I assent.

(L.S.)

ĊENSU TABONE
President

23rd October, 1990

ACT No. XXXI of 1990

AN ACT to amend the Malta International Business Activities Act, 1988.

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 Malta International Business Activities (Amendment) Act, 1990, and shall be read and construed as one with the Malta International Business Activities Act, 1988, hereinafter referred to as "the principal Act". Short title. Act XXXIV of 1988.

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

(a) in subsection (1) thereof:

(i) immediately after the definition of "business of insurance" there shall be inserted the following new definition:

""business of insurance broking" has the meaning assigned to it by paragraph (b) of subsection (6) of section 23 of the Insurance Business Act, 1981, and includes any other business carried on in connection therewith or as ancillary thereto, or which is generally recognised as insurance broking;"; Act XVII of 1981.

(ii) immediately after the definition of "international business activity" there shall be inserted the following new definition:

""Malta" does not include any area which is a freeport zone under the Malta Freeports Act, 1989;"; Act XXVI of 1989.

(iii) for the first proviso to the definition of "offshore activity" there shall be substituted the following:

"Provided that an offshore company may not carry on the business of managing or servicing another offshore company except where such other company is a captive insurance offshore company or in such other cases as may be prescribed;";

(iv) immediately after the second proviso to the definition of "offshore activity" there shall be inserted the following new provisos:

"Provided further that an offshore bank may deal in Maltese currency to service its customers for their requirements in that currency;

Provided further that an offshore company may purchase for export, goods manufactured, assembled or processed in Malta;";

(v) in the definition of "offshore company", immediately after the words ""insurance offshore company"," there shall be inserted the words ""insurance broking offshore company,"";

(b) for paragraph (b) of subsection (2) thereof there shall be substituted the following:

"(b) an offshore company may use a bank in Malta which is not an offshore bank for the purposes of any transaction in foreign currency which it could lawfully carry out with any other bank, and for the purpose of any such transaction such bank shall be deemed not to be resident in Malta for the purposes of this Act:

Provided that a loan, overdraft or other credit facility may only be provided if such facility has been duly authorised under the Exchange Control Act.". Cap 233.

Amendment of section 11 of the principal Act.

3. For the words "of trading offshore companies." in subsection (1) of section 11 of the principal Act, there shall be substituted the following: "of trading offshore companies, or of offshore companies having an interest in manufacturing or processing companies as are referred to in the first proviso to paragraph (c) of subsection (2) of section 22 of this Act.".

Amendment of section 22 of the principal Act.

4. Section 22 of the principal Act shall be amended as follows:

(a) for the second proviso of paragraph (f) of subsection (2), there shall be substituted the following:

"Provided further that a company of international standing and repute and recognised as such by the Authority, being a manager of an insurance offshore company, or an insurance offshore company being managed by such a manager as aforesaid, or a captive insurance offshore company being a subsidiary of a company of international standing and repute and recognised as such by the Authority, may be exempted by the Authority from complying with the requirements of this paragraph;";

(b) in paragraph (a) of subsection (3) thereof, immediately after the words "an insurance company," there shall be inserted the words "or an insurance broking company,";

(c) in subsection (4) thereof —

(i) immediately after the words "an insurance offshore company," in paragraph (a), there shall be inserted the words "or the business of insurance broking as an insurance broking offshore company,";

(ii) for paragraph (b), there shall be substituted the following:

"(b) is a subsidiary of a bank or a banking institution, or of an insurance company or an insurance broking company, as the case may be, of international standing and repute, and recognised as such by the Authority, or of a holding company of which a bank, institution or company as aforesaid is also a subsidiary or which is itself of international standing and repute and accepted as such by the Authority;";

(iii) immediately after the words "an insurance company" in paragraph (c), there shall be inserted the words "or of an insurance broking company, or of a holding company referred to in the preceeding paragraph";

(d) immediately after subsection (7) thereof there shall be added the following new subsections:

"(8) Notwithstanding any other provision of this Act, or of the Offshore Trusts Act, 1988, where the business of a banking offshore oversea or subsidiary company, or of an insurance offshore oversea or subsidiary company, or of a trading offshore company which is a subsidiary thereof, or of such trading offshore company as may be prescribed and is a company acceptable to the Authority for the purposes of this subsection, includes fiduciary or trust or similar business, the Authority may, subject to such conditions it may deem appropriate to impose, exempt — Act XXXV of 1988.

(a) any offshore company aforesaid and any offshore company managed by it or under its responsibility, from the provisions of paragraph (f) of subsection (2) of this section;

(b) any offshore trust of which any offshore company aforesaid or any of the employees of such company is a trustee, from the provisions of sections 18 and 48 of the Offshore Trusts Act, 1988 requiring a nominee company to be a trustee of an offshore trust, whether as sole trustee or as one of more trustees:

Provided that such exemptions shall have effect only, so long as all conditions imposed by the Authority are complied with. The company aforesaid, managing or responsible for such offshore companies and the trustee aforesaid shall, upon such exemption assume all the duties, functions and responsibilities entrusted to a nominee by this Act and the Offshore Trusts Act, 1988 and shall be liable to the same penalties imposed by law on nominee companies.

Cap 16.

(9) The provisions of section 1852 of the Civil Code and the provisions of the same Code limiting compound interest, shall not apply in respect to any loan or any debt, where the loan is made to or by, or the debt is due by or to any offshore company and it shall be permissible for the amount of interest due in respect of any such loan or of any such debt to exceed the amount of capital due in respect of any such other debt.

(10) Notwithstanding anything contained in this Act, the Authority may in particular cases waive the requirement that an offshore company be a private company subject to such conditions as may be prescribed or as the Authority may impose.".

Amendment of section 23 of the principal Act.

5. Section 23 of the principal Act shall be amended as follows:

(a) in subsection (2) thereof for the words "insurance offshore company" there shall be substituted the words "insurance offshore company, or an insurance broking offshore company";

(b) immediately after subsection (3) thereof there shall be inserted the following new subsection:

"(4) An insurance broking offshore company is an offshore company which expressly restricts its objects to the business of insurance broking or is an offshore oversea or an offshore subsidiary company to which subsection (3) or subsection (4) of section 22 of this Act applies, and restricts its operations from Malta to the business of insurance broking.";

(c) for the words "of insurance." in subsection (5) thereof there shall be substituted the words "of insurance and of insurance broking.";

(d) subsection (6) thereof shall be amended as follows:

(i) for the words "of property of any kind other than" there shall be substituted the words "of property belonging to it of any kind, including patents, copyrights, trademarks and similar property, but excluding";

(ii) for the first proviso thereof there shall be substituted the following:

"Provided that a non-trading offshore company may expressly limit its objects to, or may also include in its objects, the ownership, management, administration, and operation of a ship or ships not belonging to it, and such company shall not, thereby, cease to be a non-trading offshore company.";

(iii) in the second proviso thereof the words "other than assets held for the purposes of a pension, provident or similar fund accepted as such by the Authority," shall be deleted;

(iv) after the second proviso thereof there shall be added the following:

"Provided further that if a non-trading offshore company, directly or indirectly, holds ten per cent or more of the shares, or is entitled to ten per cent or more of the voting or controlling rights, in any institution engaged in the business of banking or of insurance or of insurance broking or of providing fiduciary services or any undertaking for collective investments, the non-trading offshore company shall for the purposes of this Act be considered as a general trading offshore company.".

6. Section 24 of the principal Act shall be amended as follows:

Amendment of section 24 of the principal Act.

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

"(4) Notwithstanding anything contained in the other provisions of this Act —

(a) a banking offshore company, or an insurance offshore company, or an insurance broking offshore company, or any such other company as may be prescribed, shall not be registered as a trading offshore company, unless the Authority has first ascertained, in accordance with guidelines as may be prescribed or as may be established by the Authority, the specific type or aspect of business intended to be carried on and the manner and other relevant circumstances concerning the conduct of that business, and unless the Authority is satisfied that the company —

(i) is capable of properly conducting and supporting the business to be carried on and has the expertise and the financial resources for such purpose; and

(ii) will keep such resources in such assets, and maintain where appropriate such margins of solvency, as may be required by the Authority to be kept or maintained from time to time and as may otherwise be prescribed; and

(iii) will observe and comply with the conditions which the Authority may in the circumstances attach to the certificate of registration of the company;

(b) a company whose business is or includes the management of insurance companies or the business of insurance broking, shall not be registered as an offshore company unless it also satisfies the Authority that it is properly and adequately insured against such liabilities as may be required by the Authority and as may be prescribed.".

(b) immediately after subsection (8) thereof there shall be added the following subsection:

"(9) the Authority shall not be bound to give reasons for any refusal to register a company as an offshore company, or for any conditions it may require to be met before it accedes to an application for registration; and the decisions of the Authority on any such matter shall be final and conclusive.".

Amendment of section 26 of the principal Act.

7. For subsection (3) of section 26 of the principal Act there shall be substituted the following:

"(3) If the Authority, having carried out or caused to be carried out in accordance with the provisions of this Act such investigations as it may deem appropriate in respect of an offshore company, is satisfied that —

(i) circumstances exist, or there has been such a change in the circumstances of the company, that, had they been known to the Authority or had they existed at the time of the company's registration, the company would not have been registered as an offshore company; or

(ii) the company has failed to observe, in any material respect, a condition or requirement attached to the certificate of its registration; or

(iii) in the case of a company referred to in paragraph (b) of subsection (4) of section 24 of this Act, the company is not insured as required by that paragraph for a period exceeding one month,

the Authority may cancel the registration of the company and thereupon the company shall cease to be an offshore company:

Provided that the Authority shall not cancel the registration of a company under this subsection unless it has first given the company the opportunity of explaining the circumstances and making other representations; and the Authority may also, where the circumstances complained of are capable of remedy, allow the company to take remedial action within such time and under such conditions as the Authority may specify.".

Amendment of section 28 of the principal Act.

8. In section 28 of the principal Act, immediately after subsection (8) thereof, there shall be added the following new subsection:

"(9) Section 27 of the Act, and any order or declaration made thereunder, shall not apply.".

Amendment of section 29 of the principal Act.

9. Section 29 of the principal Act shall be amended as follows.

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

"(4) Subsection (1) of section 6 of the Act shall not apply; subsection (3) of that section shall apply to the extent

only of requiring an insurance offshore company to give the information therein referred to; and subsection (5) of that section shall apply to the extent it is applicable in view of the foregoing provisions of this subsection.".

(b) for subsection (6) thereof there shall be substituted the following:

"(6) Sections 8, 9, 10, 11, 12, 13 and 14, and subsection (1) of section 23 of the Act shall not apply.";

(c) for subsection (7) thereof, there shall be substituted the following subsections:

"(7) Section 16 of the Act shall apply as follows:

(a) paragraphs (b) and (c) of subsection (1) and paragraphs (b) and (c) of subsection (2) thereof shall not apply;

(b) subsections (1) and (2) thereof shall apply as if the financial year of an insurance offshore company terminated on such date as the company may indicate by notice in writing to the Authority, and subject to the power of the Authority to extend the periods of four and six months therein prescribed by such further period as it may in the circumstances deem reasonable.

(8) The Act shall not apply —

(a) to an insurance broking offshore company;

(b) to a company whose business is exclusively the management of insurance offshore companies.".

Amendment of section 31 of the principal Act.

10. In section 31 of the principal Act, immediately after the word "Malta." there shall be added the following words: "In no case, however, shall section 41 of the said Act apply to an offshore company, whose obligation shall be limited to informing the Commissioner of Inland Revenue of any chargeable transmission it has reason to believe is liable to duty under the Act, within one month of the chargeable transmission or of such time as it became aware of the liability of such a duty. Failure to comply with its obligation under this section shall for all intents and purposes of the said Act be deemed to be a failure to comply with the provisions of section 41 of the said Act.".

Amendment of section 41 of the principal Act.

11. In subsection (1) of section 41 of the principal Act for the words "or allowed not to benefit therefrom." there shall be substituted the words "or allowed not to benefit therefrom, or to benefit from any such exemption, privilege or any other benefit to such extent only, as may be acceptable to the Authority.".

Amendment of section 46 of the principal Act.

12. Subsection (2) of section 46 of the principal Act shall be substituted as follows:

"(2) A non-trading offshore company may be registered with the Authority under this Act only through the agency of a nominee company authorised to act as such with respect to such company; and a non-trading offshore company shall be represented legally and judicially by a nominee company either as its sole director or as its secretary whether alone or with such other persons as may be provided in the articles of association or, in a particular case or cases or classes of cases, and with the consent of the nominee company by such other person or persons as the non-trading offshore company may appoint for that purpose.".

Amendment of section 52 of the principal Act.

13. Section 52 of the principal Act shall be amended as follows:

(a) paragraphs (c), (d), (e), (f) and (g) thereof shall be renumbered as paragraphs (e), (f), (g), (h) and (i) respectively;

(b) for paragraph (b) of subsection (1) thereof there shall be substituted the following paragraphs:

"(b) regulate the conduct, duties and obligations of —

(i) nominee companies;

(ii) insurance broking offshore companies;

(iii) companies whose business includes the management of insurance companies, or collective investments, or such other business which the Minister in consultation with the Authority may prescribe;

(c) prescribe information, that companies referred to in paragraph (b) of this subsection, are to submit to the Authority;

(d) establish the fees which, notwithstanding any other provision of this Act, nominee companies may charge;";

(c) in paragraph (e) as renumbered, of subsection (1) thereof, immediately after the words "as the case may require," there shall be inserted the words "or exempt, or provide for the exemption of any class or classes of business carried on by an offshore company from any of the provisions of any law at the time in force,";

(d) for paragraph (f) as renumbered, of subsection (1) thereof, there shall be substituted the following:

"(f) make provision allowing the Authority, notwithstanding any other provision of this Act, but subject to such conditions of confidentiality and other conditions as may be prescribed or as may be imposed by the Authority, to give such information concerning offshore banks or offshore banking institutions or insurance offshore companies or

insurance broking offshore companies or offshore undertakings for collective investments or offshore holding companies of which a bank, institution, company or undertaking as aforesaid is a subsidiary, or offshore companies listed on an exchange recognised by the Authority, as will enable foreign central banks or similar financial supervisory bodies, or self regulatory authorities, having an interest in the proper conduct in Malta of the affairs of an offshore bank, institution, insurance company, insurance broking company, undertaking for collective investments, a holding company above mentioned, or a listed company, to examine such conduct.".

Amendment of section 53 of the principal Act.

14. Immediately after subsection (3) of section 53 of the principal Act there shall be added the following new subsection:

"(4) No law, enacted after 1st January, 1989 which, but for the provisions of this section, would affect adversely the position of an offshore company with regard to taxation, including any duty, levy, dues or other liability of a similar nature, or to any other matter in respect of which such company is given rights, privileges or exemptions under this Act, shall apply to such company except and to the extent that that law specifically so provides.".

Amendment of First Schedule of the principal Act.

15. The First Schedule of the principal Act shall be amended as follows:

(a) items (f) and (g) thereof shall be renumbered as items (g) and (h) respectively; and

(b) immediately after item (e) thereof there shall be inserted the following new item —

"(f) in respect of an insurance broking offshore company	1,000	1,000"

Related amendment to Insurance Business Act, 1981. Act XVII of 1981.

16. For section 22 of the Insurance Business Act, 1981, there shall be substituted the following:

"22 (1) If a company intends to cease to carry on the business it is licensed to carry on or if its premium income in respect of a financial year is likely to fall below eighty per centum of its premium income in respect of the immediately preceding financial year it shall without delay give notice thereof to the Minister, and the company shall comply with such conditions as the Minister may deem proper to impose.

(2) Any company which fails to comply with any of the foregoing provisions of this section, including any conditions imposed thereunder, shall be liable, in respect of each such failure, to a penalty not exceeding ten thousand liri.

(3) For the purposes of this section "premium income" relates to contracts of insurance commencing during the financial year under account, or to those continuous contracts whose anniversary dates fall during the financial year under account, and

means the aggregate of gross premiums due to the company after deduction of discounts, refunds or rebates, but before deduction of commissions and before deduction of premiums for reinsurance ceded.".

Passed by the House of Representatives at Sitting No. 422 of the 15th October, 1990.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives.

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

Prezz 6c — *Price 6c*