

I assent.

(L.S.)

GUIDO DE MARCO
President

30th January, 2001

ACT No. IV of 2001

AN ACT to amend the Industrial Development Act, Cap. 325.

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

1. (1) The short title of this Act is the Industrial Development (Amendment) Act, 2001, and this Act shall be read and construed as one with the Industrial Development Act, hereinafter referred to as "the principal Act".

Short title and commencement.

Cap. 325.

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

2. In the long title to the principal Act for the words "of new industries" there shall be substituted the words "of new businesses".

Amendment of the long title to the principal Act.

3. Section 1 of the principal Act shall be substituted by the following:

Substitution of section 1 of the principal Act.

"1. The short title of this Act is the Business Promotion Act."

4. Section 2 of the principal Act shall be amended as follows:

Amendment of section 2 of the principal Act.

(a) in subsection (1) thereof -

(i) in the definition of "Corporation" immediately after the words "Corporation Act" there shall be added the words "and where any other authority or person is designated by

regulations prescribed by the Minister to be the competent authority to exercise any of the functions of the Corporation under this Act, includes any such other authority or person to the exclusion of the Corporation";

(ii) immediately after the definition of "corporation" there shall be added the following new definition:

"enterprise" means any individual or body of persons who or which carries on or exercises a trade, business, profession or vocation;;

(iii) for the definition of "qualifying company" there shall be substituted the following:-

" "qualifying company" means a company which carries on, or intends to carry on in Malta, a trade or business consisting solely of any of the activities referred to in section 3(l)(a) to (k);"

(iv) immediately after the definition of "sales revenue derived from export" there shall be inserted the following new definition:

" "State Aid Monitoring Board" means the State Aid Monitoring Board constituted under section 57;;

(b) immediately after subsection (3) thereof there shall be added the following new subsection:-

"(4) Wherever in this Act reference is made to incentives and benefits contemplated by this Act, such reference shall be read and construed to include incentives and benefits prescribed under this Act."

Amendment of
section 3 of the
principal Act.

5. Section 3 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof, for the words from "Without prejudice to the provisions of section 24," to the words "consisting solely of -" there shall be substituted the words "Unless otherwise provided by or under this Act, the incentives and benefits contemplated by or under this Act shall be due to and obtained by any enterprise which carries on or intends to carry on, in Malta, a trade or business which consists solely of -";

(b) for subsection (1)(c) and (d) thereof there shall be substituted the following:-

"(c) fisheries or large scale aquaculture; or

(d) agriculture, stock farming or large scale horticulture; or";

(c) in subsection (1)(h) thereof for the words "development programmes." there shall be substituted the words "development programmes; or";

(d) immediately after subsection (1)(h) thereof there shall be added the following new paragraphs:-

"(i) the activities set out in section 11 of the Malta Freeports Act and carried on mainly in a freeport as defined by that Act, by a company licensed under that Act; Cap. 334.

(j) (i) the operation of catering establishments, guesthouses, hostels, hotels and holiday premises as defined in the Malta Travel and Tourism Services Act, and falling within such categories as may be prescribed; or Cap. 409.

(ii) the undertaking of any project beneficial to the tourism industry as may be prescribed;

(k) the production of feature films, television films, advertising programmes or commercials, and documentaries.";

(e) immediately at the end of subsection (1) thereof there shall be added the following proviso:

"Provided that where any provision is made by or under this Act for an incentive or benefit to be obtained by a qualifying company, any such incentive or benefit shall be due and obtained only by a company which carries on or intends to carry on in Malta such trade or business.";

(f) subsection (2) thereof shall be amended as follows:

(i) for the words "in paragraphs (c), (d), (e), (f), (g) and (h) of subsection (1) hereof," there shall be substituted the words ", in subsection (1)(c) to (k),";

(ii) for the words "impose such conditions as it may deem fit.", there shall be substituted the words "impose such conditions as it may deem fit."; and

(iii) immediately at the end thereof, there shall be added the following new proviso:

"Provided that with effect from such date as may be determined by the Minister by order in the Gazette, the Corporation shall not approve any projects falling under subsection (1)(e).";

(g) subsection (8) thereof shall be amended as follows:

(i) in the last proviso thereto, for the words "under Maltese law." there shall be substituted the words "under Maltese law:" and

(ii) immediately at the end thereof there shall be added the following new proviso:

"Provided further that the incentives and benefits contemplated by or under this Act shall only be available to companies which qualify under any of the provisions of section 3(1)(i) to (k) as from such date as may be determined by the Minister by order in the Gazette."

Amendment of
section 4 of the
principal Act.

6. Section 4 of the principal Act shall be amended as follows:-

(a) in subsection (1) thereof -

(i) for the words "the third year of assessment." there shall be substituted the words "the third year of assessment:"; and

(ii) immediately at the end thereof there shall be added the following new proviso:

"Provided that in the case of a company entitled to obtain the exemption contemplated in this subsection, in terms of subsection (3)(b), the twelve years of assessment referred to in this subsection shall be the company's twelve years of assessment immediately following the year in which its shares were acquired, and the ten consecutive years of assessment in respect of which the exemption from income tax may apply shall be comprised in these twelve years of assessment as may be determined by the company by way of an irrevocable notice in writing to the Corporation, which notice shall be given by not later than the end of the third year of assessment falling within the said twelve years of assessment."

(b) in subsection (4) thereof:-

(i) for the words "such exemption is operative." in paragraph (c) of the proviso thereto there shall be substituted the words "such exemption is operative."; and

(ii) immediately after the proviso thereto there shall be added the following new proviso:-

"Provided further that, if, during any one year falling within the ten consecutive years of assessment referred to in subsection (1), a qualifying company fails to qualify for the incentive under that subsection, any entitlement under paragraph (b) may, at the option of the company, be utilised as a deduction against its chargeable income of the first or any subsequent years of assessment in respect of which the company does not so qualify."; and

(c) immediately after subsection (5) thereof there shall be added the following new subsection:-

"(6) With effect from such date as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to:

(a) qualifying companies which existed on the day immediately preceding that date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date; Cap. 386.

(b) qualifying companies incorporated in Malta or registered as overseas companies after that date which carry on or intend to carry on a trade or business which relates to a project in respect of which the Corporation has, prior to such date, approved the granting of any assistance in terms of this Act:

Provided that, as from the aforementioned date, no company shall qualify for the benefit provided by this section in terms of subsection (3)(b)."

7. Section 5 of the principal Act shall be amended as follows: Amendment of
section 5 of the
principal Act.

(a) in subsection (2) thereof, for the words "For the purposes of this section" to the words "comprised in the said accounting period" there shall be substituted the following:

"For the purposes of computing the additional profits

exempt from income tax in terms of this subsection or the profits which are exempt from income tax or taxed at a reduced rate of income tax for the purposes of section 5A of this Act for any year of assessment (hereinafter in this subsection referred to as the relevant year of assessment), where a qualifying company has changed the date on which its accounting period ends for the purposes of section 11 of the Income Tax Act and the profits of such accounting period fall to be charged to tax -

- (i) in any year of assessment comprised in a base period; or
- (ii) in any year relevant of assessment.

the value of the total sales, export sales and profits of the accounting periods, or where applicable the accounting period, the profits of which fall to be charged to tax in the years of assessment comprised in a base period, shall be decreased or increased, as the case may be, by multiplying the actual value of the said total sales, export sales and profits by the number of days comprised in the accounting period the profits of which fall to be charged to tax in the relevant year of assessment and dividing the product thereof by the number of days comprised in the said accounting periods or period as the case may be."; and

(b) immediately after subsection (6) thereof there shall be added the following new subsection:-

"(7) With effect from such date as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to:

(a) qualifying companies which existed on the day immediately preceding such date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date;

(b) qualifying companies incorporated in Malta or registered as overseas companies after that date and which would have been entitled to benefit from the provisions of section 4 but for the provisions of subsection (1)(b) thereof,

and such companies shall continue to be so entitled to the incentive contemplated under this section up to and including the year of assessment 2021 or such other date as may be

prescribed by the Minister."

8. Immediately after section 5A(5) of the principal Act there shall be added the following new subsection:

Amendment of
section 5A of
the principal
Act.

"(6) With effect from such date as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to:

(a) qualifying companies which existed on the day immediately preceding such date and, in the case of companies incorporated outside Malta and which had been registered as overseas companies in terms of the Companies Act, were so registered on the day immediately preceding such date;

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(b) qualifying companies incorporated in Malta or registered as overseas companies after that date which carry on or intend to carry on a trade or business which relates to a project in respect of which the Corporation has prior to such date approved the granting of any assistance in terms of this Act,

and such companies shall continue to be so entitled to the incentive contemplated under this section up to and including the year of assessment 2021 or such other date as may be prescribed by the Minister."

9. Section 6 of the principal Act, shall be amended as follows:-

Amendment of
section 6 of the
principal Act.

(a) in subsection (1) thereof:-

(i) for the words "quarter percentage points." in the proviso thereto, there shall be substituted the words "quarter percentage points."; and

(ii) immediately after the proviso thereto there shall be added the following new proviso:-

"Provided further that as from the year of assessment 2001 the reduction in the rate of income tax shall in all cases be of nineteen and a quarter percentage points or such other higher percentage as the Minister may from time to time by regulations prescribe"; and

(b) immediately after subsection (2) thereof there shall be added the following new subsection:-

"(3) The Minister may by regulations prescribe rules for the application of the benefit provided by this section. Such rules may be in addition to or in substitution of the rules and conditions prescribed in this section."

Amendment of
section 7 of the
principal Act.

10. (1) Section 7 of the principal Act shall be amended as follows:-

(a) immediately at the end of subsection (1) thereof there shall be added the following provisos:-

"Provided that with effect from the year of assessment 2001, the rates applicable to Maltese qualifying companies shown above shall be applicable to all qualifying companies and the rates shown under the heading "When owned by other companies" shall cease to apply:

Provided further that with effect from year of assessment 2002, investment allowances shall be calculated at the following percentages or such other higher percentages as the Minister may by regulations prescribe:

Plant and machinery 50%

Industrial buildings and structures 20% ";

(b) in subsection (2) thereof:

(i) for the words "in respect of assets which are first used by the company, having been acquired unused and not second hand:" there shall be substituted the words:

"in respect of assets:

(a) which are first used in Malta;

(b) in respect of which no allowance has been claimed under this section by any person who is, directly or indirectly, connected with the company claiming the allowance contemplated by this section, through shareholding, voting or other ownership or controlling rights."; and

(ii) the proviso thereto shall be substituted by the following:

"Provided that the condition set out in paragraph (a) of this subsection shall not apply with respect to industrial buildings or structures."; and

(c) immediately after subsection (6) thereof there shall be added the following new subsections:-

"(7) Saving the provisions of this section, investment allowances shall, for the purposes of the Income Tax Act be deemed to be deductions granted under section 14(1)(j) of the said Act and all the relevant provisions of that Act shall apply accordingly. Cap. 123.

(8) The Minister may by regulations prescribe rules for the application of the benefit provided by this section. Such rules may be in addition to or in substitution of the rules and conditions prescribed in this section.

(9) Any person who under contract with the Corporation or the Government of Malta constructs buildings or structures which are immovable in nature and rents such buildings or structures to qualifying companies shall also be entitled to the allowance contemplated by this section."

11. Section 8 of the principal Act shall be amended as follows:- Amendment of section 8 of the principal Act.

(a) immediately after subsection (1) thereof there shall be added the following proviso:-

"Provided that with effect from the year of assessment 2001 the rates applicable to Maltese qualifying companies shown above shall be applicable to all qualifying companies and the rates shown under the heading "When owned by other companies" shall cease to apply"; and

(b) immediately after subsection (7) thereof there shall be added the following new subsection:-

"(8) With effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to assets purchased by a qualifying company during the year preceding the year of assessment determined by the Minister as aforesaid."

12. Immediately after section 10(2) of the principal Act there shall be added the following new subsection:- Amendment of section 10 of the principal Act.

"(3) With effect from such date as may be determined by the Minister by order in the Gazette, the Corporation shall no longer grant approvals under the provisions of this section,

provided that such provisions shall continue to apply to training programmes approved by the Corporation prior to that date even if the expenditure to which this section applies is incurred after such date."

Amendment of
section 11 of the
principal Act.

13. Immediately after section 11(4) of the principal Act there shall be added the following new subsection:-

"(5) With effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to expenditure incurred in the year preceding that year of assessment and in the basis years in relation to the following three years of assessment."

Amendment of
section 12 of the
principal Act.

14. Immediately after section 12(3) of the principal Act there shall be added the following new subsection:-

"(4) With effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this section shall cease to have effect."

Amendment of
section 13 of the
principal Act.

15. Section 13 of the principal Act shall be amended as follows:-

(a) in the second proviso thereto for the words "of this section." there shall be substituted the words "of this section:"; and

(b) immediately after the second proviso thereto there shall be added the following new proviso:-

"Provided further that with effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this section shall only apply to any remuneration paid in the year preceding that year of assessment and in the basis years in relation to the following four years of assessment provided that such remuneration is paid to individuals in respect of whom this section applied in the year preceding the year of assessment determined by the Minister as aforesaid."

Amendment of
section 14 of the
principal Act.

16. Section 14 of the principal Act shall be amended as follows:-

(a) for the words "of the said Act." there shall be substituted the words "of the said Act:"; and

(b) immediately at the end thereof there shall be added the

following new proviso:-

"Provided that with effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to expenditure incurred in the year preceding that year of assessment and in the basis year in relation to the following year of assessment."

17. Section 15 of the principal Act shall be amended as follows:- Amendment of section 15 of the principal Act.

(a) in the second proviso thereto for the words "directly in the qualifying company." there shall be substituted the words "directly in the qualifying company."; and

(b) immediately after the second proviso thereto there shall be added the following new proviso:-

"Provided further that with effect from such date as may be determined by the Minister by Order in the Gazette the provisions of this section shall only be applicable to qualifying companies which existed on the day immediately preceding that date."

18. Immediately after section 16(10) of the principal Act there shall be added the following new subsection:- Amendment of section 16 of the principal Act.

"(11) With effect from such date as may be determined by the Minister by order in the Gazette the provisions of this section and those of section 24(1)(c) shall only be applicable with respect to loans granted before the said date."

19. Section 17 of the principal Act shall be amended as follows: Amendment of section 17 of the principal Act.

(a) in section 17(1)(b) of the principal Act the words "for export" shall be deleted; and

(b) immediately after subsection (4) thereof there shall be added the following new subsection:-

"(5) The provisions of this section and those of section 24(1)(a) shall cease to apply on the lapse of ninety days, or such longer period as the Minister may determine, from the publication of an order in the Gazette to that effect by the Minister."

Amendment of
section 18 of the
principal Act.

20. Immediately after section 18(6) of the principal Act there shall be added the following new subsection:

"(7) Without prejudice to the terms of any agreement then subsistent, with effect from such date as may be determined by the Minister by order in the Gazette, the consideration contemplated in this section shall no longer apply and the rentals to be charged by the Corporation for the lease of immovable property as contemplated by this section, shall be determined by the Corporation."

Addition of
section 18A of
principal Act.

21. Immediately after section 18A(7) of the principal Act there shall be added the following new subsection:

"(8) The Minister may from time to time, by regulations, vary the conditions and rates set out in this section."

Amendment of
section 19 of the
principal Act.

22. Immediately after section 19(7) of the principal Act there shall be added the following new subsection:-

"(8) As from such date as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable to training programmes which were approved by the Corporation prior to that date."

Amendment of
section 20 of the
principal Act.

23. Immediately after section 20(3) of the principal Act there shall be added the following new subsection:-

"(4) As from such date as may be determined by the Minister by order in the Gazette, the provisions of this section shall only be applicable with respect to grants approved by the Corporation prior to that date."

Amendment of
section 23 of the
principal Act.

24. Section 23 of the principal Act shall be amended as follows:

(a) in subsection (3) thereof for the words "Maltese citizens" there shall be substituted the word "persons"; and

(b) immediately after subsection (5) thereof there shall be added the following new subsection:-

"(6) With effect from such date as may be determined by the Minister by order in the Gazette:

(a) subsection (2)(a) shall be applicable to all activities whether or not these are related to export;

(b) subsection (3) shall apply without the

requirement of the qualifying company to satisfy the conditions of section 4(1)(b); and

(c) subsection (4) shall only apply to training programmes approved by the Corporation prior to that date."

25. Section 24 of the principal Act shall be amended as follows: Amendment of section 24 of the principal Act.

(a) in subsection (1) thereof for the words "The Corporation may," there shall be substituted the words "Subject to the provisions of section 16(11) and those of section 17(5), the Corporation may,"; and

(b) subsection (2)(b) thereof shall be substituted by the following:

"(b) qualifies as a small enterprise in accordance with regulations prescribed by the Minister in terms of this Act."

26. Section 24A of the principal Act shall be amended as follows:- Amendment of section 24A of the principal Act.

(a) in subsection (3) thereof immediately after the words "no loan shall exceed Lm200,000" there shall be added the words "or such other amount as may be prescribed"; and

(b) immediately after subsection (5) thereof there shall be added the following new subsection:-

"(6) With effect from such date as may be determined by the Minister by order in the Gazette, this section shall apply to all enterprises."

27. Section 24B of the principal Act shall be amended as follows: Amendment of section 24B of the principal Act.

(a) in subsection (1) thereof immediately after the words "reduced by seventeen and a half percentage points" there shall be added the words "or such higher percentage as the Minister may prescribe,";

(b) immediately after subsection (2) thereof there shall be added the following new subsection:-

"(3) The Minister may by regulations prescribe rules and conditions for the application of the benefit provided by this section."

Addition of new section 24C to the principal Act

28. Immediately after section 24B of the principal Act there shall be added the following new section:-

"Financial Assistance.

24C. Where the Minister, on the recommendation of the Corporation, is satisfied that a project to be undertaken by an enterprise may make a substantial contribution to the development of the economy as is consistent with the aims and objectives of the Government, the Minister may, after consultation with the Corporation as may be necessary, approve that a grant be given by the Corporation to such an enterprise subject to such conditions as the Corporation or the Minister may impose."

Amendment of section 34 of the principal Act.

29. In the proviso to section 34(2) of the principal Act, for the words "contained in subsection (1) of section 45 of this Act," there shall be substituted the words "contained in section 61(1),".

Amendment of section 36 of the principal Act.

30. For section 36(2) of the principal Act there shall be substituted the following:-

"(2) The amounts to be transferred to the Incentives and Benefits Reserve, as provided for by subsection (1), shall be so transferred from profits which, but for the provisions of this section, would otherwise be available for distribution under the laws for the time being in force in Malta, and where at the end of any accounting period there are insufficient distributable profits to enable the transfer to the said reserve of the full amount which should be transferred in accordance with subsection (1), the obligation to transfer any amount which could not be so transferred shall be carried forward to the subsequent accounting period and deemed to be an obligation for that period, and so on for subsequent periods."

Amendment of section 38 of the principal Act.

31. Section 38 of the principal Act shall be amended as follows:

(a) for the words "both such fine and imprisonment.", there shall be substituted the words "both such fine and imprisonment."; and

(b) immediately at the end thereof there shall be inserted the following new proviso:

"Provided that a person shall not be precluded from providing such information and access to the Corporation's records as may be required by the State Aid Monitoring Board

in the discharge of its functions and duties under this Act:

Provided further that a person referred to in paragraph (a) of subsection (1) of section 33 of this Act shall have the duty to provide such information and access to the Corporation's records as may be required by the Minister for the execution of the Minister's responsibilities in terms of the provisions of this Act and of the Malta Development Corporation Act."

32. Part VII of the principal Act shall be renumbered as Part IX, and sections 44, 44A and 45 shall be renumbered as sections 59, 60 and 61 respectively.

Amendment of Part VII of the principal Act.

33. Immediately after section 43 of the principal Act there shall be added the following new parts:

Addition of new parts to the principal Act.

"PART VII

PROVISIONS REGARDING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

Interpretation.

44. (1) In this Part, unless the context otherwise requires -

"advance payment" means a payment which falls due before the obligation of the supplier to which the whole contract price relates is performed, other than a payment of a part of the contract price that is due in respect of any part performance of that obligation and payable on or after the day on which that part performance is completed;

"commercial transaction" means a contract for the supply of goods or services entered into between a micro-enterprise and any body or person specified in section 45(1)(a) and (b);

"contract for the supply of goods or services" means any, or a combination, of the following contracts:

(a) a contract of sale or lease of movable effects;

(b) an agreement to carry out a service, including a contract of works, *locatio operis*, for a consideration that consists of, or includes, a money consideration;

(c) a contract of sale, emphyteusis or letting of immovable property, or a promise thereof;

(d) a contract of loan (*mutuum*) except for a loan or banking facility contracted between any undertaking and a bank or financial institution,

and the term "supplier" shall be construed accordingly;

"contractual remedy" means a contractual right to interest or any contractual remedy other than interest;

"exempt contract" means a contract that is exempt from the provisions of this Part in terms of section 47(1);

"late payment" means a payment that is made after the relevant date;

"legal interest" means interest due on commercial transactions in terms of section 45;

"purchaser" means the buyer in a contract of sale or the person who contracts with the supplier in any other contract for the supply of goods or services, or any third party to whom the obligation to pay the debt has been legally assigned;

"qualifying debt" means any sum or balance thereof due on a commercial transaction referred to in section 45(1);

"relevant date" or "relevant day", in relation to the payment of a qualifying debt under this Act, means the date on which payment falls due in accordance with section 48;

"semester" means either the period in any year starting from the first day of January and ending on the thirtieth day of June or the period in any year starting on the first day of July and ending on the thirty-first day of December as the context may require;

"substantial remedy" shall be construed in accordance with section 52;

"undertaking" means a trader as defined in article 4 of the Commercial Code, a person exercising a profession or providing a consultancy service, alone or in partnership with others, or a non-profit organisation.

(2) The provisions of this Part shall not apply to debts of any description created before the coming into force of this Act.

Legal interest.

45. (1) Subject to the provisions of this Act, late payment in a commercial transaction shall carry legal interest with effect from the relevant date, if such payment is due to an undertaking which is a micro-enterprise as defined in this Act, and is due by -

(a) an undertaking which is a medium-sized or large enterprise as defined in this Act; or

(b) a public authority, including any Government department, Government-owned or controlled entity set up by or under any law or a local council:

Provided that the Minister may by regulations extend the provisions of this subsection to late payments due to or by any other undertaking.

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(2) Notwithstanding the provisions of article 1139 of the Civil Code, legal interest shall be calculated in accordance with the provisions of section 50.

(3) Legal interest shall have effect even if no express provision to this effect is made in the relevant contract, subject to the right of the contracting parties to exclude or modify the right to such interest in accordance with section 51.

Application of legal interest.

46. Where a contract to which this Part of this Act applies is combined with an exempt contract, a reference to late payment of debt shall be interpreted as a reference to late payment of the sum due under the contract, excluding any part of that sum which refers to the exempt contract.

Debts not covered by this Act.

47. (1) Legal interest shall not be due on:

(a) a debt to which the right to interest or to charge interest applies by virtue of any special law, in which case the provisions of such special law shall prevail;

(b) any other debt which the Minister may by order exempt:

Provided that this section shall not prevent a sum from carrying legal interest by reason of the fact that a court, arbitrator or arbiter would, but for the provisions of this Part, have power to award interest on such sum.

(2) The provisions of Title IV of Part II of Book Second of the Civil Code shall not be considered as a special law for the purposes of subsection (1)(a).

Period for which
legal interest runs.

48. (1) Legal interest shall commence to run from the day on which the payment of a qualifying debt falls due under the relevant contract; a date so agreed may be a fixed one or may depend on the happening of an event or the failure of an event to happen:

Provided that, notwithstanding the foregoing, where the debt relates to an obligation to make an advance payment, the provisions of section 53 of this Act shall apply.

(2) Where the date or period for payment is not fixed in the relevant contract, the date from which legal interest shall commence to run shall be:

(a) the date on which the obligation of the supplier to which the debt relates is performed; or

(b) if the payment is subject to the receipt by the debtor of a notice of the amount or a request for payment of debt, thirty days following the day on which the purchaser receives such notice or request:

Provided that:

(i) if the date of the receipt of such notice or request is uncertain; or

(ii) if the debtor receives such notice or request for payment on a date preceding the date of performance by the supplier of the obligation to which the debt relates,

legal interest shall commence to run thirty days following the date stipulated in paragraph (a).

(3) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, the provisions of subsection (2)(a) shall have effect as if they referred to the last day of that period.

(4) Legal interest on a qualifying debt shall cease to run on the settlement of such debt.

Remission of legal interest.

49. (1) The creditor shall not be entitled to legal interest if he has not fulfilled his contractual or legal obligations:

Provided that if the interests of justice require that the supplier should receive legal interest at a reduced rate for a period, legal interest shall run at such rate as fixed by the court as meets the justice of the case for that period.

(2) The Court may order that legal interest shall not be due -

(a) by reason of any act or omission at any time, whether before or after the time at which the debt is created; and

(b) for the whole period for which legal interest would otherwise run or for one or more parts of that period.

Rate of legal interest.

50. (1) The rate of legal interest applicable under this Part of this Act shall be the minimum discount rate in terms of any directives issued from time to time by the Central Bank of Malta under the Central Bank of Malta Act, and prevailing on the relevant reference date increased by six percentage points.

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(2) The first reference date shall be the first calendar day of the semester during which legal interest first becomes due:

Provided that the rate of legal interest in respect of every subsequent semester during which the qualifying debt remains due shall be that prevailing on the first calendar date of the relevant semester.

(3) The interest rate referred to in subsection (1) or any other rate by which it may be replaced shall not be less than eight *per centum*; should the rate of legal interest calculated according to the provisions of subsections (1) and (2), or according to any other formula that may be prescribed in its place, fall below eight *per centum*, the applicable rate shall be eight *per centum*.

Circumstances where legal interest may be excluded or varied.

51. (1) The provisions of this section shall apply to contract terms agreed before, or at the same time as, the debt is created.

(2) Any contract terms which purport to exclude the right to legal interest in relation to the debt, shall be void to that extent, unless there is a substantial contractual remedy for late payment of the debt.

(3) Where the parties agree a contractual remedy for late payment of the debt which constitutes a substantial remedy, the debt shall not carry legal interest.

(4) The parties may not agree to vary the right to legal interest in relation to the debt unless either the right to legal interest as varied or the overall remedy for late payment of the debt is a substantial remedy.

(5) Any contract terms which -

(a) confer a contractual right to interest that is not a substantial remedy for late payment of the debt; or

(b) vary the right to legal interest so as to provide for a right to interest that is not a substantial remedy for late payment of the debt,

shall be void to that extent unless the overall remedy for late payment of the debt is a substantial remedy.

(6) If any remedy for late payment is declared void under this section, legal interest in terms of this Act shall apply.

(7) In this section "overall remedy", in relation to the late payment of a debt, means any combination of a contractual right to interest, a varied right to legal interest or a contractual remedy other than interest.

(8) Nothing contained in this section shall entitle the parties to fix a rate of interest which is higher than the rate of legal interest as a contractual remedy for late payment of the debt and, if such higher rate is so fixed, that part of the contract shall be void and legal interest in terms of this Act shall apply.

Meaning of
"substantial
remedy".

52. (1) A remedy for the late payment of the debt shall be regarded as a substantial remedy unless -

(a) the remedy is insufficient either for the purpose of compensating the supplier for late payment or for deterring late payment; and

(b) it would grossly be unfair or unreasonable to allow the remedy to be relied on by the creditor in the absence of the right to legal interest as envisaged in this Part of this Act.

(2) In determining whether a remedy is a substantial remedy or otherwise, regard shall be had to all the relevant circumstances at the time the terms of the contract were agreed.

(3) Without prejudice to the generality of subsection (2), in determining whether the provisions of the contract are grossly unfair or unreasonable in terms of subsection (1)(b), regard shall be had *inter alia*, to the following matters:

(a) good commercial practice;

(b) the nature of the product;

(c) the vulnerability of the supplier, considering the size of the contract in relation to the size of his undertaking;

(d) whether the debtor has any objective reason to deviate from the provisions of sections 45, 48, 49, and 50;

(e) whether terms which are grossly unfair or unreasonable have been imposed by one party to the detriment of the other through the use of standard clauses or through other means; and

(f) whether the supplier received an inducement to agree to any contract term.

Advance payments.

53. (1) A qualifying debt created by virtue of an obligation to make an advance payment shall be treated, for the purposes of this Part as if it was created on the day mentioned in subsections (2), (3), (4) or (5), as the case may be.

(2) Where the advance payment is the whole contract price, the debt shall be treated as created on the day on which the supplier's obligation is performed.

(3) Where the advance payment is a part of the contract price, but the sum is not due in respect of any part performance of the supplier's obligation, the debt shall be treated as created on the day on which the supplier's obligation is performed.

(4) Where the advance payment is a part of the contract price due in respect of any part performance of the supplier's obligation, but is payable before that part performance is completed, the debt shall be treated as created on the day on which the relevant part performance is completed.

(5) Where the debt is created by virtue of an obligation to pay a sum due in respect of a period of hire of goods, this section shall have effect as if -

(a) references to the day on which the supplier's obligation is performed were references to the last day of that period; and

(b) references to part performance of that obligation were references to part of that period.

(6) For the purposes of this section an obligation to pay the whole outstanding balance of the contract price shall be regarded as an obligation to pay the whole contract price and not as an obligation to pay a part of the contract price.

(7) The provisions of this section shall be without prejudice to any other right of the supplier arising out of the purchaser's default on the advance payment in issue.

Recovery of costs.

54. The right to recover any legal interest arising under this Part of this Act shall not exclude the right to compensation for the recovery of costs incurred by the creditor in consequence of late payment.

Actions by
associations
representing micro-
enterprises.

55. (1) Where an association is recognised by the Minister as representing, or having a legitimate interest in representing, micro-enterprises, or any other category of enterprises as the Minister may prescribe by regulations, such association may bring an action before the competent court or other body having jurisdiction for a declaration that standard contractual terms or practices used by a person in commercial transactions are grossly unfair within the meaning of section 52, and such association shall not be required to show any juridical interest in support of its action.

(2) For the purposes of this section, where the court declares any such terms or practices to be grossly unfair, every person shall desist from using any such terms or practices and any such use shall be null and of no effect.

Power to make
regulations.

56. The Minister may prescribe regulations to give effect to the provisions of this Part, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following:

(a) extend the definition of a "contract for the supply of goods or services", contained in section 44, to other contractual relations;

(b) with the concurrence of the Minister responsible for Finance, substitute or amend the rate of legal interest contained in section 48(1) by prescribing:

(i) a different formula for calculating the rate of legal interest; or

(ii) the rate of legal interest;

(c) exempt any category of persons, contracts or debts from the provisions of this Part;

(d) extend the application of section 45(1) to other categories of debtors or of creditors;

(e) with respect to specified categories of contracts, postpone the date from which legal interest shall commence to run in terms of this Act by a period not exceeding thirty days, provided that the relevant debt shall be subject to a substantially higher rate of legal interest as may be prescribed, and which shall apply for any delay in payment following the expiry of such period;

(f) prescribe anything that is to be or which may be prescribed; and

(g) provide for any other matter incidental to or connected with any of the above.

PART VIII

STATE AID MONITORING BOARD

State Aid
Monitoring Board.

57. (1) There is hereby established a board to be known as the State Aid Monitoring Board, hereinafter referred to as "the Board".

(2) The Board shall consist of five members to be appointed by the Minister responsible for Economic Services, who shall designate one of the members to be the Chairman, and another member to be the Deputy Chairman of the Board.

(3) Members of the Board shall, subject to subarticles (4) and (5), be appointed for a term of three years, and may be re-appointed for a further period or further periods of three years.

(4) A member of the Board may resign his office at any time by giving notice in writing to the Minister.

(5) The Minister may at any time remove a member of the Board on grounds of disability to perform his functions, bankruptcy or neglect of duty.

(6) The quorum necessary for meetings of the Board shall be the chairman or, in his absence, the deputy chairman and two other members.

(7) The Minister shall designate a public officer to act as the secretary to the Board.

(8) The members of the Board and the Secretary shall be paid such honoraria as the Minister responsible for Economic Services may from time to time by order in the Gazette determine.

Functions and
powers of the
Board.

(9) Subject to the other provisions of this Act, the Board may regulate its own procedures and meetings in such manner as it deems proper.

58. (1) The functions of the Board shall be to -

(a) establish and update a comprehensive state aid inventory;

(b) review and assess existing and new state aid, and provide advice about their compatibility with the principles contained in the relative European Union directives;

(c) establish and implement appropriate rules of procedure and methodological systems which lead to an effective state aid monitoring and reporting system;

(d) provide expert opinions, positions and proposals for the formulation and implementation of state aid policy;

(e) prepare an annual report on state aid in Malta, on the basis of the established methodology used in the European Union;

(f) assist in the identification and implementation of appropriate capacity building concerning state aids;

(g) act as the pertinent body concerning state aid in Malta; and

(h) exercise such other functions and duties as may be prescribed.

(2) In its deliberations on specific cases or issues, the Board may require the input of persons engaged in the public sector and, or, entities; the Board may also request appropriate expertise from, or collaboration with, third parties, as it may deem necessary.

(3) In the exercise of its powers and functions under this Act, the Board shall have the right of access to all relevant information, and may seek the clarifications and explanations that it may deem necessary for its deliberations and conclusions.

(4) Every member of the Board shall regard and deal with all documents and information relating to matters contemplated by or pursuant to the provisions of this Part of this Act as secret and confidential and shall make and subscribe before a Commissioner for Oaths a declaration on oath to this effect in the form prescribed which shall be deposited with the Attorney General.

(5) Any person who, except as provided for or allowed under this Act or for the purposes thereof, communicates or attempts to communicate to any other person any matter or thing coming to his notice or being in his possession in the performance of his duties as a member of the Board shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred liri and not more than two thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment."

Amendment of
section 59 of the
principal Act.

34. Section 59 of the principal Act, as renumbered, shall be amended as follows:-

(a) the present provision shall be re-numbered as subsection (1) thereof;

(b) in subsection (1) as re-numbered for the words "The Corporation" there shall be substituted the words "The Minister";

(c) in subsection (1)(b) as re-numbered, for the words "of this Act." there shall be substituted the words "of this Act,";

(d) immediately after subsection (1)(b) as re-numbered there shall be added the following new paragraph:-

"(c) such other promotional measures as he may deem appropriate and subject to such conditions as he may deem fit, which measures may include, but shall not be limited to:-

(i) measures of a fiscal nature whereby the tax payable by an enterprise may be reduced or absorbed by tax credits or by exempting or taxing at reduced rates of income tax the profits, or part thereof, derived by an enterprise from a trade, business, profession or vocation;

(ii) the provision of financial assistance in the

form of grants, subsidies, loans and loan guarantees;

(iii) measures directed at encouraging employment and training;

(iv) measures directed at encouraging investment in research and development;

(v) measures directed at encouraging investment for the protection of the environment;

(vi) measures directed at assisting firms in difficulty and assisting them in restructuring;

(d) special provision with respect to such micro, small or medium sized enterprises as may from time to time be prescribed;

(e) the designation of any authority or person to exercise any of the functions of the Corporation under this Act.";

(e) immediately after subsection (1) as re-numbered there shall be added the following new subsections:-

"(2) The power of the Minister under subsection (1) shall be exercised with the concurrence of the Minister responsible for Tourism where the measures relate to operations in the tourism sector and with the concurrence of the Minister responsible for Agriculture and Fisheries where the measures relate to operations in the agricultural or fisheries sector.

(3) Where the Minister proposes to make regulations in accordance with the provisions of this Act and those regulations provide that an enterprise may be wholly or partly exempted from being liable to income tax which, but for the provisions of such regulations, would have been payable, the power of the Minister to make such regulations shall be exercised with the concurrence of the Minister responsible for Finance.

(4) Where the Minister proposes to make regulations in accordance with the provisions of this Act and those regulations provide for the granting of any assistance, a copy of such proposed regulations shall be forwarded to the State Aid Monitoring Board which shall communicate its comments to the Minister on the proposed assistance to be granted within thirty days of receiving a copy of the proposed regulations."

Consequential
amendments.

35. The enactments shown in the First Column of the Schedule to this Act shall have effect subject to the amendments shown relative thereto in the Second Column of the said Schedule.

SCHEDULE

(Section 35)

First Column	Second Column
Code of Organisation and Civil Procedure. Cap. 12.	1. Immediately after article 219 there shall be added the following article: "219A. (1) In proceedings for the recovery of a debt, a judgement given upon admission of the claim or upon a claim that has not been disputed by the defendant shall, so far as possible considering the circumstances of the case, be delivered within ninety days of the lodging of the action before the Court. (2) The period mentioned in subarticle (1) shall not include the period of time taken for service of the writ of summons or application upon the defendant."
Income Tax Act. Cap. 123.	2. Article 14(1) shall be amended as follows:- (a) in paragraph (h) thereof:- (i) for the words "of this subarticle;" in the second proviso thereto, there shall be substituted the words "of this subarticle."; and (ii) immediately after the second proviso thereto there shall be added the following:

"Provided further that, if the scientific research is carried out in Malta, the deduction due under this paragraph may, at the option of the person, be allowed at one hundred and twenty per cent of the actual amount of the expenditure incurred; and when a person exercises his option as aforesaid, the total increased deduction shall not, for any year of assessment, exceed five per cent of the turnover of the person for that year; and if this total increased deduction is such that the full amount thereof cannot be allowed as a deduction in the year in which it would, but for the stated five per cent limitation, have been deductible, that part which cannot be so allowed shall be added to any deduction due under the provisions of this paragraph for the following year and be deemed to be part of that deduction or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for subsequent years.

For the purposes of this paragraph "scientific research" shall include:

(i) basic research comprising activities undertaken for the advancement of scientific or technological knowledge;

(ii) applied research where a specific application is in view;

(iii) development work involving the use of the results of basic and applied research as aforesaid for the purpose of creating new or improving existing materials, devices, products or processes.";

(b) in paragraph (j) thereof:-

(i) for the words "of this subarticle:" in the proviso thereto there shall be substituted the words "of this subarticle:"; and

(ii) immediately after the proviso thereto there shall be added the following new proviso:-

"Provided further that the deduction contemplated by this paragraph in respect of plant and machinery shall no longer be applicable with effect from such year of assessment as may be determined by the Minister by order in the Gazette.";

(c) in the proviso to paragraph (k) thereto for the words "whichever is the lesser:" there shall be substituted the words "whichever is the lesser;"; and

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

"(l) any expenditure incurred by a person engaged in a trade, business, profession or vocation for the purpose of promoting that trade, business, profession, or vocation including any expenditure on market research and obtaining market information, advertising or other means of soliciting business, providing samples, and participating in fairs and exhibitions:".

3. Immediately after article 56(19) there shall be added the following subarticle:-

"(20) (a) Where a member of a company resident in Malta is a resident of a State or territory with which Malta has made an arrangement under the provisions of this Act for the grant of relief from double taxation, and under that arrangement a dividend, or part thereof, distributed by such a company is subject to income tax in Malta at a rate lower than that chargeable on the income out of which the dividend is distributed, such company shall be entitled to require that the gains or profits, or part thereof, derived by it for the year of assessment 2001 and for subsequent years of assessment and which are distributable by way of dividend subject to tax at a lower rate as aforesaid shall, notwithstanding that the dividend, or part thereof has not been distributed, be taxed at the said reduced rate and not at the rate properly chargeable under this Act on the gains or profits of the company:

Provided that the provisions of this paragraph shall only be applicable with respect to companies which do not sell by retail and a person shall be deemed not to sell by retail if its sales of goods or services are made to:

(i) a person who carries on a trade, business, profession or vocation and the goods or services so sold to such person are either resold by such person or are used by such person for the purpose of his trade, business, profession or vocation; or

(ii) a person, other than an individual, who uses those goods for the purposes of an undertaking carried on by such person:

Provided further that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph, no person in receipt of a dividend paid by such company out of profits which have been subject to tax at such reduced rate of tax shall be entitled to claim a refund under the provisions of the Income Tax Acts in respect of that dividend.

(b) Where the provisions of paragraph (a) have been applied and subsequently there is a change in the shareholding of the company in consequence of which the new shareholders will not be entitled to a reduced rate of tax under any arrangement as aforesaid or if so entitled the rate applicable in such arrangement is more than the rate applicable to the outgoing shareholder, then any profits which have not been distributed at the end of the last financial year of the company preceding the date of change in shareholding less any profit distributions made to the outgoing shareholder in the current financial year shall be taxed at a rate being the difference between the rate of tax which would be applicable had the new shareholder held the shares when such profits were earned, and the rate actually applied, and such tax shall be a tax payable by the company in the year of assessment in which such profits are distributed:

Provided that where a member of a company is also a company incorporated under Maltese law, the provisions of this article shall apply to the same extent as if the members of the latter company had owned the shares directly in the company."

Aids to
Industries
Ordinance.
Cap. 159.

4. Immediately before the proviso to section 3(1) there shall be added the following new proviso:-

"Provided further that for the purpose of achieving the aims of this section, the President of Malta may by order provide that during the said ten years the profits of an industrial undertaking be taxed at such reduced rate of income tax and subject to such conditions which to him may seem reasonable after consultation with the Corporation."

Malta Freeports
Act.
Cap. 334.

5. In section 2 for the definition of "company" there shall be substituted the following:-

"company" means -

(i) any partnership constituted under the Companies Act, being a partnership *en nom collectif*, *en commandite* or a limited liability company;

(ii) a body of persons constituted or registered outside Malta, and of a nature similar to the aforesaid partnerships;

(iii) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;".

6. Immediately after section 20 there shall be added the following new section:

Transitory
provisions with
respect to section
18, 19 and 20.

"20A. With effect from such date as may be determined by the Minister by order in the Gazette, the provisions of sections 18, 19 and 20 shall only be applicable to companies which were licensed under this Act on the day immediately preceding such date, and the said sections shall continue to apply to these companies up to and including the year of assessment 2021."

7. Section 22 shall be amended as follows:-

(a) in subsection (4) thereof:-

(i) for the words "resident in Malta." there shall be substituted the words "resident in Malta."; and

(ii) immediately after the proviso thereto there shall be added the following proviso:-

"Provided further that with effect from such date as may be determined by the Minister by order in the Gazette, the provisions of this subsection shall only be applicable with respect to importations made prior to that date."; and

(b) immediately after subsection (4) thereof there shall be added the following new subsection:-

"(5) With effect from such year of assessment as may be determined by the Minister by order in the Gazette, the provisions of subsections (2) and (3) shall only apply with respect to remuneration paid in the year preceding that year of assessment and in the following four years, provided that such remuneration is paid to individuals in respect of whom this section applied in the year preceding the year of assessment determined by the Minister as aforesaid."

Duty on
Documents and
Transfers Act.
Cap. 364.

8. Article 36 shall be amended as follows:

(a) the words "whichever is the higher." shall be substituted by the words "whichever is the higher:";

(b) immediately at the end thereof, there shall be added the following proviso:

"Provided that no duty shall be chargeable on any assignment of any debt or other right to which this article refers where such assignment is made by a small or medium-sized enterprise, as defined under the Industrial Development Act, to a licensed bank or financial institution."

Passed by the House of Representatives at Sitting No. 474 of the
23rd January, 2001.

ANTON TABONE
Speaker

RICHARD J CAUCHI
Clerk to the House of Representatives