

I assent,

(L.S.)

Ugo MIFSUD BONNICI
President

5th August, 1997

ACT No. XX of 1997

AN ACT to encourage the establishment of new small enterprises and the expansion of existing ones through the provision of loan guarantees by the Malta Development Corporation.

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:—

Short title and
commencement.

1. This Act may be cited as the Small Enterprises (Loan Guarantee) Act, 1997 and shall come into force on such date as the Minister responsible for industry may by notice in the Gazette establish.

Interpretation.

2. In this Act unless the context or subject otherwise requires:—

“authorised bank” means a commercial bank authorised by the Corporation to determine applications for assisted loans considered to be eligible by the Corporation in terms of this Act;

Cap. 168.
Act XXV of 1995.

“person” means any sole trader or any commercial partnership constituted under the Commercial Partnerships Ordinance or the Companies Act, 1995 or any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;

“Corporation” means the Malta Development Corporation established under the Malta Development Corporation Act; Cap. 202.

“assisted loan” means a loan granted by an authorised bank in terms of this Act and the repayment of which loan is partially guaranteed by the Corporation;

“Minister” means the minister responsible for industry;

“small enterprise” means a person employing between one to ten persons (including the employer) who owns or operates plant and machinery or equipment the net value of which does not exceed the sum of Lm80,000 and whose annual turnover does not exceed the sum of Lm250,000 or such other number of persons, net value of plant, machinery or equipment, or any other amount of annual turnover as the Minister may by notice in the Gazette prescribe:

Provided that groups of companies, partnerships or sole businesses with the same ownership or control shall be considered as one enterprise for the purposes of this Act; and

“qualifying activity” means an activity which in the opinion of the Corporation consists of a trade, craft or business which consists either in the manufacture, improvement, assembly, processing, repair, preservation or maintenance of any goods, materials or commodities including computer software development, agro-industry and aquaculture, or servicing of equipment, plant or machinery in relation to the manufacturing industry or any other service designated as such by the Minister by notice to be published in the Gazette.

3. (1) A small enterprise carrying on or carrying out, or intending to carry on or carry out in Malta a qualifying activity, which fails to obtain a conventional loan from an authorised bank for lack of adequate security or business track record, may be considered by the Corporation to be eligible for an assisted loan in terms of this Act. Qualifying small enterprise.

(2) An application for an assisted loan shall only be considered by the corporation and may only be approved by an authorised bank if it is intended exclusively for business purposes which shall include project development, starting up a business, business expansions and efficiency improvement including research and

development, purchase of stocks and raw material and shall not be considered or approved if it is intended for the replacement of existing banking facilities, financing of interest payments, the acquisition of a company's shares or the buying out of the members of a partnership.

(3) The Corporation will not consider an application as eligible if the loan can be otherwise adequately secured by personal assets or personal guarantees.

Function of
authorised
banks.

4. (1) An authorised bank may only assess and approve applications for assisted loans if they have been considered eligible by the Corporation.

(2) A small enterprise applying for an assisted loan shall together with the loan application submit to the Corporation and the authorised bank a business plan and any financial forecasts that may be required by the Corporation or the authorised bank in order to assess the commercial viability of the project and identify the quantum of the assisted loan.

(3) The authorised bank shall prior to the approval of an assisted loan under this Act be satisfied that conventional finance would have otherwise been granted were it not for the lack of adequate security.

(4) Notwithstanding the provisions of this section a small enterprise qualifying for an assisted loan may still be required by the authorised bank to pledge or hypothecate its movable or immovable property in security of the scheme loan, in which case such pledge or hypothec shall apply for the whole amount of the assisted loan and not only for that part of the loan which is not covered by the Corporation's guarantee.

The maximum
limit of assisted
loans.

5. (1) Assisted loans under this Act may not exceed the maximum limit of twenty one thousand Malta Liri (Lm21,000) or such other maximum limit which the Minister may by notice in the Gazette prescribe.

(2) A small enterprise may benefit from several assisted loans under this Act provided that the total indebtedness under such loan or other banking facilities shall not exceed the maximum limit of twenty one thousand Malta Liri (Lm21,000) or such other maximum limit which the Minister may by notice in the Gazette prescribe.

6. The term of any assisted loan shall be for a maximum period of five years from the date of the grant of the respective loan. Term of the guarantee.

7. (1) The Corporation's guarantee exposure regarding an assisted loan, shall not exceed at any moment in time sixty per centum of the total outstanding loan balance due to the authorised bank which shall not exceed the sum of six thousand Malta Liri (Lm6,000): Extent of the guarantee.

Provided that in the case of an assisted loan granted to a small enterprise which has been established for at least three years, the Corporation's guarantee exposure may be increased to seventy per centum of the total outstanding loan balance due at any moment in time to the authorised bank which shall not exceed the sum of seven thousand Malta Liri (Lm7,000).

(2) The Corporation's guarantee of the repayment of an assisted loan shall be subsidiary to the principal liability of the small enterprise to whom an assisted loan has been granted.

8. In case a small enterprise to whom an assisted loan has been granted is in a state of insolvency or has been declared bankrupt and such an enterprise lacks sufficient funds to pay the total outstanding balance of an assisted loan, any funds available for the repayment of the assisted loan shall be applied in the same proportion as the Corporation's guarantee exposure bears to the exposure of the authorised bank. Insolvency of the enterprise.

9. A small enterprise to whom an assisted loan is granted by an authorised bank, shall pay to the Corporation a premium of 0.1% per annum on that part of the outstanding loan balance guaranteed by the Corporation: Interest premium.

Provided that notwithstanding the authorised bank's right to charge an interest rate below the market rate or to grant a moratorium period for the repayment of capital or interest, the payment of the premium of 0.1% per annum on that part of the outstanding loan balance guaranteed by the Corporation shall in any case be due to the Corporation;

Provided further that no moratorium granted by an authorised bank may increase the terms of the loan beyond a period of five years.

Monitoring of a
scheme loan.

10. A small enterprise qualifying for an assisted loan shall:

(a) furnish to the Corporation and the authorised bank on a six monthly basis such information, accounts, statements and other documents which the Corporation or the authorised bank may deem to be necessary for the purpose of this Act;

(b) provide the Corporation and the authorised bank with reasonable access to all premises, places, books and other documents, and allow copies to be made for the purposes of this Act.

Right of
refusal.

11. (1) Notwithstanding anything contained in the foregoing provisions of this Act, the Corporation shall have the right to declare not eligible any application under this Act.

(2) Notwithstanding anything contained in the foregoing provisions of this Act, authorised banks shall have the right to refuse any application under this Act even if declared eligible by the Corporation.

Passed by the House of Representatives at Sitting No.113
of Wednesday, 30th July, 1997.

Myriam Spiteri Debono
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.