I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XXIII of 1994

AN ACT to make special provisions applicable to certain companies and to supplement the provisions of the Commercial Partnerships Ordinance, Cap. 168.

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. (1) This Act may be cited as the Commercial Partnerships (Special Provisions) Act, 1994.

(2) This Act shall come into force on such date as the Minister responsible for finance may appoint by notice in the Gazette and different dates may be so appointed in relation to different provisions of this Act and in relation to different types and classes of companies.

Other enactments.

2. (1) The provisions of this Act shall apply notwithstanding anything to the contrary contained in the Commercial Partnerships Ordinance or in any other law.

Cap. 168

(2) Any reference in any law to the Commercial Partnerships Ordinance or to the Companies Act, 1994, shall be deemed to be a reference to the said Commercial Partnerships Ordinance read together with this Act.

Interpretation.

3. In this Act, unless the context otherwise requires:

"convertible" has the same meaning as is assigned to it by the Central Bank of Malta Act;

Cap. 204

"liri" means Maltese liri;

"Minister" means the Minister responsible for the registration of commercial partnerships;

"Ordinance" means the Commercial Partnerships Ordinance;

Cap. 168

"security" includes shares, debentures or any other security issued by a company.

Investment companies with variable share capital.

4. (1) A company may, by complying with the provisions of this section, be formed as an investment company with variable share capital.

(2) (a) The memorandum of an investment company with variable share capital shall, in respect of the share capital of the company, state in lieu of the matters specified in paragraph (e) of section 69 of the Ordinance -

(i) that the share capital of the company shall be equal to the value for the time being of the issued share capital of the company; and

(ii) the division of that share capital into a specified number of shares without assigning any nominal value thereto; and

(b) the memorandum of the company shall further state that the sole object of the company shall be the collective investment of its funds in securities and other movable and immovable property with the aim of spreading investment risk and giving shareholders of the company the benefit of the results of the management of its funds, and in the fulfilment of that object, it shall be entitled to do any act which is connected with or ancillary thereto; and

(c) the memorandum or articles of the company shall provide -

(i) that the actual value of the paid up share capital of the company shall be at all times equal to the value of the assets of any kind of the company after the deduction of its liabilities; and

(ii) that the shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets.

(3) Action taken by a company to ensure that the stock exchange value of its shares does not deviate from its net asset value by more than a percentage specified in its articles, which deviation shall not be greater than five per cent, shall be regarded as action taken for the purposes of sub-paragraph (ii) of paragraph (c) of subsection (2) of this section.

(4) An investment company with variable share capital shall not issue partly paid up shares.

(5) The purchase by an investment company with variable share capital of its own shares shall be on such terms and in such manner as may be provided by its articles.

(6) Shares of an investment company with variable share capital which have been purchased by the company itself shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares, and the company shall not be required to create any reserve account.

(7) Without prejudice to any requirements that may be imposed on an investment company with variable share capital pursuant to any other enactment, the provisions of subsection (1) of section 70, sections 72, 78, 91, 92, 95, 96, subsection (1) of section 97 and section 100 of the Ordinance shall not apply to such a company.

(8) Notwithstanding any provisions of the Ordinance, an investment company with variable share capital shall not be obliged to give any of the details specified in Parts 2 and 3 of the form of annual return set out in the Fourth Schedule to the Ordinance.

(9) Any reference in the Ordinance to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall be construed, in the case of an investment company with variable share capital, as a reference to the net asset value.

Name of company.

5. (1) Where a company is an investment company with variable share capital , the name of the company shall be followed by the words "investment company with variable share capital" or by "SICAV" in place of the word "limited" or its abbreviation.

(2) A person or persons trading or carrying on business or other activity under a name or title which ends with the words "investment company with variable share capital" or "SICAV" or a contraction or imitation thereof when the person or persons are not an investment company with variable share capital shall be liable to a penalty of five hundred Maltese liri, and, for every day during which the default continues, to a further penalty of fifty Maltese liri.

(3) The penalties referred to in this section shall be recoverable by the Registrar of Partnerships in accordance with the provisions of the Ordinance as if such penalties were imposed by the Ordinance.

Accounts of investment company with variable share capital.

6. (1) An investment company with variable share capital shall prepare its accounts in accordance with the requirements set out in the Schedule to this Act.

(2) The directors' report of an investment company with variable share capital shall provide information sufficient to enable investors to make an informed judgment on the development of the company's activities and its financial performance.

(3) In all other respects, the annual accounts and directors' report of an investment company with variable share capital shall be prepared in accordance with the provisions applicable to companies generally to the extent that they are not inconsistent with the provisions of the preceding subsections of this section and the Schedule to this Act.

Trustees and nominees.

7. (1) Unless otherwise provided in its articles, no company registered in Malta shall be obliged to recognise any trust in relation to any security issued by it, and the company shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any interest in such security or any interest in any fractional part of such security or any other rights in respect of such security except an absolute right of the registered holder to the entirety thereof.

(2) Any court proceedings against a registered holder of a security by the persons beneficially entitled to the security under a trust shall be heard in camera if the registered holder is a licensed nominee within the meaning of the Malta Financial Services Centre Act. Cap. 330

Share capital in a convertible currency.

8. (1) The share capital of a company may be denominated in any currency which is a convertible currency.

(2) A company may by extraordinary resolution change the currency in which its share capital is expressed.

(3) For the purposes of applying the provisions of the Ordinance relating to minimum share capital, share capital expressed in a currency other than in liri shall be calculated on the basis of the liri equivalent at the date of -

(a) the registration of the memorandum; or

(b) the registration of the extraordinary resolution referred to in subsection (2) of this section; or

(c) the registration of the extraordinary resolution effecting a reduction of the issued share capital, in the case where a company reduces its issued share capital.

(4) Without prejudice to the provisions of section 78 of the Ordinance, a copy of the extraordinary resolution referred to in subsection (2) of this section shall be delivered to the Registrar for registration and shall not be effective until it is so registered.

(5) The exchange rate to be used shall be the average of the buying and selling rates prevailing at the date of registration referred to in subsection (3) of this section.

(6) A company shall draw up its accounts in the same currency as that of its share capital.

(7) Where the accounts of a company are drawn up in a currency other than liri, there shall be stated on the balance sheet of the company the exchange rate between the currency used and liri on the balance sheet date and such rate shall be the average of the buying and selling rates prevailing on such date.

Power to make regulations.

9. The Minister may make regulations generally providing for the manner in which accounts and records of companies with share capital denominated in currencies other than liri are to be drawn up, and in particular such regulations may provide for special rules governing the accounts and records of such companies upon the change of currency in which their share capital is expressed.

SCHEDULE

(Section 6)

ACCOUNTS AND DIRECTORS' REPORT OF AN INVESTMENT COMPANY WITH VARIABLE SHARE CAPITAL

Without prejudice to any requirements laid down by the Competent Authority under the Investment Services Act, 1994, the accounts of an investment company with variable share capital shall disclose at least the following:-

1. Statement of assets and liabilities:
   - Securities
   - Debt instruments
   - Bank balances
   - Other assets
   - Total assets
   - Liabilities
   - Net asset value
2. Number of units in circulation
3. Net asset value per unit
4. The composition of the portfolio, distinguishing at least between:
   (a) transferable securities admitted to official stock exchange listing
   (b) transferable securities dealt in on another regulated market
   (c) recently issued transferable securities
   (d) transferable securities not included in the above
   (e) debt instruments not included in the above
   (f) other investments as applicable

References in sub-paragraph (c) to recently issued transferable securities are to securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another regulated market.

The portfolio shall be analysed on the basis of economic, geographic, currency or other appropriate criteria having regard to the investment policy of the company. Such analysis shall show the value of each category of investment as a percentage of net assets and as a percentage of total assets of the company.

Any material changes in the composition of the investment portfolio made during the financial year shall be stated.

5. Statement or statements of the developments concerning the assets of the company during the financial year and including the following:

- Income from investments
- Other income
- Management charges
- Depositary's charges
- Other charges and taxes
- Net income
- Distributions and income reinvested
- Changes in capital account
- Appreciation or depreciation in value of investments
- Other changes affecting the value of the assets and liabilities of the company

6. A comparative table covering the last three financial years and including, for each financial year, at the end of such year:

- the total net asset value of the company; and
- the net asset value per unit.

During its first, second and third financial years, a company shall show the above information for all financial years since its registration.

7. Details, by category of transaction, of the resulting amount of commitments.

References in this paragraph to commitments are to the commitments resulting from the use of techniques and instruments for the purposes of efficient portfolio management, including protection against exchange risks.

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – Kastilja — *Published by the Department of Information – Kastilja*
Mitbugħ fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Price 10c — *Price 10c*