I assent.

(L.S.)

UGO MIFSUD BONNICI
President

26th December, 1997

ACT No. XXX of 1997

AN ACT to amend the Companies Act, 1995.

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. This Act may be cited as the Companies (Amendment) Act, 1997, and shall be read and construed as one with the Companies Act, 1995, hereinafter referred to as "the principal Act". Short title. Act XXV of 1995.

2. Section 428 of the principal Act shall be amended as follows: Amendment of section 428 of the principal Act.

(a) for subsection (4) thereof there shall be substituted the following:

"(4) Unless otherwise provided in this section, and notwithstanding anything contained in the Memorandum or Articles or in the deed of partnership, as the case may be, as from the 1st March, 1998, the provisions of this Act shall apply to commercial partnerships formed and registered under the Ordinance. Such commercial partnerships shall, before the 1st March, 1998, comply with the provisions of this Act and shall, until such time, continue to be regulated by the Ordinance:

Provided that a commercial partnership may, by complying with the provisions of this Act before such date, elect to be regulated by the provisions of this Act and for this purpose the company shall additionally deliver a notice in writing to the Registrar for registration; and such election shall not take effect unless and until such notice is registered.";

(b) for subsection (8), (9) and (10) thereof there shall be substituted the following:

"(8) If an investment company as is referred to in subsection (3) hereof, fails to comply with the provisions of the said subsection within the period therein specified, that company shall be considered dissolved and the Registrar may, at any time, apply to the Court in accordance with the provisions of Title II of Part V of this Act:

Provided that the Court may, if it thinks fit, grant a further period not exceeding one year from the date of its decision in which the commercial partnership may remedy the failure.

(9) A commercial partnership as is referred to in subsection (4) of this section shall make the changes necessary in order to comply with the provisions of this Act by the 28th February, 1998.

(10) Any changes necessitated by virtue of subsection (9) of this section shall be made:

(a) in the case of a partnership *en nom collectif,* with the consent of a partner or partners having contributed at least fifty per cent of the contributions made to the partnership;

(b) in the case of a partnership *en commandite*, with the consent of a general partner or partners having contributed at least fifty per cent of the contributions made by the general partners to the partnership, or holding at least fifty per cent of the nominal value of the shares of the partnership held by the general partners as the case may be, together with the consent of a limited partner or partners having contributed at least fifty per cent of the contributions made by the limited partners to the partnership or holding at least fifty per cent of the nominal value of the shares held by the limited partners as the case may be;

(c) in the case of a company, notwithstanding anything contained in the Memorandum or Articles, by means of a resolution, passed by a general meeting of the company called for the purpose, by —

(i) fifty per cent of the members represented at the meeting and voting; or

(ii) a number of members having between them not less than fifty per cent of the nominal value of the shares represented at that meeting, and voting thereat;

and any provision relating to the quorum of members at that meeting shall not apply.

The provisions of this subsection shall not apply to any changes to the deed of partnership or to the Memorandum or Articles, as the case may be, which are not strictly necessary in order to comply with the provisions of this Act."; and

(c) immediately after subsection (13) thereof, there shall be added the following subsections:

"(14) A commercial partnership as is referred to in subsection (4) of this section which fails to effect the changes necessary in order to comply with the provisions of this Act before the 1st March 1998 shall become liable to a penalty of Lm50, and for every day thereafter during which the default continues, to a further penalty of Lm2. The provisions of subsections (1) and (2) of section 427 of this Act shall not apply to the penalties imposed under this subsection.

(15) Notwithstanding the provisions of paragraph (d) of subsection (1) of section 401 of this Act, until such time as the instrument or resolution, or a copy thereof, giving effect to the changes necessitated by virtue of subsection (4) of this section is delivered to the Registrar for registration, and until such time as any penalties that may be incurred by virtue of subsection (14) of this section are paid, the Registrar shall not retain and register:

— in the case of a company, any resolution, notice or return required to be registered under this Act, other than any resolution, notice, return or other document required to be registered under this Act, other than any resolution, notice, return or other document required to be delivered to the Registrar in terms of the provisions of Title II of Part V and of sections 122, 146, 183 and 184 of this Act; and

— in the case of any other commercial partnership any instrument giving effect to any alteration or addition to the deed of partnership.

(16) The Minister may by order in the Gazette, establish a date, being a date after the 31st December 1998, on which any company which fails to comply with the provisions of subsection (4) of this section shall be deemed to be a company which is not carrying on business or is not in operation for the purposes of section 325 of this Act.".

Amendment to section 431 of the principal Act.

3. Subsection (1) of section 431 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof for the words "contribution to the partnership.", there shall be substituted the words "contribution to the partnership; and"; and

(b) immediately after paragraph (c) thereof as amended there shall be added the following new paragraph:

"(d) a commercial partnership which on the 1st March, 1998, is a controlled asset as defined in the Controlled Companies (Procedure for Liquidation) Act, 1995, shall continue to be regulated by the Ordinance until six months after such commercial partnership shall have ceased to be a controlled asset in accordance with that Act; and the provisions of section 428 of this Act shall apply to such controlled company as if reference therein to the 28th February 1998 were a reference to the last day of the period of six moths after the commercial partnership shall have ceased to be a controlled asset, and a reference to the 1st March 1998 were a reference to the first day immediately following such period, and the provisions of subsection (16) of the said section 428 shall only be applicable after the 31st December of the year in which the said period of six months would have lapsed.".

Act XVII of 1995.

Passed by the House of Representatives at Sitting No. 167 of the 15th December, 1997.

MYRIAM SPITERI DEBONO
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives