

L.N. 228 of 2005

**BUSINESS PROMOTION ACT
(CAP. 325)**

Business Promotion (Amendment) Regulations, 2005

IN exercise of the powers conferred by article 59 of the Business Promotion Act, the Prime Minister and Minister of Finance has made the following regulations:-

Title and
commencement.

1. (1) The title of these regulations is the Business Promotion (Amendment) Regulations 2005, and they shall be read and construed as one with Business Promotion Regulations 2001, hereinafter referred to as “the principal regulations”.

(2) These regulations shall be deemed to have come into force on the 1st January, 2005.

Amends regulation
3 of the principal
regulations.

2. Regulation 3 of the principal regulations shall be amended as follows:

(a) for sub-regulations (1) to (4) there shall be substituted the following:

“(1) Subject to the other provisions of this sub-regulation –

(a) a medium-sized enterprise is an enterprise which –

(i) has fewer than two hundred and fifty employees; and

(ii) has either an annual turnover not exceeding twenty-one million and four hundred and sixty-five thousand liri or a balance sheet total not exceeding eighteen million, four hundred and fifty-nine thousand and nine hundred liri.

(b) a small enterprise is an enterprise which –

(i) has fewer than fifty employees; and

(ii) has either an annual turnover not exceeding four million and two hundred and ninety-

three thousand liri or a balance sheet total not exceeding four million and two hundred and ninety-three thousand liri.

(c) a micro enterprise is an enterprise which –

(i) has fewer than ten employees; and

(ii) has either an annual turnover not exceeding eight hundred and fifty-eight thousand and six hundred liri or a balance sheet total not exceeding eight hundred and fifty-eight thousand and six hundred liri.

(2) Notwithstanding sub-regulation (1), except in the cases set out in the proviso to sub-regulation (4)(b), an enterprise shall not be considered a medium-sized, a small or a micro enterprise if twenty-five percent or more of its capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies and, for this purpose, a public body means and includes:

(a) the Government of Malta;

(b) any Government division or department;

(c) any local council set up under the Local Councils Act;

(d) any corporation or authority set up by an Act of Parliament;

(e) any foreign entity similar to a public body referred to in the foregoing paragraphs.

(3) In determining the headcount and the financial ceilings of an enterprise for the purpose of this regulation, the following provisions shall apply:

(a) in the case of an autonomous enterprise the data, including the number of staff, shall be determined exclusively on the basis of the accounts of that enterprise;

(b) in the case of an enterprise that is not an autonomous enterprise, the data, including the number of staff, shall be the aggregate of:

(i) the data determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise or the consolidated accounts in which the enterprise is included through consolidation;

(ii) the data of any partner enterprises of the enterprise in question, which aggregation shall be made in proportion to the percentage of the capital or voting rights, whichever is the greater, held directly by each such partner enterprise in the enterprise in question or by the enterprise in question in each such partner enterprise, as the case may be;

Provided that in the case of cross holdings reference shall be made to the greater of the holdings;

(iii) one hundred percent of the data of any enterprise which is linked directly or indirectly to the enterprise in question, unless already included through consolidation in the accounts;

(c) in the application of paragraph (b)(ii), the data of a partner enterprise shall be the aggregate of the data determined on the basis of its accounts and its other data, consolidated if they exist, and one hundred percent of the data of any enterprises which are linked to that partner enterprise, unless already included through consolidation;

(d) in the application of paragraphs (b)(iii) and (c), the data of linked enterprise shall be the aggregate of the data determined by reference to its accounts and other data, consolidated if they exist, and a percentage of the data of the partner enterprises of that linked enterprise, if any, which percentage shall be established as provided in paragraph (b)(ii) unless already included, at least to the extent of that percentage, through consolidation;

(e) where in the consolidated accounts no staff data appears for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

(4) In this regulation –

(a) an ‘autonomous enterprise’ is any enterprise which is not a partner enterprises or a linked enterprises;

(b) two enterprises are partner enterprises of each another if they are not linked enterprises and if one of them holds, either solely or jointly with one or more linked enterprises, twenty-five percent or more of the capital or voting rights of the other:

Provided that an investor which is not linked, either individually or jointly, to an enterprise shall not be deemed to a partner enterprise of that enterprise, even if the said twenty-five percent threshold is exceeded, if that investor falls within any of the following categories:

(i) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (‘business angels’), provided the total investment of those business angels in the same enterprise is less than five hundred and thirty-six thousand, six hundred and twenty-five liri;

(ii) universities or non-profit research centres;

(iii) institutional investors, including regional development funds;

(iv) autonomous local authorities with an annual budget of less than four million and two hundred and ninety-three thousand liri and fewer than five thousand inhabitants;

(c) two enterprises are linked enterprises if there is between them any of the following relationships:

(i) one of them has a majority of the shareholders’ or members’ voting rights in the other;

(ii) one of them has the right to appoint or remove a majority of the members of the

administrative, management or supervisory body of the other;

(iii) one of them has the right to exercise a dominant influence over the other pursuant to a contract entered into with that other enterprise or to a provision in its memorandum or articles of association:

Provided that investors listed in the proviso to paragraph (b) shall not be deemed to exercise a dominant influence if they do not involve themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders;

(iv) one of them, being a shareholder in or member of the other enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that other enterprise, a majority of the shareholders' or members' voting rights in that enterprise;

(v) one of them has any of the relationships mentioned above with the other through one or more other enterprises or any one of the investors listed in the proviso to paragraph (b);

(vi) one of them has any of the relationships mentioned above with the other through a natural person or a group of natural persons acting jointly and the enterprises engage in their activity or in part of their activity in the same relevant market or in an adjacent market, that is to say, the market for a product or service that is situated directly upstream or downstream of the relevant market.”;

(b) in sub-regulation (5) thereof –

(i) in the proviso thereto, for “available to the Corporation.”, there shall be substituted “available to the Corporation.”;

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

“Provided, moreover, that an enterprise may or, at the request of the Corporation, shall, make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in this regulation. The declaration may or, as the case may be, shall be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise shall state in good faith whether or not it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Any such declarations shall be without prejudice to the checks and investigations provided for in the Act, in these Regulations or in any other regulations made under the Act.”;

(c) in sub-regulation (6) thereof –

(i) for the words “using the methods set out in paragraphs (a) and (b).” there shall be substituted the words “using the methods set out in paragraphs (a) and (b):”;

(ii) at the end thereof, there shall be inserted the following:

“Provided that the amount to be taken into account for determining the turnover shall be calculated excluding value added tax and other indirect taxes.”;

(d) for sub-regulation (8) thereof there shall be substituted the following –

“(8) For the purpose of this regulation –

(a) the following shall be deemed to be employees of an enterprise:

(i) employees of the enterprise;

(ii) persons working for the enterprise being subordinated to it and deemed to be employees in terms of the law regulating their employment;

(iii) owner-managers;

(iv) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise;

(b) apprentices or students engaged by an enterprise in vocational training with an apprenticeship or vocational training contract shall not be deemed to be employees of that enterprise;

(c) the number of full-time employees shall be arrived at by dividing the number of employees who worked full time for the enterprise at the end of each whole month comprised in an accounting period by the number of months in that accounting period.”; and

(e) in sub-regulation (9) thereof –

(i) for the words “one thousand and seven hundred and sixty.” there shall be substituted the following “one thousand seven hundred and sixty.”;

(ii) at the end thereof, there shall be inserted the following:

“Provided that employees who are on maternity or parental leave shall not be deemed to have worked for the duration of that leave.”.