

CHAPTER 492**VOLUNTARY ORGANISATIONS ACT**

To regulate voluntary organisations and their administration.

11th December, 2007

ACT XXII of 2007, as amended by Legal Notice 427 of 2007.

PART I**PRELIMINARY**

1. The short title of this Act is the Voluntary Organisations Act. Short title.

2. (1) In this Act, unless the context otherwise requires: Definitions.

"administrator" means any person who is appointed to control, supervise or administer an organisation, and includes a governor, director, trustee or committee member or any other person who carries out such functions even if under another name but shall not include a manager or an executive while carrying out functions under a contract against remuneration except in so far as he is an administrator and only relating to his functions as an administrator;

"Board of Appeal" means the board established in terms of article 23 or such other administrative board or tribunal which the Minister may from time to time designate to carry out all or any of the functions as are stated in this Act;

"charitable purpose" means a social purpose;

"charitable trust" means a trust as defined by the Trusts and Trustees Act which is established for a social purpose; Cap. 331.

"the Commissioner" means the person appointed by virtue of article 5;

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

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

"the Minister" means the Minister responsible for social policy;

"non-profit making" is used in respect of an organisation where:

- (a) the statute of the organisation contains an express exclusion of the purpose to make profits; and
- (b) there is express provision in the statute defining the purposes of the organisation which do not include the promotion of private interests, other than a private interest which is a social purpose; and
- (c) no part of the income, capital or property is available directly or indirectly to any promoter, founder,

member, administrator, donor or any other private interest:

Provided that if a promoter, founder, member, administrator or donor is another enrolled non-profit making organisation, the limitation in paragraph (c) shall not apply provided the availability of such income, capital or property is subject to conditions which are consistent with the general purposes of the grantor organisation:

Provided further that an organisation shall continue to be deemed as non-profit making notwithstanding that:

- (i) it obtains a pecuniary gain from its activities when such gain is not received or credited to its members but is exclusively utilised for its established purposes;
- (ii) it buys or sells or otherwise deals in goods or services where such activities are exclusively related to its principal purposes;
- (iii) it is established for the general entertainment, pastime, education or other similar benefit only of its members; or
- (iv) it is established for the promotion of the social role, ethics, education and values of a trade or profession provided it does not promote the private interests of its members;

"philanthropic" means for the relief of poverty, pain and suffering, and other humanitarian needs;

Cap. 16. "pious foundation" shall have the meaning assigned to it by article 6 of the Second Schedule to the Civil Code;

"promoter" means a person who promotes the establishment of an organisation or holds himself out to third parties as such;

Cap. 279. "public collection" shall have the meaning ascribed to it in the Public Collections Act:

Provided that for the purposes of this Act, the term "public", within the context of collections, shall not include existing founders, members or donors of a voluntary organisation, even if in large numbers, nor shall it include a group of less than fifty persons taken on one or more occasions;

Cap. 16. "Registrar for Legal Persons" means the Registrar responsible for registration of organisations in terms of the Second Schedule to the Civil Code;

"social purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes:

- (a) the advancement of education, including physical education and sports;
- (b) the advancement of religion;
- (c) the advancement of health;
- (d) social and community advancement;

- (e) the advancement of culture, arts and national heritage;
- (f) the advancement of environmental protection and improvement, including the protection of animals;
- (g) the promotion of human rights, conflict resolution, democracy and reconciliation;
- (h) the promotion or protection of the interests of other social purpose organisations, including federations of such organisations; or
- (i) any other purpose as may be prescribed by the Minister by means of regulations made by virtue of this Act;

"statute" means the constitutive instrument of an organisation and includes a will which provides for the setting up of such organisation;

"temporary organisation" means an organisation established for a specific purpose which can be achieved within less than a year as provided by article 16;

"voluntary" in the context of a voluntary organisation means the existence of one or more of the following elements:

- (a) the overall control of the organisation is exercised by administrators who do not receive any remuneration for their services for carrying on functions of administrators except as hereunder permitted;
- (b) the organisation is created by the endowment of voluntary and gratuitous grants and the organisation's affairs are supported, at least in part, by such voluntary or gratuitous grants or by services rendered on a voluntary basis;
- (c) subject to limitations due to the nature or size of the organisation and subject to any discretion which may be exercised in terms of the statute of an organisation by the administrators or a membership committee, any person can join the organisation or participate in the activities of the organisation; and
- (d) every participant in the organisation has the right to freely leave the organisation:

Provided that:

- (i) unless the statute provides otherwise, administrators may receive a reasonable honorarium for services rendered insofar as the payment of such honorarium does not materially prejudice the achievement of the purposes of the voluntary organisation;
- (ii) the remuneration of persons who are employed to carry out management, executive or fund-raising functions in a voluntary organisation shall not be such as to materially prejudice the achievement of the purposes of the voluntary organisation; and

- (iii) the organisation may refund reasonable expenses to administrators, managers, executives, volunteers and other persons supporting the purposes of the organisation;

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

"Voluntary Organisations Fund" means the foundation established by article 37;

"voluntary sector" includes voluntary organisations, volunteers, donors who make voluntary grants of money or assets to voluntary organisations, beneficiaries of the services of volunteers and voluntary organisations and administrators of such organisations;

"volunteer" means a person who provides unremunerated services through or for a voluntary organisation.

(2) Unless otherwise expressly defined in any other law or the context requires otherwise, the terms "charity", "charitable", "non-profit", "non-profit making", "philanthropic", "social purpose", "voluntary", "voluntary organisation" and variations or derivatives thereof when used in other laws, shall have the meaning ascribed to them by this Act.

Cap. 16. (3) The registration of a voluntary organisation as a legal person in terms of the Second Schedule to the Civil Code shall not imply enrolment of that organisation in terms of this Act.

(4) Enrolment of a voluntary organisation under this Act shall not imply:

- Cap. 16. (a) that the organisation has legal personality; or
 (b) that it is a registered organisation, in terms of the Second Schedule to the Civil Code; or
 (c) that the liability of its administrators under applicable laws is affected in any manner.

PART II

VOLUNTARY ORGANISATIONS

Definition of voluntary organisation.

3. (1) A voluntary organisation is an organisation which is created or established -

- (a) for any lawful purpose;
 (b) as non-profit making; and
 (c) is voluntary,

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

(2) Voluntary organisations are independent and autonomous of the Government and such organisations shall have their status respected by the Government at all times.

(3) Organisations, including trusts, which are controlled by the

State shall be regulated by article 39.

(4) For the purposes of this Act, a voluntary organisation may not be established as a limited liability company or any commercial partnership established under the Companies Act.

Cap. 386.

(5) Trusts established or recognised in terms of the Trusts and Trustees Act shall qualify as voluntary organisations only when they are established as charitable trusts.

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4. (1) Any voluntary organisation may apply to become enrolled with the Commissioner and, once enrolled and subject to the observance of applicable provisions of law, may enjoy the privileges contemplated by this Act and any regulations made thereunder.

Privileges of
voluntary
organisations.

(2) Notwithstanding the provisions of any other law, a voluntary organisation which is enrolled in terms of this Act, may make public collections without any further authorisation.

(3) Any public collections shall be made in accordance with applicable law or guidelines which may be issued by the Commissioner from time to time.

(4) An enrolled organisation may:

- (a) receive or be the beneficiary of grants, sponsorships or other financial aid from the Government, any entity controlled by the Government or the Voluntary Organisations Fund;
- (b) be the beneficiary of any policies supporting voluntary action as these may be developed by the Government;
- (c) receive or be the beneficiary of exemptions, privileges or other entitlements in terms of any law;
- (d) be a party to contracts and other engagements, whether against remuneration or not, for the carrying out of services for the achievement of its social purpose at the request of the Government or any entity controlled by the Government:

Provided that the prior written consent of the Minister is required if the Government, or any entity controlled by the Government, intends to carry out any act involving actions in paragraphs (a), (b) and (d) in relation to any voluntary organisation which is not enrolled in terms of this Act, failing which the actions shall be subject to revocation notwithstanding their terms:

Provided further that where a law or regulations, or a Ministerial exemption or notice pursuant thereto, in force on the date of the coming into force of this Act grants a benefit, exemption or privilege, it shall continue to be enjoyed until it is repealed and where a contract or engagement is already in force on such date it shall not be affected until it is performed or terminated.

(5) The following voluntary organisations shall be entitled to enjoy the privileges under this Act although not enrolled in terms of this Act:

- (a) international voluntary organisations established by

international treaty which are exempted by any special law from being subject to registration;

- (b) any voluntary organisations which are declared by the Minister by regulations made by virtue of this Act, after consultation with the Council, as being entitled to the privileges under this Act.

(6) The following organisations shall be enrolled by means of the notification procedure in terms of article 13:

- (a) pious foundations regulated by the relevant religious authority; or
- (b) voluntary organisations which are registered in terms of a law which provides for a regulator for such organisations and their activities; or
- (c) voluntary organisations which are members of a federation or association of organisations which has been approved by the Commissioner as being able to regulate its members to a standard acceptable to the Commissioner and which, if itself a voluntary organisation, is enrolled in terms of this Act:

Provided that such notification procedure shall not be available to such organisations referred to in this subarticle if they receive fifty per cent or more of their annual income through grants, donations, sponsorships or other financial aid from:

- (i) members of the public, through public collections; or
- (ii) private organisations, through public collections; or
- (iii) the Government or entities controlled by the Government; or
- (iv) other social purpose or non-profit making organisations.

(7) The Government, government departments, public agencies and entities controlled by the Government shall act upon a Certificate of Enrolment issued in terms of article 14, as evidence of the status of an organisation as a voluntary organisation and shall not require any further evidence of its existence or status when dealing with such an organisation:

Provided that such certificate shall not imply any exemption of such organisation from any procedure, duty, obligation, liability, fees or dues unless expressly stated in the applicable law, regulation or policy.

PART III

COMMISSIONER FOR VOLUNTARY ORGANISATIONS

Appointment of
Commissioner.

5. (1) There shall be a Commissioner for Voluntary Organisations who shall be appointed by the Minister for the purpose, after consultation with the Social Affairs Committee of the House of Representatives or any other committee substituting the same.

(2) The Commissioner shall be appointed for a period of three years and may be re-appointed upon the expiration of the term of office.

(3) A person shall not be qualified to be appointed or continue to hold office as Commissioner if such person:

- (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, a crime affecting the good order of the family or of an offence against this Act.

(4) Where the person appointed as Commissioner -

- (a) is not an employee of the Government before such appointment, his engagement shall not render him a public officer; or
- (b) is prior to such appointment a public officer, such person shall continue to retain his employment with the Government:

Provided that during his term as Commissioner, such person shall not hold any position which results in a conflict of interest or is incompatible with the correct performance of his official duties as Commissioner or with the impartiality expected from this office or with public confidence therein.

(5) When the office of the Commissioner becomes vacant, a person appointed as Commissioner shall hold office until a successor is appointed.

(6) Subject to the qualifications in subarticle (3), the Minister may, at any time, during the absence of the Commissioner or for any other temporary purpose where the Minister considers it necessary to do so, appoint a person to act in the office of the Commissioner, until the resumption of office of the Commissioner.

(7) The Minister may also appoint one or more Deputy Commissioners to assist the Commissioner as directed by him and in the performance of his functions.

6. (1) The Commissioner may, at any time, be removed or suspended from office by the Minister, after consultation with the Social Affairs Committee of the House of Representatives or any committee substituting the same, on the grounds of proved inability to perform the functions of the office of the Commissioner or proved misbehaviour:

Removal from office.

Provided that if the committee referred to in this subarticle is not constituted or if the House of Representatives is not in session, the Commissioner may be suspended from office by the

Minister, acting in accordance with his own discretion, for proved inability to perform the functions of the office or proved misbehaviour to the Minister's satisfaction but any such suspension shall not continue in force beyond two months after the Committee has been constituted and the House of Representatives is in session.

(2) The Commissioner may, at any time, resign from office by notice in writing addressed to the Minister.

Functions of the
Commissioner.

7. (1) The Commissioner shall perform the duties and exercise the functions imposed and conferred on him by this Act and by any regulations made thereunder including:

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- (a) providing enrolment facilities for organisations which are eligible for enrolment in terms of this Act;
- (b) monitoring the activities of voluntary organisations in order to ensure observance of the provisions of this Act and any regulations made thereunder;
- (c) providing voluntary organisations with information about the benefits and responsibilities deriving from registration as legal persons in terms of the Second Schedule to the Civil Code and enrolment in terms of this Act;
- (d) providing information and guidelines to persons performing voluntary work and to members of voluntary organisations, for the better performance of their role and for the better achievement of the objectives of the voluntary organisations in which they serve;
- (e) making recommendations to the Minister on legislation and policies in support of voluntary organisations, volunteers and voluntary work;
- (f) assisting Government, government departments, public agencies and entities controlled by the Government in preparing and reviewing policies in support of voluntary organisations and the voluntary sector in general;
- (g) investigating any complaints relating to voluntary organisations or persons or organisations purporting to be voluntary organisations and their activities, and to take such action as is in his power to redress any justified grievance that may come to his notice;
- (h) monitoring the promotion of voluntary organisations and the behaviour of administrators of such organisations to ensure the observance of high standards of accountability and transparency and compliance with law;
- (i) co-ordinating and communicating with the Registrar for Legal Persons in terms of the Second Schedule to the Civil Code with a view to facilitating registration and enrolment processes for voluntary organisations;
- (j) co-operating with and supporting the Council to

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develop policies which will be of benefit to the voluntary sector in general or categories thereof;

- (k) performing any other function or duty that is assigned to him under this Act and any regulations made thereunder as well as such other functions as may be assigned to him under any other law.

(2) In the exercise of his functions, the Commissioner shall act impartially and shall not be subject to the direction of any other person or authority.

(3) Notwithstanding the provisions of subarticle (2), for the purpose of deciding on the refusal of an application for enrolment in accordance with article 13, the Commissioner shall prior to making such decision, seek the recommendation of the sub-committee of the Council appointed in terms of article 35 and shall act accordingly.

(4) The provisions of article 72 of the Financial Administration and Audit Act shall not apply to the Commissioner or any other person carrying out his functions in terms of this Act.

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8. (1) The Commissioner shall establish systems for communication with, and in support of, volunteers who are citizens of Malta, whether serving in Malta or abroad, and the Minister may make regulations, as may be appropriate from time to time, to regulate and support volunteers.

Other functions of the Commissioner.

(2) The Commissioner shall 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.

(3) Subject to the provisions of the Data Protection Act, the Commissioner shall, for the purposes of this Act, also compile and maintain information relating to the administrators and activities of voluntary organisations which are not enrolled in terms of this Act.

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9. The Commissioner shall be guided by the following general principles:

Guiding principles.

- (a) the recognition, encouragement and promotion of the value and importance of voluntary action and voluntary organisations, whether operating independently of government institutions or in a supporting role, and the benefit deriving to the social and cultural life in Malta;
- (b) the recognition of the contribution of voluntary action and voluntary organisations, as expressions of participation, solidarity, pluralism and subsidiarity, towards the continued enjoyment and enrichment of democratic life in Malta;
- (c) the recognition of the direct economic benefit of voluntary and unremunerated action and of initiatives taken by voluntary organisations and volunteers;

- (d) the recognition of the importance of the co-ordination of efforts by voluntary organisations with similar purposes so as to achieve greater concentration of resources and to achieve the benefits of economies of scale and for the avoidance of duplication of efforts, always in the interests of their beneficiaries; and
- (e) the recognition of the importance of the creation of federations or associations of members in order to regulate member organisations and their activities to achieve the benefits of self regulation in the voluntary sector.

Annual report.

10. (1) The Commissioner shall, by not later than six weeks after the end of each calendar year, make and present to the Minister an annual report which shall include:

- (a) a report of the Commissioner's activities during the preceding year;
- (b) a general description of the circumstances of the voluntary sector in Malta and any developments which may have affected such sector;
- (c) any recommendations regarding legislation, policies or other matters affecting the voluntary sector; and
- (d) the accounts and other financial records referred to in subarticle (3).

(2) The Minister shall, by not later than eight weeks after presentation of a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause a copy of every such report to be laid on the table of the House of Representatives. This report shall be discussed by the Social Affairs Committee of the House of Representatives or any other committee substituting this Committee by not later than eight weeks from the date when the Minister places the same report on the table of the House.

(3) The Commissioner shall cause to be kept proper accounts and other financial records in respect of the operations of his office, and shall cause to be prepared a statement of accounts in respect of each financial year. The accounts of the Office of the Commissioner shall be audited by an auditor to be approved by the Minister. After the end of each financial year, and not later than the date on which the report in subarticle (1) is to be forwarded to the Minister, the Commissioner shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Office of the Commissioner.

Public statements.

11. (1) The Commissioner may publish, by advertisement or otherwise, any information about a voluntary organisation, whether enrolled in terms of this Act or not, or about any person purporting to act on behalf of a voluntary organisation, when it appears to him to be in the interest of the public or of the organisation itself.

(2) Before publishing any information referred to in subarticle (1), the Commissioner shall, in writing, notify the administrators of the organisation, or the person purporting to act as stated in subarticle (1), with the proposed text and the recipient shall have five days from the date of receipt of such notice to discuss the same with the Commissioner:

Provided that unless an agreement is reached between the Commissioner and the recipient on any remedial action as may be required to be taken in the circumstances, either party may apply to the Board of Appeal to confirm, amend or refuse the proposed advertisement, as the case may be, and the decision of the Board of Appeal shall be final.

(3) In cases which, in the opinion of the Commissioner, are urgent or involve fraud, the Commissioner may apply directly to the Board of Appeal requesting authorisation to publish such statement or information and the Commissioner shall notify the persons involved with the application and the recipient shall have two working days from the date of receipt of the application to respond to the Board of Appeal, after which the Board shall issue a final order.

(4) No action shall lie against the Commissioner or any Deputy Commissioners in terms of the Press Act for the issuing of *bona fide* public statements in terms of this article. Cap. 248.

PART IV

REGISTER OF VOLUNTARY ORGANISATIONS

12. (1) There shall be a Register of Voluntary Organisations (hereinafter referred to as "the Register") which shall be maintained by the Commissioner and shall contain the following information, supported by the documentation referred to in paragraphs (f) to (i) as the same may be amended or updated from time to time: Register of Voluntary Organisations.

- (a) the name of the organisation;
- (b) the address of the organisation;
- (c) the registration number of the organisation if registered as a legal person, whether in Malta or abroad;
- (d) the names and addresses of the administrators of the organisation;
- (e) in case of foreign or international organisations, the name and address of the representative resident in Malta of such organisation;
- (f) a copy of the constitutive deed of the organisation and any amendments thereto;
- (g) a copy of the annual accounts for the last financial year prior to enrolment, if any, prepared by the applicant;
- (h) annual reports of the organisation;
- (i) annual accounts of the organisation, together with a

report of reviewers or auditors as may be required under applicable law.

(2) Voluntary organisations shall be classified in the Register according to their principal purpose or in such a manner as the Commissioner may deem appropriate.

(3) On enrolment, the Commissioner shall allocate a unique number to the voluntary organisation preceded by the letters "VO" and that number shall at all times be quoted by the voluntary organisation on any published materials, letters, notices, advertisements and other documents issued by such organisation.

Application to enrol.

13. (1) Any voluntary organisation may apply for enrolment by submitting the prescribed application form, to the Commissioner, which form shall be accompanied by:

- (a) an original or notarially authenticated copy of the constitutive deed or statute of the organisation;
- (b) the written consent of the administrators to hold office after enrolment;
- (c) the enrolment fees, if any;
- (d) in the case of those organisations requesting to be enrolled through the notification procedure in terms of this article, a certificate issued by the relevant regulatory body referred to in article 4(7) confirming that the applicant is indeed subject to its regulation and is in good standing; and
- (e) any other document as required by this Act or by any regulations made thereunder.

(2) In considering an application, the Commissioner may request the applicant to provide further information about or make representations on:

- (a) the promoters, founders, administrators, donors and beneficiaries;
- (b) the assets and liabilities;
- (c) the past, if any, present and intended activities of the organisation;
- (d) the purposes of the organisation and the intended activities through which they are to be achieved; and
- (e) any other matter on which the Commissioner may have reservations or concerns in relation to the application.

(3) The Commissioner may accept or refuse any application for enrolment on the basis of:

- (a) observance or otherwise of all formalities required by this Act and any regulations made thereunder;
- (b) presence or otherwise of any factors which bar enrolment under an express provision of this Act;
- (c) the legality or otherwise of the proposed purposes of the organisation having regard to the stated purposes of the organisation and the stated intentions of the

promoters relating to its activities.

(4) The Commissioner shall:

- (a) pay due regard to all information provided and representations made, but in the event that the applicant fails to provide any requested information or to make representations the Commissioner shall proceed with the determination of the application for enrolment on the basis of the information available to him;
- (b) determine whether the organisation is eligible for enrolment and if the organisation is eligible for enrolment, the classification of the organisation's purposes;
- (c) notify the applicant, in writing, of his determination, and in case of a decision not to accept an application, the reasons for such determination.

(5) The Commissioner shall seek to determine all applications by not later than three months from the date of the application and failure to so determine and notify the applicant in accordance with subarticle (4) within such time shall be deemed to mean that enrolment has been refused.

(6) The Commissioner shall not enrol a voluntary organisation even if only one of the administrators is a person who does not qualify to be an administrator of an organisation in terms of applicable law.

(7) In considering applications from organisations to which the provisions of article 4(7) apply, the Commissioner shall enrol the applicant organisation on receipt of the documents required by subarticle (1) without further review and shall follow such further procedures, if any, as may be prescribed by regulations made by virtue of this Act with reference to enrolment by notification.

14. (1) Upon being satisfied that the organisation is eligible for enrolment in terms of this Act and is not in breach of the provisions of this Act, the Commissioner shall:

Enrolment and
Certificate of
Enrolment.

- (a) enter the particulars of the voluntary organisation in the Register;
- (b) issue a Certificate of Enrolment with the identification number of the voluntary organisation;
- (c) specify whether the voluntary organisation is a foundation, an association, a trust or a temporary organisation; and
- (d) specify the voluntary organisation's enrolment classification.

(2) Certificates of Enrolment shall be deemed to be public instruments and shall be surrendered to the Commissioner on his simple demand in writing.

(3) The Certificate of Enrolment issued in terms of this article shall not determine the fiscal status of a voluntary organisation or

the taxability or otherwise of its income and transactions.

Refusal to enrol on basis of the name.

15. The Commissioner shall refuse enrolment if, to the best of his knowledge, the name of the organisation is already used by another organisation, even if not enrolled, or if the proposed name is offensive or is likely to deceive:

Provided that in the event that a voluntary organisation has been enrolled with a name which is already used by another enrolled voluntary organisation, the Commissioner shall request the voluntary organisation which has been last enrolled to change its name.

Temporary organisations.

16. (1) A voluntary organisation may be established as a temporary organisation if it is an organisation formed with one specific purpose, including the raising of funds for a specific social purpose or for the benefit of another enrolled voluntary organisation, or the carrying out of a particular task in support of a social purpose or of another enrolled voluntary organisation. Such a temporary organisation shall be treated as an unregistered organisation for the purposes of the Second Schedule to the Civil Code.

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(2) A temporary organisation:

- (a) is established by means of a written constitutive instrument, including a statement of intent to achieve a specific purpose within a short time not exceeding one year, signed by the promoters and listing the acts which are necessary to achieve the purpose for which it is established;
- (b) may not carry out any acts except those listed in the constitutive instrument and may not borrow money or enter into binding financial obligations in advance of raising the necessary funds to perform such obligations;
- (c) must pay out, apply or otherwise distribute all its assets for the achievement of the purpose by the date of its expiration; and
- (d) must submit to the Commissioner a closing statement of account prior to the date of its expiration signed by the administrators -
 - (i) explaining how it has achieved the purpose for which it was established;
 - (ii) explaining how it has applied all its assets; and
 - (iii) attaching thereto any original documents or agreements which may have been entered into by such temporary organisation in connection with the disposal or application of such assets.

(3) Upon being satisfied of compliance with this article, the Commissioner shall:

- (a) enrol a temporary organisation on submission of the relevant constitutive instrument; and

- (b) cancel enrolment of such temporary organisation without the need of winding up procedures on submission of the relevant closing statement of account in terms of subarticle (2).

(4) The Commissioner may, on the written request of the administrators, consent to an extension of the expiration date of a temporary organisation which had been established for less than twelve months and the duration, including the extension, shall not exceed a total of one year from commencement.

(5) If a temporary organisation does not comply with subarticle (2)(c), its administrators shall be obliged by no later than the expiry date to:

- (a) establish such organisation as a foundation or an association in terms of the Second Schedule to the Civil Code and apply to enrol it in terms of this Act; or Cap. 16.
- (b) pay all monies and other assets raised to the Voluntary Organisations Fund to be applied to the purpose intended within two months of the expiry date.

(6) Any residual assets which may remain in a temporary organisation after the achievement of its purpose shall be paid by the administrators to the Voluntary Organisations Fund and such Fund shall, in virtue of this subarticle, be deemed to be the legal successor of all property, including any rights of refund or reversion, of such temporary organisation.

(7) The Voluntary Organisations Fund shall not be liable to perform any obligations of any temporary organisation but if any assets are received by such Fund in terms of this article and it appears to the Board of such Fund that the obligations -

- (a) were entered into in good faith; and
- (b) have not been performed other than for valid reasons; and
- (c) may be performed in whole or in part with the assets received,

then the Board of such Fund may agree to release any assets received, without any interest and after deducting any expenses incurred, to the creditor of the obligations but shall not be liable for anything further.

(8) If it appears to the Commissioner that a temporary organisation has been set up regularly for the same or similar purpose and by the same persons, or by some of them, then the Commissioner may request that the administrators proceed to form a voluntary organisation of extended duration in terms of law, failing which the Commissioner may refuse to accept the enrolment of such temporary organisation.

17. Any applicant whose application for enrolment has been refused by the Commissioner shall have the right to appeal against such decision to the Board of Appeal in terms of article 25. Right of appeal.

18. (1) In carrying out his duties, the Commissioner may Organisations in difficulty.

recommend to the administrators, or in the absence of administrators, to any identifiable members or promoters of the enrolled voluntary organisation, the winding up of such organisation.

(2) On receiving a recommendation in terms of subarticle (1), the recipients shall, as soon as practicable, call a meeting of all interested persons to discuss such recommendation and take decisions on the future course of action.

(3) The Commissioner may, on the written request of an organisation which may be in financial difficulty, appoint external administrators on a temporary basis in order to review the circumstances and make recommendations on the future of such organisation.

(4) In the case of enrolled voluntary organisations, the Commissioner shall seek to assist the organisation to implement solutions or achieve compliance prior to issuing any recommendation in accordance with this article, or prior to seeking an order in accordance with articles 19 and 20.

Suspension or
cancellation of
activities.

19. (1) The Commissioner may apply to the Board of Appeal to 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 order; or
- (b) the cancellation of the enrolment of a voluntary organisation by the issue of a Cancellation Order, which shall come into effect fifteen days from the date of notification of such order, to all or any one of the administrators, unless an appeal is filed prior to such period, in which case such order shall have effect from the date established by the Board of Appeal.

(2) The orders referred to in subarticle (1) may be issued if the voluntary organisation -

- (a) is not pursuing the purposes for which it was established and in so doing it is misleading the general public;
- (b) is carrying out unlawful activities, including making public collections without the necessary authorisation;
- (c) is failing to comply with the provisions of its statute or of this Act or any regulations made thereunder;
- (d) is misapplying funds, or is using funds or benefits received for purposes other than those for which such funds or benefits were granted;
- (e) appears to have continued operating after it has been formally dissolved;
- (f) has not functioned for a period which exceeds twenty-four consecutive months;
- (g) obtained enrolment on the basis of materially incorrect

or incomplete information that would have otherwise resulted in a refusal had the correct or complete information been known to the Commissioner.

(3) In those cases where a Suspension Order is issued, the Board of Appeal shall indicate which of the activities of the organisation are to be suspended and the Commissioner 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. Such information shall be referred to the Board of Appeal, as may be required from time to time, and the Board of Appeal may use such information when reviewing any orders issued by virtue of this article.

(4) In a Suspension Order, the Board of Appeal may make any ancillary orders, including an order to carry out any actions in compliance with the statute of the voluntary organisation or the provisions of this Act or any regulations made thereunder, as may be appropriate.

(5) The Board of Appeal shall have the power to extend, amend or revoke a Suspension Order, as it considers appropriate, on the application of the Commissioner or the administrators of the voluntary organisation.

(6) Until a Cancellation Order comes into effect in accordance with subarticle (1), 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 case where an appeal is pending, such acts as may be authorised by the Board of Appeal.

(7) In issuing a Cancellation Order the Board of Appeal shall also 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 case of a Cancellation Order based on the grounds specified in subarticle (2)(a), (b) and (d), the Board of Appeal shall have the power to order the organisation to desist from carrying on any further activities. In all other cases the Cancellation Order shall include all determinations under such terms and conditions as the Board of Appeal may consider appropriate in the circumstances and such order shall not however imply a restriction of the right of association of any persons involved in the organisation or of the right of said persons to continue to operate the organisation without the continuing benefits of enrolment under this Act.

(9) The Commissioner shall publish, in a local newspaper, any Cancellation Orders which have become final with a brief statement as to the effects of the order which shall, prior to publication, be approved by the Board of Appeal 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.

Effects of
cancellation of
enrolment.
Amended by:
L.N. 427 of 2007.

20. (1) In the event of cancellation of enrolment of a voluntary organisation, the administrators shall forthwith surrender, to the Commissioner, the Certificate of Enrolment of such organisation and any person failing to surrender such certificate within the time stated in the demand, in writing, by the Commissioner, shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of two hundred and thirty-two euro and ninety-four cents (232.94) and a fine (*multa*) of eleven euro and sixty-five cents (11.65) for every day of default.

(2) In the event of cancellation of enrolment of a voluntary organisation, all privileges, benefits, advantages or entitlements granted to such organisation by virtue of enrolment, shall cease to have effect from the date when the decision to cancel takes effect:

Provided that such loss of benefits shall not apply to the acts required to liquidate and dissolve the voluntary organisation, including any transfer of property to other organisations as required by the statute of the voluntary organisation or the provisions of applicable law.

(3) Cancellation for the reasons mentioned in article 19(2)(a), (b), (d) and (g) shall entitle the Commissioner to demand 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 the Board of Appeal may issue the relative orders against the organisation and any persons involved in such organisation, or in possession of any property, in the Cancellation Order or separately, after ensuring that such organisation or person has been given due notice of this demand and an opportunity to defend itself or himself:

Provided that there shall lie an appeal to the Court of Appeal from any determination of liability by the Board of Appeal in terms of this subarticle.

(4) An order of the Board of Appeal against an organisation or a person referred to in the preceding sub-article shall be enforceable as a judgment of the court.

Suspension of
activities of
organisations
which are not
enrolled.
Amended by:
L.N. 427 of 2007.

21. (1) The Commissioner may, by written notice, order the suspension of activities of an organisation which is not enrolled if, in his reasonable opinion, any of the grounds mentioned in article 19(2)(b) and (d) apply and this for a period to be specified in a notice to all or any one of the administrators, or in their absence to such person who appears to the Commissioner to be carrying on such activities:

Provided that such suspension shall not exceed thirty days in any one notice.

(2) An organisation which is served with such notice shall suspend the activities which shall be specifically indicated in the notice referred to in subarticle (1) until a final decision is taken as to whether it may continue to act or otherwise.

(3) Any person failing to suspend activities within three days from the receipt of the notice made to him by the Commissioner to that effect, shall be guilty of an offence under this Act and shall be

liable, on conviction, to a fine (*multa*) of two hundred and thirty-two euro and ninety-four cents (232.94) and a fine (*multa*) of eleven euro and sixty-five cents (11.65) for every day of default.

(4) The Commissioner shall apply to the Board of Appeal by not later than ninety days should he consider it necessary to have an order for the permanent suspension of activities by such organisation and the Board of Appeal shall have the power, after hearing both parties, to issue such order under such conditions as it considers appropriate.

(5) Any person aggrieved by a Suspension Order issued under this article may appeal to the Board of Appeal against the issue of such order within ten days of the receipt of the written notice from the Commissioner.

22. (1) Without prejudice to the provisions of any other law, in those cases where the Commissioner is of the opinion that a person or voluntary organisation is making or has made abusive use of a Certificate of Enrolment issued in terms of article 14 or has made or made use of a forgery thereof, the Commissioner may:

Powers of the Commissioner in case of abuse.

- (a) prohibit such person from using such certificate by giving notice to such person in writing; or
- (b) issue public statements on the facts to warn the public about any abuse by the person or voluntary organisation; or
- (c) apply to the Board of Appeal to 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 months from such seizure, pay such funds into the Voluntary Organisations Fund.

(2) Prior to the taking of any of the actions referred to in subarticle (1)(a) and (b), the Commissioner shall notify in writing any person or organisation who appears to him *prima facie* to have abused a certificate 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 Board of Appeal within five days of notification of the decision of the Commissioner, which appeal shall suspend any action taken by the Commissioner in terms of subarticle (1) until final determination by such Board of Appeal.

PART V

OF APPEALS AND THE BOARD OF APPEAL

23. (1) There shall be a Board of Appeal whose functions shall be the determination of all matters relating to voluntary organisations as are referred to it in terms of this Act.

Board of Appeal.

(2) The members of the Board of Appeal shall be appointed by the Minister, after consultation with the Council, for a period of

three years, and may be removed from office on grounds of proved inability to perform the functions of their office or of proved misbehaviour.

(3) The Board of Appeal shall consist of three persons, of whom one member, who shall be the Chairperson, shall be a person who has practiced as an advocate for not less than seven years.

Cap. 12.

(4) A member of the Board of Appeal may be challenged or may abstain for any of the reasons for which a judge may be challenged or may abstain in accordance with article 734 of the Code of Organization and Civil Procedure. In any such case, the Minister shall appoint another person to sit as a member of the Board of Appeal in substitution of the said member.

(5) A person shall not be qualified to be appointed or continue to hold office as a member of the Board of Appeal if such person:

- (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
- (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, a crime affecting the good order of the family or of an offence against this Act.

(6) The Board of Appeal shall enjoy all the functions and powers of the Civil Court in its voluntary jurisdiction.

Procedure and jurisdiction.

24. (1) The Board of Appeal shall regulate its own procedure and shall seek to introduce systems and practices which are expeditious and efficient.

(2) The Board of Appeal shall have the power to take decisions based on what appears to be just and fair in the circumstances and shall have the power to issue orders, temporary or permanent.

(3) The Board of Appeal shall at all times observe the rules of natural justice and shall provide the parties with an opportunity to make submissions and be heard and shall afford them full access to all information and documents on which such Board shall make its determination.

(4) The members of the Board of Appeal shall act impartially and independently of any influence of other persons and shall at no time have any personal interest in matters which they are required to determine. If any interest in an issue arises at any time they shall declare such interest and abstain unless the parties expressly request them to continue to act after full disclosure of such conflict.

(5) In the exercise of its functions, the Board of Appeal may summon any person to appear before it, to give evidence and produce any documentation and the Chairperson shall have the power to administer the oath.

(6) The Board of Appeal shall decide any issue referred to it by not later than four months from the date of the referral, unless in the opinion of the Chairperson a longer period is necessary, for a valid reason which must be stated and registered in the proceedings of the case.

(7) The Board of Appeal shall have jurisdiction in relation to any breach of the provisions of this Act or any regulations made thereunder when such breach does not constitute a criminal offence.

PART VI

RIGHT OF APPEAL AND DISPUTE RESOLUTION

25. (1) Any person or organisation aggrieved by any decision of the Commissioner may appeal from the decision within thirty days of receipt thereof or where there is no response to an application to the Commissioner to enrol a voluntary organisation, after forty-five days from the date of application for enrolment.

Right of appeal.

(2) Appeals shall be made in writing and shall be lodged with the Board of Appeal without the need of any further formality or shall be made in the manner as may be prescribed by regulations made by the Minister by virtue of this Act.

(3) An application to the Board of Appeal may also be made by the Commissioner, a founder, administrator, member, donor or beneficiary of a voluntary organisation in his individual capacity having an interest in the affairs of the voluntary organisation for an order on the affairs of such organisation on the grounds that such organisation is not being administered in accordance with this Act, any regulations made thereunder or as provided in the statute of such organisation.

(4) The Board of Appeal shall give reasons for its decisions and shall cause such decisions to be made public but the names of the persons involved shall be omitted if such Board considers it appropriate for reasons of privacy.

(5) In determining an appeal the Board of Appeal may dismiss the appeal or annul, revoke or substitute the decision of the Commissioner or any administrator or general meeting of a voluntary organisation.

26. (1) There shall also lie an appeal to the First Hall, Civil Court on a point of law and on any issue involving the determination of a civil right which may arise as a result of a decision delivered by the Board of Appeal.

Appeals on a point of law and determination of civil rights.

(2) All appeals shall be made by application to the court, which application shall be served on the Commissioner by the applicant and the Commissioner shall have ten days to respond thereto.

(3) When an appeal on a point of law or a determination of a civil right is made in accordance with subarticle (1), the court may either confirm, modify or overturn the decision of the Board of Appeal if it considers it necessary to do so in the light of its determination or it may refer its decision back to the Board of

Appeal for such Board to take appropriate action.

(4) The decision of the First Hall, Civil Court shall be final and no further appeal shall lie therefrom.

(5) Compliance with any instructions of the Commissioner or with the Board of Appeal's determination shall not be interpreted as a renunciation of the right to seek judicial review in terms of this article.

Support relating to disputes.

27. (1) The Commissioner may, on becoming aware of a dispute involving a voluntary organisation or persons connected therewith, even if out of his own initiative, provide assistance in the resolution of such disputes through:

- (a) the facility of advisory opinions by experts chosen from a panel of persons (hereinafter referred to as "the Advisory Panel");
- (b) assistance to the parties to the dispute by referring such dispute to mediation and, where necessary, impose mandatory reference to mediation as provided herein;
- (c) assistance to the parties to the dispute to make reference to arbitration in accordance with the provisions of Part IV of the Arbitration Act.

Cap. 387.

(2) The Commissioner shall encourage and assist parties to a dispute involving a voluntary organisation to resolve the issue by mutual agreement by referring it to the Advisory Panel, to mediation or failing that, to arbitration.

(3) The Commissioner may organise information, educational and training events in relation to alternative dispute resolution systems for the benefit of voluntary organisations.

(4) For the purposes of this Part, a dispute involves a voluntary organisation if it relates to:

- (a) a dispute between members of a voluntary organisation or between members and one or more administrators relating to the affairs of the voluntary organisation, including the payment of membership fees, the expulsion of members and similar issues; or
- (b) a dispute between the founders and the administrators of a foundation or the settlors or beneficiaries of a charitable trust and the trustees relating to the affairs of the voluntary organisation or charitable trust as the case may be; or
- (c) a dispute between administrators of a voluntary organisation; or
- (d) a dispute between voluntary organisations relating to activities, events and related matters; or
- (e) a dispute between a voluntary organisation and a donor, sponsor, beneficiary or other person who has relations with the voluntary organisation, other than purely commercial relations for the supply of goods or

services; or

- (f) a dispute between a volunteer and a voluntary organisation; or
- (g) without prejudice to any law relating to employment, a dispute between an employee of a voluntary organisation and the voluntary organisation, which shall be handled in collaboration with the Director for Employment and Industrial Relations; or
- (h) a dispute between the Government and a voluntary organisation in relation to any management or other contract entered into for the rendering of services.

28. (1) The Advisory Panel shall be composed of persons who, in the opinion of the Commissioner, are qualified to carry out the duties of advisors in matters relating to voluntary organisations and the voluntary sector in general. Advisory Panels.

(2) The Advisory Panel shall:

- (a) communicate with the parties to the dispute immediately on the referral of such dispute by the Commissioner;
- (b) organise meetings between the parties, as may be necessary, in order to resolve the dispute;
- (c) consider the causes and circumstances of the dispute;
- (d) endeavour to bring about amicable settlement of the dispute as expeditiously as possible;
- (e) make recommendations, as deemed fit, in order to resolve the dispute;
- (f) in the event of failure to achieve amicable settlement make recommendations for mediation or arbitration in terms of articles 29 and 30.

29. (1) When the Commissioner refers a dispute involving a voluntary organisation to mediation, the Commissioner shall do so by notice in writing to the parties and the parties shall be bound by such reference: Mediation.

Provided that the Commissioner shall in the notice state who is responsible for the commencement of the proceedings and shall establish a time therefor, failing which the other party or parties may commence mediation proceedings themselves.

(2) Each party referred to mediation shall be bound to act in good faith in the conduct of such proceedings and any party may withdraw from mediation procedures at any time:

Provided that if the mediator considers that a party has not demonstrated good faith in his conduct to promote or proceed with the mediation, then the mediator may order costs to be borne by such party.

(3) The Malta Mediation Centre may, after having consulted the Council, from time to time, prescribe rules governing mediation procedures in relation to voluntary organisations, including rules

on the appointment of a mediator by such Centre in the event that the parties fail to agree on such appointment.

(4) The Council shall, from time to time, advise the Malta Mediation Centre in the drawing up of a panel or panels of mediators on matters involving voluntary organisations.

Arbitration.

30. (1) When a dispute as defined in article 27 is submitted to arbitration under the rules of the Malta Arbitration Centre, the dispute shall, in the absence of agreement to the contrary by the parties involved, be determined in accordance with the provisions of the Arbitration Act and the arbitral tribunal shall take into consideration general principles of good practice, transparency and fairness that are generally accepted and applied within the voluntary sector.

Cap. 387.

(2) The Council shall, from time to time, advise the Malta Arbitration Centre in the drawing up of a panel or panels of arbitrators on matters involving voluntary organisations.

(3) The Malta Arbitration Centre may, after having consulted the Council, from time to time prescribe rules governing arbitration procedures involving voluntary organisations.

PART VII

OFFENCES

Penalties.
Amended by:
L.N. 427 of 2007.

31. Where any person acts in breach of any of the provisions of this Act or any regulations made thereunder, and a specific penalty is not provided for the offence under this Act or any regulations made thereunder, such person shall, on conviction, be liable to a fine (*multa*) of not less than one hundred and sixteen euro and forty-seven cents (116.47) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to a term of imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Forgery or alteration of certificates or misrepresentation of status.

32. Any person who, in any manner, forges or alters a Certificate of Enrolment of a voluntary organisation so as to give the impression that he acts on behalf of an enrolled voluntary organisation, or that an existing organisation is a voluntary organisation when it is not, 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.

Purporting to act as an administrator and making public collections.

33. (1) Any person who knowingly acts or purports to act as an administrator of a voluntary organisation without having been duly appointed or elected as an administrator of such organisation, shall be guilty of an offence punishable as a contravention unless the actions of the said person constitute a more serious offence under any other law, in which case it shall be punishable accordingly.

(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.

34. (1) The Commissioner may investigate the affairs of any voluntary organisation at any time and may demand, in writing, any relevant information relating to the operation of a voluntary organisation or any person involved in the activities of a voluntary organisation, if he has cause to believe that such information is necessary in order to establish whether an organisation is acting in compliance with the provisions of this Act or any regulations made thereunder.

Investigations.
Amended by:
L.N. 427 of 2007.

(2) Any person who fails to provide information and documentation as aforesaid, and destroys or defaces documents, or attempts to destroy or deface documents, required by the Commissioner pursuant to this article shall be guilty of an offence.

(3) The Commissioner may issue directives demanding compliance with any of the provisions of this Act or any regulations made thereunder and failure on the part of any person to comply with such directives shall constitute a breach of duty.

(4) The Commissioner may set a period for compliance with any of the provisions of this Act or any regulations made thereunder and may impose penalties for non-compliance within such period:

Provided that such penalties shall not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) for the breach of a directive and one hundred and sixteen euro and forty-seven cents (116.47) for each day of non-compliance and such penalties shall be paid to the Voluntary Organisations Fund.

(5) Any person or organisation who receives a communication in terms of this Part of this Act shall be entitled to apply to the Board of Appeal on the basis that such investigation, directive, order or penalty is not justified or reasonable in the circumstances and the Board of Appeal may give any directions it considers appropriate and any penalties imposed by the Commissioner in terms of subarticle (4) shall be suspended until final determination by the Board of Appeal.

PART VIII

COUNCIL FOR THE VOLUNTARY SECTOR

35. (1) There shall be set up a body to be known as the Council for the Voluntary Sector which shall assist the Commissioner and 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.

Council for the
Voluntary Sector.

(2) The Council shall be composed of a Chairperson and another ten members. Out of these eleven members, one shall be appointed by the Minister to represent the Government, another member shall be the Commissioner *ex officio* and the other nine members shall be appointed, in accordance with sub-article (3), from among and to represent the voluntary sector.

(3) The members of the Council who are appointed to represent

the voluntary sector shall reflect the various sectors in which voluntary organisations operate and shall be appointed by the Minister after the receipt of nominations following a public call by the Minister for nominations in the following manner:

- Cap. 16. (a) five members from among the voluntary sector as follows:
- (i) three members shall be nominated by voluntary organisations enrolled in terms of this Act;
 - (ii) one member shall be nominated by voluntary organisations which are not enrolled in terms of this Act but registered in terms of the Second Schedule to the Civil Code;
 - Cap. 16. (iii) one member shall be nominated by voluntary organisations which are neither enrolled in terms of this Act nor registered in terms of the Second Schedule to the Civil Code;
- (b) four members shall be appointed as follows:
- (i) one member to represent founders of and donors to voluntary organisations;
 - (ii) one member to represent members of voluntary organisations and volunteers;
 - (iii) one member to represent administrators of voluntary organisations;
 - (iv) one 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 that prior to appointing the members of the Council, the Minister shall immediately consult the Social Affairs Committee of the House of Representatives or any other committee substituting the same on the nominations received.

(4) The Commissioner shall be the Deputy Chairperson of the Council and the Chairperson shall be elected by the members of the Council from among themselves.

(5) If 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.

(6) The members of the Council shall be appointed for a period of two years and may be re-appointed on the expiration of their term for further periods of two years in accordance with the procedure established in this article.

(7) The Minister may, from time to time, make regulations to regulate the nomination, appointment and removal of members of the Council.

(8) 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 of an offence against this Act.

(9) 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; or
- (b) upon his written request to the Minister, to resign from such office; 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.

(10) The Council shall meet at least once every three 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.

(11) The Council shall, subject to the foregoing provisions, regulate its own procedures.

(12) The Council shall appoint a sub-committee composed of three members of the Council and which shall be consulted by the Commissioner in the cases referred to in article 7(3). The sub-committee shall have a quorum of two members and the written response of the two members agreeing or disagreeing to a recommended course of action shall suffice as an expression of the views of the committee.

36. The Council shall:

- (a) generally advise and assist the Commissioner in the performance of his functions;
- (b) advise and assist the Commissioner in the promotion of the voluntary sector in general;
- (c) administer the Voluntary Organisations Fund;
- (d) carry out such functions and have such powers as may be prescribed by the Minister, from time to time, by means of regulations made by virtue of this Act.

Functions of the Council.

PART IX

VOLUNTARY ORGANISATIONS FUND

Voluntary
Organisations
Fund.
Cap. 16.

37. (1) The Voluntary Organisations Fund shall be hereby established as a foundation and shall be registered in terms of the Second Schedule to the Civil Code and enrolled as the first enrolled voluntary organisation in terms of this Act.

(2) The address of the Voluntary Organisations Fund shall be the office of the Commissioner or any other address as the Council may, from time to time, deem fit.

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

(4) The Voluntary Organisations Fund shall be vested with the right to income and capital as is contemplated by the provisions of this Act or any regulations made thereunder:

Cap. 16.

Provided that article 29 of the Second Schedule to the Civil Code shall not apply to the Voluntary Organisations Fund and the requirements therein shall be substituted by a statement signed by the Commissioner.

(5) The Voluntary Organisations Fund shall be administered by the Council which shall appoint a board of administrators for the purpose.

(6) The board of the Voluntary Organisations Fund shall enjoy discretion as to the distribution of income and capital of such Fund for the purposes outlined in subarticle (3) and shall, by not later than the fifteenth day of February of each year, submit to the Council a detailed written report of its receipts and of all distributions of income and capital of such Fund during the preceding calendar year.

(7) Legal representation of the Voluntary Organisations Fund shall be vested in the Chairperson of the board of administrators or any other person designated by the board for the purpose.

(8) The provisions of article 39 shall not apply to the Voluntary Organisations Fund.

PART X

GENERAL

Trading activities.

38. (1) Voluntary organisations shall not be established for trading purposes nor to promote the interests of a commercial enterprise nor shall they principally engage in trade.

(2) When a voluntary organisation wishes to carry out a trading activity in order to raise funds to achieve its purposes, such organisation shall establish an appropriate legal entity and the administrators of the voluntary organisation shall ensure that such activity shall not burden the human and financial resources of such organisation beyond its means.

(3) For the purposes of this article, 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, shall not be deemed to be trading activities.

(4) For the purposes of this article, the following activities carried out by a voluntary organisation directly in the achievement of the purposes of such organisation shall not be considered to be a trading activity for the purposes of this Act even if remuneration is received for the following services rendered by such organisation:

- (a) fees for educational services;
- (b) consideration for sale of goods and services to members;
- (c) admission fees for entrance to art galleries, exhibitions and museums or attendance at theatrical or musical activities;
- (d) participation fees in competitions organised for members;
- (e) payment for residential accommodation and care;
- (f) similar income which may be payable to voluntary organisations established for specific social purposes for which they have been established;
- (g) such other class of income as may be prescribed by regulations made by the Minister on the recommendation of the Council.

(5) For the purposes of this article, the investment of the property of a voluntary organisation shall also not be deemed to be a trading activity.

(6) In case of doubt, a ruling on whether any activity is a trading activity or not for the purposes of this article shall be given by the Commissioner on the application of any interested party and his decision shall be subject to appeal to the Board of Appeal.

(7) 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 subarticle (4) in terms of any other law.

39. (1) Except as provided in this article, an organisation shall not be enrolled as a voluntary organisation in terms of this Act if:

- (a) the State has the power to nominate, appoint, change or remove the administrators of the organisation; or
- (b) the organisation is a public agency.

Exceptions as to enrolment of voluntary organisations.

(2) With respect to organisations existing on the date of entry into force of this Act, where the State has the power to nominate, appoint, change or remove all or some of the administrators of the organisation, such organisations may be enrolled and shall continue to retain their enrolment if they demonstrate to the Commissioner that they are independent of the State.

(3) For the purposes of this article, an organisation shall be considered independent of the State if every administrator thereof who is appointed by the State subscribes to a declaration, submitted

to the Commissioner by the individual concerned at the relevant time, that:

- (a) he understands that his duties are exclusively to the purpose of the organisation and its beneficiaries and that he is independent and autonomous of the State;
- (b) he is a volunteer; and
- (c) he is not a public officer except when his office in the organisation is unrelated to the public office he holds and therefore is not incompatible with the correct performance of his duties as an administrator, independent and autonomous of the State.

(4) An organisation in which the State is involved shall:

- (a) within two years from the coming into force of this Act cease to be enrolled if the majority of its administrators are, on such date, still subject to being nominated, appointed, changed or removed by the State; and
- (b) within four years from the coming into force of this Act cease to be enrolled if any of its administrators are, on such date, still subject to being appointed, changed or removed by the State.

Cap. 174.

(5) The provisions of article 72 of the Financial Administration and Audit Act shall not apply to any administrator of an organisation which is regulated by this article.

(6) For the purposes of this article:

- (a) "State" means the Government of Malta, any Local Council, any statutory corporation, public agency and other organisation of whatever legal form controlled by the Government and includes the President of Malta; and
- (b) "public agency" means any entity of any legal form which is established to carry out public administration.

Guidelines.

40. The Commissioner may, from time to time and after consultation with the Council, issue guidelines in relation to the activities of voluntary organisations and such guidelines shall be binding on voluntary organisations as codes of good practice.

Inspection of documents.

41. (1) On payment of the applicable fee, any person may view and obtain copies of the Register and any documentation which has been submitted to the Commissioner by any voluntary organisation.

(2) Voluntary organisations shall make the statute, annual report and audited accounts available for inspection, free of charge, by any founder, administrator or member of the voluntary organisation as well as by any donor or beneficiary who satisfies the administrators of an interest in the information.

(3) If a person is unjustifiably refused any information by a voluntary organisation such person may complain, in writing, to the Commissioner who shall decide on whether such person is entitled

to the information or not in terms of this article and inform the complainant in writing of his determination, and reasons therefor, within a reasonable time:

Provided that the Commissioner shall inform the relevant voluntary organisation of any decision taken in terms of this subarticle and any person who feels aggrieved by such decision taken by the Commissioner shall have the right to appeal to the Board of Appeal within five days of the date of receipt of such decision taken by the Commissioner.

- 42.** (1) The Minister shall have the power to make regulations: Power to make regulations.
- (a) to further regulate voluntary organisations, whether enrolled or not in terms of this Act;
 - (b) to establish the forms for the enrolment of a voluntary organisation and for the notification of changes to the statute to its administrators and otherwise;
 - (c) to establish the form and contents of certificates to be issued in terms of this Act;
 - (d) to establish the forms and procedures to be used for appeals in terms of this Act;
 - (e) to establish rules applicable to public collections by voluntary organisations;
 - (f) to regulate foreign or international voluntary organisations carrying on activities in Malta;
 - (g) to lay down any penalties for breach of the provisions of this Act;
 - (h) to implement any international convention or any European Union regulation or directive, to the extent necessary, to which Malta has adhered to in the context of voluntary organisations or the voluntary sector;
 - (i) to regulate the composition of the Advisory Panels and to regulate the procedures to be followed by the Advisory Panels and by the persons appointed on such panels;
 - (j) to regulate the Voluntary Organisations Fund and the terms and interest rates of loans therefrom and the terms and conditions of guarantees which may be provided by such Fund;
 - (k) to lay down rules on the position of volunteers in relation to their employers when such volunteers wish to carry out voluntary activity, in Malta or abroad, for periods beyond their leave entitlement;
 - (l) to lay down rules on the powers of the Board of Appeal in relation to the interpretation or variation of a statute and the administration of voluntary organisations;
 - (m) to establish the form and content of annual reports and accounts which are to be submitted to the Commissioner in order to achieve a satisfactory level

of transparency and accountability of voluntary organisations;

- (n) to extend, clarify or define the functions of the Commissioner under this Act and provide for ancillary and related matters;
- (o) to lay down conditions or guidelines for the authorisation by the Commissioner of any federation or association of voluntary organisations who wish to operate as a regulatory body over its members and their activities;
- (p) for the better carrying out of any of the provisions of this Act.

(2) The Minister may, with the concurrence of the Minister responsible for finance, make regulations relating to the fiscal status of voluntary organisations, including different rules for different categories or different classification of purposes, and may establish the criteria for the granting of any such exemptions, in whole or in part, from any law relating to taxation, duties or other charges, as well as any fiscal rules on the activities of voluntary organisations and donations to such organisations. Such regulations may also establish the terms, conditions and forms of any fiscal certificates, receipts or other documents which may be necessary for the enjoyment of the above fiscal status and regulations.
