

MALTA

ATT Nru. VIII ta' l-2003

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

ATT biex jipprovdi dwar it-twaqqif ta' korporazzjoni biex tippromwovi t-twaqqif u l-espansjoni ta' intrapriżi ta' negozju f'Malta, biex jistabbilixxi x' inhuma l-funzjonijiet u l-poteri tagħha u sabiex jipprovdi dwar affarijiet ancillari jew konnessi ma' dan.

ACT No. VIII of 2003

AN ACT enacted by the Parliament of Malta.

An Act to make provision for the establishment of a corporation in Malta to promote the establishment and expansion of business enterprises in Malta, to determine its functions and powers and to provide for matters ancillary or incidental thereto.

I assent.

(L.S.)

GUIDO DE MARCO
President

1st August, 2003

ACT No. VIII of 2003

An Act to make provision for the establishment of a corporation in Malta to promote the establishment and expansion of business enterprises in Malta, to determine its functions and powers and to provide for matters ancillary or incidental thereto.

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:-

PART I

Preliminary

1. (1) The short title of this Act is the Malta Enterprise Corporation Act, 2003. Short title and coming into force.

(2) The provisions of this Act, other than the provisions of article 30 thereof shall come into force on such date as the Minister responsible for economic policy may by notice in the Gazette establish.

(3) Article 30 of this Act shall be deemed to have come into force on the 1st May 2003.

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

Interpretation.

“committee” means a committee of the Corporation established under articles 12 and 13 of this Act;

“directors” means the members appointed to the Board of Directors of the Corporation under article 6 of this Act;

“effective date” means the date established by the Minister in virtue of subarticle (2) of article (1);

“financial year” means any period of twelve months ending on the 31st day of December of each year or such other date as may be determined by the Board with the concurrence of the Minister.

Provided that the first financial year of the Corporation shall commence on the coming into force of this article and shall end on the 31st day of December of the next following year;

“Malta” has the same meaning as is assigned to it by section 124 of the Constitution of Malta;

“secretary” means the secretary of the Board appointed in terms of article 14 of this Act;

“the Board” means the Board of Directors of the Corporation established under article 6 of this Act;

“the Chairman” means the Chairman of the Board of Directors appointed under article 7 of this Act;

“the chief executive officer” means the chief executive officer of the Corporation appointed under article 9 of this Act;

“the Corporation” means Malta Enterprise, a corporation established under article 3 of this Act;

“the Minister” means the Minister responsible for economic policy and includes, to the extent of the authority given, any person authorised in that behalf for any purpose of this Act.

PART II

Establishment and Functions of the Corporation

3. (1) There shall be a corporation, to be called Malta^{Establishment of the Corporation.} Enterprise, to perform the functions assigned to it under this Act.

(2) The Corporation shall be a body corporate having a distinct legal personality and be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any property for the purpose of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

4. (1) The Corporation shall have the following functions: ^{Functions of Corporation.}

(a) To originate, lead and further initiatives relating to the economic and social development of Malta;

(b) To lead Malta's strategy as relates to all forms of enterprise, ensuring the implementation of such activity through a co-ordinated and coherent approach;

(c) To develop, and to provide the required assistance and support services to industry and enterprise in Malta;

(d) To promote Malta as a location for businesses, to assist and co-ordinate its promotion as such a location;

(e) To promote, assist and develop the establishment, competitiveness and internationalisation of business in Malta;

(f) To develop the technological, human resource, and skills bases, and to strengthen the capacity of business enterprises, to undertake strategic assessment and formulation, to innovate, and to undertake research, development and design activities;

(g) To provide and manage land, sites, premises, services, and facilities for business enterprises;

(h) To administer schemes, grants and other financial facilities requiring the disbursement of funds, including funds originating from foreign sources;

(i) To advise the Minister on any matter relating to the operations and purposes of this Act; and

(j) To carry out such other functions as may be assigned to it by the Minister from time to time.

(2) In the exercise of the above functions, the Corporation shall have power to:-

(a) make all forms of investment, including direct ownership of business enterprises in its own right or in partnership with other persons, grant loans and advances to enterprises, subscribe, underwrite or deal in shares and debentures of companies, guarantee loans and advances to other persons, make grants to enterprises, and manage and control business enterprises: provided that in any such transaction as aforesaid the investment or liability of the Corporation shall be made or assumed at fair risk;

(b) acquire, sell or otherwise dispose of or lease land, plant, machinery and equipment, and other property, and to otherwise make available property for use by other persons;

(c) manage land, and to develop land, and to carry out works on land, and to maintain works or assist in their maintenance;

(d) provide advisory or other services or facilities in relation to any of its functions, or to assist in their provision; and

(e) generally do all such things as may be incidental or conducive to the performance of its functions.

Corporation may
function through an
agency.

5. The Corporation may, with the approval of the Minister, exercise its functions under this Act through the agency of other persons, and may act as agents or otherwise on behalf of other persons.

PART III

Functions and Powers of the Board

Board of Directors
of Corporation.

6. (1) The affairs of the Corporation shall be directed by and shall be the responsibility of the Board.

(2) (a) The Board shall consist of not less than six and not more than ten voting members as the Minister may from time to time, appoint.

(b) One of the voting members shall be designated by the Minister to be Chairman of the Board and another voting member may be designated as deputy Chairman.

(3) (a) The members appointed by the Minister shall be persons, except as indicated in paragraph (b) of this subarticle, not being public officers or staff of the Corporation, who appear to the Minister to have experience of and show ability in matters relating to industry, trade, finance, education, science, the professions, or organisations of employers or of workers.

(b) The Minister may appoint not more than two public officers one of whom to represent the Ministry responsible for industry and the other representing the Ministry responsible for finance.

(4) Two members appointed by the Minister from a list of five persons that are submitted by constituted bodies which in the opinion of the Minister better represent the interests of the commercial sector, which constituted bodies will be declared in a separate legal notice.

(5) There shall be paid to the voting members of the Board such remuneration, if any, as the Minister may from time to time determine.

(6) Each voting member shall hold office for such term and on such terms and conditions as the Minister may deem proper; members of the Board shall be eligible for re-appointment.

(7) A person shall not be qualified to be appointed, or to remain, a member of the Board if he:—

(a) is a member of the House of Representatives;

(b) is a judge or magistrate;

(c) is adjudged bankrupt or has entered into any arrangement with his creditors;

(d) is interdicted or incapacitated;

(e) is convicted of an offence affecting public trust, theft, or fraud or of knowingly receiving property obtained by theft or fraud;

(f) is subject to a disqualification under section 320 of the Companies Act.

(8) A voting member of the Board may at any time resign his office by letter addressed to the Minister and the resignation shall take effect from the date specified therein, being a date that does not precede the date of the letter of resignation.

(9) A voting member of the Board may at any time, be removed from membership of the Board by the Minister if, in the Minister's opinion to be stated in the instrument effecting the removal, the member has become incapable, through ill-health, or any other reasons of performing his functions, or his removal appears to the Minister to be necessary for the effective performance by the Corporation of its functions.

(10) If a voting member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Board to fill the vacancy so occasioned and the person so appointed shall hold office for the remainder of the period for which the person who occasioned the vacancy was appointed.

Chairman.

7. (1) The Chairman shall hold office for such term and on such terms and conditions as the Minister may deem proper; the Chairman shall be eligible for re-appointment.

(2) Where the Chairman ceases to hold office as a member of the Board he shall also cease to hold the office of Chairman.

(3) The Chairman may, at any time, resign from his office as Chairman by letter sent to the Minister and the resignation shall, unless previously withdrawn in writing, take effect on the date specified therein, being a date that does not precede the date of the letter of resignation.

Deputy Chairman.

8. Where the Chairman is absent from Malta or is temporarily incapacitated from performing the functions of his office, or is on vacation, and where the post of Chairman is temporarily vacant, the Deputy Chairman, if appointed, shall act instead of the Chairman and shall exercise the powers and perform the functions of the Chairman during such period.

Chief Executive Officer.

9. (1) The Chief Executive Officer shall be appointed by the Board.

(2) The Chief Executive Officer shall be appointed to hold office for a term not exceeding three years: provided that a Chief Executive Officer shall be eligible for re-appointment for further periods

each of not more than three years; provided further that in aggregate no person shall hold the post of Chief Executive Officer for more than nine consecutive years.

(3) The Chief Executive Officer shall, subject to the direction of the Board, carry on and manage and control the operations and business of the Corporation and shall perform such other functions as may be determined by the Board.

(4) The Chief Executive Officer shall not hold any other office or position or carry on any business activity without the consent in writing of the Board.

(5) The Chief Executive Officer may from time to time be invited to attend meetings of the Board; however, he shall not have a right to vote.

10. (1) The Board may act notwithstanding any vacancy among its members: provided a quorum is present at each meeting. ^{Meetings of the Board.}

(2) (a) The quorum at all meetings of the Board shall be half the number of voting directors for the time being constituting the Board and shall in no case be less than three voting members;

(b) In the absence of the Chairman at any meeting of the Board the Deputy Chairman, if appointed, shall act as Chairman, in the absence of both the Chairman and of the Deputy Chairman the directors present may select from amongst themselves a person to act as Chairman at the meeting.

(3) The decisions of the Board shall be taken by a majority of the votes of the members present and voting. The Chairman or other person presiding at the meeting shall have a second or casting vote.

(4) The Board shall hold such number of meetings as may be necessary for the performance of its functions, and shall meet not less than twice in every six months. The Chairman of his own motion or at the request of any two of the voting directors may at any time convene a meeting of the Board.

(5) The Board shall cause minutes of each meeting to be kept and such minutes shall be confirmed at the next successive meeting. Certified copies of the minutes of any meeting of the Board shall be forwarded to the Minister on his request.

(6) The Board may make standing orders regulating its own procedure generally, and, in particular, regarding the holding of meetings of the Board, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and audit of accounts: provided that subject to the preceding provisions of this article and of any standing orders made thereunder the Board may regulate its own procedure.

Representation.

11. (1) The representation of the Corporation shall vest in the Chairman or in such other person or persons as the Board may by resolution designate. Notice of any such resolution shall be published in the Gazette.

(2) Any document purporting to be an instrument made or issued by the Corporation and signed by the Chairman or by the Chief Executive Officer and by the Secretary, if any, on behalf of the Corporation shall be received in evidence and shall, until the contrary is proven, be deemed to an instrument made or issued by the Corporation.

Committees.

12. (1) The Board may establish committees, with such terms of reference as may be decided by the Board, to assist and advise it in relation to the performance of any of its functions and may delegate to any such committee any of its functions, whether in whole or in part.

(2) The members of the committees shall be appointed and removed by the Board and shall consist of such number of members as the Board may deem proper. A committee may include persons who are not members of the Board or officers or employees of the Corporation. Members of a committee may be removed by the Board.

(3) A committee may, at any time, be dissolved by the Board.

Provided that this subarticle shall not apply to the Audit Committee established under article 13.

(4) The Board may regulate the procedure of any committee.

(5) The acts of a committee shall be subject to confirmation by the Board save where the Board dispenses with the necessity for such confirmation.

(6) There shall be paid out of the income of the Corporation to members of a committee such allowances for expenses incurred by

them in the discharge of their functions as the Board may determine with the consent of the Minister.

13. (1) The Board shall establish an Audit Committee with ^{Audit Committee.} written terms of reference which clearly lay down the authority and duties of such committee.

(2) (a) The Audit Committee shall meet at least four times a year.

(b) Meetings of the Audit Committee shall be chaired by a voting director of the Corporation.

(c) The members of the Audit Committee shall be appointed on such terms and conditions as may be determined by the Board.

(3) Without prejudice to the generality of the provisions of subarticle (1) hereof, the Audit Committee shall have the following functions:-

(a) oversight of the systems of internal control and risk management of the Corporation and to assist and support the Board in discharging its responsibilities in relation thereto;

(b) to provide the communication link with external auditors and to evaluate and co-ordinate the audit and financial reporting process of the Corporation; and

(c) to review and assess the effectiveness of management of the Corporation in its compliance with policies and in the discharge of its regulatory and compliance functions.

(4) The Audit Committee shall report to the Board annually and at such other times as may be directed by the Board.

14. (1) The Corporation may employ, on such terms and ^{Staff of} conditions as the Board may determine, such number of persons to be ^{Corporation.} members of staff of the Corporation, as it may consider necessary for the proper performance of its functions. One such staff member shall be designated by the Board to act as its Secretary.

(2) The grades of the staff of the Corporation, the numbers of staff in each grade and the appropriate level of remuneration for each grade shall be determined by the Board, with the concurrence of the Minister.

Disclosure of
interests.

15. (1) Where the Chief Executive Officer, a member of the Board, a member of staff of the Corporation, a member of a committee established under articles 12 or 13, or a consultant, advisor or other person engaged by the Corporation, or a member of the Board, has any interest in, or material to, any matter which falls to be considered by the Board, or a committee established under this Act, he shall:—

(a) disclose to the Board or committee, as the case may be, the nature of his interest at the first meeting of the Board or committee after such interest is acquired or in advance of any consideration of the matter, whichever is the earlier,

(b) neither influence nor seek to influence a decision in relation to such matter,

(c) take no part in any consideration of such matter,

(d) if he is the Chief Executive Officer, a member of the Board, a member of the staff of the Corporation or a member of a committee established under articles 12 or 13, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or otherwise act in such capacity in relation to the matter.

(2) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him to comply with the requirements of sub-article (1), the question shall be determined by the Board and the decision and its motivation shall be recorded in the minutes of the meeting where it was taken.

(3) Where a disclosure is made to the Board or to a committee pursuant to sub-article (1), particulars of the disclosure shall be recorded in the minutes of the relative meeting.

(4) Where a person referred to in this article fails to make the required disclosure, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken:

Provided that where such person is a voting director of the Corporation the matter shall be reported to the Minister.

Disclosure of
information.

16. (1) Save as otherwise provided by this Act and sub-article (2) or any other law, a person shall not, except where necessary for the proper performance of his functions, without the consent of the Board, disclose to any person any non-public information obtained while performing (or as a result of having performed) duties as: -

- (a) a member of the Board;
- (b) the Chief Executive Officer;
- (c) a member of the staff of the Corporation;
- (d) a member of a committee established under articles 12 or 13; or
- (e) an advisor or consultant to the Corporation or an employee of such person whilst performing duties relating to such advice or consultation.

(2) Nothing in sub-article (1) shall prevent disclosure to the Minister of information in a report made to the Corporation or on behalf of the Corporation.

(3) Saving any disciplinary action which the Board may deem appropriate to take, any person who violates the provisions of this article shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five hundred liri and not more than five thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

17. (1) The Minister may, from time to time after consultation with the Corporation, give to the Corporation directions of a general character, not inconsistent with the provisions of this Act, on the policy to be followed by the Corporation in carrying out its functions under this Act. ^{Reports to the Minister.}

(2) The Board shall give effect to the directions received from the Minister under this article.

(3) The Corporation shall provide to the Minister all such information with respect to the property and exercise of the functions of the Corporation, and shall furnish him with returns, accounts and other documents with respect thereto, and shall afford him all required facilities for the verification of information furnished in such manner and at such times as he may reasonably require.

PART IV

Financial Provisions

18. (1) The initial capital of the Corporation shall be one million liri paid in by the Government. Further capital shall be raised in such ^{Capital of the Corporation.}

manner as the Minister responsible for finance may, on the advice of the Corporation, from time to time determine:

Provided that the capital of the Corporation shall be held entirely by the Government.

(2) The Corporation shall, in return for any moneys and any property, rights or interests from time to time, paid or transferred to the Corporation by the Government by way of subscription to the capital of the Corporation, issue to the Minister responsible for finance on behalf of the Government capital stock in the amounts of any moneys so paid and received and in an amount equal in nominal value to the amount agreed between the Corporation and the Government as representing the value of any property, rights and interests so transferred.

Borrowing Powers.

19. (1) The Corporation may, with the approval of the Minister responsible for finance, from time to time borrow such sums as it may require for the purpose of meeting any of its obligations or discharging any of its functions.

(2) Notwithstanding the provisions of sub-article (1) above, the Corporation may without further authority exercise its borrowing powers for the purpose of borrowing temporarily, by way of overdraft or otherwise, sums not exceeding in the aggregate one million liri at any one time outstanding or exceeding such sum established by the Minister responsible for finance by order published in the Gazette.

(3) For the purpose of securing any sums borrowed by the Corporation or any liability assumed by the Corporation in the exercise of its functions, the Corporation may hypothecate or charge its property, or any part thereof, and may issue debentures, debenture stock, bonds or other securities, whether outright or as security for any debt, liability or obligation of the Corporation or of any third party.

Funds.

20. (1) The Corporation may establish funds as may be required in the running of its operations.

(2) Such funds shall be managed by the Corporation in such manner as it may determine; but no part of such funds shall be applied otherwise than for the purposes of the Corporation.

Income to cover expenditure.

21. It shall be the duty of the Corporation to conserve its assets and to exercise and perform its functions under this Act as to ensure that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its income.

22. (1) The Corporation shall in each financial year cause to be prepared and shall adopt estimates of income and expenditure of the Corporation for the following financial year. ^{Annual estimates and accounts of the Corporation.}

(2) The Corporation shall cause to be kept proper accounts and other records in respect of its operations and transactions, and shall cause to be prepared a statement of accounts in respect of each financial year.

(3) The accounts of the Corporation shall be audited by an auditor or auditors appointed by the Corporation from year to year.

(4) The Corporation shall, not later than four months after the end of each financial year, cause a copy of a statement of its audited accounts to be sent to the Minister and to the Minister responsible for finance together with a copy of the report of the auditor or auditors with respect to such statement.

23. (1) The Corporation shall, not later than four months after the end of each financial year, make and transmit to the Minister a report of its activities during that year, containing such information relating to the functions and to the proceedings of the Corporation as the Minister may, from time to time, require, together with the audited accounts as provided under article 22 above. ^{Annual Report.}

(2) The Minister shall cause a copy of every such report and accounts to be laid on the Table of the House of Representatives within two weeks, or, if at any time the House is not in session, within two weeks from the beginning of the next following session.

PART V

Transitory Provisions.

24. (1) With effect from the effective date and subject to the provisions of article 27, all the undertakings to which this article applies shall, by virtue of this Act and without further assurance, be transferred to, and shall vest in the Corporation under the same title by which they were held by the Malta Development Corporation or by the Malta External Trade Company Limited or by the Institute for the Promotion of Small Enterprise Ltd, immediately before such date. ^{Transfer of undertakings.}

(2) (a) The Minister may by order from time to time direct that any undertaking held by any organisation or entity referred to in

the order shall by virtue of the order, subject to the provisions of article 27 of this Act vest in the Corporation in the same manner as they were held immediately before the effective date of the order by such organisation or entity.

(b) The provisions of paragraph (a) hereof shall apply with regard to an organisation or entity which is wholly owned, directly or indirectly, by the Government or a corporation established by law.

(c) The provisions of articles 25 and 26 shall *multis mutandis* apply to any undertaking in respect of which an order is made by the Minister in virtue of paragraph (a) of this article.

(3) For the purposes of this Part of the Act, “undertakings” shall include all stocks and other property movable or immovable, assets, powers, rights, privileges held or enjoyed in connection therewith or appertaining thereto, as well as all liabilities and obligations affecting or relating to any of the aforesaid undertakings or other thing included therein as aforesaid.

Construction of
existing laws,
contracts etc.,

25. Subject to article 27 and to the other provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, advances, contracts, agreements, instruments, documents, warrants and working arrangements, subsisting immediately before the appointed day, affecting or relating to the Malta Development Corporation or by the Malta External Trade Company Limited or by the Institute for the Promotion of Small Enterprise Ltd, or to which any of the said entities was a party, shall be of as full force and effect against or in favour of the Corporation, and shall be enforceable as fully and effectually as if, instead of the said entities, the Corporation had been named therein or had been a party thereto.

Transitory
provisions.

26. (1) Subject to the provisions of article 27, where anything has been commenced by or under the authority of the Malta Development Corporation or the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd, prior to the effective date and such thing is in relation to any of the transferred undertakings, such thing may be carried on and completed by or under the authority of the Corporation.

(2) Where immediately before the effective date any legal proceeding is pending to which the Malta Development Corporation or the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd is or is entitled to be a party, and such proceeding refers to any of the transferred undertakings, the Corporation shall, with effect from the effective date, be substituted in

such proceeding for the relative entity, as the case may require, or shall be made a party thereto in like manner as any of the said entities, as the case may be, would have become, and such proceeding shall not abate by reason of the substitution.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of securing and giving full effect to the transfer of any undertaking to the Corporation by or under this Act and may make such orders as may be necessary to make any powers and duties exercised by the Malta Development Corporation, the Malta External Trade Company Limited or by the Institute for the Promotion of Small Enterprise Ltd, in relation to any of the transferred undertakings, exercisable by and on behalf of the Corporation.

27. (1) The following matters which relate to the specific entity^{Exclusions.} indicated hereunder shall not be transferred to the Corporation:-

(a) title to the premises from which the Malta Development Corporation, was operating prior to the effective date;

(b) all court proceedings and pending litigation commenced, prior to the effective date, between any one of Malta Development Corporation, the Malta External Trade Company Limited, or the Institute for the Promotion of Small Enterprise Ltd, and any of the employees of any one of the said entities, whether former or then current;

(c) obligations arising out of:

(i) all contracts of employment with any employees, and

(ii) all contracts for service with any agents, advisors or any service providers entered into and effective prior to the effective date, between any of the persons mentioned in (i) and (ii) above and any one of the Malta Development Corporation, the Malta External Trade Company Limited or the Institute for the Promotion of Small Enterprise Ltd.

(2) All rights and proceeding relative to any of the matters referred to in subarticle (1) hereof shall upon the effective date be exercised by, instituted or continued by or against the Attorney General or such other public officer in the name of the Government or the Minister may from time to time by notice in the Gazette determine.

PART VI

Miscellaneous

Winding up of
Corporation.

28. The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

Repeal etc.
Cap. 202.

29. (1) The Malta Development Corporation Act is hereby repealed and subject to the provisions of articles 24 to 27 any reference in any law to the Malta Development Corporation shall be deemed to be a reference to the Corporation established under this Act.

(2) The Malta External Trade Company Limited, The Institute for the Promotion of Small Enterprise Ltd and the Malta Enterprise Ltd. are without the requirement of any further formality required by any other law wound up and dissolved.

Transitory
provision.

30. Article 3 of this Act establishing the Corporation shall be deemed to have come into force on 1st May 2003 limitedly for the purpose of recruiting such members of the staff as may be required for the running of the Corporation upon the coming into force of the other provisions of this Act and for such purpose until the coming into force of article 6 of this Act the Board of the Corporation shall consist of the Board of Directors of Malta Enterprise Ltd who for the purposes stated in this article shall be deemed to have all the power, duties and obligations of the Board of Directors under the foregoing provisions of this Act.

Consequential
amendment to the
Business Promotion
Act, Cap. 325.

31. For subarticle (8) of article 57 of the Business Promotion Act, there shall be substituted the following:

“(8) The members of the Board and the Secretary shall be paid such honorarium as the Minister may determine.”.

Passed by the House of Representatives at Sitting No. 28 of the 21st July, 2003.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives