V of the Companies Act shall be interpreted accordingly.

Cap. 386.

(2) Article 204 of the Companies Act shall also apply to any distribution that is considered to be unlawful because it is in breach of any of the provisions of this Act and particularly article 5 when the distribution is in excess of the twenty-five per cent permitted by this Act.

Dissolution and winding up. Cap. 386.

6. Title II - Dissolution and Consequential Winding Up of Companies - found in Part V of the Companies Act shall apply to social enterprise companies subject to the provisions of article 9.

Conversion, amalgamation and division. Cap. 386.

7. Part VII - Conversion of Commercial Partnerships, Part VIII - Amalgamation of Commercial Partnerships, and Part IX - Division of Companies - of the Companies Act shall apply to social enterprise companies:

Provided that social enterprise companies may only amalgamate with other social enterprise companies:

Provided further that insofar as division is concerned under this Schedule it is restricted to division within the context of social enterprise companies only.

Protection of shareholders against unfair prejudice. Cap. 386.

8. Article 402 of the Companies Act shall apply to the shareholders of social enterprise companies in a manner which is inconsistent and that does not breach this Act.

Accounts, Audit and Annual Returns.

Cap. 386.

9. (1) The provisions of this Act and particularly article 19 and the Fourth Schedule regarding annual returns shall apply in addition to Chapter X - Accounts, Audit and Annual Return - found in Title I of Part V of the Companies Act and all other relevant provisions of the Companies Act relating to accounts and auditing shall apply.

Cap. 386.

(2) A social enterprise company shall not be required to prepare any additional annual accounts for the purposes of this Act and any regulations made thereunder. A copy of the annual accounts prepared in accordance with the provisions of the Companies Act shall be submitted to the Regulator who shall file such copy in the Register of Social Enterprise Organisations.

SECOND SCHEDULE
(Article 3(2)(b))

Social Enterprise Partnership

Statement regarding legal form to be included in the statute.

1. The statute of the social enterprise partnership shall state that it is a social enterprise organisation taking the legal form of a social enterprise partnership in terms of this Act.

Agreement to pay share of profits. Cap. 386.

2. Any agreement to pay a share of profits in the manner laid down in article 8 of the Companies Act shall be made in accordance with article 5 and any other relevant provisions of this Act.

Death of a partner.

3. (1) In the case of death or expulsion of a partner such partner shall only be entitled to twenty-five per cent of the profits as permitted by this Act.

(2) There is no restriction on the return of any capital contribution under this Act and is permitted subject to the observance of the provisions of the Companies Act. Cap. 386.

Rights of persons ceasing to be partners. Cap. 386.

4. The entitlement to *pro rata* share of profits contemplated in article 34(2) of the Companies Act shall be compliant with article 5 and there can be non-participating interests in the social enterprise partnership.

Dissolution and winding up. Cap. 386.

5. Any relevant provisions regarding the dissolution and winding up of social enterprise partnerships contemplated in the Companies Act shall apply with such modifications as may be expressly or impliedly required under the provisions of this Act and particularly by article 9.

Conversion and amalgamation. Cap. 386.

6. Part VII - Conversion of Commercial Partnerships - and Part VIII - Amalgamation of Commercial Partnerships - of the Companies Act shall apply to social enterprise partnerships:

Provided that social enterprise partnerships may only amalgamate with other social enterprise partnerships and in accordance with any relevant provisions of the Companies Act. Cap. 386.

Distribution of assets. Cap. 386.

7. Any distribution of any assets as contemplated in article 45, article 47 and any other relevant provisions of the Companies Act shall only be done if it is permitted by articles 5 and 9 in the case of social enterprise partnerships.

Division of capital into shares. Cap. 386.

8. Article 66 of the Companies Act shall apply with such modifications as may be expressly or impliedly required under the provisions of this Act and in particular article 5 and when the contributions have been converted into shares the principles in the First Schedule shall apply *mutatis mutandis*.

Partnership *en commandite* or limited partnership. Cap. 386.

9. Article 66A and the Tenth Schedule - Partnerships *en commandite* or limited partnerships - of the Companies Act shall not apply to social enterprise partnerships.

Accounts, audit and annual returns.

10. (1) In the case of social enterprise partnerships, the provisions of this Act and particularly article 19 and the Fourth Schedule regarding annual returns shall apply, in addition to Chapter X - Accounts, Audit and Annual Return - found in Title I of Part V of the Companies Act and other relevant provisions regarding accounts and auditing laid down in the Companies Act.

Cap. 386.

(2) A social enterprise partnership shall not be required to prepare any additional annual accounts for the purposes of this Act and any regulations made thereunder. In such cases, a copy of the annual accounts prepared in accordance with the provisions of the Companies Act shall be submitted to the Regulator who shall file such copy in the Register of Social Enterprise Organisations.

THIRD SCHEDULE
(Article 3(2)(c))

Social Enterprise Co-operative

Statement regarding legal form to be included in the statute.

1. The statute of the social enterprise co-operative shall include a statement that it is a social enterprise organisation taking the legal form of a social enterprise co-operative.

Name of social enterprise co-operative. Cap. 442.

2. Insofar as the name of a social enterprise co-operative is concerned it shall be required to comply with article 24 of the Co-operative Societies Act and with article 8(3), (4) and (5) and the social enterprise co-operative shall have the word "co-operative limited" or the abbreviation "co-op ltd." at the end of its name as required by article 24(2)(b) of the Co-operative Societies Act after the words "Social Enterprise" or the letters "SEO".

Contents of the statute. Cap. 442.

3. Article 34(2) and the Second Schedule of the Co-operative Societies Act shall apply as modified by article 8 and any other relevant provisions of this Act and the provisions of this Act shall prevail over the provisions of the Co-operative Societies Act insofar as the statute of a social enterprise co-operative is concerned.

Description of a co-operative and the third co-operative principle. Cap. 442.

4. (1) The description of a co-operative laid down in article 21(1) of the Co-operative Societies Act shall insofar as social enterprise co-operatives are concerned be construed in accordance with articles 3 and 4 and in the event of conflict between the provisions of the Co-operative Societies Act and this Act, this Act shall prevail.

Cap. 442.

(2) The Third principle - Member economic participation - laid down in article 21(2) of the Co-operative Societies Act shall be compliant with articles 5 and 9 and any other applicable provision of this Act and a social enterprise co-operative can define interests as non-participating.

Public inspection. Cap. 442.

5. The proviso to articles 10 and 12 of the Co-operative Societies Act shall not apply to social enterprise co-operatives and the provisions of this Act shall prevail.

Sale or provision of goods. Cap. 442.

6. Article 40 of the Co-operative Societies Act shall apply as modified by article 5 and the provisions of this Act shall prevail over article 40 of the Co-operative Societies Act.

Remuneration.

Cap. 442.

7. In the case of social enterprise co-operatives, insofar as payment of allowances, honoraria, wages or salaries are concerned as laid down in article 77 of the Co-operative Societies Act in the event of conflict with article 5, the provisions of article 5 shall prevail.

Distributions of any available net surplus, property and funds. Cap. 442.

8. (1) Any considerations and determinations regarding the distribution of any available net surplus referred to in article 66 of the Co-operative Societies Act shall be made in

accordance with article 5 and any other applicable provisions of this Act.

Cap. 442.

(2) Articles 5 and 9 shall prevail over Part VII - Property and Funds of Societies - of the Co-operative Societies Act and:

Cap. 442.

(a) insofar as social enterprise co-operatives are concerned the rules regarding the division surplus funds contemplated in article 92 of the Co-operative Societies Act shall apply as modified by article 5 and any other relevant provisions of this Act;

Cap. 442.

(b) insofar as social enterprise co-operatives are concerned the rules regarding the patronage refund contemplated in article 93 of the Co-operative Societies Act shall apply as modified by article 5 and any other relevant provisions of this Act;

Cap. 442.

(c) insofar as social enterprise co-operatives are concerned the rules regarding bonus certificates and bonus shares contemplated in article 94 of the Co-operative Societies Act shall apply as modified by article 5 and any other relevant provisions of this Act.

Amalgamation. Cap. 442.

9. Part VIII - Amalgamation - of the Co-operative Societies Act shall apply to social enterprise co-operatives, and social enterprise co-operatives shall only be permitted to amalgamate with other social enterprise co-operatives.

Dissolution and liquidation. Cap. 442.

10. Part IX - Dissolution and Liquidation of Societies - of the Co-operative Societies Act shall apply as modified by article 9 and the provisions of this Act shall prevail over Part IX of the Co-operatives Societies Act insofar as dissolution and liquidation of social enterprise co-operatives are concerned and in the event of any conflict between the provisions of the Co-operative Societies Act and the provisions of this Act, the provisions of this Act shall prevail.

Accounts and audit. Cap. 442.

11. (1) The Third Schedule - Form and Content of Individual Accounts - including any other provisions of the Co-operative Societies Act relating to accounts and auditing shall apply to social enterprise co-operatives but they shall be construed in accordance with the provisions of this Act.

(2) A social enterprise co-operative shall not be required to prepare any additional annual certified accounts for the purposes of this Act and any regulations made thereunder. A copy of the annual accounts certified shall be submitted to the Regulator who shall file such copy in the Register of Social Enterprise Organisations.

FOURTH SCHEDULE
(Article 19)

Annual return

Purpose.

The purpose of this annual return is to provide the Regulator with up to date information about the social enterprise organisation, its administrators and its activities, generally. It is important that the exercise be qualitative in that the persons preparing the annual return must give a true account of the facts.

Name of Social Enterprise Organisation: .....

Social Enterprise Label: .....

Address: .....

.....

Postcode .....

Telephone number(s): .....

Fax number: .....

E-mail address/es: .....

Website: .....

Name of Contact Person: .....

Designation: .....

Mobile/Telephone Number: .....

Annual Return for the twelve month period .....

If the social enterprise organisation must nominate a local representative in terms of the Act please provide the details of the local representative below. It must be ensured that the address that is included is the address of the local representative in Malta.

Name and Surname: .....

ID Card/ Passport / Registration Number: .....

Address: .....

.....

Postcode: .....

Telephone number(s): .....

Mobile number: .....

E-mail address/es: .....

Declaration of Completeness and Correctness.

I hereby confirm that the details provided, including the attached Appendices, are complete and truthful as to their contents.

Signature of administrator: .....

Name of administrator: .....

Date: .....

Appendices

Appendix A - Organisational Chart _____

Appendix B - an authenticated updated copy of the statute of the social enterprise organisation as issued by the Registrar, if any amendments have been made to such statute and in such case a declaration signed by at least one administrator stating what amendments have been made _____

Appendix C - a copy of the annual accounts together with a report of reviewers, accountants or auditors as may be required under applicable law_____

Appendix D - a copy of the annual report _____

Appendix E - a copy of the business plan _____

Appendix F - an authenticated copy of any renewed identity cards or passports or registration certificates of the administrators and local representative of the social enterprise organisation (if applicable) _____

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