

I assent.

(L.S.)

**MARIE-LOUISE  
COLEIRO PRECA  
President**

6th November, 2018

**ACT No. XXXVI of 2018**

*AN ACT to amend the Voluntary Organisations Act and to make consequential and other amendments to the Civil Code and to the Second Schedule to the Civil Code, the Public Collections Act, the Notarial Profession and Notarial Archives Act, the Arbitration Act and the Companies Act.*

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.** The short title of this Act is the Voluntary Organisations (Amendment) Act, 2018. Short title.

**Part I - Amendments to the Voluntary Organisations Act**

**2.** This Part amends and shall be read and construed as one with the Voluntary Organisations Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Voluntary Organisations Act. Cap. 492.

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Amendment of  
article 2 of the  
principal Act.

## 3. Article 2 of the principal Act shall be amended as follows:

## (a) in sub-article (1) thereof:

(i) immediately after the definition "the Commissioner" there shall be added the following new definition:

" "controlled by a religious organisation" means that the religious organisation or the authority representing the same under the applicable Canon law or other legislation governing religious organisations, has the power, whether directly or indirectly, to nominate, appoint, change or remove more than half of the administrators of the organisation;"

(ii) the definition "controlled by the Government" shall be substituted by the following new definition:

" "controlled by the Government" means that the Government of Malta has the power, whether directly or indirectly, to nominate, appoint, change or remove any of the administrators of the organisation;"

(iii) immediately after the definition "controlled by the Government", as substituted, there shall be added the following new definition:

" "controlled by, related or affiliated to a political party" or similar terms means, in the case of the controlled, related or affiliated organisation, that:

(a) its statute, financial statements or other documents expressly state that it is controlled by, related or affiliated to the political party; or

(b) it has been established by the political party which supports it financially; or

(c) its remaining assets devolve on the political party upon its dissolution, and, in the case of a political party, that a political party as defined in the Financing of Political Parties Act, whether registered under the said Act or otherwise:

(i) has the power, whether directly or indirectly, to nominate, appoint, change or remove more than half of the administrators of the organisation; or

(ii) is a beneficiary, in any manner and at any time, of the income or capital of the organisation; or

(iii) is the beneficiary of the purposes of the organisation, including the promotion of the specific vision, policies and goals of the political party or its candidates;"

(iv) the definition "the Council" shall be substituted by the following new definition:

" "the Council" means the Malta Council for the Voluntary Sector established by article 35;"

(v) immediately after the definition "the Council", as substituted, there shall be added the following new definition:

Cap. 16. " "ecclesiastical entity" shall have the meaning assigned to it by article 26 of the Second Schedule to the Civil Code;"

(vi) immediately after the new definition "ecclesiastical entity" there shall be added the following new definition:

Cap. 373. " "Financial Intelligence Analysis Unit" means the unit set up by article 15 of the Prevention of Money Laundering Act;"

(vii) immediately after the new definition "Financial Intelligence Analysis Unit" there shall be added the following new definition:

Cap. 9. " "funding of terrorism" means the conduct described in articles 328B and 328F to 328I, both inclusive, of the Criminal Code;"

(viii) immediately after the new definition "funding of terrorism" there shall be added the following new

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definition:

" "Government" means the Government of Malta, and includes any Local Council, statutory corporation, public agency and other organisation of whatever legal form controlled by the Government and also includes the President of Malta;"

(ix) immediately after the new definition "Government" there shall be added the following new definition:

" "interested party" means a person who is given rights capable of economic valuation, present or future, actual or contingent, in the statute of an organisation or who is given powers or functions therein and shall not include other persons unless the context otherwise requires, and this, without prejudice to the right of any person to pursue any civil right or remedy he may have;"

(x) immediately after the new definition "interested party" there shall be added the following new definition:

" "lawful purpose" means a purpose other than a social or public purpose or public benefit, being a legitimate purpose in terms of these provisions and which may include a private benefit, provided such private benefit is subject to the following conditional requirements:

(a) it is solely limited and incidental or ancillary to the principal purpose and objectives of the organisation;

(b) it is not directly attributable to private individuals or members of the organisation; and

(c) it is not capable of promoting any form of private interest, irrespective of whether or not such private interest involves any economic interests, or any form of economic contributions, or is otherwise capable of economic evaluation;"

(xi) immediately after the new definition "lawful purpose" there shall be added the following new definition:

" "market conditions" and "market levels" mean:

(a) in the case of goods, the standard price normally paid for such goods on the open market;

(b) in the case of services, the standard or level of remuneration, normally paid:

(i) by voluntary organisations of the same legal form and operating in the same or in a similar area of activity; and

(ii) to persons in the same or in a similar office or role and, or under the same or similar conditions and having the same or similar qualifications; and

(c) in all other cases, the normal commercial standards:

Provided that, on a local level, such market levels and conditions shall be applicable:

(i) in the case of voluntary organisations with a generated revenue and income of less than fifty thousand euro (€50,000), these shall be made subject to Category 1 enrolment organisations in terms of the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations; S.L. 492.01.

(ii) in the case of voluntary organisations with a generated revenue and income exceeding fifty thousand euro (€50,000) but less than two hundred fifty thousand euro (€250,000), these shall be made subject to the General Accounting Principles for Small and Medium-Sized Entities (GAPSME) in terms of Accountancy Profession (General Accounting Principles For Small And S.L. 281.85.

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Medium-Sized Entities) Regulations and shall apply without prejudice to the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations; and

(iii) in the case of voluntary organisations with a generated revenue and income exceeding two hundred fifty thousand euro (€250,000), these shall be made subject to full audit by an auditor and the International Financial Reporting Standards (IFRS) shall apply:

Provided further that, for the above principles to apply, reference shall be made to prices, standards or levels of the market in the country where the relevant activities take place:

Provided also that, in case of international organisations, which operate from Malta, or in case of local organisations, which operate internationally, such organisations shall be subject to International Financial Reporting Standards (IFRS) which shall apply without prejudice to the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations;";

S.L. 492.01.

(xii) the definition "non-profit making" shall be substituted by the following new definition:

" "non-profit making", "not for profit", "non-profit" and similar phrases shall be interpreted, as the context may require, in accordance with the principles, rules and guidelines in the First Schedule to this Act;";

(xiii) the definition "pious foundation" shall be substituted by the following new definition:

Cap. 9. " "pious foundation" shall have the meaning assigned to it by article 26 of the Second Schedule to the Civil Code;";

(xiv) immediately after the definition "pious

foundation", as substituted, there shall be added the following new definition:

Cap. 544. " "political party" shall have the meaning assigned to it by article 2 of the Financing of Political Parties Act and, for the purpose of this Act, shall include any other organisation, of whatever legal form, which is controlled by, related or affiliated to the political party, and the terms "political candidate" and "political organisation" shall be construed accordingly;"

(xv) immediately after the new definition "political party" there shall be added the following new definition:

" "political purpose" means the promotion of the interests of a political party or a political candidate, whether at local, national or international level;"

(xvi) immediately after the definition "promoter" there shall be added the following new definition:

Cap. 497. " "public agency" means any entity of any legal form which is established to carry out public administration in terms of the Public Administration Act or any other law and includes a statutory body;"

(xvii) immediately after the definition "public collection" there shall be added the following new definition:

" "public purpose" or "public benefit" means a social purpose which:

(a) promotes or serves the general public interest or the interest of a sector of the general public, whether directly or indirectly:

Provided that:

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(i) if, in the opinion of the Commissioner, the organisation does not reach sufficient levels of promotion or service to the general public interest or the interest of a sector of the general public, he may decide that this criteria is not satisfied; and

(ii) such purpose is not to be presumed to exist only because the organisation has a "social purpose" as defined in this Act;

(b) does not promote or serve any private benefit unless such benefit is solely limited and incidental or ancillary to the principal purpose and objectives of the organisation and as permitted by this Act and, or the Second Schedule to the Civil Code;

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(c) is of a continuing nature and shall apply throughout the existence of the voluntary organisation; and

(d) does not include a political purpose;"

(xviii) immediately after the definition "Registrar for Legal Persons" there shall be added the following new definition:

" "religious organisation" means:

(a) a pious foundation;

(b) an ecclesiastical entity and qualifies as a diocese, parish, church or place of worship, province or similar division of any religious order, institute of consecrated life and a society of apostolic life or an ecclesiastical community; or

(c) a hospital, school, teaching or counselling institute, orphanage or residential or respite centre available to the public, which is controlled by a religious organisation referred to in paragraphs (a) and (b), whether supported by volunteers or otherwise;"

(xix) immediately after the new definition "religious organisation" there shall be added the following new definition:

"remuneration" means any honorarium, wage, salary, fee or other payment for services, whether under a contract or otherwise, but shall not include the refund of any expenses incurred on behalf of any organisation;"

(xx) the definition of the term "social purpose" shall be amended as follows:

A. paragraph (d) thereof shall be substituted by the following new paragraph:

"(d) social and community advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade, but which does not include the promotion of any private economic interest;"

B. in paragraph (h) thereof, the words "social purpose organisations" shall be substituted by the words "public benefit organisations", and the word "or" shall be deleted;

C. paragraph (i) thereof shall be re-numbered as paragraph (j);

D. immediately after paragraph (h) thereof, there shall be added the following new paragraph:

"(i) the carrying out of activities intended to raise funds to support other public benefit, non-profit or voluntary organisations or to generally support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit; or";  
and

E. immediately after paragraph (j) thereof, as re-numbered, there shall be added the following new paragraph:

"(k) shall not include a political

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purpose;"

(xxi) the definition "statute" shall be substituted by the following new definition:

" "statute" means a document which regulates the continuing management and operation of a voluntary organisation or any constitutive instrument or public deed of the organisation whereby such organisation is established, including a will which provides for the setting up of such organisation;"

(xxii) the definition of the term "voluntary" shall be amended as follows:

A. for the words "the existence of one or more of the following elements" there shall be substituted the words "the existence of two or more of the following elements";

B. in paragraph (a) thereof, for the words "as hereunder permitted" there shall be substituted the words "as permitted in this Act";

C. in paragraph (c) thereof:

(aa) immediately before the words "subject to limitations due to the nature or size of the organisation" there shall be added the words "in the case of an association,";

(bb) for the words "activities of the organisation; and" there shall be substituted the words "activities of the organisation and every participant in the organisation has the right to freely leave the organisation:";

D. paragraph (d) thereof shall be deleted;  
and

E. sub-paragraphs (i) to (iii) of the proviso thereto shall be substituted by the following new sub-paragraphs:

"(i) when a voluntary organisation is established in the form of a foundation, only

one of the above elements must exist for the organisation to be considered to be "voluntary";

(ii) when a member of a religious order or authority carries out functions in a voluntary organisation without remuneration, such functions shall be considered to be "voluntary" for the purposes of this definition if he or she is not appointed or engaged to do so as a means to carry out his vocational duties by the religious order or authority of which he or she forms part;

(iii) for the purposes of paragraph (c), only those limitations and discretions which are consistent with the Constitution of Malta and the European Convention Act shall be considered to be valid limitations and discretions;"

(xxiii) the definition "voluntary organisation" shall be substituted by the following new definition:

" "voluntary organisation" means a foundation, a trust, an association of persons or a temporary organisation which qualifies under article 3;" and

(b) in sub-article (2) thereof, for the words " "social purpose", "voluntary" " there shall be substituted the words " "social purpose", "public benefit", "public purpose", "voluntary" ".

4. Article 3 of the principal Act shall be amended as follows:

Amendment of article 3 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) A voluntary organisation is an organisation which is created or established:

- (a) for any social purpose including that which qualifies as a public purpose or for public benefit;
- (b) as non-profit making; and
- (c) is voluntary,

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Cap. 16. whether it is registered or registerable as a legal person or not in terms of the Second Schedule to the Civil Code and whether it is or may be enrolled under this Act or not.

For the purposes of this Act the above requirements shall be of a continuing nature and shall apply throughout the existence of the voluntary organisation.";

(b) sub-article (2) thereof shall be re-numbered as paragraph (a) of the said sub-article, and immediately thereafter there shall be added the following new paragraphs:

"(b) The administrators of a voluntary organisation are bound to act autonomously and independently in seeking to fulfil the express purposes of such organisation and must not be subject to the control of any other person or authority nor bound in any manner, directly or indirectly, to act under the direction or in the interest of any other person.

(c) Provisions in any statute of a voluntary organisation or in any applicable law, which administrators are bound to observe, shall not be considered as impinging on the autonomy or independence of administrators:

Provided that any such provisions in a statute, or any powers which have been vested in any person or body thereby, shall not be such as to contradict the public purpose of the organisation:

Provided further that such statute or applicable law shall include:

(i) any mission statement, standards of conduct, guidelines on corporate governance or similar statements in the statute, including those relating to ethical, reputational or commercial positions adopted by the founder;

(ii) any provisions reserving powers or rights to the founder of a foundation with a public purpose or the settlor of a charitable trust in accordance with the provisions of the Second Schedule to the Civil Code or the Trusts and Trustees Act respectively;

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(iii) any provisions on a supervisory council or a protector who may be granted powers in relation to the actions of the administrators or trustees in accordance with applicable law;

(iv) any provisions granting powers to the Courts or other authority to issue directions on any matter relating to a foundation, an association or to a trust or generally in relation to any voluntary organisation;

(v) any provisions of applicable law whereby administrators may be bound to follow the directions of a designated person on specific issues or may be under a vow of obedience or otherwise subject to the laws or rules of the competent ecclesiastical or other religious authority; or

(vi) any provisions whereby the competent ecclesiastical or other religious authorities may enjoy powers in relation to the organisation.";

(c) sub-article (3) thereof shall be substituted by the following:

"Governmental and other organisations.

(3) (a) An organisation shall not be considered to be a voluntary organisation if it is:

(i) controlled by the Government; or

(ii) a public agency.

(b) For the purposes of this sub-article:

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(i) where any person occupies the position of Prime Minister, Minister, Parliamentary Secretary, Permanent Secretary, mayor or holds any other public office with powers to act on behalf of the Government and such person also occupies the position of an administrator within a voluntary organisation in his personal capacity, his role in the latter position shall be considered to be separate and distinct from the public office he may occupy within the Government and such organisation shall not thereby be considered to be "controlled by the Government" unless the statute or any document regulating the appointment expressly states otherwise:

Provided that when, at any time, such person holds these two positions at the same time, such person shall submit a declaration to the Commissioner confirming that he is occupying the position of administrator within the voluntary organisation in his personal capacity:

Provided further that in such cases the Commissioner may, if he considers that the duties or profile of such person holding the public office to be incompatible with the duties as administrator of the particular voluntary organisation or with the voluntary sector as a whole, request the retirement by such person from his position as administrator of the voluntary organisation;

(ii) co-operation agreements, delegation of management, guardianships or similar agreements as well as public private partnerships shall not imply "control by the Government";

(iii) the appointment by Government of persons as protectors or as members of a supervisory council shall imply "control by the Government" unless the statute or any document regulating their appointment expressly states that such persons appointed by the Government are independent and autonomous, shall act on their own discretion and responsibility and shall not be bound to follow directions issued by the Government in carrying out their duties notwithstanding the fact that they are appointed by the Government, although they remain bound to protect the public interest even if in consultation with the Government.

For the purposes of sub-paragraph (i), if, under the provisions of a statute of an organisation, the successor incumbent of the same public office takes up the post of administrator on the retirement of the prior incumbent of the public office, this shall be considered to imply that the relevant person is not holding the position of an administrator in his personal capacity. The term "relevant person" has the same meaning as assigned to it under the Second Schedule to the Civil Code.

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(c) Religious organisations may not enrol under this Act and shall not be treated as voluntary organisations for the purposes of this Act. Nothing in this article shall hinder a religious organisation from establishing an organisation which is not itself a religious organisation as defined above. Subject to the provisions of this Act, such an organisation may enrol and, when so required under this Act, shall be obliged to enrol.

(d) Such an organisation shall not be eligible to the rights, privileges and benefits of a voluntary organisation unless enrolled as a voluntary organisation under this Act.

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(e) Where a religious organisation is already enrolled in terms of this Act on the date of the coming into force of this provision, such organisation shall continue to be considered as a voluntary organisation, with all relative rights, privileges, benefits and obligations, for as long as its enrolment remains in effect.

(f) An organisation shall not be considered to be a voluntary organisation if it is a political party, has political purposes or is controlled by, related or affiliated to a political party. Such organisations may not enrol under this Act and shall not be treated as voluntary organisations for the purposes of this Act. Nothing in this article shall hinder an organisation with political purposes from establishing an organisation which is not itself a political organisation as defined in this Act. Subject to the provisions of this Act, such an organisation may enrol and, when so required under this Act, shall be obliged to enrol.

(g) Where an organisation with political purposes is enrolled in terms of this Act on the date of the coming into force of this provision, such organisation shall be required to cancel its enrolment under this Act, failing which the Commissioner shall proceed to cancel the enrolment after notice in accordance with this Act."; and

(d) immediately after sub-article (5) thereof, there shall be added the following new sub-articles:

Cap. 16. "(6) Unless otherwise permitted under the provisions of article 38, and to the extent of the applicability of article 32A of the Second Schedule to the Civil Code, a voluntary organisation may not be established as the principle cause to trade or to carry out commercial activities.

(7) For the purposes of the enrolment of a foreign or international organisation under this Act, when the organisation takes the form of a foundation or an association or a trust, the organisation shall be required to have a minimum of three administrators:

Provided that such organisations shall have a representative resident in Malta."

5. Article 4 of the principal Act shall be amended as follows:

Amendment of article 4 of the principal Act.

(a) in sub-article (1) thereof, for the words "Any voluntary organisation" there shall be substituted the words "Without prejudice to the provisions of article 12B, any voluntary organisation which has a public purpose or is for public benefit";

(b) in sub-article (2) thereof, immediately after the words "may make public collections" there shall be added the words "for the purposes of the organisation, or when the purpose of an organisation is the raising of funds for other voluntary organisations with designated social or public purposes, for the purposes of such other organisations";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) Any public collections made by any enrolled voluntary organisation shall be made for the public purposes of the relevant organisation and in accordance with any regulations made by the Minister and, or any guidelines which may be issued by the Commissioner from time to time. Unless enrolled, a voluntary organisation may not make public collections.";

(d) in sub-article (4) thereof:

(a) for the words "An enrolled organisation may:" there shall be substituted the words "A voluntary organisation which is not enrolled in accordance with this Act, may not:";

(b) in paragraph (d) thereof:

(i) for the words "its social purpose" there shall be substituted the words "its public purpose";

(ii) for the words "any entity controlled by the Government:" shall be substituted the words "any entity controlled by the Government,";

(iii) immediately after paragraph (d) thereof, there shall be added the following new sentence:

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"and any act which breaches this sub-article shall be considered to be subject to revocation on the request of the Attorney General, who may act of his own initiative or at his discretion on a complaint made by the Commissioner or on a complaint made by any enrolled voluntary organisation:";

(iv) the first proviso thereto shall be shall be substituted by the following:

"Provided that:

(i) an enrolled voluntary organisation may benefit under paragraphs (a), (b), (c) and (d) only if it is fully compliant with the provisions of this Act and any regulations made thereunder; and

(ii) if an enrolled voluntary organisation, benefiting under paragraphs (a), (b), (c) and (d), ceases to be fully compliant with the provisions of this Act and any regulations made thereunder, such enrolled voluntary organisation shall be given a time period by the Commissioner or the relevant authority granting the benefit, as the case may be, in which to rectify its position:";

(e) sub-articles (5) and (6) thereof shall be deleted, and sub-article (7) thereof shall be re-numbered as sub-article (5); and

(f) immediately after sub-article (5) thereof, as re-numbered, there shall be added the following new sub-articles:

"(6) Without prejudice to the other provisions of this Act, when implementing the provisions of this article in granting benefits or funds or extending privileges to enrolled voluntary organisations or in denying benefits or funds or privileges on the basis of lack of enrolment of an organisation, the Government shall consult and may rely on the information contained in the Register of Voluntary Organisations as maintained by the Commissioner.

(7) (a) The Government shall, from time to time, at least once a year, declare when funds for grants, sponsorships or other financial aid from the Government are available to the voluntary sector.

(b) For the purpose of paragraph (a), the Government shall distinguish between:

(i) funds which are available for organisations in the voluntary sector with activities in Malta, whether the organisations are Maltese organisations or foreign organisations with activities in Malta; and

(ii) funds which are available to support the overseas activities of organisations, whether such organisations are Maltese or foreign.

(c) In the case of funds available as stated in paragraph (b)(i), these shall be available exclusively to enrolled voluntary organisations whether Maltese or foreign.

(d) In the case of funds available as stated in paragraph (b)(ii):

(i) in the case of recipient organisations which are Maltese, these shall be available exclusively to enrolled voluntary organisations; and

(ii) in the case of recipient organisations which are not Maltese, the Government shall ensure that as far as possible, such organisations broadly meet equivalent public benefit, registration and transparency standards in their own state of registration as voluntary organisations which are enrolled under this Act.

The Minister may, from time to time, issue regulations establishing the matters upon which equivalence is required and in what manner and may, from time to time, declare when registration as a charity, public benefit, non-profit or voluntary organisation in specified countries implies equivalence for the purposes of this

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Amendment of  
article 5 of the  
principal Act.

paragraph."

**6.** Article 5 of the principal Act shall be amended as follows:

## (a) sub-article (3) thereof shall be amended as follows:

(i) in paragraph (d) thereof, for the words "an offence against this Act." there shall be substituted the words "an offence against this Act; or";

(ii) immediately after paragraph (d) thereof, there shall be added the following new paragraph:

"(e) is a public officer or becomes a public officer."; and

## (b) sub-article (4) thereof shall be substituted by the following:

"(4) The appointment of a person as a Commissioner shall not render him a public officer. During his term as Commissioner, such person shall not hold any position which results in a conflict of interest or is incompatible with the appropriate performance of his official duties as Commissioner or with the impartiality expected from this office or with the public confidence therein."

Amendment of  
article 7 of the  
principal Act.**7.** Article 7 of the principal Act shall be amended as follows:

## (a) sub-article (1) thereof shall be amended as follows:

(i) paragraph (k) thereof shall be re-numbered as paragraph (m);

(ii) immediately after paragraph (j) thereof, there shall be added the following new paragraphs:

"(k) reviewing periodically new information on the voluntary sector's potential vulnerabilities to money laundering and the funding of terrorism;

(l) should he discover facts or obtain any information which raise a suspicion that funds received by a voluntary organisation could be proceeds of criminal activity or that the activities of a voluntary organisation could be related to money laundering or the funding of terrorism, he

shall promptly disclose those facts or that information, supported by any relevant and supporting documentation that may be available to him, to the Financial Intelligence Analysis Unit;"

(b) sub-article (3) thereof shall be deleted and sub-article (4) thereof shall be re-numbered as sub-article (5); and

(c) immediately after sub-article (2) thereof, there shall be added the following new sub-articles:

"(3) The Office of the Commissioner shall be deemed to be a body corporate, shall have a distinct legal personality and shall be capable, subject to the provisions of this Act or any regulations made thereunder, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or contributory to the exercise or performance of the Commissioner's functions under this Act. The Commissioner enjoys the legal and judicial representation of the Office of the Commissioner as a legal person.

(4) The Commissioner may, on behalf of the Office of the Commissioner, in his own writing, delegate to any person specific functions, powers or authorities assigned to or conferred on him by this Act or any other law, and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to divest the Commissioner of any of his functions, powers or authorities and he may, if he thinks fit, exercise such functions, powers or authorities collaterally with the person so delegated."

**8.** Sub-article (2) of article 8 of the principal Act shall be substituted by the following:

Amendment of article 8 of the principal Act.

"(2) The Commissioner shall:

(a) seek to encourage an environment where the credibility and good reputation of the voluntary sector is continually enhanced through high standards of operation of voluntary organisations and their administrators, of transparency and public awareness and of proper accountability; and

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(b) seek to assist voluntary organisations in protecting themselves from being abused for money laundering or funding of terrorism purposes by raising their awareness about such risks and informing them of available measures to protect themselves against such abuse."

Amendment of article 9 of the principal Act.

**9.** Article 9 of the principal Act shall be amended as follows:

(a) paragraph (a) thereof shall be substituted by the following:

"(a) the recognition, encouragement and promotion of the value and importance of voluntary action and voluntary organisations, whether operating independently of the Government, religious organisations or other public institutions or in a supporting role, and the benefit deriving to the social and cultural life in Malta;"; and

(b) in paragraph (d) thereof, for the words "the interests of their beneficiaries; and" there shall be substituted the words "the interests of their beneficiaries:" and immediately thereafter there shall be added the following new proviso:

"Provided that the Commissioner shall not refuse the enrolment of an organisation solely because of the potential of duplication of efforts by other organisations with similar purposes; and".

Amendment of article 10 of the principal Act.

**10.** Sub-article (1) of article 10 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, immediately after the words "preceding year" there shall be added the words "including those related to the monitoring of voluntary organisations"; and

(b) in paragraph (c) thereof, immediately after the words "other matters affecting the voluntary sector" there shall be added the words "to ensure adequate regulation of such sector including initiatives for the prevention of money laundering and the funding of terrorism".

Amendment of article 11 of the principal Act.

**11.** Article 11 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof:

(i) immediately after the words "discuss the same with the Commissioner" there shall be added the words "and unless an agreement is reached between the Commissioner and the recipient, the Commissioner may proceed with publishing the information without any further requirements"; and

(ii) the proviso thereto shall be substituted by the following:

"Provided that in cases of manifest abuse, fraud or other risks to the general public, the Commissioner may publish such information without prior notice as aforesaid:

Provided further that the organisation or the person purporting to act as stated in sub-article (1), may at any time appeal to the Tribunal which may issue orders binding on the Commissioner regarding such public statements.";

(b) sub-article (3) thereof shall be substituted by the following:

"(3) Notwithstanding the provisions of any other law, the Office of the Commissioner, the Commissioner himself and any of his officials acting on his behalf shall be exempt from any liability or responsibility whether civil or criminal, in respect of any publication, statement or other communication or activity, which is *bona fide* and is intended solely for the better information, education or protection of the public. Such exemption shall extend to such persons publishing, printing, recording, broadcasting or notifying such information by any means whatsoever. For the purposes of this sub-article, a publication, statement, communication or activity shall be deemed to be *bona fide* when it is not made or undertaken recklessly or maliciously and adheres to the principles of fairness and objectivity. Any person alleging bad faith shall have the burden of proving such allegations."; and

(c) sub-article (4) thereof shall be deleted.

**12.** Article 12 of the principal Act shall be amended as follows:

Amendment of article 12 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

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(i) for the words "paragraphs (f) to (i)" there shall be substituted the words "paragraphs (d) to (i)";

(ii) paragraphs (d) to (f) thereof shall be substituted by the following:

"(d) the names, identity card numbers, accompanied by an authenticated copy of each identity card, or passport numbers, accompanied by an authenticated copy of each passport, or registration numbers, if any, and residential addresses of the administrators of the organisation;

(e) in case of foreign organisations, the name, identity card number, accompanied by an authenticated copy of such identity card, or passport number, accompanied by an authenticated copy of such passport, or registration number, if any, and residential address of the representative resident in Malta of such organisation;

(f) a copy of the constitutive deed of the organisation and any amendments thereto authenticated by a Notary Public in the case of a public deed, and by a Notary Public or one administrator in other cases, and a statement signed by the same person as aforesaid, where the dates do not appear on the face of the documents submitted, establishing the date when the constitutive deed was drawn up and the dates when any amendments were made thereto;" and

(b) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) The administrators and any representatives resident in Malta shall be bound to submit an authenticated copy of any renewed identity cards or passports within a reasonable time from the date of expiry of the document or within three months of receipt of any demand to that effect by the Commissioner."

Addition of new articles to the principal Act.

**13.** Immediately after article 12 of the principal Act, there

shall be added the following new articles:

"General principles on enrolment.

12A. (1) Any organisation has a right to enrol as a voluntary organisation and enjoy the privileges under article 4 only if:

(a) the social purpose of such organisation also qualifies as a public purpose or public benefit as defined by this Act; and

(b) it complies with the rules on form and content, as may be, from time to time, prescribed by the Commissioner:

Provided that exemption from mandatory enrolment under article 12B shall not, on its own, prevent an organisation from enrolment.

(2) Unless exempt under article 12C, the organisations referred to in article 12B are subject to mandatory enrolment in terms of this Act.

(3) Any voluntary organisation which -

(a) is not already enrolled in terms of this Act;

(b) is not subject to mandatory enrolment in terms of article 12B;

(c) is not an exempt voluntary organisation in terms of article 12C(2); or

(d) being enrolled, ceases to be so enrolled on its own will when permitted to do so under this Act,

is required to notify the Commissioner in writing of its existence and its principal purpose in terms of article 12D, unless it ceases to be a voluntary organisation.

(4) Where a voluntary organisation either fails to enrol and, or fails to notify when required to do so in terms of this Act, the provisions under article 12E shall apply *mutatis mutandis*.

Mandatory enrolment.

12B. (1) Any voluntary organisation shall be required to enrol under this Act in the following cases:

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Mandatory enrolment on the basis of actions and the protection of the public interest.

(a) it makes or intends to make public collections; or

(b) it receives or is the beneficiary of grants, sponsorships or other financial aid from the Government or otherwise enjoys the privileges contemplated by this Act, any regulations made thereunder or any other law, or intends to be so eligible; or

(c) it is the beneficiary of any policies supporting voluntary action as these may be developed by the Government or intends to so benefit; or

(d) it receives or is the beneficiary of exemptions, privileges or other entitlements in terms of any law or intends to so benefit;

(e) it does not carry out activities as stated under paragraphs (a) to (d) but has an income of more than twenty-five thousand euro (€25,000) in any one year or has an annual income of more than five thousand euro (€5,000) for three consecutive years:

Provided that this paragraph shall not apply in the case of an organisation carrying out purposes and, or activities or having sources of income other than those related to the general public or public sources, even if such organisation has a social purpose, unless this is determined by the Commissioner in writing, of his own motion or on the request of the organisation on the basis of presumed public benefit:

Provided further that the obligation to maintain enrolment shall cease to apply if the organisation's level of income does not meet any of the relevant thresholds for more than three consecutive years;

(f) it does not carry out activities as stated under paragraphs (a) to (d) but it has capital assets of a value exceeding five hundred thousand euro (€500,000) irrespective of its income in any one year:

Mandatory enrolment on the basis of turnover and the presumed public benefit.

Mandatory enrolment on the basis of capital and presumed public benefit.

Provided that this paragraph shall not apply in the case of an organisation carrying out purposes and, or activities or having sources of income other than those related to the general public or public sources, even if such organisation has a social purpose, unless this is determined by the Commissioner in writing, of his own motion or on the request of the organisation on the basis of presumed public benefit:

Provided further that the obligation to maintain enrolment shall apply for at least five years and shall cease to apply if thereafter the organisation's level of capital is below a value of one hundred thousand euro (€100,000) and remains so for a period of three consecutive years;

(g) the administrators shall be under an obligation to enrol the organisation should it be so required by the statute, whether original or as amended, or in case of an association, if it is so resolved in a general meeting of members or if at least thirty five per cent of its members so request in writing provided that the purpose of the organisation is for a public purpose or benefit.

(2) There shall be a List of Enrolled Voluntary Organisations which shall be maintained by the Commissioner in accordance with this Act and in the manner he may consider appropriate to enable any member of the public to verify the existence of an enrolled voluntary organisation, and to obtain any other information provided by it to the Commissioner.

(3) The obligation to enrol shall arise:

(a) in the case of an established organisation, within ninety (90) days of its establishment but before engaging in any of the activities or prior to receiving any of the benefits referred to in sub-article (1);

Enrolment on the basis of statute or member request.

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(b) in the case of an established organisation, the income of which exceeds any of the income thresholds stated in sub-article (1)(e) or the capital of which exceeds the threshold stated in sub-article (1)(f), within ninety (90) days from the date on which any of the financial thresholds referred to in sub-article (1)(e) or (f) is exceeded, and in any case, prior to receiving any additional benefits referred to in sub-article (1); and

(c) in the cases contemplated in paragraph (g), within ninety (90) days from the relevant decision, resolution or similar event.

(4) It shall be the responsibility of the administrators and, in the case of sub-article (1)(e) and (f), also of any accountant, reviewer or auditor, if any, of a voluntary organisation to ensure compliance with the provisions of this article.

(5) Any accountant, reviewer or auditor, if any, engaged to review the levels of income established in sub-article (1)(e) and, or the capital in sub-article (1)(f), shall notify the administrators in writing, with a copy to the Commissioner, if the duty to enrol arises under this article and the obligation has not been fulfilled by the administrators within the established time limits. In such case, the Commissioner shall notify the administrators with a time limit for enrolment, which shall not be less than ninety (90) days, and the administrators shall be obliged to enrol the organisation within such time limit as notified by the Commissioner.

(6) For the purposes of this article:

(a) "income" includes:

(i) any subsidies, grants and donations made to the relevant organisation but does not include internal transfers within and between affiliated organisations and any reference to a relevant organisation's annual income is to be read, in relation to a particular time, as a reference to the organisation's gross consolidated income in its financial year immediately preceding that time, having regard to all affiliated organisations. "Affiliated organisations" for the purposes of this article comprises any organisation ("parent") together with all organisations set up by the same organisation ("subsidiaries"), other organisations set up by any of the subsidiaries and, any organisations established by the same founders or promoters to achieve the same or complimentary purposes from common efforts, funds or opportunities;

(ii) any cash deposit made with the organisation or any other transfer of funds under terms which indicate that it is not an ordinary commercial arrangement but is intended to operate as a grant or donation to the organisation; and

(iii) membership fees;

(b) "financial aid" shall include any financial aid which is available to the voluntary sector from the European Union.

(7) In the event that the statute of the organisation describes it to be for public purposes, voluntary or non-profit making and the organisation appears to be carrying out any of the activities in sub-article (1)(a) to (d); and -

(a) the statute satisfies many of the requirements as described in this Act for qualifying as a voluntary organisation but also has features or elements in its statute which exclude it from qualifying as such under this Act; and

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(b) any administrator, or any other person with the consent, tacit or express, of any administrator, makes any verbal or written public statement that the organisation's purposes are exclusively for public benefit and that it is non-profit making thereby seeking or encouraging public support,

the organisation shall comply with the requirements of this Act and shall enrol within ninety (90) days of the coming into force of this article or within fifteen (15) days of a notice from the Commissioner, unless it withdraws or corrects any misrepresentation and declares in writing not to repeat the same, and amends its statute and other documentation clearly stating that it is not a voluntary organisation and, where applicable, that the carrying out of its purposes and, or activities are not related to the general public or public sources, and which therefore, do not qualify as a public purpose or public benefit, even if it has a social purpose.

Provided that:

(a) should it encounter any obstacles in complying with the above within the said period, it shall apply to the Commissioner for an extension of time to do so; or

(b) if it cannot address any non-qualifying features or elements for reasons which can be justified, it may:

(i) ask the Commissioner for a ruling that it is not obliged to enrol until solutions are found but, if such ruling is given, the organisation shall be prohibited from carrying out any of the activities in sub-article (1)(a) to (d) and, if it does so, the organisation and the administrators shall be guilty of an offence; or

(ii) ask the Commissioner to permit enrolment without full compliance with the provisions of this Act together with a ruling on how the non-qualifying features or elements are to be administered.

(8) When the provisions of sub-article (7) apply and no application is made by an organisation which is deemed by the Commissioner to be subject to mandatory enrolment, the Commissioner may issue an order in writing for the enrolment of such organisation within the time period stated in the order. The organisation may, during the period stated in the order, appeal to the Tribunal which shall:

(a) confirm the Commissioner's order for the mandatory enrolment of the organisation; or

(b) declare that the organisation is not a voluntary organisation therefore not rendering such organisation subject to mandatory enrolment but also confirming the prohibitions to carry out acts or enjoy the privileges referred to in article 4(4).

(9) Nothing in sub-article (1)(e) or (f) shall prejudice the continuing enrolment of any organisation enrolled prior to the date of the coming into force of this article.

(10) An organisation which is subject to mandatory enrolment in terms of this article for reasons referred to in sub-article (1)(c) or (d) and which has been enrolled for at least five (5) years may apply to the Commissioner to be exempted from mandatory enrolment if the activities, and, or purposes of the organisation and the sources of its income are not related to the general public or public sources and which therefore, do not qualify as a public purpose or public benefit, even if it has a social purpose.

(11) Such organisation shall submit its latest accounts and reports together with the request for exemption and if such request is accepted by the Commissioner, the organisation shall not be entitled to carry out acts or enjoy the privileges referred to in article 4(4) until such time as it remains non-enrolled.

(12) The list of all enrolled voluntary organisations as may from time to time be amended shall be made accessible to the public on demand.

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Exemptions. 12C. (1) Without prejudice to the right to enrol under article 12A, the following organisations shall be exempt from mandatory enrolment under article 12B:

(a) notwithstanding that the requirements giving rise to mandatory enrolment may exist, the organisations listed in Part I of the Second Schedule;

(b) the organisations listed in Part II of the Second Schedule;

(c) those organisations or classes of organisations which are temporarily or permanently exempted by order of the Commissioner with the prior consent of the sub-committee of the Council set up in terms of article 35(13) and on compliance with the conditions for exemption;

(d) upon the issue of the appropriate determination by the Commissioner, the organisations referred to in the exception to article 12B(1)(e) or (f); and

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(e) any public purpose foundation which carries out the activities under article 32A of the Second Schedule to the Civil Code and which does not engage in any of the activities in article 12B(1)(a) to (d):

Provided that a public offer of shares or debentures, bonds or notes or other instruments shall not be considered to be a public collection and shall be governed by the law applicable to such offers.

(2) The organisations referred to in sub-article (1)(a), (b) and (c) shall also be exempt from the duty to notify the Commissioner under article 12D.

Notification.

12D. (1) Voluntary organisations which -

(a) are not subject to mandatory enrolment;

(b) are not exempt under article 12C(2);

(c) on the basis of a determination by the Commissioner, do not qualify for enrolment as they do not have a social purpose which also qualifies as a public purpose or public benefit; or

(d) have opted not to enrol when they may do so under this Act,

shall notify the Commissioner of their existence and their principal purpose by means of a "Non-Enrolment Notice" in the form prescribed in the Third Schedule.

(2) There shall be a List of Non-Enrolled Voluntary Organisations which shall be maintained by the Commissioner in accordance with this Act and in the manner he may consider appropriate to enable any member of the public to verify the existence of a non-enrolled voluntary organisation, and to obtain any other information provided by it to the Commissioner.

(3) The notification mentioned in sub-article (1) shall not grant the Commissioner any rights nor impose any obligations upon him in relation to such organisations nor shall it grant the organisations making such notification any rights nor impose any obligations on them, other than as provided in this Act.

(4) The administrators of a non-enrolled voluntary organisation shall, by means of the relevant form in the Third Schedule, notify the Commissioner of:

(a) any changes to the name or address of the organisation;

(b) any changes to the administrator or local representative, where applicable, who is to be contacted on behalf of the organisation; and

(c) the merger or dissolution and winding up of the organisation,

and the Commissioner shall amend or remove the form or forms relating to such organisation in the records relating to Non-Enrolled Voluntary Organisations as the case may be and shall amend the List of Non-Enrolled Voluntary Organisations as necessary.

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(5) The List of Non-Enrolled Voluntary Organisations, as may from time to time be amended, shall be accessible to the public on demand.

Failure to enrol or failure to notify.

12E. (1) An organisation which, when obliged to do so under this Act, fails to enrol shall, notwithstanding the provisions of any other law, be disqualified from benefiting under any grant, sponsorship, any other financial aid from the Government or any governmental policy supporting voluntary organisations or from receiving or being the beneficiary of any exemptions, privileges or other entitlements supporting organisations under any law, and any act performed by such organisation which is in breach of this sub-article shall be subject to revocation on the request of the Attorney General who may act of his own initiative or at his discretion, on a complaint made by the Commissioner or on a complaint made by an enrolled voluntary organisation.

(2) Administrators who fail to enrol an organisation when such enrolment is mandatory in terms of article 12B or who fail to notify the Commissioner of the existence of the organisation in terms of article 12D shall, upon the lapse of thirty (30) days after being notified in writing by the Commissioner of the default and its consequences, or on the lapse of the time limit stated under article 12G(2), be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than one hundred and twenty euro (€120) for every default, and a fine (*multa*) of eleven euro and sixty-five cents (€11.65) for every day such default continues.

Mandatory enrolment for foreign organisations.

12F. (1) A foreign organisation which operates in Malta in any manner and which is established -

- (a) for a public purpose or public benefit;
- (b) as non-profit making; and
- (c) is voluntary,

shall apply for enrolment by submitting the relevant form in the Third Schedule to the Commissioner.

(2) The Commissioner may issue guidelines regarding the enrolment of foreign organisations in terms of this Act.

Right to appeal.

12G. (1) Should a voluntary organisation consider that circumstances exist which create doubt as to whether it is subject to mandatory enrolment or notification under this Act and it is of the view that it is not required to enrol or to notify for any reason, it shall be entitled to formally advise the Commissioner of its position and state the relevant reasons and, until such time as the Commissioner does not order otherwise, the organisation shall not be considered to be in breach of article 12B or article 12D.

(2) Once the Commissioner rules that an organisation is required to enrol or to notify in accordance with the preceding articles, the Commissioner shall order, in writing, such organisation to do so and set a time limit for such action.

(3) The organisation may appeal against such order in accordance with article 25.

(4) Until the Commissioner determines any matter under sub-article (1) or until the Tribunal determines any appeal, such organisation shall not be considered to be in breach of article 12B or article 12D but may not carry out the acts in article 12B(1)(a) to (d) pending final determination."

**14.** Article 13 of the principal Act shall be amended as follows:

Amendment of article 13 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) All applications for enrolment shall be made by the submission of the prescribed application form to the Commissioner, which form shall be accompanied by:

(a) an original or a copy of the constitutive deed or statute of the organisation and any amendments thereto authenticated by a Notary Public in the case of a public deed and by a Notary Public or one administrator in other cases, and a statement signed by the same person authenticating the deed or statute and any amendments thereto as

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aforesaid. Where the dates do not appear on the face of the documents submitted, establishing the date or the approximate date, where this is not available from other records, a document showing the date when the constitutive deed or statute was drawn up and the dates when any amendments were made thereto;

(b) an explanation of how the public benefit shall be achieved through the activities and purposes of the organisation;

(c) the written consent of all the administrators that shall hold office after enrolment;

(d) the enrolment fees; and

(e) any other document as required by this Act or by any regulations made thereunder or as may be required by the Commissioner.";

(b) in sub-article (2) thereof, for the words "In considering an application, the Commissioner may request the applicant to provide" there shall be substituted the words "In considering an application and at any time thereafter, the Commissioner may request the voluntary organisation to provide";

(c) in paragraph (b) of sub-article (3) thereof, for the words "an express provision of this Act" there shall be substituted the words "a provision of this Act including any of the qualifying elements as stated in article 3";

(d) in paragraph (c) of sub-article (4) thereof, for the words "for such determination." there shall be substituted the words "for such determination and when the reasons relate to the absence or insufficiency of the public benefit element of the purposes of an organisation, to provide a reasoned analysis of his considerations in which case the organisation shall be granted a reasonable opportunity to make representations to the Commissioner on such matter prior to the final decision being taken by the Commissioner.";

(e) sub-article (5) thereof shall be substituted by the following:

"(5) The Commissioner shall seek to determine all applications by not later than three (3) months from the date of the application and failure to so determine and notify the applicant in accordance with sub-article (4) within such time shall be deemed to mean that enrolment has been accepted and the Commissioner shall process the enrolment without any further delay:

Provided that in the event that the applicant is a foundation which has not yet been registered with the Registrar of Legal Persons as required by law the duty of the Commissioner under this sub-article to proceed with enrolment shall be suspended until the date when the foundation is so registered:

Provided further in the case of an enrolment taking place in default of a determination as above stated, the Commissioner may request in writing the enrolled voluntary organisation to comply with legal requirements under this Act which may be applicable and which have not been complied with. The enrolled voluntary organisation shall be bound to fulfil such conditions within six (6) months so as to retain its enrolment:

Provided also that if the requirements are not fulfilled within the aforementioned time period, the Commissioner shall order the cancellation of the enrolment of the voluntary organisation by the issue of a Cancellation Order after giving the organisation thirty (30) days notice in writing:

Provided further that if, however, the Commissioner determines, after enrolment under this article, that the element of a public purpose or public benefit in terms of these provisions is absent in the relevant organisation, he may by notice in writing, order the suspension or the cancellation of the enrolment of the voluntary organisation by the issue of a Suspension Order or a Cancellation Order, as appears appropriate in the circumstances, solely on such basis.";

(f) in sub-article (6) thereof, immediately after the words "administrator of an organisation" there shall be added the words "or a trustee of a trust"; and

(g) sub-article (7) thereof shall be deleted.

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Amendment of  
article 14 of the  
principal Act.

**15.** Article 14 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be substituted by the following:

"(2) Certificates of Enrolment shall be considered to be public instruments and shall be surrendered to the Commissioner on his demand in writing. The Commissioner shall be bound to provide written reasons for any withdrawal of a Certificate of Enrolment when making such written demand."; and

(b) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) When a Certificate of Enrolment is surrendered, cancelled or otherwise withdrawn it shall not be lawful for any person to use the organisation's identification number, unless otherwise determined by the Commissioner for legitimate purposes or if he deems it necessary in the circumstances.".

Amendment of  
article 16 of the  
principal Act.

**16.** Article 16 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) A voluntary organisation may be established as a temporary organisation, by using the form in the Fourth Schedule, if it is an organisation formed with one specific purpose, including the raising of funds for a specific public purpose or to support another enrolled voluntary organisation or, subject to article 16A, funds are being raised to help a specific individual or individuals who may suffer from needs which would qualify as a social purpose.";

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof, immediately after the words "written constitutive instrument," there shall be added the words "by using the form in the Fourth Schedule,";

(ii) in paragraph (b) thereof, immediately after the words "except those listed in the constitutive

instrument" there shall be added the words "and ancillary and connected acts";

(c) sub-article (4) thereof shall be substituted by the following:

"(4) The Commissioner may, on the written request of the administrators, consent to an extension of the expiration date of a temporary organisation.";

(d) sub-article (5) thereof shall be amended as follows:

(i) the words "by no later than the expiry date" shall be deleted;

(ii) in paragraph (b) thereof, immediately after the words "pay all monies and other assets raised to" there shall be added the words "the intended purposes or";

(e) sub-articles (6) and (7) thereof shall be deleted;

(f) sub-article (8) thereof shall be re-numbered as sub-article (6) and shall be amended as follows:

(i) for the words "has been set up regularly" there shall be substituted the words "has been set up repeatedly"; and

(ii) for the words "refuse to accept the enrolment" there shall be substituted the words "refuse to accept the repeated enrolment".

**17.** Immediately after article 16 of the principal Act there shall be added the following new articles:

Addition of new articles to the principal Act.

"Public collections for the benefit of specific individuals. Cap. 279.

16A. (1) Notwithstanding the provisions of this Act or the Public Collections Act, it shall not be lawful for any person to make a public collection or call for financial support or otherwise to raise any funds from the public for the benefit of a specific individual, being himself or someone else, who may suffer from a particular social, physical or other need or disability which qualifies as a social purpose except through the establishment and enrolment of a temporary organisation for such purpose and under the conditions set out in this article.

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(2) When such an organisation is established, such organisation shall be considered to be for a public purpose notwithstanding that it may have just one beneficiary on condition that:

(a) any funds raised shall only be used for such individual's needs as declared in the appeal or literature promoting the collection; and

(b) any excess funds not used for such individual's benefit shall be disposed of in favour of another enrolled voluntary organisation with similar purposes unless the temporary organisation is itself converted into a voluntary organisation of extended duration to achieve the relevant social purpose in general for public benefit and not limited to one specific beneficiary.

Administrators, beneficiaries and rights of minors.

16B. (1) Voluntary Organisations shall have at least three administrators:

Provided that its beneficiaries or, in the case of minors, the person exercising parental authority or the minors being its beneficiaries cannot act as administrators.

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(2) The administrators of the voluntary organisation shall be bound by the provisions of this Act and the Second Schedule to the Civil Code.

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(3) Notwithstanding the provisions of the Civil Code governing minors, guardianship and tutorship, minors who have attained the age of sixteen (16) years shall be eligible to administer an organisation and shall be vested with any rights pertaining to it and, or resulting therefrom."

Amendment of article 18 of the principal Act.

**18.** In sub-article (4) of article 18 of the principal Act, for the words "prior to seeking" there shall be substituted the words "prior to issuing".

Amendment of article 19 of the principal Act.

**19.** Article 19 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Commissioner may order:

(a) the suspension of the activities of an enrolled voluntary organisation by the issue of a

Suspension Order, for such period as shall be specified in such Suspension Order which period shall not exceed thirty (30) days in any single Suspension Order; or

(b) the cancellation of the enrolment of a voluntary organisation by the issue of a Cancellation Order, which shall come into effect thirty (30) days from the date on which the sole administrator or at least one of the administrators was notified of such order, unless an appeal is filed within the appeal period provided for in article 25(1), in which case such order shall only have effect if so determined and from the date established by the Tribunal:

Provided that nothing in this article shall hinder the operation of a Suspension Order pending the decision of the Tribunal.";

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof for the words "for which it was established" there shall be substituted the words "stated in the statute";

(ii) paragraphs (d) to (g) thereof shall be re-numbered as paragraphs (e) to (h) respectively;

(iii) paragraphs (b), (c) and (d) thereof shall be substituted by the following:

"(b) is making public collections for purposes outside its objects;

(c) carries out unlawful activities or is repeatedly acting in contravention of the provisions of any law which are mandatory;

(d) is failing to comply with the provisions of its statute or of this Act or any regulations made thereunder or the administration thereof is being carried out to poor standards of corporate governance and continues to be so carried out for a period in excess of three months notwithstanding a written warning by the Commissioner;"

(iv) immediately after paragraph (h) thereof, as

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re-numbered, there shall be added the following new paragraph:

"(i) does not have a public purpose or its public purpose does not meet the sufficient requirements, whether this is determined by the Commissioner after the enrolment of the organisation in accordance with article 13(5) or otherwise; and in such a case the provisions of article 13(4) relating to the provision of reasons for such a decision and the opportunity to make representations shall apply *mutatis mutandis*.";

(v) immediately after paragraph (i) thereof there shall be added the following new provisos to the said sub-article (2):

"Provided that the Commissioner may not instruct the administrators on how to fulfil the purposes of the organisation:

Provided further that where the purpose of the organisation is the advancement of religion, the Commissioner shall rely on a statement issued by the relevant religious authority regarding whether the purposes of the organisation are being fulfilled.";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) In those cases where a Suspension Order is issued, the Commissioner shall indicate which of the activities of the organisation are to be suspended and shall meet or communicate with the administrators of the organisation, as soon as possible, to review the situation and to obtain information and undertakings from the administrators as necessary. The Commissioner may use such information when reviewing any orders issued by virtue of this article.";

(d) in sub-article (4) thereof, for the words "the Tribunal" there shall be substituted the words "the Commissioner"; and

(e) sub-articles (5), (6), (7), (8) and (9) thereof shall be substituted by the following:

"(5) The Commissioner shall have the power to extend, amend or revoke a Suspension Order, as he considers appropriate, on the application of the administrators of the voluntary organisation, or of his own motion.

(6) Until a Cancellation Order comes into effect in accordance with sub-article (1)(b), the affairs of the voluntary organisation shall continue to be administered by the administrators who shall only carry out acts of ordinary administration or, in the case where an appeal is pending, such acts as may be authorised by the Commissioner or the Tribunal.

(7) The Commissioner may determine whether any suspension of the activities of an organisation is to become permanent in relation to all or part of the activities of the organisation and may issue any relevant orders in relation to the future operations of the organisation.

(8) In the case of a Cancellation Order based on the grounds specified in sub-article (2)(a) to (e), the Commissioner shall have the power to order the organisation to desist from carrying out any further activities. In all other cases the Cancellation Order shall include all determinations under such terms and conditions as the Commissioner may consider appropriate in the circumstances:

Provided that such order shall not imply a restriction of the right of association of any persons involved in the organisation or of the right to continue to operate the organisation without the continuing benefits of enrolment under this Act.

(9) The Commissioner shall publish, in one local newspaper or by means of a notice in the official website of the Office of the Commissioner for Voluntary Organisations as the Commissioner may consider appropriate in the circumstances of the case, any Cancellation Orders which have become final with a brief statement as to the effects of the order and such statement shall be re-published regularly for as long as the Commissioner may consider necessary to ensure that the necessary public awareness has been achieved."

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Amendment of  
article 20 of the  
principal Act.

**20.** Sub-articles (3) and (4) of article 20 of the principal Act shall be substituted by the following:

"(3) Cancellation for the reasons mentioned in article 19(2)(b), (e) and (h) shall entitle the Commissioner to demand in writing the refund of, or fair compensation for, any benefits unjustly received by the voluntary organisation or any other person by virtue of its enrolment in terms of this Act, and that demand, when done by judicial letter, shall constitute an executive title against the organisation or any named administrator in favour of the Commissioner, in his own name or as trustee for the person entitled to the refund or fair compensation as aforesaid. Any person aggrieved by such order may appeal to the Tribunal within thirty (30) days of receipt thereof:

Provided that there shall lie a right of appeal by the person aggrieved to the Court of Appeal from any confirmation of liability by the Tribunal in terms of this sub-article.

(4) An order of the Commissioner against an organisation or any named administrator shall be enforceable as an executive title once all appeals have been exhausted or no appeals have been filed within the relevant time limits."

Amendment of  
article 21 of the  
principal Act.

**21.** Article 21 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Commissioner may, by the issue of a Suspension Order, order the suspension of activities of a voluntary organisation which is not enrolled if, in his reasonable opinion, any of the grounds mentioned in article 19(2)(b), (c), (d) and (e) apply and this for a period to be specified in the Suspension Order. Such Order shall be notified to all or any one of the administrators, or in their absence to such person who appears to the Commissioner to be carrying out such activities:

Provided that for the purposes of article 19(2)(b) the relevant activity shall be the making of a public collection without the necessary authorisations or, if authorised, when such collection goes beyond the terms of the authorisation:

Provided further that such suspension shall not

exceed thirty (30) days in any one Suspension Order and shall not be renewed more than two consecutive times.";

(b) in sub-article (2) thereof:

(i) for the words "served with such notice" there shall be substituted the words "served with such Suspension Order"; and

(ii) for the words "indicated in the notice" there shall be substituted the words "indicated in the Suspension Order";

(c) in sub-article (3) thereof, for the words "the notice" there shall be substituted the words "the Suspension Order";

(d) sub-article (4) thereof shall be substituted by the following:

"(4) The Commissioner may issue a Permanent Suspension Order for the permanent suspension of designated activities by such organisation, should he consider it necessary, under such conditions as he considers appropriate."; and

(e) in sub-article (5) thereof, immediately after the words "by a Suspension Order" there shall be added the words "or a Permanent Suspension Order".

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

Amendment of article 22 of the principal Act.

(a) paragraph (c) of sub-article (1) thereof shall be substituted by the following:

"(c) (i) take action to seize any funds raised or public collections made by such person or organisation and to return such funds to the donor thereof, or if it is not possible to locate donors within six (6) months from such seizure, pay such funds into the Voluntary Organisations Fund;

(ii) if considered necessary by the Commissioner due to lack of co-operation by persons involved or in the circumstances, he may request the First Hall, Civil Court to issue an order attaching such funds in the hands of third parties in general and to prohibit any person or organisation from transferring or from otherwise

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disposing of such funds;

(iii) such order shall become operative and binding on all third parties immediately as soon as it is made, and the Commissioner shall cause a notice thereof to be published without delay in the Gazette and two (2) daily newspapers;

(iv) the Court may for particular circumstances vary such order, and the provisions of the foregoing paragraphs shall apply to such order as so varied;

(v) every such order shall contain the name of the person, and the number of his identity card or passport or identification number and, if known, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence or in the case of an organisation, its name and registration number or other identification number, if any;

(vi) the order shall cease to be in force when the related civil or criminal proceedings are finally determined by the Court or when the Commissioner informs the Court that such order is no longer required and in such event the Commissioner shall cause a notice to that effect to be published without delay in the Gazette and two (2) daily newspapers.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) Prior to the taking of any of the actions referred to in sub-article (1)(a), (b) and (c)(i), the Commissioner shall notify in writing any person or organisation who appears to him *prima facie* to have breached the provisions of sub-article (1), of his findings and of the actions he intends to take and such person or organisation shall be entitled to:

(a) make submissions to the Commissioner within five days from the date of receipt of the written notice; and

(b) file an appeal to the Tribunal within five (5) days of notification of the decision of the Commissioner, which appeal shall suspend any

action taken by the Commissioner in terms of sub-article (1) until final determination by such Tribunal:

Provided that until submissions are made to the Commissioner and pending the Tribunal's decision, the recipient of such notice shall not transfer or dispose of such funds as he may control and, in case of default, the recipient shall be guilty of an offence."

**23.** Immediately after article 22 of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"Financial Intelligence Analysis Unit may demand access to register, information, etc.  
Cap. 373.

22A. (1) The Financial Intelligence Analysis Unit, in fulfilling the responsibilities assigned to it under the Prevention of Money Laundering Act and any regulations made thereunder, may demand access to the Register or to any information or documentation relating to the operation of an enrolled voluntary organisation and to the List of Non-Enrolled Voluntary Organisations.

(2) Upon receipt of any demand for access to the Register or the List as aforesaid or to any information or documentation in terms of sub-article (1), the Commissioner shall, as soon as is reasonably practicable but not later than five (5) working days from when the demand is first made and without levying any payment as provided by article 40, give the Financial Intelligence Analysis Unit such access or information or documentation, as the case may be.

Duties of administrators in relation to anti-money laundering and the funding of terrorism.

22B. (1) It shall be the duty of all the administrators of a voluntary organisation to implement appropriate procedures relating to the prevention of money laundering and the funding of terrorism so as to ensure that their organisation is not used for such purposes. Such duties shall include but shall not be limited to:

(a) confirming the identity, credentials and good-standing of the persons or organisations which the voluntary organisations support and obtaining evidence of the identity of the persons who control such organisations;

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(b) confirming the identity, credentials and good-standing of other voluntary organisations, in Malta or overseas, as well as other persons with whom the administrators associate in carrying out activities to fulfil the purposes of their organisation;

(c) identifying significant donors of the voluntary organisation, being individuals or other organisations, and, while respecting donor confidentiality, obtaining evidence of identity of the relevant individuals or the persons who control such other organisations;

(d) obtaining information on the source of funds which are donated to the organisation;

(e) verifying that the assets of the organisation are used lawfully and in a manner which is consistent with its purposes and objects.

(2) For the purpose of this article:

(a) the administrators shall carry out their duties on a best efforts basis;

(b) the administrators shall pay regard to the context and the potential risk to money laundering or the funding of terrorism; and

(c) "significant" shall mean any donations of fifteen thousand euro (€15,000) or more, whether carried out in a single operation or in several operations which appear to be linked.

(3) In the case of voluntary organisations, the administrators of which are not ordinarily resident in Malta, the duties mentioned in the previous sub-article shall be carried out by the local representative of the organisation.

(4) The administrators or the local representative of the voluntary organisation, as the case may be, shall:

(a) keep adequate records regarding the receipt and use of all funds by the voluntary organisation, which records shall be sufficiently detailed to verify that the funds have originated from lawful activity and have been used lawfully and in a manner consistent with the purpose and objects of the organisation;

(b) ensure that the voluntary organisation has adequate financial controls and financial management which are essential to protect it against money laundering and the funding of terrorism;

(c) ensure that there are appropriate internal procedures in place within the voluntary organisation to encourage staff and volunteers to report any vulnerability of the organisation to the risk of money laundering and the funding of terrorism to the administrators or the local representative so that remedial action may be taken by the organisation; and

(d) provide adequate training to staff and volunteers to ensure they are familiar with the voluntary organisation's reporting procedures and financial controls and know what actions to take if they suspect money laundering and the funding of terrorism.

Powers of the Commissioner in relation to anti-money laundering and funding of terrorism.

22C. (1) Should the Commissioner discover facts or obtain any information which raises a suspicion that funds received by a voluntary organisation could be proceeds of criminal activity or that the activities of a voluntary organisation could be related to money laundering or the funding of terrorism, he shall promptly disclose those facts or that information, supported by any relevant documentation that may be available to him, to the Financial Intelligence Analysis Unit.

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(2) The Commissioner may furthermore order the voluntary organisation to appoint, within a stated time period and at its own cost, an advocate, a notary public, an auditor or an authorised company service provider, being independent from such voluntary organisation, to review the records and activities of the voluntary organisation for a stated period and to report to the Commissioner on the compliance or otherwise to the provisions of this Act relating to the prevention of money laundering and the funding of terrorism.

Definitions.

22D. Any terms relating to the prevention of money laundering and the funding of terrorism and related terms shall have the meaning ascribed to them in the Prevention of Money Laundering Act or regulations made thereunder."

Cap. 373.

Amendment of article 25 of the principal Act.

**24.** Article 25 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, immediately after the words "Right of appeal" there shall be added the words "from a decision of the Commissioner.";

(b) sub-article (1) thereof shall be substituted by the following:

"(1) Any person or organisation aggrieved by any decision of the Commissioner may appeal from the decision within thirty (30) days of receipt thereof.";

(c) sub-article (2) thereof shall be substituted by the following:

Cap. 490. "(2) Appeals shall be made in writing and shall be lodged with the Tribunal in accordance with the provisions of the Administrative Justice Act or shall be made in the manner as may be prescribed by regulations made by the Minister by virtue of this Act.";

(d) sub-articles (3), (4) and (5) thereof shall be re-numbered as sub-articles (4), (5) and (6) respectively;

(e) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) All appeals shall be made by application to the Tribunal, which application shall be served on the Commissioner by the applicant."; and

(f) in sub-article (4) thereof, as re-numbered, the words "the Commissioner," shall be deleted.

**25.** Article 32 of the principal Act shall be substituted by the following:

Substitution of article 32 of the principal Act.

"Offences.

32. Any person who -

(a) in any manner, forges or alters a Certificate of Enrolment of a voluntary organisation;

(b) acts or purports to act on behalf of an enrolled voluntary organisation when he is not authorised to do so and raises funds or acquires assets or achieves any personal benefit from so doing;

(c) gives the impression that an existing organisation is a public benefit organisation, non-profit making or voluntary organisation when it is not;

(d) makes abusive use of a Certificate of Enrolment or of a voluntary organisation's identification number;

(e) gives the impression that an organisation has a voluntary organisation identification number when it has none or uses a non-existent identification number;

(f) acts or purports to act in the name of a public benefit, non-profit making or voluntary organisation which does not exist,

shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code."

Cap. 9.

**26.** Article 33 of the principal Act shall be amended as follows:

Amendment of article 33 of the principal Act.

(a) in sub-article (1) thereof, immediately after the words "an administrator of such organisation" there shall be added the words "but who does not acquire any assets or achieve any personal benefit from doing so"; and

(b) sub-article (2) thereof shall be substituted by the

A 1830

following:

"(2) Any person who makes or attempts to make a public collection when not enrolled as a voluntary organisation under this Act shall be guilty of an offence unless such person has obtained a licence or is exempt from the requirement of obtaining a licence in terms of the Public Collections Act."

Cap. 279.

Amendment of article 34 of the principal Act.

**27.** Article 34 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Commissioner may, in the cases referred to in article 19(2), investigate the affairs of any voluntary organisation at any time and may demand from any person, in writing, any relevant information relating to the operation of a voluntary organisation or related to any person involved in the activities of a voluntary organisation, if he receives what he considers to be a valid complaint in writing or if he has cause to believe that such information is necessary in order to establish whether a voluntary organisation is acting in compliance with the provisions of this Act or any regulations made thereunder:

Provided that where the complaint arises from a member of the public who seeks information required to be filed with the Commissioner under this Act which is for any reason absent from the Register, the complaint need not be in writing and the Commissioner shall be entitled to presume that the complaint is valid on establishing that the information is absent from the Register and he may then proceed to take action against the organisation and, or its administrators without the need for a formal investigation under this article.";

(b) in sub-article (4) thereof, immediately after the words "The Commissioner may set a period for compliance with" there shall be added the words "any directives he may give or for compliance with"; and

(c) immediately after sub-article (5) thereof, there shall

be added the following new sub-articles:

Cap. 377. "(6) A demand under this article may also be sent to a person who is bound by a duty of professional secrecy under the Professional Secrecy Act and for the purposes of article 6A of such Act the Commissioner shall be considered to be a public authority. Any information obtained by the Commissioner upon such a demand shall be used exclusively for the purposes of this article.

Cap. 586. (7) Notwithstanding the provisions of sub-article (1), the Commissioner has the right to request any other information required in terms of the provisions of this Act including personal information and any other data of identification of a person, provided that such data is not divulged to third parties without the written consent of the persons involved and provided this information is in conformity with the provisions of the Data Protection Act.

(8) For the purpose of sub-article (7) any personal information may include but shall not be limited to:

(a) names of donors and beneficiaries;

(b) names of sponsors;

(c) details of any other person or entity with whom the organisation would have made any kind of transaction including financial transactions;

(d) personal details of employees including payslips;

(e) beneficiaries of companies (including shareholders):

Provided that the requirements mentioned in paragraphs (a), (b) and (c) are necessary for the purpose of maximum transparency and accountability and may enable the Commissioner in identifying any irregularities or suspicions from annual returns and reports and eventually take any necessary action:

Provided further that the requirements under paragraphs (d) and (e) shall only be requested by the Commissioner in exceptional cases and shall not be made accessible to the public.

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(9) For the purpose of this article, the Commissioner shall also be vested with the power to request the banks or any financial authority or entity for any other information required in terms of the provisions of this Act and he shall have the right to obtain such information as may be required without the need of having to file an action before the Tribunal or the Civil Court."

Substitution of article 35 of the principal Act.

**28.** Article 35 of the principal Act shall be substituted by the following:

"The Malta Council for the Voluntary Sector.

35. (1) There shall be a body, to be known as the Malta Council for the Voluntary Sector, which shall have a distinct legal personality. The role of the Council shall be to promote the voluntary sector, provide a forum for the voluntary sector and a platform from which to develop co-operation between voluntary organisations and the Government and co-operation between voluntary organisations amongst themselves. The Malta Council for the Voluntary Sector shall also assist and advise the Commissioner for the Voluntary Sector.

(2) The Council shall be composed of a Chairperson and another ten members, who shall be appointed as follows:

(a) one (1) member shall be appointed by the Minister to represent the Government;

(b) four (4) members shall be appointed by the Minister in accordance with sub-article (3) from among the voluntary sector in order to represent voluntary organisations; and

(c) six (6) members shall be elected directly by the voluntary sector.

(3) The four (4) members of the Council who are appointed by the Minister to represent voluntary organisations shall be appointed after the receipt of nominations following a public call by the Minister for nominations in the following manner:

(a) one (1) member to represent founders of and donors to voluntary organisations;

(b) one (1) member to represent members of voluntary organisations and volunteers;

(c) one (1) member to represent administrators of voluntary organisations; and

(d) one (1) member to represent foreign and international organisations:

Provided that where there is more than one nomination representing a particular sector, the Minister shall appoint such members from among the nominations received:

Provided further that where no nominations are received, the Minister shall appoint such members at his discretion:

Provided further that prior to appointing the members of the Council, the Minister shall consult with the Social Affairs Committee of the House of Representatives or any other committee substituting the same immediately upon receiving the nominations.

(4) (a) The six (6) members of the Council who are elected directly by the voluntary organisations enrolled with the Commissioner for Voluntary Organisations shall be representative of the following sectoral groups:

(i) one (1) member from the Social and Humanitarian Sector;

(ii) one (1) member from the Health and Special Needs Sector;

(iii) one (1) member from the Education, Youth and Sport Sector;

(iv) one (1) member from the Environmental Sector and the Animal Welfare Sector;

(v) one (1) member from the Arts and Culture Sector; and

(vi) one (1) member from the Non-Governmental Organisations Sector in Gozo.

(b) All members of the Council shall be remunerated for their services in relation with their duties and functions carried out in terms of article 36(2) and (3):

A 1834

Provided that such remuneration shall be established at eight hundred euro (€800) per annum.

(5) The Chairperson of the Council and the Deputy Chairperson shall be appointed by the Council from among the members of the Council. The Council shall be assisted by a Secretary.

(6) Where the Chairperson is absent from Malta or is otherwise temporarily unable to perform the functions of his office, the Deputy Chairperson shall act as Chairperson and shall exercise all the powers and functions of the Chairperson.

(7) A person shall not be qualified to be appointed or to hold office as a member of the Council if he:

(a) is a Judge, a Magistrate, a Member of the House of Representatives or a Local Council, or a candidate for election to the House of Representatives or a Local Council; or

(b) is legally incapacitated or interdicted; or

(c) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(d) has been convicted of a crime affecting public trust or theft or fraud or of knowingly receiving property obtained by theft or fraud; or

(e) is subject to disqualification under article 320 of the Companies Act or is involved or has interest in any enterprise or activity which is likely to affect the proper discharge of his function as a member of the Council.

Cap. 386.

(8) Subject to the provisions of this article, the office of a member of the Council shall become vacant:

(a) at the expiration of his term of office;

(b) if a member of the Council is absent for more than half of the meetings of the same Council in a calendar year or three consecutive meetings without an excuse; or

(c) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment as such.

(9) A member of the Council may be relieved from office by the Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or body, or to any other cause, or on the ground of misbehaviour.

(10) A member of the Council may resign from his office by means of a letter to the Minister. If a member resigns or is relieved from office by the Minister or if the office of a member of the Council is otherwise vacant, the vacancy shall be filled reflecting the person's appointment in terms of sub-article (3), as the case may be, and any person so appointed shall continue in office for the remaining period of the term of office of the person whom he is substituting and shall be eligible for re-appointment.

(11) The Council shall meet at least once every three (3) months and shall be convened by the Chairperson:

Provided that the Chairperson shall convene a meeting of the Council when requested to do so by at least three members thereof.

(12) The Council shall, subject to the provisions of this Act, regulate its own procedures.

(13) The Council shall appoint a sub-committee composed of three (3) members of the Council. The sub-committee shall have a quorum of two (2) members and the written response of the two (2) members agreeing or disagreeing to a recommended course of action shall suffice as an expression of the views of the committee."

**29.** Article 36 of the principal Act shall be substituted by the following:

Substitution of article 36 of the principal Act.

"Powers of the Council.

36. (1) The powers of the Council are:  
 (a) to carry out such functions and have such powers as may be prescribed, from time to time, by the Minister responsible for the voluntary sector by means of regulations made by virtue of this Act;

A 1836

(b) to provide a consultative forum that can effectively address issues related to the voluntary sector;

(c) to assist the Commissioner for Voluntary Organisations;

(d) to provide a platform from which to develop co-operation between voluntary organisations and the Government;

(e) to stimulate co-operation and networking between voluntary organisations;

(f) to administer the Voluntary Organisations Fund in terms of article 37(3);

(g) to promote and encourage a culture of volunteering and participation in volunteering activities among people, especially children and youths, as an aspect of personal and social development;

(h) to foster co-operation in the voluntary sector with local and international bodies, entities or other persons for the encouragement and promotion of the development of volunteering programmes, initiatives and activities; and

(i) to encourage, in furtherance of the principle of subsidiarity, non-governmental bodies and private entities or persons and local councils to contribute to the promotion of volunteering in Malta.

(2) The functions of the Council are:

(a) to provide on-going guidance and advice in relation to the implementation of the Council's strategy;

(b) to support, develop and promote the interests and work of all voluntary organisations in Malta and Gozo;

(c) to meet the ever-increasing needs of the voluntary sector;

(d) to make recommendations to the Minister on a national volunteering policy, or otherwise, in relation to the development of volunteering;

(e) to develop and implement policies and strategies for the furtherance of its objectives and functions, to initiate, encourage and facilitate research and development in relation to volunteering;

(f) to promote and ensure the education and preparation of volunteer administrators and officials with the required vocational and professional competencies, and to promote, organise or assist by whatsoever means, educational schemes for volunteers;

(g) to promote and ensure the establishment, development and maintenance and proper use of the Voluntary Organisation Centre, to be of service and a resource to voluntary organisations;

(h) when so directed by the Minister, to represent the Government of Malta internationally or regionally in matters related to the voluntary sector as may be designated by the Minister;

(i) to support voluntary organisations in the acquisition of both local and EU funds;

(j) to collect and distribute information, and provide advice, on matters related to the activities of the Council;

(k) to keep a register of *bona fide* voluntary organisations, entities and other persons who are considered to be voluntary organisations;

(l) to raise money and to administer and expend money appropriated by the House of Representatives or otherwise received from other sources;

(m) to consult and co-operate with local councils and other persons on matters related to the voluntary sector;

(n) to draw up, develop and amend, from time to time, a Code of Ethics to be followed by volunteers and voluntary organisations; and

A 1838

(o) to carry out such functions and have such powers as may be prescribed, from time to time, by the Minister responsible for Social Policy by means of regulations made by virtue of this Act.

(3) Subject to the provisions of this Act, the Council has the power to do all things necessary or convenient to be done in connection with the performance of its functions and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

(4) The legal and judicial representation of the Council shall be vested in the Chairperson and the Deputy Chairperson in the absence of the former, or in any other person under such terms and conditions and with such powers as the Council may from time to time by resolution determine.

(5) Any document purporting to be an instrument made or issued by the Council and signed by the Chairperson shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Council.

(6) The Council may engage or employ persons to perform services for the Council and may enter into any agreement to exercise any of its functions through the agency or services of any person.

(7) The Council shall engage a Chief Executive Officer in terms of the Public Administration Act, and:

Cap. 497.

(a) subject to the other provisions of this Act and to any directions of the Council, the executive conduct of the Council, its administration and organisation and the administrative control of its officers and staff, shall be the responsibility of the Chief Executive Officer, who shall also have such other powers as may from time to time be delegated to him by the Council;

(b) the Chief Executive Officer shall also be responsible for the implementation of the objectives of the Council and the exercise of its functions and without prejudice to the generality of the foregoing he shall develop the necessary strategies, policies and regulations for the implementation of the objectives of the Council, advise the Council on any matter it may refer to him or on any matter which he considers necessary or expedient, and perform such other duties as the Council may assign to him from time to time;

(c) the Chief Executive Officer shall have the right to attend all the meetings of the Council. The Chief Executive Officer shall not, however, have a vote or be counted for the purpose of constituting a quorum; and

(d) the Chief Executive Officer shall perform all his duties only under the direction of the Council.

(8) The Council may:

(a) obtain commercial sponsorship for the Council and participate in marketing arrangements involving the endorsement by the Council of products and services associated with volunteering;

(b) arrange for the manufacture and distribution (whether for profit or otherwise) of any article or thing bearing a mark, symbol or writing that is associated with the Council; and

(c) provide (whether for profit or otherwise) goods and services to persons using, or otherwise attending at, facilities of the Council.

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(9) The Council may charge or impose such reasonable fees in respect of:

(a) access to, or use of, any of its resources or facilities; and

(b) the provision by it of programs, services, information and advice.

(10) The Council shall meet as often as may be necessary or expedient. The meetings of the Council shall be convened by the Chairperson either of his own initiative or at the request of at least four (4) of the other members.

(11) The Council shall not act unless a quorum consisting of not less than fifty percent plus one (50% +1) of the appointed members are present.

(12) The meetings of the Council shall be chaired by the Chairperson or, in his absence, by the Deputy Chairperson.

(13) Decisions of the Council shall be taken by a simple majority of the votes of the members present and voting. In the case of equality of votes, the Chairperson or in his absence the Deputy Chairperson shall have and exercise a second or casting vote.

(14) Without prejudice to the other provisions of this Act, no decision shall be valid which is not supported by at least four (4) members of the Council.

(15) Any vacancy among the members of the Council, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Council.

(16) The Minister may, after consultation with the Council, from time to time give to the Council such directives in writing as he may deem appropriate and not being inconsistent with the provisions of this Act, and the Council shall, as soon as may be, comply with and give effect to all such directives and shall conduct its affairs accordingly.

(17) The Council shall afford to the Minister all necessary facilities for obtaining information with respect to the property and activities of the Council and furnish him with returns, accounts and other information with respect thereto, and afford him the necessary facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

(18) For the purposes of this Act the Council shall submit to the Minister for his approval, a two-year strategic plan which establishes clear objectives and targets to attain its principal aims and objectives during the said period in fulfilment of its functions under this Act.

(19) The aforementioned strategic plan shall be presented to the Minister for his approval not less than two (2) months before the commencement of the period to which the strategic plan relates, and shall come into force on the day on which it is approved by the Minister or the day of commencement of the period to which it relates, whichever is the later:

Provided that the first strategic plan shall be prepared by the Council and submitted to the Minister for approval within six (6) weeks from the date of appointment of the Council.

(20) The Council shall also from time to time during the period in respect of which a strategic plan is in force, consider and propose to the Minister any necessary variations to the said plan and, following approval by the Minister, vary the said plan.

(21) The Council shall at the beginning of each year in respect of which a strategic plan is in force, prepare an operational plan that articulates the programmes, initiatives and activities that it will undertake in fulfilment of the objectives defined in the said strategic plan for the said year.

A 1842

(22) (a) Subject to the provisions of the Constitution and of any other enactment applicable thereto, including this Act, the Council, acting with the concurrence of the Minister, may appoint and employ such officials and other employees with such remuneration and upon such terms and conditions as the Council may, from time to time, determine.

(b) The Chief Executive Officer shall be appointed to act as the administrative official of the Council and manage all the related operation.

(c) The officer detailed for such duty with the Council shall at all times be under the administrative authority and control of the Council but he shall for other intents and purposes remain and be considered as a public officer.

(d) Without prejudice to the generality of paragraphs (a) to (c), the officer detailed for duty as aforesaid, shall not, during the time in respect of which he is so detailed:

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Council.

(e) Without prejudice to the generality of paragraphs (a) to (d), the officer detailed for duty as aforesaid, shall, during the period for which he is so engaged:

Cap. 93.  
Cap. 58.

(i) be entitled to have his service with the Council considered as service with the Government, for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows' and Orphans' Pensions Act and to any other right or privilege to which he would be entitled; and, or

(ii) be accountable for any liability:

Provided that, for the purpose of such pension, gratuity or benefit, regard shall be had solely to the substantive grade with the Government of the officer so engaged."

**30.** Article 37 of the principal Act shall be amended as follows:

Amendment of article 37 of the principal Act.

(a) sub-article (3) thereof shall be substituted by the following:

"(3) The objects of the Voluntary Organisations Fund shall be to assist and support enrolled voluntary organisations through education, management and support and financial grants for the said purposes."; and

(b) sub-article (8) thereof shall be deleted.

**31.** Article 38 of the principal Act shall be substituted by the following:

Substitution of article 38 of the principal Act.

"Voluntary organisations not to be established for trade.

38. (1) Voluntary organisations shall not be established principally for trading purposes nor shall they regularly engage in acts of trade, but to the extent that they are established for public purposes which are achieved through the carrying out of such acts of trade provided in sub-article (2), voluntary organisations may regularly carry out such acts of trade which are related and ancillary to the principal purpose and objectives of the organisations in order to achieve their public purposes:

A 1844

Provided that trading activities which do not fall within the exemptions of sub-article (2) but which are only marginal to the income of the voluntary organisation may also be carried out by the voluntary organisation itself, subject to the requirements established under sub-article (6).

(2) For the purposes of this article, the following activities carried out by a voluntary organisation and, or the following income generated directly in the achievement of the public purposes of such organisation, shall be presumed to be permitted under sub-article (1):

(a) the operations and activities carried out by schools, training centres and other educational institutes and the charging of fees for educational services;

(b) income generated from the sale of goods and, or the provision of services, by a voluntary organisation when such goods and, or services are themselves donated to the voluntary organisation;

(c) income generated from the sale of goods and, or the provision of services only to members, supporters, sponsors or contributors of the voluntary organisation or the group of organisations of which it forms part;

(d) income generated from the sale of goods or the provision of services on sites administered by the voluntary organisation and offered to *bona fide* visitors by the organisation itself through volunteers or employees:

Provided that this shall not apply to shops, bars, restaurants or other outlets on such sites, or the sites themselves when these operate under lease agreements, management agreements, licences or otherwise by third parties for profit;

(e) the operations and activities of art galleries, exhibitions, museums and other organisations established for the advancement of culture, arts and national heritage and the charging of fees for the admission at theatrical, musical activities or other such activities;

(f) participation fees in competitions;

(g) payment for residential accommodation, care and other philanthropic support provided on a cost or subsidised basis; and

(h) such other activities intended to raise funds for the achievement of the principal purpose and objectives of the organisation resulting in:

(i) income from the grant on lease or a management contract of land or buildings or other commercial property to a third party, where no services are provided by the voluntary organisation;

(ii) income from the investment of the assets of a voluntary organisation, including the holding of shares or other interests in another legal organisation;

(iii) income which may be made payable to voluntary organisations which own, administer or otherwise operate an innovative technology arrangement; and

(iv) such other activities or classes of income as may be prescribed by regulations made by the Minister on the recommendation of the Council.

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(3) In cases other than those contemplated in sub-articles (1) and (2), unless acts of trade and trading activities are only marginal to the income of the voluntary organisation, such organisation shall establish a limited liability company to carry out acts of trade and the administrators of the voluntary organisation shall ensure that such establishment shall not burden the human and financial resources of such organisation beyond its means.

(4) The limited liability company established in terms of sub-article (3):

(a) shall in all cases be permitted to carry out those acts of trade which are related or ancillary to the principal purpose and objectives of the voluntary organisation, or if expressly permitted in the statute of such voluntary organisation, subject to the discretion and satisfaction of the Commissioner;

(b) shall be non-profit making in accordance with this Act;

(c) shall have directors who do not receive any remuneration for their services for carrying out such functions except as permitted by this Act and, or the statute of the voluntary organisation; and

(d) shall not permit the evasion of the limitations imposed on voluntary organisation in the First Schedule by any person in the voluntary organisation or the limited liability company and the same limitations shall also apply in this case to the limited liability company in the same way.

(5) For the purpose of this article "marginal" means not more than ten per cent (10%) of the income generated by the voluntary organisation in any one year and the administrators shall have the duty to determine whether any activity, being an act of trade, is marginal or not, for the purpose of this article and, when such issue arises, shall submit a declaration in this regard to the Commissioner who may:

(a) issue directives at any time in writing on such matters if he deems that the declaration submitted by the administrators does not satisfy the criteria established in terms of this article and may impose conditions in relation to such activities to ensure compliance with the principles established under this article; and

(b) issue a ruling on the matter giving reasons for decision, and any administrator or any interested party may appeal from such decision before the Administrative Tribunal.

(6) Voluntary organisations shall not be exempt from the obligation to obtain any authorisations or licences which may be required to carry out any particular activity referred to in this article in terms of any other law.

(7) The Commissioner may issue guidelines on the duties and responsibilities of administrators of voluntary organisations which carry out acts of trade as permitted by this article or with regard to all aspects regarding limited liability companies which voluntary organisations establish in accordance with this article.

(8) In cases falling under sub-article (4), it shall be presumed that:

(a) a limited liability company notwithstanding that it has a separate and distinct legal personality, is only an instrument to keep the trading activities distinct from the activities of the voluntary organisation promoting its social and public purpose; and

(b) the existence of the limited liability company shall not operate in any way so as to prejudice third parties in good faith or the voluntary organisation itself, to reduce the transparency of the voluntary organisation or to create any private benefit to third parties which is not permitted within the voluntary organisation itself.

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(9) Any wholly owned limited liability company established in accordance with this article, which may be carrying on trading activities from a premises or site held under any title by an enrolled voluntary organisation shall have absolutely no rights in relation to any concessions leases or other grants of property to the said voluntary organisation, including Government, which shall be deemed to permit use of such property by such wholly owned limited liability company:

Provided that any documentary arrangements set in place for governance purposes between the voluntary organisation and the wholly owned limited liability company shall be disregarded with regard to any grantor organisation and when any grant is modified or terminated for any reason by or with regard to the voluntary organisation, the limited liability company shall automatically be affected thereby.

(10) Whenever a voluntary organisation establishes a limited liability company in terms of sub-article (3) of this article, the administrators shall notify the Commissioner in the prescribed form, which form shall be included in the Register and shall be made accessible to the public. The Commissioner shall notify the Commissioner for Inland Revenue of the name and registration number of such limited liability company upon being notified. The same rules shall apply *mutatis mutandis* to the winding up of any such limited liability company."

Deletion of article 39 of the principal Act.

**32.** Article 39 of the principal Act shall be deleted.

Re-numbering of articles of the principal Act.

**33.** Articles 40, 41 and 42 of the principal Act shall be re-numbered as articles 39, 40 and 41 respectively.

Substitution of article 39 of the principal Act, as re-numbered.

**34.** Article 39 of the principal Act, as re-numbered, shall be substituted by the following new article:

"Guidelines issued by the Commissioner.

39. (1) The Commissioner may, from time to time and after consultation with the Council, issue guidelines -

(a) in relation to voluntary organisations and their activities;

(b) in relation to the voluntary sector as a whole,  
and such guidelines shall be binding on voluntary organisations, administrators and volunteers, as the case may be.

(2) The Commissioner may, with the consent of the Minister, issue guidelines on the objective classification of the categories of "social purpose" or "public benefit" and related concepts which may be used in the interpretation of this Act for any of its purposes.

(3) Such guidelines shall be based on internationally recognised classification methodologies and shall be implemented in the administration of the provisions of this Act and any related laws:

Provided that such guidelines shall not have retrospective effect."

**35.** Article 41 of the principal Act, as re-numbered, shall be amended as follows:

Amendment of article 41 of the principal Act as re-numbered.

(a) in sub-article (1) thereof:

(i) in paragraph (h) thereof, immediately after the words "of voluntary organisations or the voluntary sector" there shall be added the words "and to issue guidelines thereon";

(ii) paragraph (p) thereof shall be re-numbered as paragraph (s);

(iii) immediately after paragraph (o) thereof, there shall be added the following new paragraphs:

"(p) in relation to freezing orders and related matters to support the powers of the Commissioner in case of fraud;

(q) in relation to the enrolment of organisations, including, after consultation with the Council, to change the thresholds under article 12B(1)(e), (f) and (g) relating to mandatory enrolment and to amend the categories or classes of activities in the definition of "social purpose" in this Act;

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(r) to regulate the prevention of money laundering and the funding of terrorism in voluntary organisations;"; and

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

"(3) The Minister may, by order published in the Gazette and in consultation with the Commissioner and the Council, revise or amend any of the schedules annexed to this Act."

Addition of new schedules to the principal Act.

**36.** Immediately after article 41 of the principal Act, as re-numbered, there shall be added the following new Schedules:

**"FIRST SCHEDULE  
(Articles 2 and 38)**

Rules, Principles and Guidelines on the Non-Profit Making  
requisite as used in this Act

The principle purpose of this Schedule is to ensure that any material private interest in any voluntary organisation is avoided in view of the public support and trust vested in such organisations on the basis of their non-profit making qualities.

*I. Applicability*

1. The following paragraphs shall apply specifically to the interpretation and application of the provisions of this Act and in particular to enrolled voluntary organisations for as long as they remain enrolled and shall be applied as rules in order to ensure a high level of observance in both form and substance by all enrolled voluntary organisations.

2. They shall apply as principles in relation to non-enrolled voluntary organisations.

3. They shall also apply to the interpretation of the provisions of other laws, where such other laws adopt the concept of non-profit making for the purposes and in terms of these provisions, and may apply to non-profit organisations, which, for any reason, do not qualify as voluntary organisations under this Act, political organisations, or religious organisations:

Provided that, in such cases, these paragraphs shall only operate as non-binding guidelines.

## *II. Definition*

4. An organisation shall be considered to be non-profit making when:

(a) the statute of the organisation contains an express provision which excludes the purpose to make profit; and

(b) the purposes of the organisation do not include the promotion of private interests; and

(c) the purposes of the organisation include any of the purposes established and permitted under:

(i) article 32(8) and (10) of the Second Schedule to the Civil Code;

(ii) article 38 of this Act governing permissible trading activities, where such activities are carried out to obtain the principal purpose and objectives of the organisation;

(iii) this Schedule; and

(d) except as permitted under this Schedule or the Second Schedule to the Civil Code, no part of the income, capital or property is available directly or indirectly to:

(i) any administrator; or

(ii) any promoter, founder, member, donor or beneficiary; or

(iii) any other private interest:

Provided that such income, capital, property, or part thereof is administered solely in order to obtain the purpose and objectives for which the organisation was established.

5. If an administrator, promoter, founder, member, donor or beneficiary is -

(a) another enrolled voluntary organisation; or

(b) a pious foundation, an ecclesiastical entity or a person representing the same; or

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(c) the Government or an organisation controlled by the Government or a person representing the same; or

(d) the Voluntary Organisations Fund; or

(e) a political party as defined in the Financing of Political Parties Act (Cap. 544),

the limitation in paragraph 4(d) shall not apply provided the availability of such income, capital or property is subject to conditions, which are consistent with the general purposes and objectives of the grantor organisation.

6. (1) An endowment of property of a voluntary organisation with reversion rights or assets in favour of the donor, may only be accepted by a voluntary organisation if the donor agrees to compensate the voluntary organisation for any costs incurred by the organisation, except for costs attributed to ordinary wear and tear, for any enhancements made to the property and which have not accrued in full to the organisation during the period of enjoyment. Such compensation shall be made by the donor in accordance with the principles agreed to between the parties.

(2) In the case of a reversion of assets endowed to a voluntary organisation under a temporary title, any administrator, partner, promoter, founder, member, donor or any member of his family may not realise a gain. Such prohibition shall also apply to shares or other interests of organisations only where the increase in value of such shares or interests, as reverting, is directly attributable to contributions or expenditures made by the voluntary organisation:

Provided that the above prohibition shall not apply if enjoyment rights of the voluntary organisation arise under a temporary title, which is onerous, including a lease, and is reasonably in accordance with standard market levels or market conditions established in terms of these provisions.

(3) If the reversion of assets, not being shares or other interests, in favour of the donor has increased in value due to a direct expenditure by the voluntary organisation, the donor shall be obliged to refund the voluntary organisation the costs incurred by the voluntary organisation, regard being had to depreciation for ordinary wear and tear, where applicable:

Provided that this shall not apply if the donor is a public benefit organisation as defined in the Second Schedule to the Civil Code.

(4) When such reversion takes place, it shall be notified to the Commissioner. Such notification shall be accompanied by an auditor's report on costs incurred, wear and tear and gains received on reversion, irrespective of the value involved, and the Commissioner shall have all powers to order such refunds as deemed necessary, in order to ensure that no abuse takes place owing to or resulting from such transactions. Such order shall be subject to appeal under article 25 of the Act.

7. An organisation shall continue to be deemed as non-profit making notwithstanding that:

(a) it obtains a pecuniary gain from its activities when such gain is not received or accredited to its members, but is intended exclusively for the achievement of the purposes and objectives of the organisation as provided in its statute;

(b) it buys or sells or is otherwise involved in trading activities of goods or services where such activities are carried out exclusively to fulfil its principal purposes and objectives in accordance with article 38 of the Act;

(c) it is established for the general entertainment, hobbies, education or other similar benefits to its members; or

(d) it is established for the promotion of the social role, ethics, education and professional values exercised by its members, provided it does not promote the private interests of its members or private individuals.

### *III. Permissible Private Benefit*

8. It shall be permissible for a voluntary organisation to have within its objects or powers the grant of limited or ancillary private benefit to identifiable persons or classes of persons provided that the object or power comply with the following conditions:

(a) the purposes for which it has been established, may, immediately or following the lapse of time or the fulfilment of a condition, be achieved notwithstanding the private benefit;

(b) the funds available for use under such object or power are not raised through a public collection, a grant or from the general public but are raised only from the founder, or organisations controlled by him, as a condition for the initial or any additional endowment; and

(c) the Commissioner approves the particular private

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benefit in writing and under such conditions, as he considers appropriate to safeguard the primacy and identity of the purpose of the organisation, which is not private:

Provided that until such time as the Commissioner approves such private benefit as aforesaid, the organisation shall not be obliged to enrol nor shall it be eligible for enrolment, or where already enrolled, to maintain its enrolment but in such cases, the organisation shall be prohibited from carrying out any of the activities in article 12B(1)(a) to (d) of this Act.

9. The reservation by the founder of any right over the assets of the voluntary organisation shall not prejudice the non-profit making status of the organisation.

#### *IV. Meaning of Private Benefit*

10. The term "private benefit" means a benefit other than that which qualifies as a social or public benefit, indirectly attributed to an administrator of the organisation, and if the statute so determines, shall also include a donor, founder or promoter, a member of the organisation, a beneficiary or a volunteer of money, goods, services or property:

Provided that such private benefit is limited and is only ancillary or incidental to the principal purpose and objectives of the organisation:

Provided further that such benefit may be created for a lawful purpose within the meaning of these provisions.

#### *V. Principles on Remuneration*

##### *A. Donors, Founders, Promoters, Members, Volunteers*

11. Subject to the provisions of paragraph 8 of this Schedule, any donor, founder, promoter, member, or volunteer may receive remuneration from the organisation when he is engaged or is an employee of the organisation under a written contract or when he is the provider of any goods or services to the organisation:

Provided that such remuneration:

(a) is strictly attributable to those functions being the subject of the written contract or to the governing provisions relating to goods or services rendered to the organisation;

(b) is not substantial and is in accordance with market

levels and market conditions established in terms of these provisions, and in any case, is of material irrelevance when compared to the overall income and expenditure of the organisation;

(c) is not as such as to prejudice the achievement of the purposes and objectives of the organisation or its sustainability;

(d) is in any case, subject to the annual accounts and annual returns submitted by the organisation, in terms of the Voluntary Organisations (Annual Accounts and Annual Returns) Regulations (S.L. 492.01); and

(e) is recorded in sufficient detail in the minutes of the administrators during the general meeting and in the case of an investigation subject to any complaint on such matters, such minutes shall be submitted to the Commissioner, upon his request in writing, or to the Court, as the case may be.

#### B. Administrators

12. (1) Subject to the provisions of paragraph 8 of this Schedule and any express prohibition in the statute of a voluntary organisation, an administrator may solely receive remuneration from the organisation when he is engaged or is an employee of the organisation under a written contract which, in any case, does not prejudice the achievement of the principal and sustainable purpose and objectives of the organisation.

(2) An organisation may reimburse the administrator of any costs incurred by him, if directly related to his work as administrator of the organisation. The same rules shall apply to any fundraising officers or employees.

13. Any voluntary organisation shall not:

(a) grant an administrator remuneration which is higher than standard market levels or market conditions established in terms of these provisions, unless the Commissioner may deem necessary in the circumstance or is otherwise satisfied that the administrator has specific skills which meet the needs of the organisation, in which case, remuneration may exceed such market conditions or market levels as provided in guidelines issued by the Commissioner, according to his discretion, or as otherwise approved by him;

(b) remunerate any person, whether an employee or

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otherwise, with a salary, wage or a fee, which is higher than market levels, unless the Commissioner is satisfied that in that particular case specific conditions apply;

(c) pay interest or other remuneration on loans, credit or financial instruments capable of economic evaluation raised or acquired from organisations which are not licensed, or financial institutions, other than in accordance with market conditions; or

(d) pay a price for any property acquired which is higher than the established market price for such property, notwithstanding any special discounts, sales or other special arrangements.

#### *VI. Expenses*

14. Any administrator, donor, promoter, founder, member, volunteer, or any other person supporting the purposes and objectives of the organisation may receive a reasonable refund for expenses incurred by him on behalf of the organisation.

#### *VII. Principles regarding shares and other interests*

15. When shares in a company are endowed to a voluntary organisation to support the purposes, income or capital of the voluntary organisation, the administrators may accept and hold the same provided that such shareholding is in the interest of the organisation. Such shareholding shall also be declared and recorded in the annual returns and balance sheet in terms of the Voluntary Organisations (Annual Accounts and Annual Returns) Regulations (S.L. 492.01) and shall be accompanied by an annual report, both of which shall be submitted to the Commissioner.

16. (1) The acceptance and enjoyment by a voluntary organisation of an endowment of shares or other interests or of other property held by another organisation which -

(a) does not have the same purposes or uses which are consistent with the recipient organisation's purposes; or

(b) is profit-making,

shall not affect the purpose of the recipient voluntary organisation nor its non-profit making status for the purposes of this Act:

Provided that such endowment shall not result in any undue risk to the other assets of the voluntary organisation nor shall it hinder the voluntary organisation in the achievement of its purposes

and objectives:

Provided further that the following criteria and conditions shall apply:

(a) the grantor organisation of which shares, interests or the value of the property is being endowed to the recipient voluntary organisation shall strictly adhere to the principles applicable to market levels and market conditions as established in terms of these provisions; and

(b) the requirements established under item 15 of this Schedule shall apply.

(2) Without prejudice to any other law governing tax exemptions, with particular reference to article 12 of the Income Tax Act the conditional requirements mentioned under paragraph 15 and sub-paragraph (1) of this paragraph shall, in particular, apply in order to: Cap. 123

(a) eliminate any form of tax abuse which may potentially arise in the setting up of organisations and to strictly adhere to the non-profit making conditions;

(b) ensure that the set up of voluntary organisations and their activities which benefit from tax exemptions shall be kept separate and distinct from any trading or commercial activities set up by commercial entities or their members or related parties;

(c) ensure that any income, shares, capital, interests or value of property held by commercial entities is not accounted for as exempt income;

(d) ensure that any expenses which are related to exempt activities shall not be accounted for as expenses of taxable entities to be set off against taxable income in violation of tax exemption regulations; and

(e) ensure that tax exemptions do not result in a distortion as to the rules and conditions governing fair competition.

17. When the voluntary organisation is not the sole shareholder of a limited liability company, no part of the income, capital, interests or value of property of such limited liability company shall be available directly or indirectly to persons involved in the voluntary organisation:

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Provided that the provisions of this Part VII shall not apply to private foundations carrying out activities listed under article 31B of the Second Schedule to the Civil Code.

18. The Commissioner may issue guidelines on grantor companies or other organisations of which shares, capital, interests or value of property are endowed to recipient voluntary organisations to ensure compliance with the principles of this Act and any regulations issued hereunder or under the Second Schedule to the Civil Code.

19. When a voluntary organisation has assets, including shares or other interests, in another legal organisation, such assets may not be sold or otherwise transferred to any administrator, partner, promoter, founder, member, donor or any member of his family, of the voluntary organisation.

#### *VIII. Extension of Fiduciary Obligations*

20. Without in any way impinging on the fiduciary obligations of any administrators or officers of any organisation, any person who has any role in an organisation for which remuneration is paid in any form and, or has his expenses refunded, or has any control or powers of disposition over the assets of a voluntary organisation, even if not an officer, shall be considered to be subject to fiduciary obligations.

#### *IX. Powers of the Commissioner*

21. The Commissioner may request any information from any person in order to enable him to establish whether an organisation qualifies as non-profit making in terms of this Schedule and whether the principles, rules or guidelines of this Schedule are being observed.

#### *X. Rulings*

22. Any promoter, founder, member, administrator or donor or other person referred to in this Schedule may apply to the Commissioner in writing for a ruling on any matter related to the qualification or otherwise of the organisation as non-profit making in accordance with this Schedule with reference to himself or any other person involved in an organisation.

The decision of the Commissioner shall be subject to an appeal as stated in article 25 of the Act.

#### *XI. Breaches*

23. Any administrator who fails to observe the provisions of this Schedule shall be guilty of a breach of duty and shall be liable to

refund the organisation:

(a) if permitted to receive remuneration, any such remuneration received by any administrator in excess of the permitted level;

(b) if not permitted to receive remuneration, all sums received apart from expenses.

24. When an administrator agrees to pay other persons sums which are not permitted to be paid or are in excess of permitted levels as stated herein, he shall be jointly and severally liable with them to refund such sums to the voluntary organisation.

### *XII. Applicability in Time*

25. These provisions shall not apply retrospectively and shall be without prejudice to the application of any rules of law in force on the date (the "relevant date") when these provisions shall come into force. All enrolled voluntary organisations shall seek to come in line with these provisions within two (2) years of the relevant date and may seek a ruling on such matters from the Commissioner in case of doubt. Nothing herein contained shall invalidate any act carried out prior to the relevant date when in accordance with applicable law nor shall it render any person liable for anything carried out when, under applicable law, this was not prohibited.

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## SECOND SCHEDULE

Organisations, which are exempt from mandatory enrolment with the Commissioner pursuant to article 12C of this Act<sup>\*</sup>

### PART I

International public benefit, non-profit making or voluntary organisations established by international treaty, or their local branch, which are exempted by any special law from being subject to enrolment.

The exemption under this Part I shall apply, provided that such international organisations do not make or intend to make public collections, and this, subject to any applicable provisions of any treaty, any special law or other agreement relating to such organisations.

### PART II

Organisations which are registered with SportMalta in terms of the Sports Act.

The exemption under this Part II shall apply provided that such organisations do not engage in any of the activities in article 12B(1)(a) to (d) of this Act.

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<sup>\*</sup> These organisations are free to enrol at any time upon complying with the requirements of this Act.

**THIRD SCHEDULE**

*Form A*

**VOLUNTARY ORGANISATIONS ACT  
(CAP. 492)**

**Non-Enrolment Notice - Notification by a non-enrolled voluntary organisation to the Commissioner pursuant to article 12D**

Name of Organisation ..... ("the Organisation")

Delivered by .....

To the Commissioner for Voluntary Organisations:

The Organisation hereby notifies the Commissioner that:

(a) it is a voluntary organisation in terms of article 3 of the Voluntary Organisations Act ("the Act") established in writing as an association, foundation or trust<sup>(1)</sup> on the<sup>(2)</sup> ..... and is not enrolled in terms of such Act;

(b) it is not subject to mandatory enrolment in terms of the Act because:  
.....  
.....

the address of the Organisation is: .....

(where applicable) it is a legal person and its registration number is .....

the sector of activity in which it operates is .....  
and its principal purpose is .....

all communications may be made by and to<sup>(3)</sup> .....  
..... as the responsible administrator appointed for the purpose at the address mentioned in (b) above.

The administrators are aware that if the activities of the organisation are such as to fall within the terms of article 12B of the Act they are obliged to enrol the organisation in accordance with article 12B of the Act.

Signature: .....

Name: .....  
Responsible Administrator

Dated this ..... day of ..... of the year .....

-----  
(1) Delete as applicable  
(2) State date of establishment  
(3) Insert name and surname of responsible administrator

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*Form B*  
VOLUNTARY ORGANISATIONS ACT  
(CAP. 492)

Notice of change in name/address<sup>(1)</sup> of a non-enrolled voluntary organisation pursuant to article 12D

Name of Organisation<sup>(2)</sup> .....("the Organisation")

Address<sup>(2)</sup>:.....  
.....

Delivered by: .....  
-----

To the Commissioner for Voluntary Organisations:

The Organisation hereby gives notice, in accordance with article 12D of the Voluntary Organisations Act, that:

- (i) with effect from<sup>(3)</sup> ..... its name has been changed to .....
- (ii) with effect from<sup>(4)</sup> ..... it has changed its address and its new address is .....

Signature: .....

Name: .....  
Responsible Administrator

Dated this ..... day of ..... of the year .....

-----

- (1) Delete as applicable
- (2) Indicate old name/address as applicable
- (3) State date when change in name occurred
- (4) State date when change in address occurred

*Form C*  
VOLUNTARY ORGANISATIONS ACT  
(CAP. 492)

Notice of change in local representative/administrator <sup>(1)</sup>  
of a non-enrolled voluntary organisation pursuant to article 12D

Name of Organisation ..... ("the Organisation")

Address: .....  
.....

Delivered by: .....

To the Commissioner for Voluntary Organisations:

The Organisation hereby gives notice, in accordance with article 12D of the  
Voluntary Organisations Act that:

with effect from<sup>(2)</sup>..... the person currently acting  
as a local representative of the Organisation is no longer exercising such  
function and:

Name:.....

Address:.....

Identification number:.....

has been appointed as local representative in his/her stead.

with effect from<sup>(2)</sup>..... the administrator who was  
responsible for making and receiving communications on behalf of the  
Organisation is no longer exercising such function and:

Name:.....

Address:.....

Identification number:.....

has been appointed to carry out such function in his/her stead.

Signature: .....

Name: .....

Responsible Administrator

Dated this ..... day of ..... of the year .....

-----  
(1) Delete as applicable  
(2) State date when new appointment was made

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*Form D*  
**VOLUNTARY ORGANISATIONS ACT**  
**(CAP. 492)**  
Notice of merger of a non-enrolled voluntary organisation pursuant to  
article 12D

Name of Organisation ..... ("the Organisation")

Address: .....

.....

Delivered by: .....

To the Commissioner for Voluntary Organisations:

(a) residing at ..... hereby gives notice, in accordance with article 12D of the Voluntary Organisations Act that the Organisation has been merged with the following organisation/s:

(b) and will continue as an organisation with the following details:

Name:.....

Address: .....

Registration Number: .....

The notification of the Organisation may be removed from the List of Non-Enrolled Voluntary Organisations.

Signature: .....

Name: .....

Responsible Administrator

Dated this ..... day of ..... of the year .....

-----  
(a) State name and residence of Responsible Administrator

(b) State name(s) of organisation(s) amalgamating with the Organisation

*Form E*  
VOLUNTARY ORGANISATIONS ACT  
(CAP. 492)  
Notice of dissolution and winding up of a  
non-enrolled voluntary organisation pursuant to article 12D

Name of Organisation ..... ("the Organisation")

Address: .....

.....

Delivered by:.....

To the Commissioner for Voluntary Organisations:

(a) ..... residing at ..... hereby gives notice, in accordance with article 12D of the Voluntary Organisations Act that the Organisation has been dissolved and wound up and that its notification may be removed from the List of Non-Enrolled Voluntary Organisations.

Signature: .....

Name: .....

Responsible Administrator

Dated this ..... day of ..... of the year .....

-----  
(a) State name and residence of Responsible Administrator

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*Form F*  
VOLUNTARY ORGANISATIONS ACT  
(CAP. 492)

Enrolment of a Foreign Organisation pursuant to article 12F

Name of Organisation: ..... ("the Organisation")

Delivered by: .....

The Organisation hereby notifies the Commissioner that:

- (i) it is registered or established under the laws of .....  
bearing registration number ..... and having a registered  
office at .....
- (ii) it is substantially established for the public purpose or public benefit of  
.....;
- (iii) it is substantially non-profit making and voluntary for the purposes of  
the Voluntary Organisations Act.

The Organisation gives notice that:

Name:.....

Address: .....

Identification number:.....

has been appointed as local representative of the Organisation. The  
Organisation confirms that the said person has accepted to so act.

Signature: .....

Name: .....

Responsible Administrator

Dated this ..... day of ..... of the year .....

**FOURTH SCHEDULE**  
**TEMPORARY ORGANISATION**

Application for the enrolment of a temporary organisation and the constitutive instrument of such temporary organisation established in accordance with the Voluntary Organisations Act pursuant to article 16

Name of Organisation ..... ("the Organisation")

Delivered by: .....

-----

**Name**

The name of the organisation is .....

**Address**

The address of the organisation is .....

-----

**Purpose**

The organisation is formed with the one specific purpose of\*

**Necessary Acts**

The temporary organisation shall perform the following necessary acts so as to achieve the purpose for which it is established\*\*

.....

.....

.....

---

\* This one specific purpose may include the raising of funds for a specific public purpose or to support another enrolled voluntary organisation, and can even be for the benefit of a named individual who may need humanitarian support.

\*\* State acts such as paying for medical assistance, paying for flights or accommodation, paying for repairs, equipment and the like.

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Acts which may not be carried out by the  
temporary organisation

The temporary organisation may only carry out the acts listed in this constitutive instrument and ancillary and connected acts. The temporary organisation may not:

- (a) borrow money; or
- (b) enter into binding financial obligations in advance of raising the necessary funds to perform such obligations.

Administrators<sup>\*</sup>

The administrators of the temporary organisation, who sign next to their name to confirm their consent to act, shall be:

- 1.
- 2.
- 3.

Duration

This temporary organisation is established for ..... months/1 Year<sup>\*\*</sup>. The temporary organisation shall pay out, apply or otherwise distribute all its assets for the achievement of the purpose by the expiry date of its term. If for any reason the above cannot be complied with, the administrators shall, on the lapse of the above mentioned period, select one of the following options:

- a. pays out the funds to another enrolled voluntary organisation with purposes similar to its own with an instruction to hold the funds and when possible use them for the stated purpose or pay out the funds to the Voluntary Organisations Fund;

---

\* The beneficiary, or if a minor, his or her parents cannot be administrators. This instrument must be delivered to the Commissioner for Voluntary Organisations with the written consents of the administrators endorsed on it. There must be at least three (3) administrators for which there should be included their name, ID card number and address.

\*\* Cannot exceed one year, but can be extended by the Commissioner.

- b. converts the temporary organisation into a new voluntary organisation of extended duration with the same purposes; or
- c. applies to the Commissioner for an extension under article 16(4) of the Voluntary Organisations Act.

#### Termination

Prior to the date of its termination, the temporary organisation shall submit to the Commissioner a closing statement of account signed by the administrators:

- (a) explaining how it has achieved the purpose for which it was established;
- (b) explaining how it has applied all its assets, including receipts; and
- (c) attaching any original documents or agreements which may have been entered into by the temporary organisation in connection with the disposal or application of such assets.

Signatures\*  
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## Part II - Amendments to the Civil Code

**37.** This Part amends and shall be read and construed as one with the Civil Code or the Second Schedule to the Civil Code, as the case may be, hereinafter in this Part referred to as the "Code" or the "Second Schedule" as the case may be.

Amendments to  
the Civil Code.  
Cap. 16.

**38.** Article 1124A of the Code shall be amended as follows:

Amendment of  
article 1124A of  
the Code.

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the word "quasi-contract,"

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\* This constitutive instrument must also be signed by the promoters, who may be the administrators as well.

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there shall be added the words "unilateral declarations including wills,";

(ii) in paragraph (a) thereof, immediately after the words "of another person" there shall be added the words "and it shall be presumed that such an obligation where a fiduciary acts in or occupies a position of trust is in favour of another person";

(iii) in paragraph (b) thereof, for the words "holds, exercises control or powers of disposition over property" there shall be substituted the words "has registered in his name, holds, exercises control or powers of disposition over property";

(b) sub-article (4) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "in the performance of his obligations" there shall be substituted the words "in the performance of his fiduciary obligations";

(ii) in paragraph (b) thereof, immediately after the words "any conflict of interest" there shall be added the words "or any conflict of trust or fiduciary obligations";

(iii) in paragraph (c) thereof, immediately after the words "from his position or functions" there shall be added the words "nor permit any other person to do so, nor enter into any transaction related to the property, directly or indirectly, unless authorised to do so by the instrument creating the fiduciary obligation or permitted by a person or authority empowered to approve such dealings under the instrument or applicable law or as otherwise authorised by the Court:"; and immediately thereafter there shall be added the following proviso:

"Provided that any references to "the Court" shall be construed as references to the Civil Court (Voluntary Jurisdiction Section) unless otherwise indicated or unless the context refers to any court seized of any matter in which case it is the court where the matter arises;"

(iv) in paragraph (e) thereof, immediately after the words "similar obligations" there shall be added the words "and to affect a change in the registration of any

relevant property, as may be required for such purpose;"

(v) in paragraph (g) thereof, the word "and" shall be deleted;

(vi) paragraph (h) thereof shall be substituted by the following:

"(h) to return on demand any property held under fiduciary obligations to the person lawfully entitled thereto or as instructed by him as otherwise required by the written instrument regulating the fiduciary obligation or by applicable law, and for such purpose, execute such agreements, including any public deed, or other instruments and, or effect a change in the registration of any relevant property, as may be required;" and

(vii) immediately after paragraph (h) thereof, there shall be added the following new paragraphs:

"(i) to return any property held under the fiduciary obligations upon the termination of the fiduciary obligations to the person lawfully entitled thereto, as required by the written instrument regulating the fiduciary obligation or by applicable law, and for such purpose, execute such agreements, including any public deed, or other instruments and, or effect a change in the registration of any relevant property, as may be required;

(j) to keep confidential the affairs of the person to whom fiduciary duties are owed, subject to the fiduciary's duty to provide information to the beneficiary of the specific fiduciary obligation or to other persons in accordance with and subject to any restrictions contained in the written instrument, if any, giving rise to the fiduciary obligation with reference to this sub-article, unless the fiduciary is given consent from the person to whom fiduciary obligations are owed to disclose such information:

Provided that a fiduciary has the right to declare on any written instrument or when carrying out any act, that he is acting as a fiduciary in such context and such declaration shall not be

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considered to be a breach of this sub-article; and

(k) to carry out the designated purpose, where property has been entrusted to him."; and

(c) immediately after sub-article (6) thereof, there shall be added the following new sub-articles:

"(7) Subject to the provisions of sub-article (8), where the competent court, in any proceedings, finds that a person owns, has registered in his name, holds, exercises control or has powers of disposition over property and is bound by fiduciary obligations arising in any manner in relation to such property, the court may make any order or declaration in favour of or for the benefit of such persons and under such terms and conditions as it considers appropriate in the circumstances to protect the beneficiary of such obligations under the provisions of this Title and any special law including:

(a) to order the transfer, restitution or delivery of any property, or the change in the registration thereof, to another fiduciary or order that it be held jointly with another fiduciary;

(b) to terminate the powers of disposition of property;

(c) to order the fiduciary to give adequate security;

(d) to establish a trust in relation to property subject to fiduciary obligation and to establish the terms of such trust;

(e) to rescind any transfer or other transaction or declaring the same null and void; or

(f) imposing damages on the fiduciary.

(8) The court shall also have such powers, whether the proceedings are instituted under article 1124E or under any other provision of law, by any beneficiary, a successor in title of such beneficiary, a creditor of such beneficiary when such creditor may exercise the rights of the beneficiary under applicable law, or by any other person whom the court considers to be entitled under the relevant fiduciary obligation, as the case may be, and on

the basis of the demands in the relevant proceedings. Where a third party acquires any property under an onerous title or acquires rights over any property owned, held or registered in the name of a fiduciary, he shall not be prejudiced by any remedy granted by the court to any person as aforesaid:

Provided that the third party who acquires any property pursuant to this sub-article was not aware of that he was dealing with a fiduciary.

(9) Fiduciary duties may, in particular cases, be implicitly waived or varied in certain circumstances, such as:

(a) the method of engagement of the fiduciary, in particular where the fiduciary is engaged for two or more purposes, functions or offices or where the fiduciary is engaged for a purpose, function or office at the same time as when the fiduciary is granted an entitlement;

(b) the scope, purposes and contexts of the fiduciary obligations imposed;

(c) the handing over of property, by delivery, registration in name of another person, assignment or transfer, to or for the benefit of a beneficiary's creditor for purpose of security or other purpose which is distinct from that of the beneficiary; or

(d) the manner of the acceptance or assumption or undertaking of the fiduciary obligations.

(10) Where there is an express waiver of fiduciary obligations as stated in sub-article (4) or an implicit waiver as stated in sub-article (9), the fiduciary may, in case of doubt, apply for directions from the competent court on how to act in the circumstances. The court shall give due regard to the intentions of the person establishing or imposing the fiduciary obligations and to the interests of both the fiduciary and the beneficiary."

**39.** Article 1124B of the Code shall be amended as follows:

(a) the marginal note thereof shall be substituted by the

Amendment of  
article 1124B of  
the Code.

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following:

"Dealings with third parties aware of fiduciary obligations.";

(b) sub-article (1) thereof shall be substituted by the following:

"(1) Where a third party is aware that a fiduciary is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations, third parties may, in good faith, act in relation to the fiduciary as though he were the absolute owner thereof.";

(c) sub-article (2) thereof shall be substituted by the following:

"(2) A third party who acquires property under an onerous title as provided for in sub-article (1) shall not be affected by the fiduciary obligations to which the said property is subject, unless otherwise agreed upon.";

(d) immediately after sub-article (2) thereof, as substituted, there shall be added the following new sub-article:

"(2A) Where a third party acquires property under gratuitous title as provided for in sub-article (1) from a fiduciary who acts in breach of the fiduciary obligation or where the third party has acquired property under gratuitous title to the detriment of a beneficiary, the third party shall be subject to the same fiduciary obligations which the fiduciary was subject to, which shall take effect when the third party becomes aware or where he reasonable ought to have become aware from the circumstances of the breach of the fiduciary obligations:

Provided that the fiduciary obligations which the third party is subject to shall be limited to the extent of the breach or unauthorised gain, unless the Court provides otherwise pursuant to any of the remedies in article 1124A:

Provided further that the performance of the fiduciary obligations in accordance with the terms and conditions that the fiduciary is subject to shall not be considered to be gratuitous for the purpose of this article.";

(e) paragraph (a) of sub-article (3) thereof shall

substituted by the following:

"(a) enquire into the terms and conditions of his authority, except in the case of a gratuitous transaction; or";

(f) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(3A) Any third party dealing with a fiduciary in a transaction shall be entitled to enquire about the purposes of the fiduciary obligation, including the obligation of not exceeding the value raised by the transaction, or otherwise relating to the propriety subject to the transaction or the applicability of the funds in question."; and

(g) immediately after sub-article (5) thereof there shall be added the following new sub-articles:

"(6) Where a fiduciary is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property informs a third party with whom he is dealing that he is acting as a fiduciary, the third party is otherwise aware or should reasonably be aware, the fiduciary shall not be personally liable for the obligations entered into with such third party, other than those entered into in the exercise of his obligations. Where the third party is unaware of the fiduciary obligations, the fiduciary shall, subject to any terms which may have been stipulated or which otherwise apply under the applicable law, be personally liable to such third party in respect of any obligation entered into.

(7) The fiduciary shall have a right of recourse against the beneficiary where contemplated in the provisions of this Code or in any special law, by way of indemnity against such liability unless he has acted in breach of his duties, in which case he shall not be entitled to be indemnified.

(8) A fiduciary shall be presumed to have all the powers at law which are required for him to perform his fiduciary obligations towards beneficiaries or purposes."

**40.** Immediately after article 1124B of the Code there shall be added the following new articles:

Addition of new articles to the Code.

A 1876

"Property subject to fiduciary obligations and ownership.

1124C. (1) Where a person is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations, such property shall constitute a distinct and separate patrimony, consisting of all relative rights and obligations with respect thereto, and such property shall not be subject to the claims or rights of action of the fiduciary's personal creditors, nor of his spouse or heirs at law, except as stated in the provisions of this Code or of special laws.

(2) Fiduciary ownership of property is ownership as contemplated by Title II of Book Second of this Code in so far as third parties are concerned, but which is modified by the provisions of this Title and any special laws and other provisions of this Code which may be applicable, in so far as it is subject to obligations towards and for the benefit of another person, referred to as a beneficiary, or for the achievement of a purpose, or both. Such modifications imply restrictions and limitations on the right of ownership consistent with the provisions of this Title, the special laws on trusts and other provisions of this Code.

(3) Where property subject to fiduciary obligation is in the possession of a fiduciary and owned by the beneficiary, the provisions of this Code or of any other special law governing their relationship shall apply in accordance with the terms and conditions established by the fiduciary and the beneficiary:

Provided that such terms and conditions may be modified in terms of the provisions of this Title for the protection of the beneficiary and, or the achievement of the obligation.

Retirement of a fiduciary and appointment of his successor.

1124D. Where a fiduciary is vested with ownership of a property, has it registered in his name, holds, exercises control or powers of disposition over such property and for any reason, ceases to act as fiduciary and is thereafter replaced by another fiduciary, the latter shall continue to perform the same fiduciary obligations, as may be applicable at the relevant time:

Provided that:

(a) the transfer of rights and obligations with respect to the property subject to fiduciary obligations shall take place in favour of beneficiaries and third parties upon the execution of a written instrument between the fiduciary ceding his fiduciary obligation and the fiduciary replacing him. The written instrument shall specify the property subject to fiduciary obligations, and shall empower the new fiduciary to transfer all rights and obligations, including possession and, or, delivery of the property in favour of the beneficiary and any third party, as the case may be, except as stated in paragraphs (d) and (e);

(b) for any rights over immovable property to be validly vested in the new fiduciary, the execution of a public deed shall be required;

(c) the sole consideration for the said transaction shall be that referred to in article 958L, which shall apply *mutatis mutandis* in case of fiduciary obligations other than those arising from trusts, and notwithstanding any other law it shall not be required to state in the relative instrument, including any public deed, the value of the property being transferred or delivered;

(d) the provisions of this article shall also apply *mutatis mutandis* to the transfer of a cell from one organisation to another or the constitution of a cell as a new organisation under articles 20A or 20B of the Second Schedule, as the case may be;

A 1878

(e) all rights and obligations, including any contracts which may be in force, shall continue to operate in accordance with their terms with reference to the property subject to fiduciary obligations and shall accrue and be binding on the new fiduciary upon the transfer and, or delivery to him of the property in accordance with applicable law and any written instrument regulating the fiduciary obligations and the property subject to fiduciary obligation and this without the need of any notice to or consent of any other person except as provided in this sub-article or applicable law;

(f) the fiduciary who ceases to act as a fiduciary shall no longer be entitled to all the rights and powers and, subject to paragraph (g), shall be released from all the fiduciary obligations related to the property subject to fiduciary obligations, including any obligations under any contracts, once he has carried out the transfer and delivery of the property to the successor fiduciary after obtaining all such consents as are required to terminate his engagement as fiduciary under any written instrument and observing all formalities under applicable law;

(g) the fiduciary who ceases to act as a fiduciary shall not be released of his obligations towards the beneficiary with respect to any property subject to fiduciary obligations he may not have transferred, delivered or accounted for or which may come into his possession thereafter or for any breaches of fiduciary obligations when he was acting as fiduciary;

(h) the fiduciary who ceases to act as a fiduciary shall not be released from any obligations towards third parties which:

(i) he has expressly entered into in his own personal capacity and interest and not in a fiduciary capacity;  
or

(ii) he is personally liable for under the provisions of this Title towards a third party who was not aware he was acting as a fiduciary, unless the third party expressly releases him from liability;

(i) the appointment of another fiduciary, as aforesaid, shall not be subject to the provisions on assignment of rights nor constitute a novation under the provisions of this Code but shall be regulated by this article and the provisions of the Trusts and Trustees Act, when applicable;

Cap. 331.

(j) any undertaking, guarantee, hypothec, pledge or other forms of security granted by the fiduciary or over or in relation to the property shall not be affected in any manner by the substitution of a fiduciary and shall continue to attach to the property in accordance with its terms and the applicable law and when property subject to a hypothec or privilege is the subject of a transaction where another fiduciary replaces a fiduciary, the fiduciary replacing the previous fiduciary and the provisions of articles 2070 to 2083 shall not apply:

Provided that this paragraph shall not apply where the retiring fiduciary is already a third party in possession in which case articles 2070 to 2083 shall apply;

(k) the fiduciary ceasing his functions or the replacing fiduciary shall:

(i) notify interested third parties of such substitution, at what time and to what extent, while abiding with any confidentiality obligations regarding beneficiaries and their interests;

A 1880

(ii) where rights over immovable property are subject to fiduciary obligations, execute a public deed with the fiduciary who has ceased to perform his fiduciary obligations to record that the fiduciary obligations relating to such property have been transferred to another fiduciary. Nevertheless, if for any reason the fiduciary ceasing his functions is not able to appear on such public deed and the property is in the possession of the replacing fiduciary, the latter may state such facts as are known to him, confirm that such property is in his possession and shall declare by means of a written declaration or notification, his acquisition of title over the property and the undertaking of the fiduciary obligations. The transfer of ownership of such property shall take place upon the execution of such public deed and the same rules shall apply *mutatis mutandis* to other registered movable property by the execution of a private writing and any applicable registrations or notifications as may be required by law;

(iii) in so far as any security forms part of the property subject to fiduciary obligations and it is duly registered in the Public Registry, the new fiduciary shall, upon making a unilateral declaration relating to the relevant security, in accordance with the applicable law, register the substitution resulting from the written instrument between himself and the former fiduciary in the said register;

(l) in cases where the substitution is ordered or approved by a competent court or regulatory authority, then no further consent or agreements which may otherwise be required under this article, applicable law or the written instrument regulating the fiduciary obligations, shall be necessary;

(m) the fiduciary who has ceased to perform his functions shall be entitled to be indemnified for liabilities, expenses or losses he may incur with reference to the property subject to fiduciary obligations even after he has ceased to perform his functions except for any breaches thereof;

(n) where a fiduciary dies in the course of performing his fiduciary obligation:

(i) his universal heir who has reached majority and is capable at law, or if more than one, each one of such heirs severally, shall be deemed to be executors *ex lege* of the property and shall immediately transfer or deliver the property to a successor fiduciary or the beneficiary;

(ii) should the heir fail to perform the duties in sub-paragraph (i) within thirty (30) days, extendable by the Court, he shall be considered to be the temporary successor fiduciary and shall have the same obligations towards the beneficiaries as the deceased fiduciary until he performs his obligations as aforesaid;

(iii) should the heir be unable to perform his duties in sub-paragraph (i) for any reason not attributable to himself, he shall apply to the competent court providing the relevant information and seeking an order as stated below;

(iv) when the deceased fiduciary has appointed a testamentary executor, the above duties, and all relative powers to so act, shall bind only the executor, unless the executor is also a universal heir in which case sub-paragraph (i) shall apply, such testamentary executor shall be deemed to have all the necessary powers for the purposes solely of recovering, transferring or returning the property to another fiduciary or to the beneficiary;

A 1882

(v) notwithstanding the above, a beneficiary, the heirs, the executor, as the case may be, may apply to the Court to confirm their powers or may appoint an ad hoc testamentary executor at any time, to act for the estate of the deceased fiduciary for the purposes of recovering, transferring or returning the property to another fiduciary or the beneficiary and the competent court may confirm to which property such powers refer or may accede to such request notwithstanding any contestation of the will or his appointment;

(vi) the successor fiduciary is the person:

A. designated in any instrument governing the fiduciary obligations; or

B. designated in accordance with any applicable law; or

C. appointed by the Court for such purposes, even if only temporarily for this purpose, on the demand by application of any interested party;

(o) where the fiduciary is a legal person which is declared bankrupt, dissolved or wound up, such obligations shall bind the last directors jointly and severally or, if a liquidator has been appointed, the liquidator, as the case may be, and the provisions of paragraph (j) shall apply *mutatis mutandis*;

(p) where there is more than one fiduciary who holds, exercises control or powers of disposition over property for a beneficiary, such property shall, by operation of law, consolidate in the ownership of the remaining fiduciary or fiduciaries on the death, resignation or removal of a co-fiduciary. The remaining fiduciary or fiduciaries shall execute a unilateral declaration by public deed or other writing in accordance with applicable law, which shall be registered in the relevant register, so as to declare the consolidation in his or their name of the title or control of such property and the consolidation shall thereon take place without the need of any other formality.

Fiduciary  
action.

1124E. (1) It shall be competent to any beneficiary, in order to enforce fiduciary obligations owed to him, to exercise a right of action on the basis of the provisions of this Title.

(2) The demand may be made together with any other action available under the provisions of this Code or any other law and where such specific right of action is not exercised, the remedies contemplated herein may also be demanded by an additional application to the Court, at any time of the proceedings until the award of a final judgement by the competent court or the Court of Appeal.

(3) In the case of a fiduciary obligation undertaken solely for the achievement of a purpose and in the absence of any beneficiary, the above right of action may be exercised by any person or body granted the power to protect, supervise or enforce the purpose in the instrument creating the obligation or, in the case of an obligation undertaken by a public benefit organisation, also by the Attorney General.

Prescription.

1124F. (1) Notwithstanding any provision of this Code or any other law, an action brought against a fiduciary, or a person considered to be a fiduciary under the provisions of article 1124A -

(a) in respect of any fraud or dishonesty to which such person was a party or of which he had knowledge; or

A 1884

(b) for the recovery from the fiduciary, or any person considered to be a fiduciary as aforesaid, of any property subject to fiduciary obligations or previously received by the fiduciary and converted to his use, or for benefits or gains received as a result of breach of duty,

shall not be barred by prescription, notwithstanding the lapse of time.

The action shall not be barred by prescription irrespective of whether it is brought against the fiduciary by a beneficiary who has suffered prejudice as a result of the behaviour of the fiduciary in relation to the same property or property substituting the same.

(2) Notwithstanding the provisions of article 2140 and without prejudice to article 2155, a fiduciary or any person considered to be subject to fiduciary obligations under this Title, shall not acquire any property held under fiduciary obligations by means of prescription.

(3) Where the fiduciary or beneficiary acts in bad faith under the provisions of this Code, such act shall be sufficient for an action not to be barred by prescription.

(4) With the exception of the matters falling within the scope of the preceding sub-article for which there is no prescription, no action may be brought against a fiduciary by a beneficiary for breach of other fiduciary obligations referred to in sub-article (4) of article 1124A, after the lapse of five years. Such period shall commence -

(a) from the date of the delivery of a written account, or part thereof, of the fiduciary activity to the beneficiary; or

(b) from the date on which the beneficiary first had knowledge of the occurrence of the breach of fiduciary duty,

whichever is the earlier date:

Provided that, if the account or part thereof is itself fraudulent or dishonest then, with reference to the account or the relevant part, the period shall only commence on the date referred to in paragraph (b).

Fiduciary obligations towards a purpose.

1124G. (1) When a fiduciary obligation is imposed or undertaken solely to achieve a designated purpose or purposes, including in the case of a charitable trust or a purpose foundation, without there being a beneficiary, such obligation shall be valid and enforceable, and:

(a) where there is more than one person who is so bound, their obligations shall be joint and several; and

(b) in case of a foundation, the administrators of the foundation shall be jointly and severally obliged to perform the fiduciary obligations with the foundation itself.

(2) The provisions of this Title shall be applied *mutatis mutandis* and the obligations of the fiduciary shall be attributed towards achieving the designated purpose in accordance with the terms of the fiduciary obligation, any applicable law and the provisions of this Title.

(3) When a fiduciary obligation is imposed or undertaken by any religious organisation, Canon law and other legislation governing religious organisations shall apply and in case of inconsistency shall prevail over the provisions of this Title.

Obligations of the beneficiary towards the fiduciary.

1124H. (1) The beneficiary shall be bound towards the fiduciary:

(a) to perform all such obligations as are agreed by him in writing or as may be established in the relative instrument under which the fiduciary obligations arise or as may arise under the applicable law;

(b) to pay the remuneration to, and all expenses incurred by, the fiduciary as may be established in the relative instrument under which the fiduciary obligations arise or are governed;

(c) subject to the provisions of any special law or this Code which exclude remuneration, where not expressly agreed in the relevant instrument:

A 1886

(i) to pay such fees as are reasonable as is established in agreement with all beneficiaries who are of age or as may be established by the Court; and

(ii) the fiduciary may reimburse himself or pay out of the property subject to fiduciary obligations all expenses properly incurred by him in connection with his duties, in which case the fiduciary shall notify the beneficiary, or the persons required to be notified in the relevant instrument or applicable law, of such reimbursement in the manner and at the time established by applicable law.

(2) The beneficiary must at all times act in good faith towards the fiduciary irrespective of the manner by which or by whom the fiduciary has been appointed.

(3) Subject to the terms of the instrument governing the fiduciary obligations, the beneficiary shall, to the extent of the property unless the beneficiary has agreed otherwise, indemnify the fiduciary for any liabilities the fiduciary may incur in the carrying out of his fiduciary duties except to the extent that the fiduciary is guilty of negligence, wilful misconduct or fraud.

(4) Nothing in this article shall limit the rights or remedies of the fiduciary under this Code or any other law arising from bad faith or other harmful acts on the part of a beneficiary.

Directions  
from the Court.

1124I. (1) A fiduciary may, at any time, apply to the Court for directions regarding the performance of his obligations.

(2) Upon such application the Court may issue any orders or directions as it thinks fit.

Applicability  
of the  
provisions of  
this Title.

1124J. In the application of the provisions of this Title the following principles shall apply:

(a) when a fiduciary relationship is governed by particular rules, whether because of the source and type of the obligations or because of any special law, such particular rules shall apply to the context and these provisions shall apply as necessary to support the interpretation of the said rules;

(b) it shall be presumed that these provisions operate consistently with particular rules applicable to any particular fiduciary relationship or obligation but, in case of inconsistency, the particular rules shall prevail over the provisions of this Title;

(c) the provisions of this Title shall apply to all fiduciary obligations, which exist at the time of the coming into force of these provisions, or any amendments thereof, even if arising before such date, as well as any fiduciary obligations arising thereafter:

Provided that such provisions shall not apply retrospectively where their effect is to deny or restrict any vested right or create any liability where such did not occur under law prior to such provisions coming into force;

(d) where a fiduciary obligation is vitiated by a breach or attempted breach of law by the parties or any one of them and is thereby rendered unenforceable due to the falsity or illegality of the cause, the compliance by the beneficiary or the fiduciary, or both, with such law or a change in law resulting in the cause no longer being false or unlawful, shall render the fiduciary obligation enforceable with effect therefrom. In such cases, the Court may give such interim orders it considers appropriate to ensure compliance with the law or to prevent the further abuse by the parties or any one of them."

**41.** Article 1 of the Second Schedule shall be amended as follows:

Amendment of article 1 of the Second Schedule.

(a) sub-articles (2), (3), (4), (5), (6), (7), (8) and (9) thereof shall be re-numbered as sub-articles (6), (7), (8), (9), (10), (11), (12) and (13) respectively;

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(b) immediately after sub-article (1) thereof, there shall be added the following new sub-articles:

"(2) Organisations may be established in different legal forms.

(3) The lawful purpose of an organisation referred to in sub-article (1) shall not be contrary to morals and public policy, which purpose or purposes shall be one of the categories referred to in sub-article (4).

(4) Every organisation shall be categorised according to its purpose and the purpose of any organisation may be:

(a) to exclusively promote a social or public purpose on a non-profit making basis, excluding any private benefit, or if it has beneficiaries, be for the benefit of public interest beneficiaries. For the purposes of this paragraph "public interest beneficiaries" shall mean any of the following:

(i) organisations, which are themselves established exclusively for social or public purposes on a non-profit making basis;

(ii) religious organisations;

(iii) public organisations; or

(iv) beneficiaries referred to in article 32(8):

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Provided that this excludes any private benefit other than those listed under the First Schedule to the Voluntary Organisation Act or under this Schedule, in which case it is referred to as a "public benefit organisation"; or

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(b) to promote any lawful purpose in terms of the Voluntary Organisations Act other than those referred to in sub-paragraph (i), whether for a private benefit or not, in which case it is referred to as a "private benefit organisation".

(5) When a private benefit organisation is established with beneficiaries, the organisation shall be for

the benefit of a person or class of persons who can be ascertained, through the designation of named persons, whether they are members, shareholders or other interests or rights, or are otherwise ascertainable.";

(c) in sub-article (6) thereof, as re-numbered, immediately after the words "constitutive instrument" there shall be added the words "or statute";

(d) in sub-article (11) thereof, as re-numbered, for the words "to the particular legal form shall apply." there shall be substituted the words "to the particular legal form shall also apply.";

(e) sub-article (13) thereof, as re-numbered, shall be substituted by the following:

"(13) In this Schedule:

(a) "constitutive instrument" means the public deed, private writing, resolution or any other written instrument or document, or the relevant part thereof, which establishes an organisation of any form and includes a will which provides for the setting up of an organisation;

(b) any reference to "the Court" shall be deemed to be a reference to the Civil Court (Voluntary Jurisdiction Section) unless it is otherwise expressly stated;

(c) "deed of foundation" means the public deed or part thereof, which establishes a foundation and regulates its governance in terms of article 29. When a provision in this Schedule establishes a requirement relating to the deed of foundation, this shall be satisfied if such requirement is found in the constitutive instrument or in the statute, or a combination of both, as the case may be;

(d) "interested party" means a person who is given rights capable of economic valuation, present or future, actual or contingent, in the constitutive instrument or statute of an organisation or who is given powers or functions therein and shall not include other persons unless the context otherwise requires, and this, without prejudice to

A 1890

the right of any person to pursue any civil right or remedy he may have;

(e) "international organisation" means an organisation of which only States or other international organisations are members;

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(f) the term "non-profit making" shall have the meaning as assigned to it in article 2 of the Voluntary Organisations Act ;

Cap. 544

(g) "political purpose" means the promotion of the interests of a political party or a political candidate, whether at local, national or international level and "political party" shall have the meaning assigned to it by the Financing of Political Parties Act and for the purpose of this Schedule shall include any other organisation, of whatever legal form, financially controlled by or affiliated with a political party or its purpose, as stated in its statute or constitutive instrument or public deed or an organisation which acts in such manner which is not autonomous from a political party and the terms "political candidate" and "political organisation" shall be construed accordingly;

(h) "promoter" means a person who promotes the establishment of an organisation or holds himself out to third parties as such and, after the establishment of an organisation, in the case of a foundation means the founder and in the case of an association means the first associating members;

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(i) "public deed" shall include any documents annexed to such public deed in accordance with the Notarial Profession and Notarial Archives Act ;

Cap. 492

(j) the terms "public purpose", "public benefit" and similar phrases mean a social purpose and any other purpose or benefit which promotes or serves the general public or general interest or a sector of the general public and does not promote or serve any private benefit except as permitted by the Voluntary Organisations Act and this Schedule;

(k) the term "public organisation" shall

mean any organisation which is controlled, directly or indirectly, by the Government and an organisation is "controlled by the Government" where the Government enjoys the power to appoint or remove a majority of the administrators of the organisation;

(l) "relevant date" means the 1st April 2008;

(m) "relevant persons" means:

(i) the administrators;

(ii) the protector or members of a supervisory council, if any; and

(iii) any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means, including any person, other than those already referred to in paragraphs (a) and (b) of this definition, whose consent is to be obtained or whose direction is binding, in terms of the statute of the association or any other instrument in writing, for material actions to be taken by the administrators thereof;

(n) "religious organisation" means an organisation established by a religious authority or another religious organisation of any denomination to fulfil a religious purpose including a pious foundation or ecclesiastical entity as defined in this Schedule;

(o) "social purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes:

(i) the advancement of education, including physical education and sports;

(ii) the advancement of religion;

(iii) the advancement of health;

(iv) social and community

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advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade;

(v) the advancement of culture, arts and national heritage;

(vi) the advancement of environmental protection and improvement, including the protection of animals;

(vii) the promotion of human rights, conflict resolution, democracy and reconciliation;

(viii) the promotion or protection of the interests of other public benefit organisations, including federations of such organisations;

(ix) the carrying out of activities intended to raise funds to support other organisations which are exclusively public benefit organisations or to support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit;

(x) any other purpose as may be prescribed by the Minister responsible for justice by means of regulations made by virtue of this Schedule,

and for the purpose of this Schedule, includes a political purpose;

(p) "special law" means an Act of Parliament or any regulations made thereunder or a part of this Code or a part of this Schedule which regulates specifically a particular legal form or forms of organisations, including civil partnerships, foundations and associations;

(q) "statute" means the public deed, private writing, resolution or any other written instrument or document, or the relevant part thereof, which governs the purposes, objects, structure, internal

management and administration of an organisation on a continuing basis after the organisation has been established, whether it forms part of the constitutive instrument, as an appendix or otherwise, or is an independent instrument;

(r) "writing" when used in relation to a notice to be sent shall mean printed, typewritten, or otherwise visibly represented, copied or reproduced, including by fax or electronic mail or other electronic means and in the case of a private writing a combination of several signed copies of the same instrument shall suffice."

42. Article 2 of the Second Schedule shall be amended as follows:

Amendment of article 2 of the Second Schedule.

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the words "under the laws by which they are established" there shall be added the words "or if they are registered overseas, under the laws of the place of registration,"; and

(ii) for the words "for all purposes of law" there shall be substituted the words "for all purposes of law, with the characteristics of the legal form they may take under the applicable law";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) International organisations which are granted legal personality in any multilateral or bilateral treaty or agreement to which States or international organisations, as subjects of international law are parties, shall be recognised as legal persons for all purposes of law, which personality shall be governed by the relevant treaty or agreement or by any law of any State which is selected for the purpose by the parties thereto. The Minister responsible for justice shall, from time to time, publish a list of such organisations in the Gazette.";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) In the case of a foreign or international organisation which has legal personality, the law, treaty or

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agreement applicable in terms of sub-articles (1) and (2) shall apply to all matters regarding such legal persons, including their form, their existence, the setting-up and effects of their statute, constitutive instrument or public deed and their administration, the liability of persons who control or manage or are otherwise involved in such organisations and their dissolution, and to the extent that an international organisation is subject to a special law following the ratification by the State of the treaty establishing such organisation, such organisation shall also be governed by such law and in case of inconsistency with its Statute or agreement, the latter shall prevail.";

(d) sub-article (4) thereof shall be re-numbered as sub-article (6);

(e) immediately after sub-article (3) thereof, there shall be added the following new sub-articles:

"(4) Subject to the provisions of article 19(8), a foreign or international organisation which does not have legal personality under the applicable law shall be recognised as a legal organisation and all matters regarding such foreign or international organisation including its form, its existence, the construction and effects of its constitutive instrument or statute, the liability or otherwise of its promoters, members or its administrators, its administration and its dissolution shall be governed by the proper law applicable to its constitutive instrument or statute, either express or according to applicable law.

(5) Notwithstanding the law applicable in accordance with the preceding provisions, when there exists the power to carry out a trading or a commercial activity, the limitations established under article 32A shall apply to activities in Malta in case of foundations established outside Malta.";

(f) sub-article (6) thereof, as re-numbered, shall be amended as follows:

(i) immediately after the words "required to register" there shall be added the words "by notice in the prescribed form"; and

(ii) for the words "For the purposes of this article "regular activity" means activity having a duration of more

than three months or which is carried out through a permanent establishment in Malta." there shall be substituted the following:

"For the purposes of this sub-article:

(a) "regular activity" means an activity having a duration of more than three months or which is carried out through a permanent establishment in Malta; and

(b) "permanent establishment" includes a place of business, office or branch through which an activity is carried out on a stable and continuous basis:

Provided that the obligation to register shall not apply to foreign religious organisations."; and

(g) immediately after sub-article (6) thereof, as re-numbered, there shall be added the following new sub-articles:

"(7) Where a foreign or international organisation, whether having legal personality or not, does not carry out regular activities in Malta, but needs to prove its recognition under this article for the purpose of applicability of the laws of Malta other than this Schedule, the organisation may register under this sub-article by means of a notice in the prescribed form.

(8) Whenever the purposes or activities of a foreign or international organisation are the subject of laws regulating credit institutions, insurance undertakings, investment services or funds or the provision of trustee, fiduciary, or corporate services or other licensable or regulated activities, such organisation may only be registered with the prior written consent of the Malta Financial Services Authority, when so required by the applicable law and where it is otherwise the competent authority under such law, unless the foreign or international organisation is expressly exempted from obtaining authorisation under Maltese law.

(9) The Minister responsible for justice may from time to time issue regulations to modify and redefine what constitutes "regular activity" and to regulate registrations under this article."

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Amendment of  
article 3 of the  
Second  
Schedule.

**43.** Article 3 of the Second Schedule shall be amended as follows:

(a) in sub-article (1) thereof, for the words "Legal personality shall be granted on the registration of an organisation in the Public Registry in accordance with article 12 of this Schedule." there shall be substituted the words "Except where legal personality is recognised or established by a law or an international treaty or agreement or is granted in virtue of registration pursuant to any special law, legal personality shall only be acquired by an organisation on its registration with the Registrar for Legal Persons in accordance with article 12."; and

(b) in sub-article (4) thereof, for the words "or to their purpose or both" there shall be substituted the words "or to their purpose or category".

Amendment of  
article 4 of the  
Second  
Schedule.

**44.** Article 4 of the Second Schedule shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Every legal person has a patrimony which shall be appropriated to a purpose or purposes in accordance with article 1.";

(b) in sub-article (4) thereof, for the words "it has members" there shall be substituted the words "they have members";

(c) sub-article (5) thereof shall be amended as follows:

(i) for the words "shall be vested in the manner stated in the statute of the organisation or the applicable law, and the administrators" there shall be substituted the following:

"shall be vested:

(a) in all cases, in any one or more of the administrators, jointly and severally, in the manner stated in the statute or the applicable law;

(b) without limiting the powers of representation of the administrators as stated in paragraph (a), in other persons as are named in the statute of the organisation or other holders of office

therein designated; and

(c) the administrators;"

(ii) for the words "the constitutive act" there shall be substituted the words "the statute";

(iii) in the proviso thereto, for the words "from the deed of constitution" there shall be substituted the words "from the statute"; and

(iv) immediately after the proviso thereto, there shall be added the following new proviso:

"Provided further that in the absence of any statement on the legal representation of any organisation in the statute, the sole administrator, or if there are more than one, any two administrators, shall have the legal representation of the organisation in accordance with this sub-article.";

(d) sub-article (6) thereof shall be substituted by the following:

"(6) Every legal person shall have at least one administrator who may act on its behalf or have such minimum number of administrators as may be required by the law applicable to its legal form, purpose or category.";

(e) sub-article (7) thereof shall be amended as follows:

(i) for the words "undertaken, except as otherwise stated in any special law" there shall be substituted the words "undertaken, and except as otherwise stated in any special law";

(ii) immediately after the proviso thereto there shall be added the following new proviso:

"Provided further that notwithstanding the provisions of this sub-article, where a third party deals in good faith with persons acting in the name or on behalf of a legal person before its establishment, any contract would come into effect from the date on which the organisation shall come into existence, and the organisation shall be entitled to be indemnified by the persons who had

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acted in its name or on its behalf with respect to its liability under this sub-article towards the said third party.";

(f) sub-article (9) thereof shall be amended as follows:

(i) in paragraph (a) thereof, immediately after the words "shall be revocable on demand" there shall be added the words "by application to the Court";

(ii) in paragraph (b) thereof, immediately after the words "shall be revocable on demand" there shall be added the words "by application to the Court",and

(iii) in paragraph (d) thereof, immediately after the words "or other interested party" there shall be added the words "or to order the administrator or any other relevant person to register the organisation and do all such acts as may be necessary to ensure that the intent of the testator or donor, as the case may be, is achieved"; and

(g) sub-article (10) thereof shall be substituted by the following:

"(10) The provisions of sub-article (9) shall not apply to testamentary dispositions and donations in favour of pious foundations, marriage legacies and ecclesiastical entities."

Amendment of  
article 5 of the  
Second  
Schedule.

**45.** Article 5 of the Second Schedule shall be amended as follows:

(a) in sub-article (1) thereof, for the words "constitutive act" there shall be substituted the words "statute, constitutive instrument or public deed"; and

(b) sub-article (4) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "constitutive act" there shall be substituted the words "statute, constitutive instrument or public deed";

(ii) in sub-paragraph (i) of paragraph (b) thereof, for the words "constitutive act" there shall be substituted the words "constitutive instrument or statute";

(iii) in sub-paragraph (ii) of paragraph (b) thereof, for the words "to their particular legal form" there shall be

substituted the words "to its particular legal form";

(iv) in paragraph (c) thereof, for the words "the purpose for which they have been established" there shall be substituted the words "the purpose for which it has been established";

(v) in paragraph (d) thereof, immediately after the words "no administrator in office" there shall be added the words "or the number of administrators falls below the minimum required by law for a particular legal form;"; and

(vi) paragraph (e) thereof shall be substituted by the following:

"(e) when the number of members falls below that required by this Schedule in the case of an association or when there are no beneficiaries in the case of a beneficiary foundation."

46. Article 6 of the Second Schedule shall be amended as follows:

Amendment of  
article 6 of the  
Second  
Schedule.

(a) sub-article (1) thereof shall be amended as follows:

(i) the words "in terms of customary law or" shall be deleted;

(ii) immediately after the words "delivered by any Court" there shall be added the words "relating to that particular organisation";

(iii) in paragraph (a) thereof, for the words "or any special law, is required" there shall be substituted the words "or any special law, or is required";

(b) in sub-article (3) thereof, for the words "in accordance with sub-article (1) but such foundation, as well as its administrators, shall be governed by the provisions of this Schedule applicable to unregistered organisations with effect from the lapse of the two-year period referred to in sub-article (2)." there shall be substituted the words "in accordance with sub-article (1).";

(c) sub-article (4) thereof shall be substituted by the following:

"(4) Religious organisations and marriage legacies

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which are constituted as foundations shall not be bound to register and shall continue to be recognised as legal persons until they are wound up.";

(d) sub-articles (5) and (6) thereof shall be substituted by the following:

"(5) An existing foundation which has been established by a public deed and notwithstanding whether it was registered pursuant to this Schedule or not shall:

(a) have full legal capacity and all the powers of a registered legal person as stated in this Schedule and the restrictions in article 14 shall not apply to it;

(b) continue to be the exclusive owner of all its property even if acquired after the lapse of the period referred to in sub-article (2) and shall be liable for its own obligations;

(c) until it is registered in accordance with this Schedule, the liability of its administrators shall be governed by the provisions of article 17 and other provisions applicable to unregistered organisations for all acts carried out from the lapse of the period stated in sub-article (2) until the date of registration but the administrators shall not be in any way liable for obligations entered into by the existing foundation prior to such date unless they have personally assumed such obligations in writing; and

(d) when it is registered, the provisions of article 16 shall thereafter apply to all acts of the administrators after the date of registration.

(6) An existing foundation which has not been established by a public deed and which fails to register shall:

(a) have the capacity only to achieve its stated purposes and all ancillary matters;

(b) be subject to the restriction in article 14(5);

(c) be deemed to be the exclusive owner of

all its property which shall constitute a distinct patrimony; and

(d) have its administrators be jointly and severally liable and with the organisation for the obligations entered into by the foundation, subject to the provisions of the second proviso to article 17(3)."; and

(e) immediately after sub-article (6) thereof, as substituted, there shall be added the following new sub-articles:

"(7) All associations, established in writing before the relevant date, hereinafter referred to as "existing associations", the form of which is recognised as a legal person in accordance with applicable law or, in terms of any final judgement delivered by the Court relating to that particular organisation prior to the relevant date shall continue to be recognised as legal persons although they are not registered; however, existing associations which do not register as legal persons, as well as their administrators, shall be governed by the provisions of this Schedule applicable to unregistered organisations with effect from the lapse of four calendar years from the relevant date.

(8) When an organisation -

(a) is established as an association but has the characteristics of a foundation; or

(b) is established as a foundation but has the characteristics of an association; or

(c) qualifies for registration both as a foundation and as an association,

it shall be referred to herein as a "hybrid organisation" and shall be regulated by the following provisions of this article.

(9) A hybrid organisation shall be established by means of a statute, which may be amended from time to time, to clearly identify the form of a foundation or an association.

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(10) Until the hybrid organisation complies with sub-article (9), the administrators shall be subject to the provisions of this Schedule on both foundations and associations in their administration.

(11) Where an action to modify the statute of a hybrid organisation is not taken by the founders or such other persons or bodies authorised by the statute or, in the case of associations, the members, or it is impossible or impracticable to do so, the administrators of a hybrid organisation may, at any time, apply to the Court to sanction such modifications as are appropriate to clarify the legal form of such organisation either as a foundation or an association and the Court shall issue such orders as it deems appropriate, including amendments to the statute and the name of the organisation, after considering all evidence submitted to it and after hearing interested parties who may wish to make submissions.

(12) In reaching a decision in terms of the preceding sub-article, the Court shall *inter alia* pay regard to the initial intentions of the promoters, the purposes of the organisation and its current operations, the rights of beneficiaries or members, the future fulfilment of its purposes and management of the organisation.

(13) The Court shall also have the power to:

(a) order, upon application of the administrators, the re-organisation of the organisation by the creation of other organisations whereby one or more promoters, founders, members or beneficiaries, as the case may be:

(i) cease to be treated as founders or otherwise of a foundation and, or form an association with the sole purpose of supporting the said foundation or enjoying the benefits of membership; or

(ii) cease to be treated as members of an association and, or form a foundation to achieve the stated purposes without any benefits of membership;

(b) direct otherwise than as provided in paragraph (a) so as to ensure the effective

achievement of the initial purposes of the organisation.

(14) In making an order referred to in the preceding sub-article, the Court shall ensure that neither the purposes of the organisation nor any vested rights of any person shall be affected, nor shall any obligations other than those freely undertaken by any person arise from such modification or reorganisation.

(15) It shall not be lawful to register a hybrid organisation under this Schedule and the Registrar shall require compliance with sub-article (9) prior to accepting the registration thereof."

47. Article 7 of the Second Schedule shall be amended as follows:

Amendment of article 7 of the Second Schedule.

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the words "ensuring compliance with the" there shall be added the words "constitutive instrument and"; and

(ii) for the words "particular legal form" there shall be substituted the words "particular legal form, purpose or category";

(b) sub-article (3) thereof shall be substituted by the following:

"(3) The statute shall designate the first administrators, how they are appointed and removed from office or if not designated, how administrators are appointed and removed."; and

(c) immediately after sub-article (4) thereof, there shall be added the following new sub-article:

"(5) If a legal person does not have at least one administrator in office or the minimum number of administrators required at law, the Attorney General or any other interested party shall be entitled to request the Court to appoint an administrator or administrators for such purposes, for such time and under such conditions as the Court considers appropriate. When such an application is made, the period referred to in article 5(4)(d) shall be suspended until the Court determines the application and

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should an application be made after the lapse of the said period, an appointment by the Court shall be effective provided it is made at any time prior to the striking off of the legal person from the relevant register."

Amendment of  
article 8 of the  
Second  
Schedule.

**48.** Article 8 of the Second Schedule shall be amended as follows:

(a) in sub-article (1) thereof, immediately after the words "in the previous ten years" there shall be added the words "or persons who have been interdicted by order of any court in Malta in terms of the Criminal Code, or overseas under laws of equivalent effect,";

(b) sub-articles (2) and (3) thereof shall be substituted by the following:

"(2) Persons convicted of any offence involving money laundering or the funding of terrorism shall not be eligible for appointment or election to the office of administrator or, if already appointed or elected, shall not be eligible to retain such office.

(3) The Court may, either generally or with reference to a particular organisation -

(a) disqualify any person from holding an office within an organisation; or

(b) disqualify any person from performing identified functions within an organisation,

and this, on any of the grounds mentioned in this article, following the application of any interested party, the Attorney General or, in the case of voluntary organisations, the Commissioner for Voluntary Organisations.

The Court may rehabilitate such person in accordance with regulations, which may be made by the Minister responsible for justice from time to time regulating the disqualification of administrators, their rehabilitation and the registration of such disqualification and rehabilitation orders in the Registry for Legal Persons or the Public Registry, as the case may be."; and

(c) immediately after sub-article (3) thereof, as substituted, there shall be added the following new sub-article:

"(4) Persons who are subject to a disqualification order issued by the Court in terms of sub-article (3) shall not perform such functions, either generally or with reference to a particular organisation, and this, for such times as are stated in the order."

49. Article 10 of the Second Schedule shall be amended as follows:

Amendment of article 10 of the Second Schedule.

(a) in sub-article (2) immediately after the words "shall be reviewed" there shall be added the words "and shall be published and, or filed";

(b) sub-article (3) thereof shall be re-numbered as sub-article (4); and

(c) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) Until such time as:

(a) the form and content of accounts and reports; and

(b) the rules on review, publication and, or filing are prescribed in terms of sub-article (2), for legal organisations, the form of which is not already regulated by a special law, in which case the special law shall apply, the following shall apply:

(i) in the case of organisations established exclusively for public benefit, the provisions applicable to enrolled voluntary organisations shall apply, irrespective of whether such organisations are enrolled or not:

Provided that this paragraph shall not apply to organisations established for a political purpose, which shall be regulated *mutatis mutandis* by the Financing of Political Parties Act: Cap. 544.

Provided further that, when the organisation is not a political party as defined under article 2 of the Financing of Political Parties Act but is only controlled by or affiliated to a political party, or its purpose as stated in its statute or constitutive deed, is such Cap. 544.

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as renders it non-autonomous;

(ii) in the case of organisations, which promote a form of private benefit:

Cap. 13.

Cap. 386.

A. in the case of foundations which are permitted to carry out commercial activities under article 31B, in lieu of the requirements prescribed under articles 13 to 18 of the Commercial Code, the provisions of Chapter IX and X of Part V of Title I of the Companies Act shall apply *mutatis mutandis* and any references made to the Registrar of Companies shall be made to the Registrar for Legal Persons:

Cap. 386.

Provided that the Minister shall have the power to issue regulations on matters stated in articles 188 and 189 of the Companies Act and also to exclude the application of specific articles or sub-articles of the said Act and to determine the manner in which they are to apply in such context;

B. in the case of private foundations as defined in article 31B, the guidelines issued by the Malta Financial Services Authority relating to trustees;

C. in the case of associations promoting a form of private benefit where all the members are limited liability companies, the provisions of subparagraphs A and B shall also apply; and

D. in all other cases the provisions of sub-article (1) shall apply:

Cap. 492.

Provided that, the Commissioner shall have the power to issue guidelines to exclude the application of such associations when these are promoting a form of private interest, which goes beyond the limit of incidental or ancillary private benefit as defined in terms of the provisions prescribed under the Voluntary

## Organisations Act .".

**50.** Immediately after sub-article (4) of article 11 of the Second Schedule, there shall be added the following new sub-article: Amendment of article 11 of the Second Schedule.

"(5) The Registrar for Legal Persons shall administer the Registry for Legal Persons which shall form part of the Public Registry and, in the absence of any provisions to the contrary, the Public Registry Act shall apply *mutatis mutandis* to registrations made in terms of this Schedule. In case of inconsistency, the provisions of this Schedule shall prevail. Save as otherwise provided, all registrations in terms of this Schedule shall be made with the Registrar for Legal Persons unless registration in the Public Registry is specifically required." Cap. 56

**51.** Article 12 of the Second Schedule shall be amended as follows: Amendment of article 12 of the Second Schedule.

(a) in sub-article (2) thereof, for the words "registered at the Public Registry" there shall be substituted the words "registered with the Registrar for Legal Persons";

(b) in sub-article (4) thereof, immediately after the words "are already registered" there shall be added the words "in a public registry";

(c) sub-article (5) thereof shall be substituted by the following:

"(5) It shall be a condition for registration of any organisation the administrator or administrators of which are not ordinarily resident in Malta, to appoint and retain at all times, a person who is ordinarily resident in Malta to act as local representative and such representative shall have, by operation of the law and without the need of any act on the part of the administrators:

(a) the legal representation of such organisation in Malta and this for all purposes of any law in Malta; and

(b) the legal representation of such organisation limitedly to the signing of forms and other notifications to the Registrar and other competent authorities in Malta and the enrolment of instruments and other documents executed by

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the administrators with a Notary Public in Malta when necessary to comply with the legal obligations of the organisation in Malta:

Provided that if the administrators appoint another person or persons to carry out the acts stated in paragraphs (a) and (b), the local representative shall only act in consultation with such persons when such person or persons are not in Malta or if they fail to carry out any such function when required to do so within the times stated in this Schedule.

For the purpose of this sub-article, residence shall be established by documentary evidence."; and

(d) immediately after sub-article (6) thereof there shall be added the following new sub-article:

"(7) The provisions of this Schedule regulating the registration and filing of documents and notes of registration in the Register of Legal Persons shall apply to the registration and filing of acts by all registered legal organisations governed by this Schedule and the provisions of any other law regulating the filing and registration of documents in a public registry shall not apply except where expressly stated."

Amendment of article 13 of the Second Schedule.

**52.** Article 13 of the Second Schedule shall be amended as follows:

(a) in sub-article (2) thereof, for the words "has been established, which purposes shall be construed restrictively." there shall be substituted the words "has been established.";

(b) sub-article (4) thereof shall be amended as follows:

(i) immediately after the words "although they are not registered" there shall be added the words "with the Registrar for Legal Persons";

(ii) in paragraph (b) thereof, the word "and" shall be deleted;

(iii) paragraph (c) thereof shall be substituted by the following:

"(c) foreign and international organisations not obliged to register in Malta;

and

(d) pious foundations, marriage legacies and ecclesiastical entities, each of which shall be regulated and governed by the law applicable to their particular form or purpose or category and, except as herein provided, shall not be subject to the provisions of this Schedule."

**53.** Article 14 of the Second Schedule shall be amended as follows:

Amendment of article 14 of the Second Schedule.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Saving as otherwise stated in this Schedule, unregistered organisations are not legal persons but, pursuant to this Sub-Title, they enjoy recognition, as a matter of fact, and legal powers to achieve the stated purposes for which they are constituted.";

(b) in sub-article (2) thereof, for the words "it may require, strictly for the achievement of the express purposes of the organisation" there shall be substituted the words "it may require for the achievement of the express purposes of the organisation and all ancillary matters";

(c) sub-article (5) thereof shall be substituted by the following:

"(5) An unregistered organisation may establish other organisations provided the other organisations are registered."; and

(d) sub-article (6) thereof shall be deleted.

**54.** Sub-articles (3) and (4) of article 15 of the Second Schedule shall be substituted by the following:

Amendment of article 15 of the Second Schedule.

"(3) Any property acquired by any means by an unregistered organisation shall be considered to be held by or for the following interests as the case may be where it is established:

(a) as a private benefit organisation, unless otherwise stated in its statute or in any written instrument signed by the promoters and authenticated by a Notary

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Public, such property shall be considered to be held for the promoter in ownership or the promoters in co-ownership according to the proportion of their contribution to the unregistered organisation;

(b) partly for a private benefit and partly for a social or other public purpose, unless otherwise stated in its statute or in any written instrument signed by the promoters and authenticated by a Notary Public, such property shall be considered to be held in ownership for the private benefit subject to the performance, by the promoters or administrators, as fiduciaries, of the social or other public purpose, until the said purpose is achieved, exhausted or becomes impossible or is otherwise addressed by the appropriation or endowment of a sufficient part of the property to a registered public benefit organisation with a similar purpose;

(c) solely for a social or other public purpose, or in the case of religious organisations and marriage legacies and public organisations in the form of foundations, religious or public purposes respectively, such property shall be held by the promoters or administrators as fiduciaries only for the purpose stated in the statute or any special law which may be applicable to it.

(4) On dissolution of an unregistered organisation which is:

(a) established as a public benefit organisation, the property of the organisation must be applied in accordance with article 32;

(b) established as a private benefit organisation, the property shall be distributed in accordance with the express terms of the statute, failing of which, to the promoters or their heirs:

Provided that any person with a co-ownership right in property of an unregistered organisation may only demand the division of such patrimony and any promoter or administrator may only dissolve the organisation and, or withdraw his contribution from an unregistered organisation when all obligations towards third parties have been performed and, or its purposes have been achieved, exhausted or become impossible."

**55.** Article 16 of the Second Schedule shall be amended as follows: Amendment of article 16 of the Second Schedule.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The promoters or members of a registered organisation, or in case of a registered foundation, the founders, the donors or the beneficiaries shall not be liable for the obligations of such an organisation, except to the extent that they expressly agree to be so liable. The liability of such persons towards third parties for the obligations of the organisation shall be determined in accordance with any rules which may be applicable to the legal form of the organisation in terms of any special law or, in the absence of any special law, the provisions of this Schedule.";

(b) in sub-article (2) thereof, immediately after the words "The promoters and members of a registered organisation" there shall be added the words "or in the case of a registered foundation, the founders, the donors or the beneficiaries,";

(c) in sub-article (3) thereof, for the words "declare the founders, promoters, administrators or members" there shall be substituted the words "declare the founders, promoters, administrators, beneficiaries or members";

(d) in paragraph (d) of sub-article (4) thereof, for the word "interest:" there shall be substituted the word "interest;" and

(e) immediately after paragraph (d) of sub-article (4) thereof there shall be added the following new paragraph:

"(e) to the Registrar for the payment of any fees which may be due by the organisation upon failure by the organisation to pay the same within three months of the date on which they are due:".

**56.** Article 17 of the Second Schedule shall be amended as follows: Amendment of article 17 of the Second Schedule.

(a) sub-article (3) thereof shall be deleted;

(b) sub-articles (1) and (2) thereof shall be re-numbered as sub-articles (2) and (3) respectively;

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(c) immediately before sub-article (2) thereof, as re-numbered, there shall be added the following new sub-article:

"(1) Any member, donor, or beneficiary involved in any unregistered public benefit organisation, shall not be liable for the obligations of such organisation except as follows:

(a) he shall be liable to the extent that he expressly agrees to be so liable in the statute or any other document signed by him;

(b) he shall be liable for the obligations of the organisation if these were entered into by him in the name of the organisation in favour of third parties at a time when he knew or ought to have known that there was no reasonable prospect that the organisation would avoid being wound up due to insolvency; and

(c) he shall be liable if he is guilty of fraud or bad faith in entering into any obligations on behalf of the organisation.";

(d) sub-article (4) thereof shall be re-numbered as sub-article (6); and

(e) immediately after sub-article (3) thereof, as re-numbered, there shall be added the following new sub-articles:

"(4) The liability of members and administrators of an unregistered organisation having a particular legal form, towards third parties, for the obligations of the unregistered organisation shall be determined in accordance with any rules which may be applicable to the legal form of the organisation under any special law or, in the absence of any special law, the provisions of this article.

(5) Any provision in the statute of an unregistered organisation or any agreement with the unregistered organisation exonerating an administrator from liability for wilful misconduct, gross negligence or breach of duty shall be null and void.".

Amendment of  
article 19 of the  
Second  
Schedule.

**57.** Article 19 of the Second Schedule shall be amended as follows:

(a) in sub-article (4) thereof, for the words "shall *mutatis mutandis* apply to unregistered organisation" there shall be substituted the words "shall *mutatis mutandis* apply to an unregistered organisation"; and

(b) sub-article (8) thereof shall be substituted by the following:

"(8) Notwithstanding the provisions of article 2, the liability of all foreign and international public benefit organisations which -

(a) operate in Malta, including if they raise funds in Malta; or

(b) provide services available to the public within Malta,

as well as that of their administrators, shall also be subject to the provisions of this Schedule in so far as their activity in Malta is concerned, subject however to any provisions of any special law applicable to them."

**58.** Article 20 of the Second Schedule shall be amended as follows:

Amendment of article 20 of the Second Schedule.

(a) paragraph (b) of sub-article (2) thereof shall be substituted by the following:

"(b) subsequently by a resolution of the administrators pursuant to a power vested in them by the statute and in either case shall be established:

(i) by reference to shares, interests or other rights of the members or beneficiaries or by reference to purposes, or by reference to both such rights and purposes; or

(ii) for purely administrative purposes which support the main purposes and operations of the organisation; and

(iii) with other purposes which shall be consistent with the main purposes of the organisation.";

(b) sub-article (9) thereof shall be deleted;

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(c) sub-articles (10) and (11) thereof shall be re-numbered as sub-articles (17) and (18) respectively;

(d) sub-articles (3), (4), (5), (6), (7) and (8) thereof shall be re-numbered as sub-articles (7), (8), (9), (10), (11) and (12) respectively;

(e) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(3) Segregated cells may be established, except for those established for purely administrative reasons:

(a) in the case of a public benefit organisation, only to the extent as they are established for public benefit purposes and, or public interest beneficiaries; and

(b) in the case of a private benefit organisation, only to the extent as they are established for a lawful purposes in terms of the Voluntary Organisations Act , including:

(i) any public benefit purposes or public interest beneficiaries; or

(ii) any public purposes established for the carrying out of any of the activities referred to in article 32A, provided such activities are carried out solely in order to attain the principal purpose and objectives of the organisation.

(4) When the segregated cell is established by the statute of the organisation, the administrators shall be presumed to have the power to supplement such statute with additional guidelines on the purposes and activities of the cell in a manner which supports the purposes and objects of the organisation.

(5) Segregated cells shall, after establishment, be regulated either in the statute of the organisation and, or in a cell statute. A cell statute shall be consistent with the statute of the organisation. The statute of the organisation shall apply on any issue which is not addressed in the cell statute and shall prevail over the cell statute in case of inconsistency.

- (6) A cell statute shall:
- (a) state the following matters:
    - (i) the name of the cell;
    - (ii) the purposes or objects of the cell;
    - (iii) the manner in which the administrators shall manage its affairs, directly or through an administrative committee, which shall in any case not have legal representation of the cell;
  - (b) be in the form of a resolution or guideline of the administrators;
  - (c) in case of a cell for beneficiaries, either state the names of the beneficiaries or the class of beneficiaries or, in the absence of such indication, a declaration that the cell is constituted for the benefit of beneficiaries. In the latter case the beneficiaries shall be indicated in a written instrument, which need not form part of the cell statute, called a "cell beneficiary statement" and which shall be signed by the administrators in the presence of a notary public, and all provisions in the Schedule relating to beneficiary statements shall apply *mutatis mutandis* to cell beneficiary statements; and
  - (d) comply with the requirements of this article.";
- (f) sub-article (7) thereof, as re-numbered, shall be substituted by the following:
- "(7) A segregated cell shall have its own distinct name or designation and it shall refer to the organisation of which it forms part in all its dealings, but shall not be a legal person nor shall it be eligible for registration as a legal person. A cell may not change its name or designation under any circumstances.";
- (g) in paragraph (a) of sub-article (8) thereof, as re-numbered, the words "for the achievement of one or more defined purposes which are consistent with the main purposes

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of the organisation" shall be deleted;

(h) in sub-article (11) thereof, as re-numbered, for the words "The legal effects stated in sub-article (6) shall arise only if-" there shall be substituted the words "The legal effects stated in sub-article (10) shall arise only if -";

(i) immediately after sub-article (12) thereof, as re-numbered, there shall be added the following new sub-articles:

"(13) The rules, including without limitation the rules applicable to dissolution and winding up, applicable to the legal form of an organisation within which a cell is established shall apply *mutatis mutandis* to the cell as though the cell were itself a registered organisation of the same legal form with such modifications as are necessary to accommodate the fact that the cell is not a legal person.

(14) The winding up of a cell, whether voluntarily or due to its inability to perform its obligations shall not affect the continuing operation of the organisation which established it or other cells in any manner whatsoever and the appointment of a liquidator for a cell shall not affect the powers of the administrators in relation to the organisation or any other cells. Where a cell is being wound up and a liquidator is appointed, the powers of the administrators of the organisation shall cease and shall vest in the liquidator, solely in respect of that cell.

(15) Any winding up proceedings in relation to an organisation within which cells are established shall respect the legal status of each cell as a patrimony separate from the assets and liabilities of the organisation and other cells of the organisation and from the assets and liabilities of the organisation not attributable to any cell.

(16) A cell shall be administered by the administrators of the organisation who may, if authorised by the statute, establish an administrative committee with reference to one or more cells, and the administrators may delegate any of their powers to such administrative committee or committees as the case may be. Such delegation shall:

(a) not in any way restrict the powers of the administrators of the organisation in relation to the cell; and

(b) not include the legal and judicial representation in relation to the assets and liabilities of the cell.";

(j) in sub-article (18) thereof, as re-numbered, for the words "or incidental thereto, including on the dissolution of cells and on the transfer of assets of a cell to another organisation, with or without segregated cells, and the legal effect of such transfer." there shall be substituted the following:

", including:

(a) any formalities which shall be necessary for a cell to be created by the appropriation of assets already belonging to the organisation to the cell;

(b) the dissolution of cells;

(c) the transfer of assets of a cell to another organisation, with or without segregated cells;

(d) the legal effects of such transfers; and

(e) all matters related and incidental thereto.";

and

(k) immediately after sub-article (18) thereof, as re-numbered, there shall be added the following new sub-article:

"(19)The Minister may also make regulations to regulate the establishment of segregated cells having legal personality.".

**59.** Immediately after article 20 of the Second Schedule, there shall be added the following new articles:

Addition of new articles to the Second Schedule.

"Transfer of cells.

20A. (1) It shall be lawful for the cell of one organisation, hereinafter referred to as the "transferring organisation", to be transferred to another organisation, hereinafter referred to as the "recipient organisation" where:

(a) the administrators of the transferring organisation so resolve in writing pursuant to a power vested in them by the statute;

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(b) the creditors of the cell in the transferring organisation do not object to this transfer following public notice of at least thirty (30) days of the intent to transfer;

(c) the recipient organisation has the same legal form and is of the same purpose or category as that of the transferring organisation;

(d) the administrators of the recipient organisation resolve in writing to accept such cell pursuant to a power vested in them by the statute;

(e) a notice relating to the transfer of the cell is delivered to the Registrar by the administrators of the recipient organisation and the Registrar shall:

(i) record the notice of transfer of the cell in the records of the transferring organisation; and

(ii) issue a new certificate relating to the transfer of such cell and record such transfer in the records of the recipient organisation; and

(f) it is required, under a special law, to obtain the approval or consent of any regulatory or governmental authority for such action, that such consent or approval is obtained.

(2) The assets and liabilities of a cell shall constitute a distinct patrimony which shall be distinct from all other assets and liabilities of the recipient organisation or other cells of such organisation, if any.

(3) The transfer of a cell shall not entitle the creditors of the recipient organisation to have recourse to the assets of the transferred cell or of the transferring organisation.

(4) All rights and obligations of the organisation and any third parties shall cease to be those of the transferring organisation with respect to the cell and shall continue unaffected as rights and obligations of the recipient organisation with respect to the cell by operation of law with effect from the date of notification to the Registrar in terms of sub-article (1)(e), notwithstanding the absence of any agreements or consents that would otherwise be necessary for the transfer to be effective in law for those purposes.

(5) Upon the completion of the transfer, the administrators of the recipient organisation shall notify in writing all interested parties of which they are aware regarding the transfer of such cell from the transferring organisation to the recipient organisation providing details of its name and purpose and other material information.

(6) When a cell is transferred it shall retain its name or designation notwithstanding the transfer of the cell in accordance with this article but the administrators of the recipient organisation may enter into a unilateral declaration by public deed and register this event in the applicable public register.

(7) The transfer of a cell as contemplated in this article shall constitute a change in fiduciary and shall be governed by the provisions of article 1124C(4) of the Code regulating the succession of fiduciary obligations.

Constitution of  
a cell into a  
new  
organisation.

20B. (1) It shall be lawful for a cell of an organisation to be constituted as a new organisation, with all the assets and liabilities of the cell becoming the patrimony of the new organisation or a part thereof.

(2) The name of the new organisation shall reflect the name or designation of the cell as closely as possible to comply with the applicable law in this regard.

(3) Such action may be taken under such conditions as may be applicable by the administrators of the existing organisation by means of a resolution of the board of administrators only if the statute of the organisation provides for such power.

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(4) The cell shall be constituted as a new organisation upon the observance by the administrators of the requirements applicable to the creation of a new organisation of the same legal form as the organisation in which the cell is currently established, including its registration with the Registrar, and if the cell is created with reference to members, the members shall sign the statute of the new organisation, and:

(a) the administrators in office shall be the administrators of the new organisation unless new administrators are appointed in the constitutive documents when a cell is being constituted as a new organisation;

(b) the purposes and beneficiaries, if any, of the new organisation shall be those of the cell;

(c) all rights and obligations of the organisation and any third parties shall cease to be those of the organisation with respect to the cell and shall continue unaffected as rights and obligations of the new organisation by operation of law with effect from the date of notification to the Registrar under sub-article (6) and the registration of the organisation in terms of sub-article (7) notwithstanding the absence of any agreements or consents that would otherwise be necessary for the transfer to be effective in law for those purposes; and

(d) the constitution of a cell as a new organisation as contemplated in this article shall constitute a change in fiduciary and shall be governed by the provisions of article 1124D of the Code regulating the succession of fiduciary obligations.

(5) The creditors of the cell being constituted as a new organisation shall be given the opportunity to object to such constitution following public notice of at least thirty (30) days of the intent to such constitution and this only if the new legal form which the cell is to take creates limitations on the liabilities of the organisation or its administrators or members which reduce the rights of the creditors when compared to those prevailing with reference to the cell.

(6) The administrators shall be bound to notify the Registrar by means of the prescribed form when a cell no longer forms part of an organisation under this article and shall surrender any certificate issued by the Registrar relating to the cell.

(7) The Registrar shall register in the Register the notification of the removal of a cell from an organisation by the administrators and shall then, subject to sub-article (8), immediately proceed to register the new organisation in the Register. The same shall apply when the cell is being registered in another register pursuant to a special law.

(8) When the new organisation takes a legal form which is governed by a special law which provides for registration which differs from this article, the Registrar shall furthermore issue his confirmation that he has been notified of the constitution of the cell as a new organisation and only upon such confirmation shall the new organisation be registered in the relevant register.

(9) Upon registration, the administrators of the new organisation shall notify in writing all interested parties of which they are aware regarding the constitution of the cell as a new organisation.

Objections by  
creditors.

20C. In accordance with the previous articles, any creditor of a cell may within fifteen (15) working days of receipt or publication of any notice issued under the previous articles, by sworn application in the Court, object to -

(a) the transfer of a cell from the transferring organisation to the recipient organisation; or

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(b) the constitution of a cell into a new organisation,

and, upon good cause being shown that such transfer should not take effect, the Court shall either accede to the creditor's demand, authorise the aforementioned transfer or constitution on sufficient security being given or give such other orders as it deems appropriate.

Power to make regulations.

20D. The Minister may make regulations to regulate the transfer of cells from one organisation to another or the constitution of a cell as a new organisation, to establish forms and notifications, to establish rules for the protection of third parties and generally for the better implementation of the preceding provisions.

Publication of notices.

20E. For the purposes of the notifications contemplated by article 20A and 20B it shall be sufficient if the administrators publish the relative notices as follows:

(a) if the organisation has creditors in Malta, in two daily newspapers published in Malta, one in Maltese and one in English; or

(b) in the case of an organisation which does not have its principal creditors in Malta, in two general distribution newspapers, one published in Malta in the English language and one published in the country where the principal creditors of the organisation carry out business in the language of the place of business."

Amendment of article 21 of the Second Schedule.

**60.** Immediately after sub-article (5) of article 21 of the Second Schedule there shall be added the following new sub-article:

"(6) It shall also be lawful to convert a legal organisation registered in the Register of Legal Persons into a cell of another multi-cell organisation and this following the procedures which may be laid down in regulations made by the Minister responsible for justice in terms of this article."

Amendment of article 22 of the Second Schedule.

**61.** Article 22 of the Second Schedule shall be amended as follows:

(a) in sub-article (1) thereof, for the words "the provisions of the Companies Act" there shall be substituted the words "the provisions of Title II of Part VIII of the Companies Act";

(b) sub-article (2) thereof shall be re-numbered as sub-article (4); and

(c) immediately after sub-article (1) thereof, there shall be added the following new sub-articles:

Cap. 386.           "(2) For the purposes of the application, *mutatis mutandis*, of the provisions of article 345 of the Companies Act to the amalgamation of two or more associations at least one of which is registered, any extraordinary resolution that may be required in terms of the Companies Act, shall be an extraordinary resolution taken and passed by the general meeting of an association in accordance with provisions regulating the taking and passing of extraordinary resolutions as found in the statute or constitutive instrument of the said association, and the provisions of article 135(1) and (3) of the Companies Act shall not apply:

Cap. 386.           Provided that if the statute or constitutive instrument of the association does not contain any provisions regulating the manner in which extraordinary resolutions are to be taken and passed, the provisions of article 135(3) of the Companies Act shall regulate the taking and, or passing of such an extraordinary resolution, *mutatis mutandis*.

Cap. 386.           (3) Article 348 of the Companies Act shall not apply to the amalgamation of two or more associations."; and

(d) immediately after sub-article (4) thereof, as re-numbered, there shall be added the following new sub-article:

Cap. 386.           "(5) Articles 339 and 370 of the Companies Act regarding the issue and cancellation of certificates in the context of amalgamations and divisions shall apply *mutatis mutandis*."

**62.** Immediately after article 22 of the Second Schedule there

Addition of new article to the Second Schedule.

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shall be added the following new article:

"Continuation in Malta of a foreign organisation.

22A. (1) An organisation formed and incorporated or registered under the laws of a state within the European Union or the European Economic Area other than Malta which is similar in nature to an organisation -

(a) governed by this Schedule; or

(b) governed by any special law which does not, itself or by virtue of regulations, provide for continuation,

may, if it is authorised to do so by its constitutive instrument or statute, or by the applicable law in its state of registration, request the Registrar to be registered as being continued in Malta.

This article shall also apply in the case of such an organisation incorporated or registered under the law of any other country or jurisdiction which is approved by notice as may be issued and reviewed, from time to time, by the Minister responsible for justice.

(2) When registered in Malta, the foreign organisation shall be registered in the same legal form which it has under the law of the foreign country or jurisdiction. In the event that a similar form does not exist under the laws of Malta, the applicant shall select a form as similar as possible to the one being continued in Malta and shall designate the form selected.

(3) Where the continuation in Malta of foreign organisations taking a particular form is regulated by a special law, the provisions of this article shall not apply.

(4) The continuation in Malta of a foreign organisation shall require:

(a) the adoption of Maltese law to govern the statute from the time of registration under this Schedule; and

(b) the compliance with:

(i) all matters required for the relevant legal form of organisation to be established and registered under this Schedule;

(ii) all matters required under any other applicable law relating to its activities or its administrators;

(iii) any other procedures or formalities which may be stated in the statute of the organisation:

Provided that if the statute does not address the subject or vest powers relating to continuation in any person or body, it shall be presumed that compliance shall be with a resolution of the board of administrators or equivalent or if the organisation is an association of persons, a resolution of the members having the support required under the statute or, if silent, with applicable law for decisions on matters considered to be extraordinary or special; and

(iv) any requirements which may be prescribed from time to time.

(5) The Registrar may request such undertakings, activities, documentation and other information from the applicant to satisfy himself of compliance with the provisions of this article and the laws of the relevant foreign country and may impose such conditions as appears appropriate to him for the publicity of such procedure in Malta and any other relevant state, for the avoidance of fraud or abuse and for the protection of beneficiaries, members or creditors of the organisation.

(6) An organisation registered under this Schedule may continue in any state within the European Union or the European Economic Area when it is authorised to do so by its constitutive instrument or statute. In such case, and after the relevant procedures are followed, the Registrar shall proceed to terminate the registration of such organisation under this Schedule on such basis.

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S.L. 16.07. (7) The registration fees set out in the Civil Code (Second Schedule) (Fees) Regulations relating to the registration of an organisation shall apply *mutatis mutandis* to foreign organisations requesting to be registered as being continued in Malta."

Substitution of article 23 of the Second Schedule.

**63.** Article 23 of the Second Schedule shall be substituted by the following:

"Registration of public organisations.

23. (1) Except where an organisation is established as a foundation or an association, public organisations may not be registered under the provisions of this Schedule. The Minister responsible for Justice may, by regulation, permit or require such registration. The registration of public organisations or classes of public organisations shall thereafter be made in terms of this Schedule and in accordance with such conditions as the Minister may prescribe.

(2) The Minister responsible for justice may by regulation expressly prescribe which provisions of this Schedule shall apply to public organisations, generally or where they take a particular legal form, specifically to such form, and to their administrators, and may also determine or modify the mode of application of any of the said provisions in such regulation."

Amendment of article 24 of the Second Schedule.

**64.** Article 24 of the Second Schedule shall be amended as follows:

(a) the current article shall be re-numbered as sub-article (1) of the said article;

(b) sub-article (1) thereof, as re-numbered, shall be amended as follows:

(i) paragraph (c) thereof shall be substituted by the following:

"(c) establish the forms and fees for the registration of any organisation, the certificates of registration and to establish the powers of the Registrar in relation to registration and all related matters;"

(ii) paragraph (e) thereof shall be substituted by the following:

"(e) regulate foreign or international organisations carrying out activities in Malta and the forms and content for registration and the terms and conditions of registration including the principles applicable to the determination of the proper law applicable to the constitutive instrument and, or the statute of such organisation and the implementation of provisions of any private international law treaty or any European Union law on such matters;"

(iii) paragraph (m) thereof shall be deleted;

(iv) paragraphs (n), (o) and (p) thereof shall be re-numbered as paragraphs (m), (n) and (o) respectively, and shall be substituted by the following:

"(m) regulate the conversion of an organisation having one legal form into that having another legal form;

(n) lay down rules on the powers of the Court in relation to the interpretation or variation of a statute and the administration of an organisation;

(o) lay down rules for the better carrying out of any of the provisions of this Schedule;" and

(v) immediately after paragraph (o) thereof, as re-numbered, there shall be added the following new paragraphs:

"(p) regulate the procedure for registration of public organisations, including the forms and content for registration, the terms and conditions for registration, and to establish the powers of the Registrar in relation to the registration of such organisations and all related matters;

(q) establish any requirements for notifications to be made to the Registrar by any legal organisation for the purposes of this Schedule;

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(r) further regulate the segregated cells of organisations, whether such cells are incorporated as legal persons or otherwise;

(s) regulate the accessibility or otherwise of the register of members of associations;

(t) regulate the procedure for the continuation of organisations, whether under the laws of Malta or the laws of another country, including the forms needed for such continuation, the terms and conditions for continuation, and to establish the powers of the Registrar in relation to the continuation of organisations;

(u) provide for any matter incidental to or connected with any of the above; and

(v) lay down rules for the better carrying out of any of the provisions of this Schedule."; and

(c) immediately after sub-article (1) thereof, as re-numbered, there shall be added the following new sub-articles:

"(2) The Minister responsible for justice may, with the concurrence of the relevant minister empowered to make regulations under any other special law, make regulations in accordance with the provisions of this Schedule to regulate:

(a) the applicability to forms of legal organisations or particular types thereof, or in relation to particular sectors of activity carried out by such legal organisations, established under such special law;

(b) the mode of their applicability to such forms of legal organisations; and

(c) all related and ancillary matters, including the powers of the relevant registrar, any requirements for notification to such registrar or for registration in the relevant registry, applicable fees, forms, or otherwise.

(3) The Minister may, by means of regulations, amend any annexes to this Second Schedule to the Civil Code.".

**65.** In paragraph (a) of article 25 of the Second Schedule, for the words "provisions of this Schedule" there shall be substituted the words "provisions of this Schedule and any regulations made thereunder".

Amendment of article 25 of the Second Schedule.

**66.** Article 26 of the Second Schedule shall be amended as follows:

Amendment of article 26 of the Second Schedule.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) A foundation is an organisation consisting of a universality of things constituted in writing, including by means of a will, by a founder or founders whereby assets are destined either -

(a) for the fulfilment of a specified purpose; and, or

(b) for the benefit of a named person or class of persons,

and which are entrusted to the administration of a designated person or persons.

The patrimony, namely assets and liabilities, of the foundation is distinct from that of its founder, administrators or any beneficiaries. The fiduciary obligations in 1124A of this Code shall be binding upon the foundation and all persons administering it towards any beneficiaries for the fulfilment of the stated purposes of the foundation:

Provided that the fiduciary obligations shall be subject to such restrictions or modifications as may be stated in the statute or the terms of engagement of the administrators, as the case may be.";

(b) sub-article (5) thereof shall be deleted and sub-articles (6) and (7) shall be re-numbered as sub-articles (5) and (6) respectively;

(c) sub-article (6) thereof, as re-numbered, shall be substituted by the following:

"(6) Foundations may be established in one or two legal forms being either for the benefit of beneficiaries (called "beneficiary foundations") or for the fulfilment of a

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specified purpose without beneficiaries (called "purpose foundations"). Whatever legal form they take, foundations may have any of the purposes stated in article 1.";

(d) sub-article (7) thereof shall be re-numbered as sub-article (12); and

(e) immediately after sub-article (6) thereof, as re-numbered, there shall be added the following new sub-articles:

"(7) In this Schedule:

(a) any reference to "pious foundation" includes:

(i) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as juridical persons by the competent ecclesiastical or other religious authorities;

(ii) non-autonomous pious foundations, that is, temporal goods given in any way to a public juridical person established by the competent ecclesiastical or other religious authorities and carrying with them a long-term obligation, such period to be determined by applicable religious or national law, and where a long-term obligation consists of binding the juridical person, from the annual income, to celebrate Masses or other religious ceremonies, to perform other determined ecclesiastical functions, or in some other way to fulfil the pious or religious purposes as defined by the applicable religious laws or rules; and

(iii) "pious or religious purposes" are understood to be those which concern acts of piety, of the apostolate, or of charity, whether spiritual or temporal and include similar organisations of any religious denomination;

(b) any reference to "ecclesiastical entity" shall be a reference to an association of persons or a universality of things which are established by the competent ecclesiastical or other religious

authority so that they might, in the name of such authority and in accordance with the provisions of the relevant law, fulfil the specific task entrusted to them in view of the public good, including the imparting of religious teaching, the promoting of public worship and the undertaking of projects which are appropriate to their character and governed by their statutes, under the higher direction of the said authority. Such entities include dioceses, parishes and all institutes of consecrated life and societies of apostolic life, and include similar organisations of any religious denomination.

(8) With effect from the relevant date, it shall not be lawful to establish a foundation other than by public deed or by will for marriage legacies or ecclesiastical entities.

(9) The appropriation of assets to a purpose or for the benefit of beneficiaries written in the form indicating an intent to establish a foundation but which is not made by a public deed of foundation or by will, shall be regulated by the provisions relating to unregistered organisations. In such cases, the persons who may be acting as administrators or fiduciaries shall be deemed to have the power to constitute such appropriation of assets into a foundation in accordance with this Schedule and to register the same.

(10) Until such time as it is registered, it shall not be lawful for such an organisation to use the word "foundation" in its name and the Registrar may, upon being notified thereof or upon becoming otherwise aware of such circumstances, by notice in writing demand the removal of such word from the name.

(11) It shall be presumed that a mandate regulated by Title XVIII of this Code or a deposit regulated by Title XIX of this Code, has been established, where a written instrument is executed vesting a person with the ownership or possession of property for the fulfilment of a specified purpose or for the benefit of beneficiaries, unless there is clear evidence of an intent to create a foundation as stated in sub-article (9) and to appoint the recipient as an administrator, or a trust and to make the recipient a trustee."

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Amendment of article 27 of the Second Schedule.

**67.** In sub-article (1) of article 27 of the Second Schedule, for the words "or any beneficiaries." there shall be substituted the words "or any beneficiaries:" and immediately thereafter there shall be added the following new proviso:

"Provided that an association which is not established as a public benefit organisation may be established between two persons."

Substitution of article 28 of the Second Schedule.

**68.** Article 28 of the Second Schedule shall be substituted by the following:

"28. Religious organisations constituted as foundations or associations and established for purposes as defined in applicable religious laws shall not be subject to or in any manner regulated by this Schedule and shall be regulated by the relative religious laws. In the event that they are registered as foundations or associations under this Schedule they shall also be regulated by the provisions of this Schedule from such date and in case of inconsistency the provisions of this Schedule shall prevail."

Amendment of article 29 of the Second Schedule.

**69.** Article 29 of the Second Schedule shall be amended as follows:

(a) sub-article (2) thereof shall be substituted by the following:

"(2) The deed of foundation shall contain, on pain of nullity, an endowment of money or property worth at least one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) except in the case of a public benefit foundation in which case the endowment shall be of at least two hundred and thirty-two euro and ninety four cents (€232.94).";

(b) in sub-article (3) thereof, immediately after the words "When the property endowed is not cash or" there shall be added the word "any";

(c) sub-article (4) thereof shall be amended as follows:

(i) for the words "shall, on pain of nullity, state the following:" there shall be substituted the words "shall state the following:";

(ii) in paragraph (c) thereof, immediately after the words "the purposes or objects" there shall be added

the following:

"and in those cases where the foundation falls within the following specific categories:

(i) the foundation is a public benefit foundation as defined in article 1(4); or

(ii) the foundation is a private foundation as defined in article 31B,

an indication of the category of the foundation in the statute;"

(iii) paragraph (e) thereof shall be substituted by the following:

"(e) (i) the composition of the board of administration and the name, surname, identification, passport or registration number, as applicable, nationality and residential address of the administrators, if any, or when there are no administrators at the time of establishment or registration, the person who has the power to appoint the administrators;

(ii) the manner in which administrators are appointed and removed from office and the duration of their appointment, if any:

Provided that if the duration of the appointment of the administrators is not stated in the deed of foundation, administrators shall be deemed to have been appointed indefinitely until they retire or are removed.";

(iv) paragraph (f) thereof shall be deleted;

(v) paragraphs (g), (h) and (i) thereof shall be re-numbered as paragraphs (f), (g) and (h) respectively;

(vi) paragraph (f) thereof, as re-numbered, shall be substituted by the following:

"(f) the term for which it is established, if any and if not stated it shall be presumed to be established for an indefinite term except in a beneficiary foundation in which case the provisions

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of articles 29(7) and 33 shall apply;"

(vii) in paragraph (g), as re-numbered, for the words "the name and address of a person resident in Malta" there shall be substituted the words "the name and address of a person ordinarily resident in Malta";

(viii) paragraph (h) thereof, as re-numbered, shall be substituted by the following:

"(h) in the case of a beneficiary foundation, either the names of beneficiaries, or, in the absence of such indication, a declaration that the foundation is constituted for the benefit of beneficiaries. Such beneficiaries may be indicated in a written instrument, which need not form part of the public deed, called the "beneficiary statement", signed by the founder and addressed to the administrators, and the same shall be signed in the presence of a Notary Public. The use of a beneficiary statement shall not be permitted in the case of a beneficiary foundation, or a cell of such a foundation, when it is established exclusively for the benefit of public interest beneficiaries."; and

(ix) immediately after paragraph (h) thereof, as re-numbered, there shall be added the following new paragraphs:

"(i) where there exist more than one board or committee in virtue of the deed of foundation, the deed of foundation shall specify which board or committee shall be the board of administration;

(j) when the category of any foundation is for the public benefit, this shall be stated expressly through the use of the words "public benefit", "social purpose" or "public purpose" in the constitutive instrument and in the statute of the foundation.";

(d) sub-article (5) thereof shall be amended as follows:

(i) immediately after the words "any person subscribing to the statute after a foundation is established" there shall be added the words "by means of a public deed or in such other manner provided for in the statute"; and

(ii) for the words "In the event that more than three founders wish to establish a foundation, a statement may be made of this fact in the statute and the signature of three founders on behalf of all founding members stated in a schedule to the statute shall be sufficient to indicate the consent of all stated founders." there shall be substituted the following:

"Where a foundation is being established as a public benefit foundation involving more than three persons as promoters, the signature of three persons shall be sufficient to indicate the consent of all founders at the time of establishment. A document containing a list of all founders shall be sufficient evidence of their consent. The Notary Public shall not be bound to ascertain that the three persons have been authorised by the founders to appear on the deed but shall rely on the document submitted to him by the three persons containing a list of all founders as evidence of their consent. Notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all founders, their name, surname and identity card, passport number or registration number, as applicable, shall suffice:

Provided that the Notary Public who receives any deed to which this sub-article refers shall record in the deed a declaration by the three persons that they are authorised by the founders to state their names, surnames and identity card, passport number or registration number, as applicable, in the document above referred to and the said Notary Public shall warn the said three persons of the importance of the truthfulness of such declaration. The document shall be attached to the public deed establishing the foundation:

Provided further that any person named as a founder in a document as referred to above who claims that he did not authorise the three persons to include his name and surname and identity card, passport number or registration number, as applicable, in the document shall, within sixty (60) days of his becoming aware of his inclusion in the document, be entitled to register a declaration to that effect in the Register of the foundation and in

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the absence of any written evidence to the contrary which may be produced in case of dispute on such matter, he shall not be considered ever to have been a founder.";

(e) sub-article (6) thereof shall be substituted by the following:

"(6) When administrators are designated in the statute, unless they consent on the said statute itself, the written consent of the administrators must be delivered to the Registrar prior to registration of any foundation. When the administrators are not designated in the statute, their written consent must be submitted to the Registrar on the notification of their appointment.";

(f) sub-article (7) thereof shall be substituted by the following:

"(7) (a) It shall not be lawful to state a term for a foundation in excess of one hundred and twenty-five (125) years except in the following cases in which a foundation may have an unlimited duration:

- (i) public benefit foundations; or
- (ii) foundations governed by article 31B(4), (5) and (6).

(b) When no term is specified in the deed of a foundation, a foundation shall be considered to be valid for one hundred and twenty five (125) years from its establishment except in the cases referred to in paragraph (a).

(c) Saving as otherwise provided, in the event that a longer term is stated in a deed of a beneficiary foundation, it shall terminate on the hundred and twenty fifth anniversary from when it came into existence. The limitation on duration also applies in the case where a foundation results from the conversion of another registered organisation or of a trust in accordance with this Schedule and any regulations or from the transfer of a patrimony by a foundation to another foundation or trust. In such a case periods of existence shall be considered cumulative.";

(g) paragraph (b) of sub-article (11) thereof shall be substituted by the following:

"(b) The administrators of a foundation may not renounce to a benefit to the foundation under a will pursuant to a disposition in its favour except with the prior consent of the beneficiaries or in the case of a purpose foundation, the Court:

Provided that nothing in this sub-article shall oblige any administrator to accept a benefit under a will or an endowment if such administrator has reason to suspect that the same consists of assets derived from any criminal offence or involves money laundering or the funding of terrorism:

Provided further that if the administrator is not willing to accept to act as an administrator or to continue in such office, the provisions of article 35 shall apply."; and

(h) immediately after sub-article (12) thereof there shall be added the following new sub-articles:

"(13) The Registrar shall register an existing foundation without its name being changed even if this is not in conformity with the requirements of sub-article (4)(a) or any other article imposing rules on the names of organisations.

(14) The Minister responsible for justice may make regulations permitting foundations to use alternative words instead of the word "foundation" in their name.

(15) The provisions of this article shall apply *mutatis mutandis* in the case of foundations governed by any directive or regulation of the European Parliament and the Council regulating the establishment and operation of foundations as may be in force at any time."

**70.** Immediately after article 29 of the Second Schedule there shall be added the following new articles:

"Mandatory rules to prevail.

29A. (1) Subject to the provisions of sub-article (2), in the case of a foundation governed by Maltese law, where the laws of Malta contain provisions with regard to the following matters -

Addition of new articles to the Second Schedule.

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(a) the protection of minors or incapable parties;

(b) the personal and proprietary effects of marriage;

(c) succession rights, whether testate or intestate, especially the indefeasible shares of spouses, ascendants and descendants,

hereinafter referred to as "rules of mandatory application" or "mandatory rules" which cannot be derogated from by a voluntary act, such laws shall prevail over the terms of the foundation and related endowments unless otherwise expressly provided in this Schedule or in applicable law.

(2) To the extent that there exist rules of mandatory application, the courts shall apply such mandatory rules subject to the provisions of article 29B.

(3) When a foundation is governed by Maltese law and has no connection to Malta by reason of the domicile of the founder at the time of the endowment of the property to the foundation or the *situs* of the property, when immovable, any rules of mandatory application shall not apply in any manner. In such cases no regard shall be had to:

(a) the domicile, habitual residence, registration, authorisation or place of business in Malta of any protector or any person rendering administration, accounting or other services to the foundation; or

(b) the fact that the proper law of the foundation is Maltese law and the place of registration is Malta; or

(c) the *situs* of property in Malta, when movable; or

(d) the fact that the place of execution of the deed of foundation, any documents relating to the foundation or relating to the foundation property or other transaction documents is Malta.

(4) In the case of a foreign foundation, the rules of mandatory application shall only apply to any relevant endowment to the foundation when the founder is domiciled in Malta at the time of creation of the foundation or the making of the endowment, subject always to the rules stated in article 29B.

(5) In the case of a foreign foundation, when the founder of such a foundation is not domiciled in Malta at the time of the creation of the foundation or the making of the endowment, the provisions of this Schedule shall apply only in so far as they regulate the continuation or otherwise in Malta of the foundation or the endowment.

(6) To the extent that there exist rules of mandatory application in the law applicable in the circumstances in terms of Maltese private international law, the courts of Malta may apply such mandatory rules subject to the provisions of article 29B.

(7) When a court is requested to recognise a foreign judgement which enforces any rules of mandatory application as referred to in sub-article (6), the court may accede to such request subject to the provisions of article 29B.

Management  
of  
inconsistent  
provisions.

29B. In order to ensure that the provisions of applicable law which cannot be derogated from by voluntary act are applied in a manner which preserves the endowment to the foundation and its terms as far as possible, the following rules shall apply:

(a) the application of the mandatory rules shall not produce the failure or invalidity of the endowment or the foundation, and where possible, the endowment and the foundation shall continue under the same terms in relation to property which is unaffected by such mandatory laws. Subject to any order of the court, the affected property shall be held by the foundation for the founder absolutely, or if he is dead, for his heirs;

(b) the administrators shall be empowered to:

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(i) vary the terms of the foundation in so far as relates to the nature or the extent of benefit or the endowment; or

(ii) do such acts as are necessary and legally permissible:

Provided that the beneficiaries or the purpose of the foundation derive the benefits in accordance with the intentions expressed by the founder in the deed of foundation in a manner compatible with the mandatory rules and any property which becomes free from the terms of the foundation for any reason shall be held by the foundation for the founder absolutely, or if he is dead, for his heirs;

(c) for the purposes of resolving conflicts between the endowment and the foundation and any mandatory rules and to enable the continuance of the foundation as specified in paragraphs (a) and (b), the terms of the foundation or the endowment, where silent, shall be deemed to include:

(i) the power, without any obligation to do so, of the administrator to reduce the foundation assets and return all or part of them to the founder or the estate of the founder so as to achieve compliance with such provisions of law;

(ii) the power of the administrator to enter into arbitration and mediation agreements and to reach a compromise to disputes and claims by third parties; and

(iii) the power to seek directions from the Court on such matters:

Provided further that such powers shall be exercisable notwithstanding any contrary provisions of the deed of foundation or the endowment and, provided the administrator acts honestly, in good faith and reasonably, such acts shall not constitute a breach of any fiduciary duties and any applicable law;

(d) the property of the founder which is not endowed to the foundation shall first be utilised, to the extent possible, to meet the claims of any person seeking to invalidate or reduce an endowment;

(e) notwithstanding any other applicable law, the foundation may meet a valid claim being made against the foundation property, whether voluntarily or as a result of a court direction, order or judgement, by a payment of value in money and shall not be obliged to return property endowed to the foundation in kind;

(f) any person who succeeds in reducing the property of the foundation or obtains a court order to invalidate an endowment in whole or in part or who enjoys the benefits of an arrangement with the foundation as provided in paragraph (c)(i), shall forfeit the benefits under the foundation, unless the terms of the foundation expressly state otherwise or the administrators consider it unreasonable in the circumstances and obtain the consent of the Court to maintain in force rights in favour of such person subject to such conditions as the Court may consider appropriate;

(g) in any event and notwithstanding any provision of law, a foundation shall not be subject to an obligation to pay or return more than the foundation property held by it, after deducting any fees and costs, and shall not be subject to any obligation for any distributions made by it, in good faith prior to having written notice of any claim.

Property in Malta, Maltese or foreign foundations, foreign domiciliary.

29C. Article 958R of this Code shall apply to foundations and endowments thereto *mutatis mutandis*."

71. Article 30 of the Second Schedule shall be substituted by the following:

Substitution of article 30 of the Second Schedule.

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"Obligation  
to register.

30. (1) It shall be the obligation of the administrators of any foundation established after the relevant date, other than pious foundations, marriage legacies and ecclesiastical entities constituted as foundations, to register such foundation in terms of this Schedule within the periods stated in this Title:

Provided that when no administrators are designated, the foundation shall be registered by any of the persons mentioned in article 31(2), (3) and (4) or by the person designated in the statute as having the power to appoint the administrators.

(2) After a foundation has been established by public deed in accordance with this Sub-Title of this Schedule or at any time after the opening of succession in case of a foundation established by will, the provisions of article 14 shall apply to any acts carried out by the administrators on behalf of a foundation prior to its registration and in such cases the administrators shall not be personally liable in accordance with article 17(2) if:

(a) the actions carried out implement what is expressly required of them in the public deed or will; and

(b) the foundation is registered within the period stated in article 31."

Amendment of  
article 31 of the  
Second  
Schedule.

**72.** Article 31 of the Second Schedule shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) For the purpose of registration of a foundation the prescribed application form shall be submitted to the Registrar together with:

(a) in the case of a private foundation as defined in article 31B:

(i) an authentic copy of the constitutive instrument and the statute without the beneficiary statement, if any;

(ii) save as otherwise provided in this Schedule, the prescribed Note of Initial Registration; and

(iii) the written consent of the administrators, if any; and

(b) in all other cases, an authentic copy of the constitutive instrument and the statute and the written consent of the administrators, if any;"

(b) in paragraph (ii) of sub-article (2) thereof, the words "appointed in the said deed" shall be deleted;

(c) in sub-article (4) thereof, for the words "the said extract is to delivered" there shall be substituted the words "the said extract is to be delivered";

(d) in sub-article (7) thereof, immediately after the words "sub-articles (2), (3) and (4)" there shall be added the words "or by the person designated in the statute as having the power to appoint the administrators";

(e) in paragraph (b) of sub-article (8) thereof, for the words "for such refusal." there shall be substituted the words "for such refusal:", and immediately thereafter there shall be added the following new proviso:

"Provided that, the fact that the Registrar registers a foundation in the absence of compliance with any requirement under any special law, shall not exempt such foundation or its administrators from their obligation to comply with such law or to be subject to any penalties or proceedings which may arise from the breach of such special law.";

(f) in sub-article (9) thereof, for the words "private foundation" there shall be substituted the words "private foundation as defined in article 31B";

(g) sub-article (10) thereof shall be amended as follows:

(a) immediately after the words "the persons mentioned in sub-articles (2), (3) and (4)" there shall be added the words "and the person designated in the statute as having the power to appoint the administrators";

(b) in the proviso thereto, for the words "or any

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other relevant fact." there shall be substituted the words "or any other relevant fact:" and immediately thereafter there shall be added the following new proviso:

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"Provided further that in case of a public benefit foundation which is enrolled in accordance with the Voluntary Organisations Act , the penalty above referred to shall be reduced to twenty-three euro (€23)."; and

(h) sub-articles (12) and (13) thereof shall be deleted.

Addition of new articles to the Second Schedule.

**73.** Immediately after article 31 of the Second Schedule there shall be added the following new articles:

"Amendments to statutes and notices of changes.

31A. Any amendments to the statute of a foundation or changes in a foundation after a foundation has been registered, shall be registered in the Register as follows:

(a) notwithstanding what is stated in the statute, if there is a form which is prescribed, by the filing of such form and such amendments or changes shall not require a public deed or enrolment in the records of a Notary Public;

(b) notwithstanding the provisions of any other law, any other amendments or changes not the subject of notification through the filing of a prescribed form shall be made by resolution, private writing or notarial deed in accordance with the statute and unless made by a notarial deed, shall be enrolled in the records of a Notary Public and shall be registered in the Register by the Notary Public publishing or enrolling the deed, as the case may be, within fourteen days from the date of publication of the deed or its enrolment in his records, as the case may be;

(c) the duty of the administrators with regards to amendments to the statute, shall be as prescribed from time to time; and

(d) in the case of a private foundation as defined in article 31B, if such amendment affects any matter referred to in the Note of Initial Registration referred to in article 31, which is not already otherwise addressed in a prescribed form filed in terms of paragraph (a), an Amended Note of Initial Registration shall also be submitted to the Registrar.

Private foundations and trading activities.

31B. (1) Private foundations may carry out the trading activities referred to in:

(a) this sub-article and sub-articles (2) and (3); and

(b) sub-articles (4), (5) and (6) without limitation:

Provided that private foundations may also establish another legal organisation to carry out acts of trade or trading activities to achieve and promote their principal purposes and objectives. They may establish another legal organisation to carry out any acts of trade which are not related to their principal purposes and objectives only when this power is expressly granted in their statute.

For the purpose of this article, a private foundation means a foundation, which neither qualifies as a public benefit foundation nor is it established for a public or social purpose and which is not a voluntary or non profit organisation but which can be established for a lawful purpose as defined in terms of the provisions of the Voluntary Organisations Act.

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(2) Notwithstanding the provisions of sub-article (1), a private foundation:

(a) may have additional objectives and powers contained in its statute to enable it to carry out any such activities referred to in this article to achieve its purposes or to protect its assets and, or to otherwise comply with legal requirements; and

(b) shall, in any case, be deemed to have all the powers to do anything which is necessary or ancillary to achieve the said purposes.

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(3) In addition to the activities referred to in sub-articles (1) and (2), a private foundation may:

(a) hold assets as an investment portfolio and to do all such acts ordinarily carried out in such context;

(b) carry out any specific actions with shares it may hold as may be designated in the statute of the foundation for the achievement of any designated purpose, transaction or for the protection of any designated interests;

(c) own, establish, grant and license a franchise, a trade mark or other intellectual property which gives rise to income;

(d) own income which may be made payable to voluntary organisations which own, administer or otherwise operate an innovative technology arrangement; and

(e) own commercial property or a ship or aircraft.

(4) For the purposes of sub-article (3):

(a) a foundation shall act as the passive owner of such assets, the administration of which is delegated to a third party, including another legal organisation with its own board of directors or a third party under a fiduciary agreement or temporary title; and

(b) the carrying out of acts of trade of any kind by the delegate with assets belonging to the foundation shall not imply that the foundation is itself carrying out such activities.

For the purpose of this sub-article "passive" shall mean that the foundation is not involved in the day to day operations of the relevant activity but shall not imply limitations on the foundation or its administrators from exercising or protecting the rights of the foundation in relation to any of its purposes or assets.

(5) Subject to any authorisations, registrations or notifications as may be necessary under applicable laws, a foundation may operate:

(a) as a collective investment vehicle, and issue units to investors therein, for the holding of a common pool of assets, the management of which is delegated to a third party;

(b) as a pension or employee benefit arrangement;

(c) as a securitisation vehicle or for the purpose of supporting or implementing a securitisation transaction, including to hold any assets in connection therewith, borrow monies against the issue of bonds, establish security or collateral and do all relative and ancillary acts;

(d) as a retirement scheme or fund;

(e) for the holding, administration, development, or sale of undivided property originating from an inheritance deriving from one or more deceased person or persons common to the beneficiaries for the sole purpose of the division or liquidation of the common estate; or

(f) for any other purpose as may be prescribed in a notice issued by the Minister under this Schedule.

(6) A foundation may be used in the context of the following transactions and any transactions connected or ancillary thereto:

(a) securities offerings, whether to the public or for private placement, portfolio management and custody of investment instruments;

(b) the grant of real or personal security interests, including hypothecs, mortgages, privileges, pledges and guarantees;

(c) collective loan agreements and other multi-creditor banking facilities;

(d) insurance policies and the payment of proceeds thereunder;

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(e) timeshare and multi-property structure; and

(f) such other commercial transactions as may be prescribed in a notice issued by the Minister under this Schedule.

(7) When a foundation is established with segregated cells, the foundation may itself render services against remuneration in favour of any of its cells which are established for the benefit of beneficiaries or for purposes or both.

(8) Whenever the activities of a foundation intended to be carried out under sub-articles (4), (5) and (6) are subject to laws regulating credit or financial institutions, insurance undertakings, investment services or funds, trusts and trustees, corporate or other licensable fiduciary institutions, such foundation shall only be permitted to register with the prior written consent of the Malta Financial Services Authority, where applicable in terms of law and when it is the competent authority under such law, or may be permitted by such authority to register but not to carry out activities, until it is authorised by means of a notice issued by such authority.

(9) Where such activities are exempt from registration in terms of sub-article (8), the Registrar for Legal Persons may request confirmation of such exempt status from the Malta Financial Services Authority prior to registering the foundation in terms of the provisions of this Schedule.

(10) Nothing in this article shall prohibit foundations regulated by European Union law from carrying out acts of trade or trading activities if they are permitted to do so under such law.

31C. (1) The following registration documents are accessible to the public, except as stated in sub-article (2):

(a) the application form;

Accessibility of registered documents and confidentiality of private foundations.

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(b) any forms notified to the Registrar under the Civil Code (Second Schedule) (Notifications and Forms) Regulations, including the Note of Initial Registration, as the same may be amended from time to time, except the following forms:

(i) Form DD relating to assets added to an organisation by additional endowments, as the same may be amended or re-numbered from time to time;

(ii) such other forms stated in a notice issued by the Minister;

(c) the written consent of any administrator to act as administrator; and

(d) the Certificate of Registration,

as well as any changes made thereto.

(2) Unless the founder has expressly waived confidentiality under sub-article (3), in the case of a private foundation, all documents, statements or declarations submitted to the Registrar, including those accompanying notified forms referred to above, shall not be accessible to third parties without the prior written consent of the administrators or the supervisory council of the foundation, if any, duly authenticated by a Notary Public, or with the permission of the Court and only when the Court is satisfied that the person requesting such information has a legitimate interest therein:

Provided that:

(a) nothing in this article shall render confidential any transactions which are subject to registration in the Public Registry according to law;

(b) unless the founder has expressly waived confidentiality under sub-article (3), the applicant shall be obliged to submit a Note of Initial Registration signed by the administrators, the founder or by the person designated in the statute as having the power to appoint the administrators as a condition to registration and this shall be accessible to the public; and

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(c) articles 47, 48, 49 and 50 of the Trusts and Trustees Act shall apply to the administrators of a private foundation.

(3) The founder may, by means of a statement in the statute or by a notarially authenticated notice in writing, filed with the Registrar, declare that all registration documents in relation to a private foundation are accessible to third parties, and the Registrar shall act accordingly. Such declaration shall be filed in the Register by the Registrar and shall be accessible to third parties.

(4) The Registrar shall implement procedures and take all measures to ensure the privacy of all documents relating to a private foundation which are not accessible to the public.

(5) A person dealing with administrators of a private foundation in relation to foundation property need not:

(a) enquire into the terms of the foundation or of any endowment; or

(b) obtain the consent of the beneficiaries or any other person, and shall, where he acts in good faith, be entitled to rely on declarations made by the administrators with regard to any matters therein stated.

(6) The administrators may furnish to any person with whom they are dealing in the interest of the foundation, a certificate containing the following information without being in breach of any confidentiality obligations:

(a) that the foundation exists, is registered and that the Note of Initial Registration is complete and factually correct;

(b) the identity and address of the current administrators in office;

(c) that the administrators, or any of them, are duly authorised and empowered to carry out the relevant transaction and have obtained all necessary internal consents, if any;

(d) the revocability or irrevocability of the endowments of the foundation and, if revocable, that the endowments have not been revoked, or if any have been revoked, which ones have been revoked since the last accounts made available; and

(e) the latest accounts of the foundation.

(7) When there is more than one administrator, a certificate may be signed and authenticated by any administrator.

(8) Without prejudice to any liability under applicable law or to other fine or penalty which may be applicable under any other law, any administrator who issues any certificate containing any statement which he knows or ought to know is false shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment for a term not less than thirteen months and not exceed four years or to a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) or to both."

74. Article 32 of the Second Schedule shall be amended as follows:

Amendment of article 32 of the Second Schedule.

(a) in sub-article (1) thereof, for the words "including a social purpose" there shall be substituted the words "including a social or public benefit purpose"; and the words "as provided in article 26(7)" shall be deleted;

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The founder may, at any time amend or add to the deed of a purpose foundation, including its purpose, by means of an amendment to the statute done in accordance with the provisions of the statute, if any, and, or any applicable law. The statute may expressly permit any other body or person to amend the statute in the manner and subject to the conditions as may be stated. After the death of the founder, unless the statute provides for the manner in which amendments may be made, the Court may authorise such amendment or addition to the deed of a

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purpose foundation, including its purpose, on the application of:

- (a) any administrator;
- (b) the supervisory council;
- (c) any interested party, or
- (d) in the case of a public benefit foundation, the Attorney General:

Provided that a public benefit foundation may not have its purpose changed or extended to other purposes which are not also social or public purposes.";

(c) in sub-article (3) thereof, immediately after the words "is made the administrators may exercise their discretion." there shall be added the following new paragraph:

"A purpose foundation may use money or property of the foundation to acquire shares or interests in other organisations when the principal purposes and objectives of the other organisations are related or ancillary to the purpose foundation or established to implement the purposes of the said foundation:

Provided that, if an endowment of shares or interests in an organisation is made to a purpose foundation to help the foundation and its principal purposes and objectives, such purposes and objectives of the organisation need not be related or ancillary to the purposes of the foundation.";

(d) sub-article (4) thereof shall be amended as follows:

(i) for the words "unless the founder amends the purpose in terms of sub-article (3)" there shall be substituted the words "unless the purpose is amended in terms of sub-article (2), or, if the founder is no longer alive, the administrators unanimously determine that the foundation is to be terminated and the proceeds distributed in accordance with this article"; and

(ii) the words "Any disposal of assets shall be made only to another purpose foundation with similar purposes." shall be deleted;

(e) sub-article (5) thereof shall be re-numbered as sub-article (8);

(f) immediately after sub-article (4) thereof, there shall be added the following new sub-articles:

"(5) In the case of a purpose foundation established for a public benefit, the indication of alternative purposes must refer to other public benefit organisations.

(6) Any disposal of assets pursuant to the statute of the foundation shall be made on the following basis:

(a) in the case of a purpose foundation established for a public benefit to another public benefit organisation having the same or a similar purpose:

Provided that when an organisation is controlled by the Government, a religious organisation or a political party then the disposal of assets may be made in favour of the Government, another religious organisation of the same denomination or the relevant political party, as the case may be; and

(b) in the case of a purpose foundation established for any other purpose in accordance with the deed of foundation.

(7) Any disposal of assets by the Court under sub-article (4), shall be made on the following basis:

(a) if the purpose foundation is not established for a public benefit purpose, in the absence of express direction in the statute, the assets shall be paid out to the founder or his heirs;

(b) if the foundation is a public benefit foundation, in the absence of express direction in the statute in accordance with sub-article (6)(a), the assets shall be disposed of in favour of:

(i) the founder, if it is also a public benefit organisation, irrespective of its purpose; or

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(ii) if sub-paragraph (i) does not apply, another public benefit organisation with the same or similar purposes but the recipient shall make reasonable efforts to achieve the original purposes of the endowments made to the original organisation:

Provided that when the purposes are the advancement of religion or the carrying out of a religious vocation or there are indications in the original endowment that this was intended for a religious organisation, to any pious foundation or ecclesiastical entity, and in such case of the appropriate denomination; or

(iii) if the Government of Malta is the founder, to the Government of Malta if the purposes are for the general public benefit or utility;

(c) if the foundation has a combination of purposes, being partly private benefit and partly social or public purposes, the assets shall be paid out as follows:

(i) unless the social or public purposes have already been achieved or are specifically determined such that their extent can be calculated, the assets shall be paid out, in accordance with paragraph (b) in such manner that reasonably proportionately reflects the benefit intended for the social or public purposes as may be approved on application to the Court; and

(ii) the balance shall be paid out as stated in paragraph (a); and

(iii) where the assets are not immediately payable due to the fact that payment is subject to a condition, a contingency or a discretion, they shall be retained until the condition or contingency occurs or the discretion can be exercised;

(d) where the foundation is a pious foundation, marriage legacy or ecclesiastical entity

which is constituted as a foundation and which qualifies as a long-term obligation, in the event that there may be any remaining assets from the sum dedicated to the performance of the long-term obligation after it has been performed, this shall be paid out as may be determined in accordance with Canon law and other legislation governing religious organisations.";

(g) sub-article (8) thereof, as re-numbered, shall be substituted by the following:

"(8) When the dominant purpose of a foundation is to support a class of persons which constitute a sector within the community as a whole, because they suffer from a particular social, physical or mental disability it shall be permissible to indicate one or more individuals who suffer from such condition as named beneficiaries. Notwithstanding such indication, the foundation shall be considered to be a public benefit purpose foundation on condition that after the death of such beneficiaries, the residual property of the foundation is, by the express terms of the statute, to be held either for the exclusive benefit of the designated class of beneficiaries or for another foundation established for a similar social purpose which qualifies as a public benefit."; and

(h) immediately after sub-article (8), as re-numbered and substituted, there shall be added the following new sub-articles:

"(9) Notwithstanding the provisions of this article and other provisions of this Schedule, a "purpose foundation" which is not established as a public benefit foundation shall be subject to the provisions of Column A with the modifications in Column B which prevail over its legal form in deference to its non-public benefit purposes:

Column A	Column B
29(2)	The foundation must have an initial endowment of money or property of at least one thousand and one hundred and sixty four euro and sixty nine cents (€1,164.69);
29(7)	The foundation may not be established for more than one hundred and twenty-five years (125) except where expressly permitted by this Schedule;

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- 32(4) This sub-article shall not apply to the foundation and if the foundation terminates because the purposes have not been amended in accordance with the statute, the assets of the foundation shall, subject to the terms of the foundation, devolve on the founder or his heirs at law;
- 34(6), (7) Any endowments to the foundation may be expressed to be revocable;
- 35(2) The foundation may have only one (1) administrator and the administrator or administrators shall be subject to or otherwise require authorisation by the Malta Financial Services Authority under article 43 of the Trusts and Trustees Act in accordance with its terms;
- 40(9) The foundation may be constituted in a revocable manner;
- 60(1) This article shall not apply and article 60(2) shall apply in lieu thereof.

(10) Without prejudice to the provisions of this article, a provision in the statute granting the power to the administrators to apply the proceeds to another public benefit purpose when the stated purpose has been achieved, exhausted or is no longer possible shall be valid."

Substitution of article 32A of the Second Schedule.

**75.** Article 32A of the Second Schedule shall be substituted by the following:

"Public benefit foundations and trading activities.

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32A. (1) Without prejudice to the ability of any public benefit foundation to carry out acts of trade in the ordinary course of carrying out its principal purposes and objectives, in terms of article 38(2) of the Voluntary Organisations Act, where applicable, a foundation shall not be established to carry out acts of trade or trading activities on a regular or continuing basis nor shall it do so in practice, except as permitted under this article and when the proceeds of such trading activities are attributable to a social or public purposes.

(2) Notwithstanding the provisions of sub-article (1) a foundation may own, acquire or be endowed with shares or other interests in another legal organisation and may generally:

(a) carry out any specific actions with shares it may hold as may be designated in the statute of the foundation for the achievement of its main purposes and objectives;

(b) subject to such authorisations as may be necessary under applicable laws, issue tokens and carry out any trading activity resulting from such foundations owing, administering or otherwise operating an innovative technology arrangement; and

(c) seek the achievement of designated social purposes which may include health and education:

Provided that this shall not apply to management agreements, licences or otherwise to third parties for profit:

Provided further that:

(i) when the foundation owns a shareholding in an organisation established to trade, the trading organisation shall not be restricted in its activities by the purposes of the foundation in any manner, unless otherwise stated in the statute of such trading organisation;

(ii) when the foundation qualifies as a voluntary organisation and owns shares or other interests in another legal organisation established pursuant to the provisions of article 38 of the Voluntary Organisations Act, the provisions of sub-article (4) of the said article 38 shall apply but the relevant limitations shall not apply to persons who are not involved in the foundation and are not related parties thereto; and

(iii) the purposes of the holding, acquisition or endowment of shares or other interests shall not be to enable the foundation to speculate with such assets.

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For the purposes of sub-paragraph (ii), "related parties" shall mean persons related by consanguinity or affinity in the direct line in any degree or in the collateral line up to the third degree inclusively, and shall also include any person involved in the same business under any legal structure or otherwise.

(3) With reference to a public benefit foundation:

(a) its statute may contain additional objectives and powers to enable it to carry out any such activities, to achieve its purposes, to protect its assets and otherwise to comply with legal requirements; and

(b) it shall, in any case, be deemed to have all the powers to do anything which is necessary or ancillary to achieve the said purposes.

(4) It shall be lawful for -

(a) the administrators or a person designated in the statute;

(b) any public benefit beneficiary, in the case of public benefit foundations; or

(c) the Attorney General, in the case of a public benefit foundation and, or the Commissioner for Voluntary Organisations in the case of foundations which are voluntary organisations enrolled in accordance with the Voluntary Organisations Act,

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to seek directions from the Court as to whether the actual or proposed activity of the foundation constitutes regular or continuing trading activity beyond what is permitted under sub-article (1) and the Court may, in such cases, issue directives to the foundation on the manner in which it shall carry out activities consistently with this article, including a direction to amend its purposes and objectives, but any such order shall not affect or invalidate acts already lawfully carried out or interrupt lawful acts in progress.

(5) The Court shall also consider the following principles and circumstances:

(a) in case of a public benefit foundation, the avoidance of speculation which may affect the assets of the foundation and the achievement of its purposes;

(b) the creation of liabilities which may impinge on the achievement of the purposes of the foundation;

(c) the protection of third parties dealing with the foundation; and

(d) the competence of the administrators to carry out such activities and the extent of the delegation of such functions to third parties.

(6) When a public benefit foundation is established with segregated cells, the foundation may itself render services against remuneration in favour of any of its cells which are established for the benefit of its beneficiaries or its purposes or both.

(7) Nothing in this article shall prohibit public benefit foundations regulated by European Union law from carrying out acts of trade or trading activities if they are permitted to do so under such law:

Provided such acts or activities are carried out solely to achieve and promote the principal purposes and objectives of the foundation."

76. Article 33 of the Second Schedule shall be amended as follows:

Amendment of article 33 of the Second Schedule.

(a) in the marginal note thereto, for the words "Private foundations" there shall be substituted the words "Beneficiary foundations";

(b) in sub-article (1) thereof the words "Foundations imply fiduciary obligations under this Code upon all persons administering them." shall be deleted;

(c) in sub-article (3) thereof, the words "If the foundation terminates for any other reason at law the assets of the foundation shall, subject to the terms of the foundation, devolve on the founder or his heirs at law." shall be deleted;

(d) sub-article (4) thereof shall be amended as follows:

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(i) for the words "Private foundations" there shall be substituted the words "Beneficiary foundations";

(ii) in the paragraph immediately following paragraph (b) thereof, for the words "as aforesaid the foundation," there shall be substituted the words "as aforesaid,";

(iii) in the paragraph immediately following the paragraph referred to in sub-paragraph (ii), for the words "Such identification need not be made in the deed constituting the foundation" there shall be substituted the words "Such identification need not be made in the constitutive instrument or statute";

(e) sub-article (7) thereof shall be amended as follows:

(i) for the words "Subject to the terms of the deed of foundation, if the founders are still alive and capable of acting they may freely amend the deed and substitute, add or remove beneficiaries:" there shall be substituted the words "Subject to the terms of the deed of foundation which may exclude or restrict such power, if the founder is still alive and capable of acting he may freely amend the deed of foundation including substituting, adding or removing beneficiaries:"; and

(ii) in the proviso thereto, for the words "he receives notice" there shall be substituted the words "they receive notice"; and

(f) immediately after sub-article (19) thereof, there shall added the following new sub-articles:

"(20) When permitted by the statute of a beneficiary foundation, beneficial interests may be established in the statute or a beneficiary statement in unitised form, of whatever nomenclature, where each unit reflects a share in the assets of the foundation with such rights to income, capital or other entitlements or powers as may be stated in the statute or beneficiary statement and if nothing is stated, proportionately to the total number of units:

Provided that the units may be subject to rules on recordation in a register of units, transfers, pledges and other such matters as the administrators may establish

from time to time or as are provided in the statute. In such cases, the beneficial interest is presumed, unless otherwise stated in the statute or beneficial statement, to be subject to inheritance in favour of the beneficiary's heirs under his will or at law in case of intestacy and shall not terminate as provided for in sub-article (3).

(21) In the event that a private foundation as defined in article 31B is dissolved for any reason at law, the assets of the foundation shall, subject to the performance of all obligations towards beneficiaries and any other terms of the foundation, be presumed to be held for the founder or his successors in title.

(22) Notwithstanding the provisions of this article, and other provisions of this Schedule, where a "beneficiary foundation" is established exclusively for public interest, beneficiaries shall be regulated by the provisions in Column A:

Provided that such provisions listed in Column A shall be subject to the modifications in Column B:

Column A	Column B
29(2)	The foundation may have an initial endowment of money or property of only two hundred and thirty two euro and ninety four cents (€232.94);
29(4)(h)	The beneficiaries or class of beneficiaries must be indicated in the statute and the use of a beneficiary statement shall not be permitted;
29(7)	The foundation may be established for an unlimited term and the one hundred and twenty-five year (125) limit shall not apply;
32(2)	Any amendments or addition to the purpose of the foundation may not introduce any purpose or beneficiary which amounts to a private benefit;
32(4), (5), (6), (7)	These sub-articles on the using, disposal or distribution of assets on termination of a public benefit foundation shall apply to the foundation <i>mutatis mutandis</i> ;
33(7), (9)	The founder or the administrators may add beneficiaries if given such power but, at all times, the new beneficiaries shall only be public interest organisations;

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- The founder or the administrators may be given the power to amend the deed of foundation consistently with the rules applicable to public benefit foundations;
- 33(21) Any transfer of the beneficial interest may only be made in favour of other public interest organisations;
- 34(6), (7) Endowments to the foundation are irrevocable and the constitutive instrument or statute of the foundation or the instrument of additional or new endowment may not state that such endowments are revocable;
- 35(2) The foundation must have at least three (3) administrators or at least one juridical person acting as administrator in accordance with article 35(1);
- 38(1)(g) The Attorney General or the Commissioner in terms of the Voluntary Organisations Act may request information from the administrators;
- 38(4) The administrators are not bound to inform certain beneficiaries until such time as they intend making a distribution to them;
- 40(2) The beneficiaries may not terminate the foundation;
- 40(9) This sub-article shall apply to the foundation;
- 45 The provisions of this article shall not apply; however the founder may impose confidentiality to protect the identity of the named persons referred to in article 32(8);
- 60(2) This sub-article shall not apply and on dissolution and winding up of the foundation the distribution of the assets shall be governed by article 60(1)."

Amendment of  
article 34 of the  
Second  
Schedule.

**77.** Article 34 of the Second Schedule shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Subject to the provisions of the statute, any person may add to the assets of a foundation by endowments at any time. Endowments shall be considered to have been made under the same terms and conditions, for the same beneficiaries or for the same purposes, as the case may be, in terms of the statute of the foundation. Unless the provisions of sub-article (2) apply, the grantor of such endowments, if not the founder, shall have no

status or powers in relation to the foundation and the endowment shall be referred to as an additional endowment.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) When permitted by the provisions of the statute or with the express concurrence of the founder, the supervisory council or protector, the administrators or, in default of such persons, the Court, a person, hereinafter referred to as "the grantor" may make an endowment in such a manner that he shall be considered to have the status and powers of a founder in the foundation in relation to such endowment or in relation to the whole foundation, or where such endowment is granted to a cell if so contemplated and consented to as aforesaid, such endowment shall be considered a new endowment.";

(c) sub-articles (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) thereof shall be re-numbered as sub-articles (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14), respectively;

(d) immediately after sub-article (2) thereof, as re-numbered, there shall be added the following new sub-articles:

"(3) When such augmentation by third parties is made by means of a will, the testamentary disposition shall be deemed to require the creation of a new foundation and the administrators of the nominated foundation shall proceed accordingly, even without the concurrence of the persons mentioned in sub-article (2).

(4) Where the statute of a foundation provides for the establishment of segregated cells, a new endowment, whether transferred *inter vivos* or *causa mortis*, may be constituted as a new segregated cell by the administrators in which case the grantor's status and powers may be limited to such segregated cell. When a grantor becomes a new founder as aforesaid the rules in article 39 shall apply when there is more than one founder.";

(e) sub-article (6) thereof, as re-numbered, shall be substituted by the following:

"(6) In the event that endowments are received by such foundation in a regular manner in terms of a scheme

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which is registered with the Registrar, it shall not be required that the administrators file a descriptive note on each occasion that a new or additional endowment is made but they shall file a schedule of endowments on an annual basis. Neither shall it be required that the administrators enter into a public deed on each occasion that an endowment is made, unless the endowment involves immovable property. In each case, the administrators shall file the prescribed form and required attachments to notify such endowments to the Registrar.";

(f) sub-article (7) thereof, as re-numbered, shall be substituted by the following:

"(7) Endowments may be granted under a condition, for a fixed time or in accordance with express rules stated in the statute. A new endowment may be made for purposes which are different from those of the foundation. In the absence of any indication, endowments shall be considered to be unconditional and made for the same purposes of the foundation.";

(g) sub-article (8) thereof, as re-numbered shall be substituted by the following:

"(8) Additional and new endowments to public benefit foundations shall be irrevocable notwithstanding any term to the contrary in the constitutive instrument or statute of the foundation or the instrument providing for the additional or new endowment.";

(h) sub-article (9) thereof, as re-numbered, shall be amended as follows:

(i) for the words "Unless expressly stated otherwise, endowments to foundations shall be deemed" there shall be substituted the words "Unless expressly stated otherwise, additional and new endowments to beneficiary foundations shall be presumed"; and

(ii) for the words "in the deed of constitution" there shall be substituted the words "in the constitutive instrument or statute of the foundation or the instrument of additional or new endowment";

(i) in sub-article (10) thereof, as re-numbered, for the words "Where an endowment is made" there shall be substituted

the words "Where, in the case of a beneficiary foundation, an additional or new endowment is made";

(j) sub-article (11) thereof, as re-numbered, shall be substituted by the following:

"(11) In the case of a beneficiary foundation, the revocation of an endowment shall not affect or invalidate acts already carried out or interrupt acts in progress, nor affect commitments made and not yet fulfilled. The revocation of an endowment shall be suspended until such time as the administrators certify to the Registrar that all commitments have been fulfilled and shall be deemed to refer only to such amount as shall not have been utilised in fulfilment of such commitments.";

(k) sub-articles (12), (13) and (14) thereof, as re-numbered, shall be substituted by the following:

"(12) The revocation of an additional or new endowment shall not imply the termination of a foundation but shall, unless otherwise stated in the statute, imply the cessation of the status of founder and all related rights in relation to the grantor.

(13) If a foundation is the beneficiary of a new or additional endowment granted for specific purposes different from its own purposes, unless permitted in accordance with sub-article (5), the administrators shall seek new instructions from the grantor and if that is not possible, such endowment shall not be accepted and shall be deemed to require the creation of a new foundation and the administrators of the recipient foundation shall proceed accordingly.

(14) When a foundation receives an endowment without sufficiently specific terms and from the circumstances it is evident that the foundation owes fiduciary duties in relation to such property towards a beneficiary or a class of beneficiaries or a purpose, the administrators shall execute a unilateral declaration by instrument in writing containing all the fiduciary terms under which the foundation is holding the same, comprising the information enabling the identification of all the beneficiaries or purposes. The administrators may ask the Court to confirm the contents of their declarations."; and

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(1) immediately after sub-article (14) thereof, as re-numbered and substituted, there shall be added the following new sub-articles:

"(15) In the event that there are no administrators at the time of establishment or registration of a foundation, the founder or the person having the power to appoint administrators shall be deemed to have the power to accept any endowment but shall not have the power to bind the foundation on any other matter nor shall the foundation be entitled to commence operations prior to the appointment of the required number of administrators.

(16) The term "endowment" for the purposes of this Title shall mean any grant of money or other property under a gratuitous title, including rights to money or other property, existing or which may arise in the future."

Amendment of  
article 35 of the  
Second  
Schedule.

**78.** Article 35 of the Second Schedule shall be amended as follows:

(a) in sub-article (2) thereof, for the words "Purpose foundations shall have" there shall be substituted the words "When a foundation is a public benefit foundation it shall have";

(b) in sub-article (3) thereof, for the words "constitutive deed" there shall be substituted the words "constitutive instrument or statute";

(c) sub-article (9) thereof shall be amended as follows:

(i) paragraphs (a), (b) and (c) thereof shall be substituted by the following:

"(a) the lapse of the term for which the administrator was appointed;

(b) the removal of the administrator by any person or body having the power to do so in terms of the public deed of the foundation or by the Court on grounds stated in the deed of foundation or in this Schedule;

(c) steps are taken for the winding up of the administrator when a legal person;"; and

(ii) immediately after paragraph (c) thereof, there shall be added the following new paragraphs:

"(d) when the administrator is a legal person, the retirement, resignation or removal of all administrators, including directors in a company acting as administrator, from their office in the said legal person or steps are taken for its winding up; or

(e) where an administrator is appointed without any indication of his duration of office and:

(i) is the sole administrator, he shall require that the statute caters for a substitute administrator or the manner in which a new administrator may be appointed upon his retirement, resignation or removal. Where the administrator is in default of the obligation in this paragraph, a new administrator may be appointed to substitute such administrator at any time with the consent of the founder, of any person designated in the statute or of the Court in the absence of such persons; and

(ii) there is more than one administrator, it is implied that the other administrators shall have the power to remove the administrator at any time when they consider that he is unable to carry out his functions due to health or in accordance with the provisions of article 9:

Provided that in case of disagreement on any of the matters referred to in this paragraph, the administrator who was appointed without any indication of his duration in office may apply to the Court and demand that the Court issues such orders regarding his substitution, retirement, resignation or removal, as it considers appropriate after hearing the relevant persons."

**79.** Article 36 of the Second Schedule shall be amended as follows:

Amendment of article 36 of the Second Schedule.

(a) in sub-article (1) thereof, immediately after the words "are being dealt with by the Court." there shall be added the following:

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"The founder may also be vested with powers to appoint, add or remove any administrators, protectors or beneficiaries and powers to appoint an investment adviser or investment manager and where a power mentioned in this sub-article has been reserved or exercised by the founder, an administrator who acts in accordance with any directions issued pursuant to the founder's power as aforesaid shall not be considered to be acting in breach of his fiduciary duties.";

(b) in sub-article (2) thereof, immediately after the words "A founder may be an administrator" there shall be added the words "or a protector";

(c) in sub-article (3) thereof, for the words "private foundation" there shall be substituted the words "beneficiary foundation"; and

(d) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) It shall be lawful for a founder to give non-binding written guidance to the administrators on how to exercise the powers or discretions vested in them in the deed of foundation or the beneficiary statement and to substitute, modify or withdraw such guidance from time to time as the founder sees fit. A beneficiary may also be permitted to give such guidance by means of specific clauses in the deed of foundation or the beneficiary statement, and this, with effect from the date of death of the founder.".

Amendment of  
article 37 of the  
Second  
Schedule.

**80.** Article 37 of the Second Schedule shall be amended as follows:

(a) sub-articles (2), (3), (4), and (5) thereof shall be re-numbered as sub-articles (3), (4), (5) and (6) respectively;

(b) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

"(2) The founder may be the sole or one of the members of the supervisory council or may also be a protector. However, a founder may not carry out the functions of a protector for as long as he holds the office of an administrator.";

(c) sub-article (3) thereof, as re-numbered, shall be substituted by the following:

"(3) The members of the supervisory council or the protectors:

(a) may be designated in the statute of the foundation; or

(b) where no such designation is made, may be subsequently appointed by the administrators and in the manner prescribed in the statute; and

(c) may be removed and replaced by the administrators and in the manner prescribed in the statute.";

(d) in sub-article (5) thereof, as re-numbered, immediately after the words "or addition of administrators" there shall be added the words "and such other powers as may be stated in the statute including the power to give guidance to the administrators in the exercise of their powers, discretions or duties.";

(e) in sub-article (6) thereof, as re-numbered, for the words "The exercise of any action or discretion" there shall be substituted the words "The exercise of any power, action or discretion"; and

(f) immediately after sub-article (6) thereof, as re-numbered, there shall be added the following new sub-articles:

"(7) Unless the statute of a foundation expressly states otherwise and until such time as the supervisory council or protectors are appointed, in the event that a deed of foundation contemplates a supervisory council or protectors whose consent or direction is needed for the administrators to carry out any act, the administrators shall be presumed to have the power to carry out any act without such consent or direction:

Provided that, the decision to act without consent is taken unanimously by the administrators.

(8) The presumption in sub-article (7) shall not apply if the statute requires the administrators or any of them to appoint the members of the supervisory council or

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the protectors."

Amendment of article 38 of the Second Schedule.

**81.** In paragraph (f) of sub-article (1) of article 38 of the Second Schedule, for the words "purpose organisation" there shall be substituted the words "public benefit organisation".

Substitution of article 40 of the Second Schedule.

**82.** Article 40 of the Second Schedule shall be substituted by the following:

"Termination of a foundation.

40. (1) Subject to the provisions of sub-article (2), unless expressly provided otherwise in the statute or in this Title, a foundation shall not be subject to termination prior to the term for which it is established.

(2) Unless the founder has expressly excluded such a right, a beneficiary foundation may be terminated on the demand of all the beneficiaries of the foundation provided they are all in existence, have been ascertained and no one of them is an interdicted or a minor. If the founder is still alive his consent shall be required for termination by the beneficiaries. The founder may subject termination to the consent of a person or the supervisory council or the protectors, other than the administrators, stated in the statute.

(3) Notwithstanding anything stated in the statute or in sub-article (2), after the death of the founder, the Court shall have the power to dissolve and wind up any beneficiary foundation when requested to do so by all the beneficiaries of the foundation if it is satisfied that the continuance of the foundation is no longer necessary to achieve the intentions of the founder or is otherwise unreasonable.

(4) The statute of a foundation may provide that it may be terminated at any time but termination shall not affect or invalidate acts already lawfully carried out or interrupt lawful acts in progress. Nor shall termination affect lawful commitments made and not yet fulfilled. Termination shall be suspended until such time as the administrators certify to the Registrar that all lawful commitments have been fulfilled.

(5) The express reservation by the founder of the right to terminate a foundation shall not be exercisable by the heirs or spouse of such founder unless expressly provided otherwise in the deed of foundation. Without prejudice to any other remedies available at law, creditors of the founder may not exercise the right to terminate a foundation.

(6) When a foundation is terminated, the procedures in article 59 shall apply.

(7) Except in cases contemplated in article 47(2), where a foundation is converted into a trust, termination of registration shall imply termination of the foundation but not of the fiduciary obligations therein contained and upon notice of the conversion, the Registrar shall proceed to strike off the foundation.

(8) The administrators shall have a duty to maintain in good standing the registration of a foundation until it is terminated as provided for in this article.

(9) Public benefit foundations may only be constituted in an irrevocable manner and, without prejudice to the power to terminate such a foundation in accordance with article 32 for the reasons and subject to the conditions therein stated, any clause in the statute reserving the right for the founder or any other person or body to revoke such foundation shall not apply."

**83.** Article 41 of the Second Schedule shall be substituted by the following:

Substitution of article 41 of the Second Schedule.

"Jurisdiction of the Court.

41. The Court shall have jurisdiction in relation to all non-contentious matters which are internal to the foundation, its administrators and beneficiaries:

Provided that if a non-contentious matter being examined by the Court becomes contentious, the Court shall declare the proceedings before it to be contentious and shall continue to deal with the matter as a contentious issue, providing the parties the opportunity to promote the claim and respond to it according to law."

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Amendment of  
article 42 of the  
Second  
Schedule.

**84.** Article 42 of the Second Schedule shall be amended as follows:

(a) sub-article (4) thereof shall be re-numbered as sub-article (5);

(b) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) In sub-articles (1) and (2) of this article all references to "foundation" shall be references to a beneficiary foundation.";

(c) sub-article (5) thereof, as re-numbered, shall be substituted by the following:

"(5) An application to the Court made under the previous sub-articles may be made by the administrator, by any beneficiary or by any interested party, as the case may be."; and

(d) immediately after sub-article (5) thereof, as re-numbered and substituted, there shall be added the following new sub-articles:

"(6) In the event that the statute of a purpose foundation does not contain any provisions relating to amendments to such statute, if the Court is satisfied that circumstances exist justifying a request made for such amendments to be made to the statute, the Court may order -

(a) any variation or addition to the statute;

(b) any variation to the purposes for which property may be applied;

(c) any variation of any provision of the statute as may be required for the effective achievement of the purposes of the foundation or its administration; and

(d) any variation to achieve the re-organisation of the structure of the foundation including its division into two or more foundations or legal organisations of a similar nature, or its conversion into a trust or trusts,

and to the extent that the provisions of article 32(8) apply, the Court shall have the powers referred to in this article with reference to any identifiable beneficiaries to whom the provisions of sub-article (1) apply.

(7) The Court shall not approve a request under the previous sub-article unless it is of the opinion that such amendment is, as far as reasonably practicable, consistent with the principal purpose and objectives of the foundation.

(8) Any variation approved by the Court shall be implemented by an amendment to the statute and the administrators shall abide by the formalities as may be prescribed in the statute and in applicable law.

(9) Any application to the Court made under sub-article (6) may be made by the administrator, any person vested with such power in the statute or by the Attorney General, as the case may be."

**85.** Article 43 of the Second Schedule shall be amended as follows:

Amendment of article 43 of the Second Schedule.

(a) in the proviso to sub-article (3) thereof, for the words "in terms of article 36 of this Schedule" there shall be substituted the words "in terms of article 38"; and

(b) in sub-article (7) thereof, for the words "under a foundation" there shall be substituted the words "under a beneficiary foundation".

**86.** Article 44 of the Second Schedule shall be amended as follows:

Amendment of article 44 of the Second Schedule.

(a) in sub-article (1) thereof, immediately after the words "of this Schedule" there shall be added the words "except where the matter has been declared to be contentious and the Court has, after the relevant proceedings have been completed, rendered a judgement on any matter"; and

(b) in sub-article (2) thereof, for the words "declarations or directions" there shall be substituted the words "declarations, directions or judgements".

**87.** Article 45 of the Second Schedule shall be amended as follows:

Amendment of article 45 of the Second Schedule.

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(a) in sub-article (1) thereof, for the words "private foundation" there shall be substituted the words "beneficiary foundation"; and

(b) immediately after sub-article (4) thereof, there shall be added the following new sub-article:

"(5) The provisions of this article shall apply only to beneficiary foundations."

Amendment of article 47 of the Second Schedule.

**88.** Immediately after sub-article (3) of article 47 of the Second Schedule there shall be added the following new sub-article:

"(4) The provisions of this article shall apply *mutatis mutandis* to:

(a) the conversion of a cell of a foundation into a trust, whether relating only to the assets of such cell or by incorporating the cell assets as a segregated patrimony under an existing trust; and

(b) the conversion of a trust, or a segregated part thereof, into a cell of a multi-cell foundation."

Amendment of article 48 of the Second Schedule.

**89.** Article 48 of the Second Schedule shall be amended as follows:

(a) the marginal note thereto shall be substituted by the following:

"Associations established as private benefit organisations.";

(b) sub-article (1) thereof shall be deleted and sub-articles (2), (3), (4) and (5) thereof shall be re-numbered as sub-articles (1), (2), (3) and (4) respectively;

(c) sub-article (1) thereof, as re-numbered, shall be amended as follows:

(i) for the words "When established for the promotion of a private interest an association of persons shall be regulated by -" there shall be substituted the words "When established for the promotion of a private benefit, an association of persons shall be regulated by special laws mentioned in this sub-article as the case may be, based on the purposes and legal form chosen by its promoters, whether it is registered or not with the Registrar:";

(ii) paragraphs (d) and (e) thereof shall be substituted by the following:

"(d) the special laws relating to unions and employer associations;

(e) the special laws relating to co-operatives;"

(iii) immediately after paragraph (e) thereof, there shall be added the following new paragraphs:

"(f) the provisions of special law, where promoting ancillary or incidental private benefit, other than those listed above;

(g) where there is no other special law which is applicable, the provisions of this Sub-Title III "Of Associations" other than those governing public benefit organisations; or

(h) where for any reason the provisions of a special law cease to apply to an association which continues to exist, the provisions of this Schedule shall apply.";

(d) sub-article (2) thereof, as re-numbered, shall be substituted by the following:

"(2) The special laws referred to in sub-article (1) shall be supplemented by the provisions of this Schedule, with the exception of provisions which apply solely to public benefit organisations in the form of associations:

Provided that, where the provisions of this Schedule are not consistent with the special laws, the special laws shall prevail.";

(e) sub-articles (3) and (4) thereof, as re-numbered, shall be substituted by the following:

"(3) Where an association is governed in accordance with the provisions of sub-article (1)(g) and irrespective of whether the association is registered or not:

(a) the provisions of the statute shall, in case of inconsistency, prevail over the provisions of this Sub-Title III "Of Associations" and the

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applicable provisions of this Schedule except where such provisions are mandatory;

(b) subject to the benefit of discussion of the assets of an association, which must first be discussed, any member shall be liable to third parties with whom the association has contracted in proportion to his share in the profits and losses or in proportion to his benefit or other interests in such association, whichever is the higher, unless:

(i) his liability has been varied in a contract entered into with the third party, which contract shall not bind other members of the association without their consent; or

(ii) such liability has been excluded or limited by any provision of law;

(c) when the share of the profits or losses, or the benefit or other interests, is not determined on the basis of a designated proportion, the liability of a member shall be based on the proportion which his monetary contribution bears to the total contributions of the members.

The matters referred to in paragraphs (b) and (c) shall be determined on the basis of express provisions in the statute and absent any such provisions, the liability to third parties shall be equally borne by the members and any private agreement among members shall not affect the rights of third parties.

(4) If any member, for any reason, directly or indirectly, pays or is subject to a liability greater than his proportional share as stated in sub-article (3)(b) or (c), such member shall have a right of relief against the other members proportional to their share, subject to any agreement among the members or the provisions of the statute on such matters."; and

(f) immediately after sub-article (4) thereof, as re-numbered, there shall be added the following new sub-article:

"(5) The Minister may make regulations in relation to associations governed by the provisions of this Schedule for their better governance and shall have the

power:

(a) to extend the application of specific provisions of special laws regulating other types of associations to such associations; and

(b) to introduce rules which apply when such associations are registered with the Registrar, which rules may establish different principles to those stated in sub-article (3) for such registered associations; and

(c) to introduce any special rules, including limited liability for the members for particular cases and establish the conditions under which such limited liability may be enjoyed."

**90.** Immediately after article 48 of the Second Schedule there shall be added the following new article:

Addition of new article to the Second Schedule.

"Associations established as public benefit organisations.

48A. (1) When an association is established as a public benefit organisation, it shall be governed by the provisions of this Sub-Title III "Of Associations" and the applicable provisions of this Schedule, with the exception of provisions of article 48.

(2) The provisions of the statute of such association shall, in case of inconsistency, prevail over the provisions of this Sub-Title III "Of Associations" and the applicable provisions of this Schedule except where they are mandatory.

(3) The rules on liability of the members of such an association towards third parties shall be governed by:

(a) article 16 if the association is registered with the Registrar; and

(b) article 17 if the association is not so registered.

(4) Where applicable the associations referred to in sub-article (1) shall also be regulated by the provisions of the Voluntary Organisations Act.

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(5) In the event that the statute of an association established as a public benefit organisation does not contain any provisions relating to amendments to such statute, if the Court is satisfied that circumstances exist justifying a request made for such amendments to be made to the statute, the Court may order:

(a) any variation or addition to the statute;

(b) any variation to the purposes for which property may be applied;

(c) any variation of any provision of the statute as may be required for the effective achievement of the purposes of the foundation or its administration; and

(d) any variation to achieve the re-organisation of the structure of the foundation including its division into two or more associations or legal organisations of a similar nature.

(6) The Court shall not approve a request under the sub-article (5) unless it is of the opinion that such amendment is, as far as reasonably practicable, consistent with the spirit of the promoter's intention.

(7) Any variation approved by the Court shall be implemented by an amendment to the statute and the administrators shall abide by the formalities as may be prescribed in the statute, if any, and in applicable law.

(8) Any application to the Court made under sub-article (5) above may be made by the administrator, any person vested with such power in the statute or by the Attorney General, as the case may be.

(9) The provisions of article 32(8) shall also apply to associations *mutatis mutandis*."

Amendment of article 49 of the Second Schedule.

**91.** Article 49 of the Second Schedule shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) paragraph (c) thereof shall be substituted by the following:

"(c) (i) the purposes or objects of the association; and

(ii) the category of the association when the association is a public benefit association as defined in article 1(4);";

(ii) paragraphs (f), (g) and (h) thereof shall be substituted by the following:

"(f) the composition of the board of administration and the name, surname, identification, passport or registration number as applicable, nationality and ordinary residence of the administrators;

(g) the manner in which administrators are appointed or elected to and removed from office;

(h) where there exist more than one board or committee in virtue of the statute, the statute shall specify which board or committee shall be the board of administration;";

(iii) in paragraph (i) thereof, for the words "the name and address of a person resident in Malta" there shall be substituted the words "the name and address of a person ordinarily resident in Malta"; and for the words "of the association in Malta; and" there shall be substituted the words "of the association in Malta;";

(iv) in paragraph (j) thereof, for the words "if any." there shall substituted the words "if any;"; and

(v) immediately after paragraph (j) thereof, there shall be added the following new paragraph:

"(k) when the category of the association is public benefit, this shall be stated expressly in the constitutive instrument and statute of the organisation.";

(b) sub-articles (3) and (4) thereof shall be re-numbered as sub-articles (4) and (5) respectively;

(c) immediately after sub-article (2) thereof, as amended, there shall be added the following new sub-article:

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"(3) If no term is specified in the statute of the association, such association shall be considered to be indefinite in duration."; and

(d) sub-article (4) thereof, as re-numbered, shall be substituted by the following:

"(4) (a) The statute shall be signed by the associating persons and any person subscribing to the statute after an association is established shall be deemed to have consented to all the provisions of the statute and all rules which may have been validly promulgated by the association until such date. In the event that more than three persons wish to establish an association, a statement may be made of this fact in the statute and the signature of three persons on behalf of all associating members stated in a schedule to the statute shall be sufficient to indicate the consent of all stated persons.

(b) Where an association is being established as a public benefit association involving more than three persons as promoters, the signature of three persons shall be sufficient to indicate the consent of all other associating members at the time of establishment.

(c) A document containing a list of all other associating members shall be sufficient evidence of their consent and notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all associating members, their name, surname and identity card, passport number or registration number, as applicable, shall suffice. A declaration by the three persons that they are authorised to act on behalf of all other associating members shall be recorded under their signature.

(d) When such association is constituted by public deed, the Notary Public shall not be bound to ascertain that the three persons have been authorised by the associating members to appear on the deed but shall rely on the document submitted to him by the three persons containing a list of all associating members as evidence of their consent. Notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all associating members, their name, surname and identity card, passport number or registration number, as applicable, shall suffice.

(e) The Notary Public who receives any deed to which this sub-article refers shall record in the deed a declaration by the three persons that they are authorised by the associating members to state their names, surnames and identity card, passport number or registration number, as applicable, in the document above referred to and the said Notary Public shall warn the said three persons of the importance of the truthfulness of such declaration.

(f) The document shall be attached to the statute by the declarants or, if established by public deed, to the public deed establishing the association.

(g) Any person named as an associating member in a document as referred to above who claims that he did not authorise the three persons to include his name and surname and identity card, passport number or registration number, as applicable, in the document shall, within sixty (60) days of his becoming aware of his inclusion in the document, be entitled to register a declaration to that effect in the Register of the association and in the lack of any written evidence to the contrary which may be produced in case of dispute on such matter he shall not be considered ever to have been an associating member."

**92.** In sub-article (5) of article 50 of the Second Schedule, for the words "A social purpose association" there shall be substituted the words "A public benefit association"; and for the words "social purposes" there shall be substituted the words "public benefit purposes".

Amendment of article 50 of the Second Schedule.

**93.** Article 51 of the Second Schedule shall be amended as follows:

Amendment of article 51 of the Second Schedule.

(a) sub-articles (1), (2) and (3) thereof shall be re-numbered as sub-articles (2), (3) and (4) respectively;

(b) immediately before sub-article (2) thereof, as re-numbered, there shall be added the following new sub-article:

"(1) Subject to the provisions of article 12(3), all associations shall be eligible to register under the provisions of this Title.";

(c) sub-article (4) thereof, as re-numbered, shall be substituted by the following:

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"(4) The document referred to in article 49(4) relating to the other associating members, when such is the case, at the time of establishment shall also be delivered to the Registrar for registration."; and

(d) immediately after sub-article (4) thereof, as re-numbered, there shall be added the following new sub-articles:

"(5) The name, surname and identity card or passport or registration number, as applicable, of every person who joins an association as a member after this has been established and, or registered, shall be entered in a register of members which shall be regularly updated. A record of the persons who leave the association shall also be maintained in the said register of members.

(6) Such register of members shall not be registered with the Registrar but this shall be without prejudice to the right of any person, subject to Court authorisation, and to the right of the Commissioner for Voluntary Organisations in the case of a voluntary organisation, and to the right of the Malta Financial Services Authority in the case of entities which are regulated or which appear to be carrying out regulated activities for which it is the competent authority under applicable law, to require information about members subject to the provisions of applicable law.

(7) Notwithstanding the preceding sub-article, in the case of a public benefit organisation in the form of an association:

(a) if it is registered with the Registrar, the register of members may be registered by the Registrar at any time upon the written request of the administrators and shall be available to the public in all cases;

(b) the register of members shall always be accessible to any member.

(8) On receipt of the documents mentioned in sub-articles (2) or (3) together with the prescribed forms and any required attachments, the Registrar shall register the association on being satisfied that all the provisions of this Sub-Title have been complied with."

94. Article 53 of the Second Schedule shall be amended as follows:

Amendment of article 53 of the Second Schedule.

(a) sub-article (2) thereof shall be substituted by the following:

"(2) The provisions of article 35 shall *mutatis mutandis* apply to administrators of associations except as herein provided."; and

(b) immediately after sub-article (2) thereof, as substituted, there shall be added the following new sub-articles:

"(3) An association established for the promotion of a private benefit may be administered by only one administrator and such administrator may also be a registered legal organisation on condition that such legal organisation has at least one administrator in office.

(4) In the case of a private benefit association, the administrators of the association may be appointed in any manner whether by notice in writing from any member or class thereof, by elections among the members, by designation to an office by the administrators or otherwise as the statute may establish and for any term or function, subject to the provisions of sub-article (5) for indefinite appointments.

(5) In the case of a public benefit association the same rules shall apply but notwithstanding the provisions of the statute:

(a) the majority of the administrators shall be appointed by means of elections among the members in general meeting except where every member or every class of members is each given the right to appoint and remove an administrator or where the provisions of sub-article (6) apply; and

(b) it shall be required that a majority of the administrators shall be subject to confirmation by the general meeting of the members at least once every five (5) years:

Provided that when the provisions of sub-article (6) apply, such administrators as are appointed indefinitely shall not be subject to such confirmation.

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(6) When an administrator is appointed indefinitely, such appointment shall imply a power of the general meeting to remove such administrator at any time when it considers that he is unable to carry out his functions due to health or under article 9:

Provided that in case of disagreement on any of the matters referred to in this sub-article, the administrator who is appointed indefinitely may request the Court to issue such orders as it considers appropriate after hearing the relevant persons."

Amendment of article 54 of the Second Schedule.

**95.** Article 54 of the Second Schedule shall be amended as follows:

(a) sub-article (3) thereof shall be amended as follows:

(i) immediately after the words "falls, below three" there shall be added the words "and in case of an association which may be established between two person in accordance with article 27, falls below two,";

(ii) for the words "with the termination of the registration of such association in terms of this Title." there shall be substituted the words "with the winding up of the association under this Schedule.";

(b) sub-article (6) thereof shall be substituted by the following:

Cap. 492. "(6) The membership of a person in a public benefit organisation established as an association is not transferable nor shall be subject to inheritance. Members may not have patrimonial rights to the assets of such an association except as permitted under the Voluntary Organisations Act and are not entitled to any compensation on retirement or expulsion or on winding up of the association."; and

(c) sub-article (7) thereof shall be deleted.

Substitution of article 55 of the Second Schedule.

**96.** Article 55 of the Second Schedule shall be substituted by the following:

"Endowments. 55. (1) The provisions of article 34 shall apply *mutatis mutandis* to endowments, additional and new, to public benefit organisations established as associations:

Provided that endowments shall be subject to the written acceptance of the administrators or as otherwise required by the statute and such endowment, when accepted, shall imply that the grantor has become a member of the organisation, unless otherwise expressly agreed or provided for in the statute in relation to endowments, with the same rights and obligations and otherwise in accordance with the statute and the provisions of this Schedule.

(2) Membership fees are not endowments and shall not be treated as such nor shall they be refundable except as expressly stated in the statute.

(3) When an association has a private benefit, new or additional endowments shall generally be considered to be contributions to the capital of the association and the following rules shall apply:

(a) an endowment shall be subject to the consent of the administrators or as otherwise required by the statute;

(b) an endowment when accepted, shall constitute a contribution in favour of the association and in favour of the grantor who shall thereupon become a member, and if he is already a member of the association, such contribution shall be considered to be an additional endowment to his initial endowment;

(c) unless otherwise agreed or stated in the statute or if the subject is not addressed in any agreement or the statute, it shall be presumed that the contributions shall be the basis of proportionality of all rights and obligations within the organisation;

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(d) the statute may regulate and establish rules, which may be based on principles other than proportionality, on the following matters:

(i) the rights of members in relation to their contributions with regard to voting, sharing in profits and losses and participation in capital on dissolution;

(ii) participation in management of the organisation and rights to be appointed or elected as and appoint or elect administrators;

(iii) subject to the rights of third parties being protected, the manner in which the contributions of the members may be withdrawn or otherwise paid back to them."

Amendment of article 56 of the Second Schedule.

**97.** Article 56 of the Second Schedule shall be amended as follows:

(a) sub-article (3) thereof shall be substituted by the following:

"(3) In the case of public benefit organisations established as associations, subject to the provisions of the statute, any assets on termination shall be donated or distributed by the administrators on behalf of the association to -

(a) first to the founder, if the founder is another public benefit organisation;

(b) if paragraph (a) does not apply, to another public benefit organisation with the same or similar purposes and features, or in default to any other organisation with a social or public purpose:

Provided that when the purposes are the advancement of religion or the carrying out of a religious vocation or there are indications in the original endowment that this was intended for a religious organisation, to any pious foundation or ecclesiastical entity, and in such case of the appropriate denomination;

(c) to the Government of Malta if the purposes are general public benefit or utility when the Government has granted the association a substantial part of its assets, as the administrators or the members in general meeting may determine in accordance with the provisions of article 52(3)(b).";

(b) sub-article (4) thereof shall be re-numbered as sub-article (5); and

(c) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) In the case of associations established for a combination of purposes, being partly private benefit and partly social or public benefit, the assets shall be paid out to the members in such manner that the assets reflecting the private benefit owned by the members shall be paid to the members and the remaining assets shall be disposed of in accordance with the provisions of sub-article (3), as may be approved by the members in accordance with article 52(3)(b), and in case of disagreement as may be directed by the Court."

**98.** Sub-article (1) of article 58 of the Second Schedule shall be substituted by the following:

Amendment of article 58 of the Second Schedule.

"(1) Without prejudice to any special law regulating the form or purpose of an organisation, an organisation may be wound up voluntarily or by order of the Court."

**99.** Article 59 of the Second Schedule shall be amended as follows:

Amendment of article 59 of the Second Schedule.

(a) in sub-article (1) thereof, for the words "in case of a foundation." there shall be substituted the words "in case of a foundation:" and immediately thereafter there shall be added the following new proviso:

"Provided that the local representative may also wind up the organisation if he has not received any form of notification from any of the administrators for a period which exceeds twenty-four (24) consecutive months.";

(b) in sub-article (3) thereof, immediately after the words "its assets exceed its liabilities" there shall be added the words "or its assets have been exhausted"; and

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(c) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

"(4) Once the scheme of distribution is approved, the administrators shall proceed to pay out the remaining assets of the organisation in accordance with such scheme of distribution."

Amendment of article 60 of the Second Schedule.

**100.** Article 60 of the Second Schedule shall be amended as follows:

(a) in sub-article (1) thereof, for the words "purpose organisation" there shall be substituted the words "public benefit organisation"; and

(b) sub-article (2) thereof shall be substituted by the following:

"(2) In case of dissolution and winding up of an organisation established for a private benefit and in the absence of an indication in the statute of how assets are to be distributed in case of winding up, the assets shall be paid to the beneficiaries or members, or, to the founders or promoters or their heirs at law after payment of all expenses, as may be determined by the Court after hearing the proposals of the administrators, the founders or promoters if alive, the beneficiaries or members and any other interested parties, keeping in view the intentions of the founder."

Amendment of article 62 of the Second Schedule.

**101.** Article 62 of the Second Schedule shall be amended as follows:

(a) in sub-article (3) thereof, for the words "private foundation" there shall be substituted the words "private foundation as defined under article 31B"; and

(b) in sub-article (4) thereof, for the words "purpose foundation" there shall be substituted the words "public benefit organisation".

Amendment of article 64 of the Second Schedule.

**102.** In sub-article (3) of article 64 of the Second Schedule, for the words "private foundation" there shall be substituted the words "private foundation as defined in article 31B".

Amendment of article 65 of the Second Schedule.

**103.** In article 65 of the Second Schedule, immediately after the words "struck off the Register" there shall be added the words "of Legal Persons".

**104.** Article 66 of the Second Schedule shall be amended as follows: Amendment of article 66 of the Second Schedule.

(a) for the words "the Court shall" there shall be substituted the words "the Court shall, on the demand of any founder, the last serving administrators or any member,"; and

(b) for the words "distributing or liquidating such assets or liabilities." there shall be substituted the words "paying out or liquidating such assets or liabilities.".

**105.** Immediately after article 67 of the Second Schedule there shall be added the following new articles: Addition of new articles to the Second Schedule.

"Defunct organisations.

68. (1) Where the Registrar has reasonable cause to believe that a registered organisation is not in operation, he may send a letter by post, to enquire whether the organisation is in operation.

(2) In the event that the Registrar is notified with the letter referred to in sub-article (1), to the effect that the organisation is not in operation, or does not within three (3) months of sending such letter receive such notification from any administrator or any member in the case of an association, he shall publish a notice in the Gazette and in a daily newspaper that, at the expiration of three months from the date of the last publication of the said notice, the organisation, unless the Registrar is satisfied that cause has been shown to the contrary and there are sufficient grounds that the organisation is not defunct, shall be struck off the Register, and the remaining assets of the organisation shall devolve in accordance with the provisions of the Statute or in the absence of such statute, in accordance to the provisions of this Schedule as would occur on dissolution.

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(3) If any creditor or any other interested party who feels aggrieved by the fact that the name of the organisation has been struck off the Register by virtue of this article, the Court, on an application made by such creditor or any other interested party before the expiration of five years from the publication of the notice of the striking off provided for in sub-article (2) may, if satisfied that there are sufficient grounds to revoke the Registrar's order to strike off the organisation, order that such name be restored to the Register, and upon an official copy of the order being delivered by the Registrar of the Courts to the Registrar for registration, the organisation shall be deemed to have continued in existence as if its name had not been struck off.

(4) Subject to the provisions of sub-article (3), the Court may give such directions and make such provisions it deems appropriate for placing the organisation and all other interested parties in the same position as they were before the name of the organisation had been struck off. The Registrar shall forthwith proceed to publish a notice in the Gazette and in a daily newspaper circulating wholly or mainly in Malta that the name of the organisation has been restored to the Register.

(5) Notwithstanding that the name of the organisation has been struck off the Register in terms of the preceding provisions of this article, the liability, if any, of every promoter, founder, administrator, member, of the organisation shall continue and may be enforced as if the name of the organisation had not been struck off the Register.

Transitory provision.

69. Amendments to this Schedule introduced by means of the Voluntary Organisations (Amendment) Act, 2018, requiring statements to be made in the constitutive instrument or the statute of an organisation which were not required prior to the coming into force of the aforementioned Act, shall not be binding on those organisations which already existed prior to the coming into force of the Act. Such organisations are required to introduce such statements in their constitutive instrument or statute in conformity with the provisions of the Voluntary Organisations Act within five (5) years of the coming into force of the Voluntary Organisations (Amendment) Act, 2018."

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### Part III - Amendments to the Public Collections Act

**106.** This Part amends and shall be read and construed as one with the Public Collections Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Public Collections Act. Cap. 279.

**107.** Article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) before the definition "charitable purpose" there shall be added the following new definition:

" "benevolent" shall mean a social purpose or other public benefit or public purpose;"

(ii) the definition "charitable purpose" shall be substituted by the following new definition:

" "charitable purpose" shall mean a social purpose or other public benefit or public purpose;"

(iii) the definition "collection" shall be amended as follows:

A. immediately after the words "or by means of any advertisement," thereof, there shall be added the words "or by the use of technological means, including the internet or any social media channel on any platform of any type,"

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B. paragraph (b) thereof shall be substituted by the following:

"(b) collections made in a church or in a place of public worship in the ordinary course for the upkeep, embellishment or improvement thereof or for services held therein, and collections for the purposes declared in writing to be benevolent by the competent local or international religious authorities;"

C. immediately after paragraph (d) thereof, there shall be added the following new paragraph:

Cap. 492. "(e) collections made by any organisation enrolled with the Commissioner for Voluntary Organisations in terms of the Voluntary Organisations Act for as long as it remains so enrolled;"

(iv) in the definition "public place", immediately after the words "or has access" there shall be added the words "including by the use of technological means, such as the internet or any social media channel on any platform of any type";

(b) sub-article (2) thereof shall be re-numbered as sub-article (3);

(c) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

Cap. 492. "(2) For the purposes of this Act, the terms "social purpose", "public benefit" or "public purpose" shall have the meaning assigned to them in article 2 of the Voluntary Organisations Act."; and

(d) immediately after sub-article (3) thereof, as re-numbered, there shall be added the following new sub-article:

"(4) For the purposes of this Act, when a purpose is declared to be benevolent, a copy of such declaration may be requested by any person and the person responsible for such collection shall produce the same within a

reasonable time. In case of default the Commissioner of Police may demand the same from the competent religious authority which shall deliver the same within ten working days and the Commissioner shall release the same to the person requesting it."

**108.** Sub-articles (2) and (3) of article 5 of the principal Act shall be substituted by the following: Amendment of article 5 of the principal Act.

"(2) A licence shall only be granted for a social purpose or other public benefit or public purpose, or for a purpose approved by the Minister, and shall only apply to a social purpose or other public benefit or public purpose or such purpose approved by the Minister. No licence shall be granted for a general purpose or for more than one purpose. The application for a licence must be signed by at least three individuals.

(3) A licence shall only be granted for specific events or for a stated period not exceeding twelve months and shall lapse on the taking place of the specified event or the lapse of the stated term."

**109.** Immediately after article 5 of the principal Act there shall be added the following new article: Addition of new article to the principal Act.

"Additional rules for certain types of collections.

5A. Any collection made by -  
 (a) any person, not being an enrolled voluntary organisation, for any social or public benefit purposes;  
 (b) any non-enrolled voluntary organisation for its own purposes; or  
 (c) any of those referred to in paragraphs (a) or (b) for the benefit of another voluntary organisation, whether enrolled or not,

shall, in addition to this Act, also be subject to any guidelines issued by the Commissioner for Voluntary Organisations depending on the type of collection made, including electronic or internet based appeals and crowd funding."

**110.** Article 3 of the First Schedule to the principal Act shall be substituted by the following: Amendment of the First Schedule to the principal Act.

"3. Purpose of the collection or specific event"

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**Part IV - Amendments to the Notarial Profession and Notarial Archives Act**

Amendments to the Notarial Profession and Notarial Archives Act. Cap. 55.

**111.** This Part amends and shall be read and construed as one with the Notarial Profession and Notarial Archives Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 50 of the principal Act.

**112.** Article 50 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (g) thereof, immediately after the words "on immovable property" there shall be added the words "and any act notifying the termination thereof";

(ii) paragraph (m) thereof shall be substituted by the following:

Cap. 16. "(m) subject to the provisions of sub-article (9), any act whereby a foundation is established or terminated and any act whereby a new endowment, other than an endowment under a scheme which is registered under the Second Schedule of the Civil Code, is granted to a foundation;"

(b) sub-article (9) thereof shall be substituted by the following:

"(9) In the case of a deed creating a foundation, the note shall contain the date and nature of the act, the name of the foundation and the designation of the founder in accordance with article 28(1)(c) and in the case of a new endowment, the date and nature of the act, the name of the recipient foundation and the designation of the grantor in accordance with article 28(1)(c):

Cap. 331. Provided that, in the case of a private foundation, the Notary shall have no obligation and shall not register such notes if the founder or grantor has exempted him from so doing in the relevant deed and the administrator is a person who is authorised or not required to be authorised to act as an administrator for a private foundation in terms of article 43 of the Trusts and Trustees Act."; and

(c) immediately after sub-article (9) thereof, as substituted, there shall be added the following new sub-articles:

"(10) When a foundation which is registered with the Registrar is terminated, the administrators shall enrol in the records of a Notary the relative form presented to the Registrar for Legal Persons, and the note delivered to the Director of Public Registry by the Notary shall only contain the date and nature of the act and a reference to the original note delivered to the Director of Public Registry on the establishment of such foundation:

Provided that when the Notary who published the deed establishing the foundation was exempted by the founder from delivering the note regarding such establishment to the Director of Public Registry, the administrators and the Notary shall not be bound as aforesaid.

Cap. 16. (11) In this article "private foundation" shall mean a foundation as defined in article 31B of the Second Schedule of the Civil Code."

**113.** Immediately after article 51 of the principal Act, as deleted, there shall be added the following new article:

Addition of new article to the principal Act.

"Note to be delivered in relation to cells of organisations  
Cap. 16.

51A. (1) When there is a transaction relating to a cell of an organisation under article 20A or under article 20B of the Second Schedule to the Civil Code which results in a change in legal ownership of any immovable property or real rights over such property, such event shall be recorded in a public deed before a Notary Public executed by the administrators or their delegates of -

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(a) the transferring organisation and, if different, those of recipient organisation under the said article 20A; or

(b) the organisation of which the cell formed part and those of the new organisation under the said article 20B, as the case may be, and the Notary shall, within fifteen (15) days from the date of the act, deliver to the Director of the Public Registry a note in accordance with article 50.

(2) (a) Where a beneficial owner of immovable property which is held by a private foundation, transfers or otherwise disposes of the beneficial ownership of such property inter vivos to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfer Act, and for the purposes of article 5(1) of the Income Tax Act.

Cap. 364.

Cap. 123.

(b) Where a change in the ownership of immovable property does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfers Act, and for the purposes of article 5(1) of the Income Tax Act but shall nevertheless be recorded as required in this article.

Cap. 364.

Cap. 123.

(c) For the purposes of article 49 of the Duty on Documents and Transfers Act, "transferor" and "transferee" in a transfer of immovable property inter vivos shall be deemed to include a private foundation acting for the benefit of either the transferor or the transferee of the beneficial ownership of such immovable property, or of both such transferor and transferee.

Cap. 364.

(3) In this article:

"beneficial owner" means the person beneficially entitled to the shares under a private foundation;

"private foundation" shall mean a foundation as defined in article 31B of the Second Schedule of the Civil Code."

Cap. 16.

Substitution of article 68B of the principal Act.

**114.** Article 68B of the principal Act shall be substituted by the following:

"Accessibility of notarial deeds creating purpose foundations.

68B.(1) Notarial deeds creating purpose foundations shall be accessible to any person requesting to have access thereto even if the purpose is not exclusively social or public benefit.

(2) The accessibility of notarial deeds creating private foundations shall be governed by the provisions of article 31B of the Second Schedule to the Civil Code."

Cap. 16.

**Part V - Amendment to the Arbitration Act**

**115.** This Part amends and shall be read and construed as one with the Arbitration Act, hereinafter in this Part referred to as "the principal Act".

Amendment to the Arbitration Act. Cap. 387.

**116.** Immediately after article 15A of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Arbitration clause in foundation statutes.

15B.(1) It shall be lawful for a founder to insert an arbitration clause in a foundation statute when creating the foundation or by subsequent amendment if he has the power to amend the statute. In such event such clause shall be binding on all administrators, protectors, members of a supervisory council, and beneficiaries, if any, under the foundation in relation to all matters arising under or in relation to the foundation. It shall not be lawful for the administrators or other persons having the power to amend the statute of a foundation to insert an arbitration clause by amending its statute.

(2) The provisions of sub-article (1) shall not prejudice the right of a party to seek directions from the Civil Court (Voluntary Jurisdiction Section) in terms of the Second Schedule to the Civil Code and the right of the party shall not be limited by any such clause. Notwithstanding the provisions of this Act, the said Court shall not be bound to stay proceedings in terms of article 15(3) or otherwise, but shall enjoy a discretion to do so until such time as it determines that the matter is of a contentious nature, in which case it shall stay the proceedings and shall refer the parties to arbitration."

Cap. 16.

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**Part VI - Amendments to the Companies Act**

Amendments to the Companies Act. Cap. 386.

**117.** This Part amends and shall be read and construed as one with the Companies Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 30 of the principal Act.

**118.** Sub-article (3) of article 30 of the principal Act shall be deleted.

Addition of new article to the principal Act.

**119.** Immediately after article 127 of the principal Act there shall be added the following new article:

"Shares in companies held by private foundations, including those with segregated cells.

127A. (1) Except as provided for in this article, the provisions of the preceding article shall not apply to foundations and -

(a) a private foundation as an organisation with legal personality; or

(b) when the foundation is a multi-cell foundation, a segregated cell in a private foundation which constitutes a distinct patrimony administered by the private foundation,

shall be considered to be the holder of any shares registered in the name of the private foundation or in the name of the foundation with reference to a cell, and beneficial owners shall not be taken into account and shall be disregarded for determining the status of the company for the purpose of Chapter XII of this Title.

(2) (a) Where a beneficial owner of shares in a company, which are held by a private foundation, transfers or otherwise disposes of the beneficial ownership of such shares inter vivos to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfer Act, and for the purposes of article 5(1) of the Income Tax Act.

(b) Where a change in the registered holder of shares in a company does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfers Act, and for the purposes of article 5(1) of the Income Tax Act, but shall nevertheless be noted in the register of members.

Cap. 364.

Cap. 123.

Cap. 364.

Cap. 123.

Cap. 364. (c) For the purposes of article 49 of the Duty on Documents and Transfers Act, "transferor" and "transferee" in a transfer of shares inter vivos shall be deemed to include a private foundation acting for the benefit of either the transferor or the transferee of the beneficial ownership of such shares, or of both such transferor and transferee.

Cap. 16. (3) When a transaction takes place relating to a cell of an organisation under article 20A or under article 20B of the Second Schedule to the Civil Code and the relevant private foundation, or the foundation with reference to a cell, is the registered holder of any shares in a company, any such transaction shall be treated as a change in the registered holder of the shares in a company without any change in the beneficial owner of the shares. As such transactions result in a change in legal ownership of any shares in a company, the administrators, or their delegates, of -

(a) the transferring organisation and, if different, those of recipient organisation under the said article 20A; or

(b) the organisation of which the cell formed part and those of the new organisation under the said article 20B,

as the case may be, shall, within fifteen (15) days from the date of the act, deliver to the Registrar a form notifying him of the transfer of such shares from one foundation to the other, or from the foundation to a new organisation, as the case may be.

(4) The same principles above stated shall apply when the transferor and, or transferee are involved in a partnership *en commandite* the capital of which is divided into shares.

(5) In this article:

"beneficial owner" means the person beneficially entitled to the shares under a private foundation;

"private foundation" shall mean a foundation as defined in article 31B of the Second Schedule of the Civil Code."

Cap. 16.

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Substitution of  
article 384 of  
the principal  
Act.

**120.** Article 384 of the principal Act shall be substituted by the following:

"Application  
of articles 385  
to 389.

384. Articles 385 to 389 shall apply to all companies, commercial partnerships, as well as other legal organisations enjoying legal personality which have characteristics similar to companies and commercial partnerships constituted or incorporated outside Malta (hereinafter in this Chapter and in Chapter III of this Part referred to as "oversea companies") which establish a branch or place of business within Malta."

### **Part VII - Repeal of the Amalgamation of Organisations Regulations**

Repeal.  
S.L. 16.09.

**121.** The Amalgamation of Organisations Regulations are hereby repealed.

Passed by the House of Representatives at Sitting No. 153 of the 31st October, 2018.

CLAUDETTE BUTTIGIEG  
*Deputy Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*



