I assent.

(L.S.)

ĊENSU TABONE
President

23rd June, 1989

ACT No. XV of 1989

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:—

Short title.

1. This Act may be cited as the Malta International Business Activities (Amendment) Act, 1989, and shall be read and construed as one with the Malta International Business Activities Act, 1988, hereinafter referred to as "the principal Act".

Act XXXIV of 1988.

Amendment of section 2 of the principal Act.

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

(a) immediately after the definition of "body of persons", there shall be inserted the following definitions:

" "business of banking" has the meaning assigned to it by section 2 of the Banking Act, 1970 and includes any other business customarily carried on by banks and generally accepted to be so carried on;

Act V of 1970.

"business of insurance" has the meaning assigned to it by section 2 of the Insurance Business Act, 1981; ";

Act XVII of 1981

(b) in the definition of "offshore activity" —

(i) in the first proviso thereto, the words "caused to be formed and registered in Malta for the purposes of this Act by the company managing them and are so registered" shall be deleted; and

(ii) in the English text of the second proviso thereto, for the word "overseas" there shall be substituted the word "oversea";

(c) for the definition of "oversea company" there shall be substituted the following definition:

" "oversea company" has the meaning assigned to it by Cap. 168. section 177 of the Commercial Partnerships Ordinance;";

(d) the second proviso to the definition of "resident in Malta" shall be deleted;

(e) subsections (2), (3), (4) and (5) thereof shall be renumbered respectively as subsections (3), (4), (5) and (6) thereof; and

(f) immediately after subsection (1) thereof, there shall be inserted the following new subsection:

"(2) For the purposes of this Act —

(a) a company which is itself an offshore company shall be deemed not to be resident in Malta;

(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, including any facility, other than a loan or overdraft, provided that such facility is fully secured by a prime foreign bank guarantee or by bank deposits in convertible foreign currency; and for the purpose of any transaction that may be carried out through a local bank as aforesaid, such bank shall be deemed not to be resident in Malta;

(c) shares in, and debentures of, an offshore company, and ships, even if registered in Malta, shall be deemed to be property not situated in Malta.".

Amendment of section 5 of the principal Act.

3. In subsection (2) of section 5 of the principal Act for the words "in paragraph (d)" there shall be substituted the words "in paragraph (e)".

Amendment of section 9 of the principal Act.

4. For the words "the provisions of subsection (2)" in subsection (3) of section 9 of the principal Act, there shall be substituted the words "the provisions of subsections (2) and (3) of section 33 and of subsection (2)".

Amendment of section 11 of the principal Act.

5. In subsection (1) of section 11 of the principal Act, immediately after the words "such lawful activities" there shall be added the words "other than an interest in the ownership or control of trading offshore companies".

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

Amendment of section 22 of the principal Act.

(a) in the proviso to paragraph (c) of subsection (2) thereof, for the words "or processing of goods in Malta " there shall be substituted the words "or processing of goods in Malta, or the ownership, management, administration or operation of ships," and immediately after the said proviso there shall be added the following further proviso:

"Provided further that such latter company shall still be deemed to be wholly owned by persons not resident in Malta if not more than one person resident in Malta holds such number of shares as do not exceed in the aggregate one lira in nominal value without any special voting rights;";

(b) immediately at the end of paragraph (d) of subsection (2) thereof, there shall be added the following proviso:

"Provided that notwithstanding anything contained in the Exchange Control Act, 1972, one person resident in Malta may hold such number of shares in the company as do not exceed in the aggregate one lira in nominal value;";

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

"(e) has none of its shares or debentures held by a nominee which is not a nominee company;";

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

"(f) has a nominee company as its secretary:

Provided that where the company has a sole director the foregoing requirements of this paragraph shall not apply if and so long as a nominee company holds that office:

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

(e) in paragraph (b) of subsection (4) thereof, the words ", provided the name of the subsidiary company includes the name of the holding company" shall be deleted; and

(f) for paragraph (c) of subsection (4) thereof there shall be substituted the following paragraph:

"(c) has a name which on the face of it clearly identifies it as a subsidiary or an associate of a bank or banking

institution or of an insurance company, as the case may require, which is of international standing and repute, and which is accepted as such by the Authority;".

Amendment of section 23 of the principal Act.

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

(a) subsection (4) thereof shall be deleted; and

(b) in the first proviso to subsection (6) thereof, the words "registered in Malta" shall be deleted.

Amendment of section 24 of the principal Act.

8. In the English text of subsection (2) of section 24 of the principal Act, for the words "provisions" there shall be substituted the word "provision".

Amendment of section 26 of the principal Act.

9. Section 26 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, the words "for illegal activities" shall be deleted;

(b) immediately after subsection (2) thereof, there shall be added the following new subsection:

"(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 circumstances exist, or that 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, the Authority may strike the name of the company off the register and thereupon the company shall cease to be an offshore company:

Provided that the Authority shall not strike the name of the company off the register 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 27 of the principal Act.

10. Section 27 of the principal Act shall be amended as follows:

(a) in the marginal note and in subsection (1) thereof, the numbers "1962" shall be deleted;

(b) in the subsequent subsections thereof, for the numbers of sections of the Commercial Partnerships Ordinance shown, in the order in which they appear in those subsections, in the First Column of the Schedule to this Act, there shall be substituted the corresponding numbers shown in the Second Column of the said Schedule.

11. For subsection (3) of section 28 of the principal Act there shall be substituted the following subsection: Amendment of section 28 of the principal Act.

"(3) Subsections (2) and (4) of section 5 of the Act shall not apply; subsection (1) of the said section 5 shall not apply to a banking offshore oversea company or to a banking offshore subsidiary company; subsection (3) of the said section shall apply to a company as aforesaid to the extent only of requiring it to give the information therein referred to; and subsection (5) of the said section shall apply to the extent that it is applicable in view of the foregoing provisions of this subsection.".

12. In the English text of paragraph (c) of subsection (3) of section 29, of the principal Act, for the words "the Minister therein referred to act" there shall be substituted the words "the Minister therein referred to, to act". Amendment of section 29 of the principal Act.

13. Section 30 of the principal Act shall be amended as follows: Amendment of section 30 of the principal Act.

(a) for the marginal note and subsection (1) thereof there shall be substituted the following:

"Extent of application of the Income Tax Act to offshore companies. Cap. 123.

30. (1) The Income Tax Act (in this section referred to as "the Act") and any enactment replacing that law shall apply to trading offshore companies subject to the provisions of subsections (2) and (3) of this section.";

(b) in subsection (2) thereof, immediately after the second proviso, there shall be added the following new proviso:

"Provided also that in respect of banking and insurance offshore companies, and such other class or classes of offshore companies as may be prescribed —

(i) the chargeable income of a company, or class of companies, as aforesaid, shall be computed according to such regulations as may be prescribed or, until so prescribed, in accordance with generally accepted principles and standards;

(ii) section 17 of the Act shall not apply;";

(c) in subsection (6) thereof, for the number and letter "37A" there shall be substituted the number "44"; and

(d) in subsection (9) thereof, for the number and letter "68A" there shall be substituted the number "80".

14. In the English text of section 33 of the principal Act, for the words "used personal belonging" there shall be substituted the words "used personal belongings"; and for the words "from the first taking up Amendment of section 33 of the principal Act.

residence in Malta" there shall be substituted the words "from first taking up residence in Malta".

Amendment of section 34 of the principal Act.

15. In section 34 of the principal Act, the number ", 1948" shall be deleted.

Amendment of section 35 of the principal Act.

16. In the English text of subsection (3) of section 35 of the principal Act, for the words "by an other person" there shall be substituted the words "by any other person".

Amendment of section 39 of the principal Act.

17. Section 39 of the principal Act shall be amended as follows:

(a) in the English text of paragraph (a) of subsection (1) thereof, for the words "if were such a company" there shall be substituted the words "if it were such a company";

(b) in the English text of subsection (3) thereof, for the words "may, demand" there shall be substituted the words "may, on demand";

(c) the number "1962," wherever it appears in the section shall be deleted.

Amendment of section 40 of the principal Act.

18. In section 40 of the principal Act, the number "1948," shall be deleted.

Amendment of section 43 of the principal Act.

19. In subsection (3) of section 43 of the principal Act, the words "and secretaries" shall be deleted.

Amendment of section 52 of the principal Act.

20. Subsection (1) of section 52 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof, immediately after the words "the Banking Act, 1970" there shall be inserted the words "or of the Central Bank of Malta Act, 1967";

(b) paragraphs (e) and (f) thereof shall be re-lettered as (f) and (g) respectively;

(c) for paragraph (d) thereof there shall be substituted the following paragraph:

"(e) alter any fees established by any provision of this Act, and amend any such provision accordingly and to establish such other fees as may be deemed appropriate in respect of any matter for which a fee is not provided by this Act:

Provided that fees may only be increased in order to reflect changes in the cost of living or in the value of currencies; and

Provided further that any alteration increasing a fee established by this Act, as such fee may from time to time be in force, shall not have effect before the expiration of one year from the publication of such alteration in the Gazette;"; and

(d) immediately after paragraph (c) thereof there shall be inserted the following new paragraph:

"(d) 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 offshore insurance companies, as will enable foreign central banks or similar financial supervisory bodies having an interest in the proper conduct of the affairs of an offshore bank or insurance company in Malta, to examine such conduct.".

Amendment of section 54 of the principal Act.

21. In the English text of subsection (3) of section 54 of the principal Act, for the words "of this Act, the Act" there shall be substituted the words "of this Act, the act".

Amendment of section 55 of the principal Act.

22. In section 55 of the principal Act, including the marginal note thereto, the number ", 1962" wherever it appears shall be deleted, and for the number "69", appearing in the said section and in the provision of the Commercial Partnerships Ordinance as amended by that section, there shall be substituted the number "70".

Amendment of the Second Schedule to the principal Act.

23. In the Second Schedule to the principal Act, for the words "Income Tax Act, 1948" there shall be substituted the words "Income Tax Act, Cap. 123".

SCHEDULE

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Passed by the House of Representatives at Sitting No. 246 of the 14th June, 1989.

LAWRENCE GONZI
Speaker

C. MIFSUD
Acting Clerk to the House of Representatives

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