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The Family Business Act

MINISTER’S MESSAGE

Hon. Christian Cardona
Minister for the Economy, Investment and Small Business

It has long been recognised that family businesses are an indispensable asset for Malta and Europe’s economic prosperity. Family businesses generate economic growth and employment and provide lasting stability. At the same time, it has equally been recognised around the world that family businesses face unique challenges that require the full attention of the legislator and policy makers.

Family business succession is the most challenging process that family businesses must undergo, since, if not properly undertaken, it might result in the end of the family business. Financial issues and lack of proper governance structures are the main reasons why family businesses fail this succession process and why the European Commission has long been calling upon Member States to address this legislative and functional void by policy makers.

The main recommendation that this new legislation proposes is to allow businesses to structure and register themselves and acquire the status of a family business with the opportunity to benefit from such structure and identity. The legislation is established along the principles and vision of the European Commission as well as the necessities of local family businesses in Malta. The legislation clearly defines a ‘family business’ and how family businesses can be structured to acquire the same label and remove the ambiguity that presently exists around this sector.

Furthermore, the legislation also seeks to regulate and establish parameters within which family businesses are to govern and operate the family businesses to help them pursue succession and an effective transfer of the family business. The legislation is intended to establish operational benchmarks so that family businesses can further achieve their aims. The legislation will give due recognition to this sector and will further facilitate and support their unity in their endeavors to work collectively to ensure their survival. Finally, the legislation proposes an initial set of incentives to be immediately made available to family businesses to assist them throughout their transition process.

The ultimate objective of this process is to listen to all stakeholders and members of the public so that we can take an informed decision that reflects the wishes and interests of family businesses as well as those members of the general public and persons that fall under the remit of the proposed legislation.
This White Paper is intended to provide background information on the family business sector and on its potential to address some of our family businesses needs while ensuring their growth and continuity. It will also look at how the sector has developed and survived over the years and introduces proposals to build a framework to enable the transfer and continuity of family businesses in Malta. This Paper continues the process started two years ago when the public and key stakeholders were asked to give their input on four key areas that are fundamental to this sector in order to put in place the proposals set forth in this white paper. In this context, a draft law is being proposed to provide a legal framework with the objective of ensuring the governance and continuity of sustainable family businesses. The proposal has been put forward following the joint collaboration of the steering committee that established the proposal. The steering committee that developed and endorsed the legislative proposal was made up of representatives from the Ministry for the Economy, Investment and Small Business, the Ministry for Finance, the Ministry for the Family and Social Solidarity, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, the Commissioner for Revenue, the Inland Revenue Department, the Chamber of Commerce, the MFSA, the Malta Institute of Accountants, the Malta Association of Family Enterprises, and the General Retailers and Traders Union.
The term “family business” has been given a broad range of definitions and there are a number of understandings of the nature of this sector with an estimated 93 definitions across European Union Member States with variations depending on the relationship between family businesses themselves. Family businesses in general have in the past made a large contribution to a surge in the European economy and play a significant role in economic growth and social development, in reducing unemployment, particularly among young people, and in investment in human capital. The multi-generational character of family businesses reinforces the stability of the economy, and family businesses usually play a vital role in regional development, in terms of employment, transmission of know-how and regional organisation. Furthermore, family-business-targeted policies encourage entrepreneurship and motivate European families to start their own family businesses. According to the most recent collated information in 2014, 85% of all European companies are family businesses, and these account for 60% of jobs in the private sector.

Family businesses are of various sizes. This factor exposes them to different difficulties and problems. While most family businesses are SMEs, family businesses can be small, medium-sized or large, listed or unlisted. Family businesses have been widely equated with SMEs, but this ignores the fact that there are also very large multinational corporations in certain Member States that are also family businesses. In some EU Member States a few family businesses account for a large share of the total turnover of all businesses, and thus make a significant contribution to job retention, including in times of crisis, to the creation, the growth and the economic success of the country concerned.

Direct taxation and succession law are Member State competences, and some Member States have adopted limited measures to support family businesses and address their concerns owing to the fact that family businesses are perceived as exhibiting high integrity and values that guide their business operations, and therefore introduce high standards of corporate social responsibility towards their employees and the environment, which also creates a favourable environment for work-life balance.

Family businesses usually guarantee that knowledge and skills will be passed on, and in some cases play an important role in social links. In agriculture, family farms are the most common business model and make a major contribution to the prevention of rural depopulation, and in many cases provide the only source of employment in the regions of Europe where development is lagging behind, particularly in less industrialised regions.

The Commission’s group of experts on family businesses completed its work more than six years ago, and no new European initiative has been launched since then at EU level. There is still a lack of research and data at national and European levels to understand the special needs and structures of family businesses.

Crucially, there is no legally-binding, concrete, simple and European-wide harmonised definition of family businesses and, equally, a lack of policy decision-making, which means that the needs of family businesses are not being met adequately by any Member State. Additionally, the imbalance of roles in family businesses is an Achilles’ heel to their sustainability. In the EU, women earn, on average, 16% less per hour than men, and there is
a dearth of women in high-level and leadership positions. The labour practices and wage systems applied to men are not the same as those applied to women, making it more difficult for the latter to be financially independent, participate fully in the job market and achieve a work-life balance. In family businesses women often play an invisible role, or act as figureheads, and do not have their job or salary status appropriately recognised. This has serious repercussions in terms of social security contributions, pensions and welfare entitlements, and also in terms of recognition of their skills.

The European Commission believes that family businesses have a key role to play in Europe’s economic recovery and future sustainability. In fact, the European Commission in its report of 30th June, 2015 on family businesses in Europe, is requesting Member States to provide tangible support for the continuity, succession transfer and good governance of family businesses. Family businesses cannot be treated in the same way as other businesses, since there are certain challenges that are felt to a greater extent by such businesses, such as the issue of governance and succession, that remains among the most challenging aspects of family businesses, together with fiscal hurdles that can lead to cash flow problems when such businesses are transferred from one generation to another.
In Malta, family businesses have been the economic pillar and backbone of our society, and have withstood economic downturns robustly. Addressing their needs was the primary foundation for such policy initiatives and the scope for establishing legislation to give due form to this sector. At present, many family businesses in Malta do not succeed to transfer their family business beyond their second generation. This is due, for the most part, to liquidity difficulties and a lack of developed governance during the lifetime of the family business. A lack of succession planning, of clear demarcation of roles and competencies, and of financial planning all add to the limited ability of these family businesses to successfully transfer to the next generation.

Primary research conducted through a nation-wide statistical survey, commissioned specifically for the purposes of these proposals, shows that nearly half (49.5 per cent) of family-run businesses employed two family members; another 34.5 per cent employed three or four family members; the remaining 16.0 per cent employed more than five. In addition, 41.9 per cent of such enterprises had at least one family member who helped out seasonally or periodically.

The majority (69.4 per cent) of family-run businesses were started by the current family members, while another 16.9 per cent were inherited. A further 7.3 per cent bought the business from other family members.

From a total of 1,557 enterprises that participated in the nation-wide survey, in the absence of a formal definition, 769 family-run businesses were identified. Once a formal definition is established it is estimated that around 4,000 will be identified. From this category, 287 enterprises, or 37.3 per cent, planned to continue the business in the future. Of these, 82.9 per cent would opt to pass it on to the next generation, while 8.0 per cent would choose to sell it to other persons (non-family members). These enterprises indicated that taxation issues and financial problems were the major challenges and risks to transfer the business to someone else, followed by challenges regarding family conflict, retirement uncertainty, and inheritance.

The vast majority (97.5 per cent) of family-run businesses indicated that family members took the major decisions within the company, with the highest percentage being recorded for enterprises employing 50 persons or more. Just over 35.0 per cent of family-run businesses had a future plan by the current family members involved for the continuity of the company. For family-run businesses employing 50 persons or more, this percentage was equal to 45.2 per cent.
THE PROPOSED LEGISLATION

The backdrop against which this legislation is developed is the knowledge that around 98% of all businesses in Malta are micro, small or medium-sized enterprises, with the vast majority of them being family-run businesses. More significantly, 95% of these SMEs are classified as micro enterprises, having less than 10 employees. These SMEs provide about 80% of all the jobs in the business economy and create 71% of the overall value added. For both variables, this is about 14 percentage points more than the EU average.

To date there is no legislation on a European or international level that specifically assists and encourages the regulation of family businesses, their governance, and the transfer of the family business from one generation to the next. Therefore, the scope of the legislation is to encourage and assist family businesses to enhance their internal organisation and structure with the aim that they effectively operate the business and work towards an effective succession of the family business.

This law is being developed in line with the European Commission recommendations to create a transfer-friendly regulatory framework:

**Creation of a transfer-friendly regulatory framework**: Helping the transfer of businesses means having the right regulatory framework. The European Commission dealt with this area in its recommendation on the transfer of small and medium-sized enterprises. It invited the Member States to improve their legal and fiscal environment for business transfers. Some progress has already been made in implementing the recommendation, but there is still work to be done;

and the Government’s pledge to introduce the Family Business Act which will offer benefits to registered family businesses seeking to transfer their business and ensure next-generation continuity:

**Miżura 120 - Se jiġi indirizzat l-Att tan-Negozju tal-Familja. Il-liġi se tagħti definizzjonij ċara ta’ x’inhu negozju tal-familja u min huma l-membri tal-familja, u se tinċentiva t-trasferiment tan-negozju bejn membri tal-istess familja. Kull negozju tal-familja rreġistrat taħt dan l-Att se jkun eliġibbli sabiex japplika għal numru ta’ beneficiċji.**
The proposed legislation is intended to provide a legal as well as an administrative environment conducive to the development of this sector. It seeks to do this by establishing the parameters which would entitle a business to be considered as a family business by proposing the establishment of a regulatory framework, including the role of a Regulator whose function would include ensuring the continued development of the sector by nurturing, encouraging and assisting family businesses. The intention of the legislation is to encourage family members within the same family to transfer their family business during the lifetime of the family members (inter vivos) as opposed to waiting for a family member, and most often and crucially, the founder, to pass away and effect a transfer causa mortis. In transferring a family business inter vivos the benefits and likely success of the continuity of the family business by far outweigh a transfer causa mortis especially as most transfers causa mortis result from an unexpected and unforeseen passing away of a family member. A transfer inter vivos will not only be more transparent, smooth and successful but the same family business will maintain the confidence of its employees, business partners, investors, customers, shareholders and all financial and credit relationships related to the family business. Furthermore, the proposed legislation identifies the benefits and the assistance which family businesses require to facilitate a successful transfer.

The main provisions of the Bill are the following:

• The establishment of a legal form for a family business. The term “family business” is defined and the business models by which family businesses trade and operate are identified. Whilst the Bill is developed keeping in mind the scenario of the Maltese economy it allows for foreign family businesses to benefit from the legislation through the establishment of part or all of their family business in Malta. As Malta will be the first jurisdiction legislating specifically for family business, this Bill spearheads Malta's status as a core financial centre for the European Union and international and Commonwealth businesses, and acts as a further complement to foreign direct investment.

• Family businesses vary from “normal” businesses in that they are motivated by the unity and continuity of family ties. In this respect it was vital to clearly identify which family members will be recognised within a family business for the purposes of registering as a family business as well as to provide adequate safeguards for their employment.

The definition of “family member” is intended to identify those relatives who, according to Maltese law, will be considered to fall within the parameters of the Act. It takes into account the current indications of family members already established in existing legislation such as the Income Tax Act (Chapter 123 of the Laws of Malta), the development and emergence of recent legislation regulating partners and spouses, as well as the intention of the legislation to encourage succession to subsequent generations.

• The definition of “family business” throughout article 3 of the proposed legislation identifies direct ownership of those family businesses that are: (1) listed or trading on a multilateral trading facility, (2) limited liability companies, (3) registered partnerships, (4) businesses set up as a trust, (5) unregistered partnerships, and (6) those that the Minister may prescribe. Indirect ownership is identified as those family businesses set up as: (1) holding companies, (2) those held in a trust, or (3) a private foundation.
An “owner” is identified as being the ultimate beneficial, physical individual who, directly or indirectly, has a shareholding or other interest in the family business. A family business, to be understood as such, must be made up of at least two owners who are family members within the same family unit. The definition takes into account not only the requirements for ownership by family members but also the importance of their involvement in the governance and decision-making rights of the family business.

The proposed legislation aims towards the consolidation of ownership as opposed to its fragmentation. Keeping this in mind, the proposed legislation takes into consideration that successful family businesses are not necessarily entirely 100% family-owned and that, furthermore, part of their continuity and success depends on allowing participation and ownership by non-family members. In this respect, the legislation provides that where forms of ownership are held directly or indirectly by individuals who are not family members they shall be disregarded if their aggregate issued value does not exceed five per cent of the said ownership as prescribed in the provisos to sub-articles (2), (3), (4), (5) and (7) of article 3 of the legislation.

The legislation furthermore takes into account the fact that business assets may be held on lease and not through ownership. To provide for this fact, the legislation provides that where any business assets are held on lease, the family members shall be the majority of the lessees in the lease agreement. In this way, the net that encompasses family businesses is further extended and takes into account the real scenario of those family businesses that lease their premises.

• The success of family businesses depends highly on family members being fully and properly integrated in the ownership and governance of the family business. Therefore, achieving a balance is fundamental to ensure continuity and success. For this purpose, the success of a family business requires not only the presence but also the involvement of the same family members operating it and who will eventually inherit it. The legislation seeks to achieve this balance by establishing the parameters for the duration of the family business both in registering as a family business and maintaining the label, the level of direct and indirect ownership, as well as the quality of ownership, management and decision-making rights.

• Governance, structured management and good administration are the Achilles’ heel of family businesses owing to the fact that family businesses invest much of their personal qualities in growing and establishing the business. In failing to plan, a business plans to fail. The legislation tackles this aspect by requiring family businesses to clearly determine the role of family members within the family business not only from an ownership perspective but also through decision-making rights and formal involvement in the management of the business.

• To further ensure the continuity and transfer of family businesses, benefits have been developed to complete the scope of the legislation and assist family businesses. Access to benefits is on the precondition that a family business is fiscally sound. This, apart from further strengthening the internal governance of family businesses, also allows the State to collect its fiscal dues and increase revenue and transparency in the operations of family businesses.

• A Regulator for Family Businesses will be established with the complementary function of being a leader and a representative of the sector. As the administrator of the Register of Family Businesses, the Regulator will collate those businesses that have been allocated the family business label after meeting the established requisites.
The Regulator’s function will go beyond that of a “licensor” by striving to create a community bringing together family businesses and professionals to work together and develop opportunities to continually assist family businesses in their transfers and succession.

• The Act contains other provisions that establish parameters for businesses to qualify as family businesses, as well as to guide the functioning of these businesses so as to ensure transparency in their operations and fiscal accountability, and to enhance the survival of the sector.

• Finally, the Act includes enabling provisions to allow the Minister to further legislate on a number of aspects including the development of further benefits.
THE INITIAL INCENTIVES

• Benefits are twofold: governance and fiscal.

• The initial governance benefits, which will be supported through Malta Enterprise, will range as follows, subject to Malta Enterprise’s terms and conditions:

(1) Micro Investment of a maximum tax credit of €50,000 over a three-year period.
(2) Legal and Accountancy advisory services up to €2,500 over a five-year period.
(3) Arbitration of up to five sittings.
(4) Education and training for owners and their employees of up to €1,000 annually per family business.
(5) The positive consideration of lease renewals occupying government premises.
(6) Loan guarantees of up to €500,000 per business for the purpose of acquiring the business or parts thereof.
(7) When a registered family business is occupying industrial government premises or land on lease or emphyteusis as prescribed under the Business Promotion Act (Chapter 325), and subject to the business satisfying all the conditions of the tenancy agreement, the Regulator shall recommend to the Malta Enterprise and/or Malta Industrial Parks to renew the tenancy. Such renewal shall not be unreasonably withheld when the objectives of the renewal are to ensure the continuity of the family business between family members.

• The fiscal incentives will be integrated into the Duty on Documents and Transfers Act (Chapter 364). The intention is to allow for a more effective and smoother transfer or retention of the family business within the family. This should simultaneously encourage financial and fiscal good governance. The fiscal incentives will afford varying fiscal rates to those family businesses transferring to other family members. In essence, the duty on immovable property shall be chargeable on the first €500,000 of the value of the property transferred at the advantageous rate of 3.5% or part thereof. In respect of duty on shares, interests in a partnership, trust or foundation, in assessing the duty chargeable no account shall be taken of the first €150,000, or such other greater amount as may be prescribed, of the value of the shares or interests in a partnership, trust or foundation transferred.

These incentives should be considered as the foundation to commence the operation of the legislation. They are not intended to be exhaustive and final but will serve as the platform for family businesses to immediately benefit upon the introduction of the legislation. The Regulator will monitor their success or otherwise and propose and work towards developing further benefits for family businesses in the widest context possible.

The role of the Regulator shall also be to continuously update, develop and introduce further governance and fiscal incentives. Furthermore, it is intended that other incentives through other third party stakeholders should be developed and integrated within the operational aspect of the legislation.
CONCLUSION

The principles that govern family businesses are commercial success, family unity and the continuity of the family business to the subsequent generation. In supporting this legislation Government’s commitment towards family businesses is recognised. By supporting family businesses to facilitate their transition from one generation to the next, the Government is not only ensuring the further continuation and existence of family businesses, which are one of the pillars of a strong economy, but also proactively helping these businesses to develop and help themselves through the creation and the awareness of sound governance structures. Moreover, Government will be able to regulate the sector by entrenching fiscal accountability and by obtaining data on this mass sector, and will be a jurisdictional innovator among its peers within the European Union and the international community.

The attached proposed legislation, with accompanying fiscal and governance benefits, have been developed following in-depth direct consultation with over forty stakeholders, a pre-drafting public consultation, a nation-wide quantitative statistical survey, a qualitative survey, and the formation of a steering committee representing a cross-section of public and private sector interests which looked into the family business sector in Malta and collectively worked towards the proposed legislation. The same proposed legislation has also been the subject of an internal consultation with a number of Ministries including the Attorney General, and has been reviewed and endorsed also by the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.
The Ministry for the Economy, Investment and Small Business would like to invite all those interested to put forward their reactions, submit their ideas, suggestions and comments on the proposals in this document in order to ensure that the proposed legislation has been afforded the broadest consultation from stakeholders in the field possible. This participatory approach shall also ensure that this proposed legislation shall help provide the right impetus for the continuity of family businesses for the benefit of Maltese society.

All responses are to be submitted to the Ministry in the following manner:
By internet portal from www.economy.gov.mt

By post addressed to:
Dr Nadine Sant
Ministry for the Economy, Investment and Small Business
Palazzo Zondadari,
Merchants Street,
Valletta, VLT 1172

By email to familybusinessact.meib@gov.mt

For more information please call on +356 2220 9519
A Bill
entitled

FAMILY BUSINESS ACT

AN ACT to encourage the regulation of family businesses, their governance and the transfer of the family business from one generation to the next. The Act seeks to encourage and assist family businesses to enhance their internal organisation and structure with the aim of effectively operating the business, and working towards a successful succession of the family business.

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:-

ARRANGEMENT OF ACT

| Part I. Preliminary          | 1-2     |
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SCHEDULES

First Schedule. Application Form for Registration as a Family Business.
Second Schedule. Annual Return
PART 1

PRELIMINARY

Short Title and Commencement.

(1) The short title of this Act is the Family Business Act, 2015.

(2) The provisions of this Act shall come into force on the date that the Minister may prescribe.

Interpretation.

In this Act, and in any rules or regulations made under this Act, unless the subject or context otherwise requires:

“applicant” shall mean a business registering as a Family Business under this Act;

“benefits” shall mean any assistance or relief granted to a registered family business in terms of the Duty and Documents Transfers Act, the Malta Enterprise Act, the Business Promotion Act and in terms of any other law as the Minister may prescribe by regulations;

“company” shall mean a company duly formed and registered under Part V of the Companies Act or a partnership duly formed and registered under the Commercial Partnerships Ordinance;

“established” means the head office, agency, or branch or part of a business and includes any permanent presence of that business carried out in Malta;

“family business” shall have the meaning assigned to it in article 3 of this Act;

“family member” shall mean the family business owner’s spouse, descendants in the direct line and their relative spouses, brothers or sisters and their descendants, or as the Minister may prescribe;

“guidelines” shall mean the set of rules issued by the Regulator from time to time for the further implementation of the provisions of this Act, and any regulations issued hereunder, including the definition, application, administration, grant and revocation of benefits and other arrangements for the regulation, management and transfer of family businesses and their governance in Malta;

“owner” shall mean the ultimate beneficial, physical individual who, directly or indirectly, has a shareholding or other interest in a family business;

“the Minister” shall mean the Minister responsible for the economy;

“prescribed” shall mean either prescribed by regulations issued by the Minister under this Act or prescribed by binding guidelines made by the Regulator under this Act, unless otherwise expressly stated, and in the event of a conflict between regulations issued by the Minister and guidelines made by the Regulator on any particular matter, the regulations shall prevail;
“private foundations” shall mean those foundations established for a private interest and registered or otherwise recognised as legal persons in terms of the Second Schedule to the Civil Code.

“the Regulator” means a person who is appointed to manage, supervise and administer the Register of Family Businesses according to this Act and appointed by virtue of article 16 of Part III of this Act;

“spouse” shall mean a ‘spouse’ in terms of The Marriage Act, and a ‘partner’ in terms of the Civil Unions Act;

“trusts” shall mean a ‘trust’ in terms of The Trusts and Trustees Act.
PART II

GENERAL PROVISIONS

Conditions for registration as a Family Business.

3. A family business that can qualify for registration under this Act shall mean any business established in Malta whereby:

Listed Companies

(1) In the case of a company whose shares are listed on a regulated market or traded on a multilateral trading facility, the majority of the shares including rights are held, whether directly or indirectly, by at least two owners who are family members within the same family.

Limited Liability Companies.

(2) In the case of a limited liability company constituted in a manner other than that referred to in sub-article (1) above:

(a) all the shares of the company are held, whether directly or indirectly, by at least two owners who are family members within the same family; and
(b) at least one family member is formally involved in the management of the company:

Provided that shares held, directly or indirectly, by individuals who are not family members shall be disregarded for the purposes of this sub-article if their aggregate issued value does not exceed five per cent of the issued share capital of the company:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

Registered Partnerships.

(3) In the case of registered partnerships en nom collectif and partnerships en commandite:

(a) the full capital contribution to the partnership shall have been made, directly or indirectly, by at least two owners who are family members within the same family having, directly or indirectly, the right to receive the majority of distributable profits; and
(b) at least one of whom holds the majority of the decision-making rights:

Provided that capital contributions made, directly or indirectly, by persons who are not family members shall be disregarded for the purposes of this sub-article if their aggregate contribution does not exceed five per cent of the total contribution made by all partners in the partnership;

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

Trusts.

(4) In the case of a family business set up as a trust established by a written instrument, all the beneficiaries are owners and family members within the same family:
Provided that other beneficiaries who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing family members within the same family capable of benefitting from the trust at any relevant point in time:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

Other Registered Forms of a Family Business.

(5) In the case of a business carried out by family members in a form of partnership other than as indicated in (3) above, the business and the assets of such business are owned and controlled, whether directly or indirectly, by at least two owners who are family members within the same family:

Provided that other assets held by individuals who are not family members shall be disregarded for the purposes of this sub-article if their aggregate value does not exceed five per cent of the net assets of the family business:

Provided further that such a business shall abide by all the provisions relative to Unregistered Organisations as provided in the Civil Code, and the relative Schedule thereto:

Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

The Minister may provide for other business.

(6) Any other business as the Minister may prescribe.

Indirect acquisition of a Family Business.

(7) For the purposes of this article, a reference to shares, interests or other assets, held indirectly by family members in the business, or contributions made to the business indirectly by family members, refers to those shares, interests or other assets held or contributions made by:

(a) holding companies which are at least 95% beneficially owned by family members; or

(b) trustees of a trust set up for the benefit of family members within the same family, provided that other beneficiaries who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the trust only upon termination of the trust due to the fact that there are no existing beneficiaries capable of benefitting from the trust at any relevant point in time; or

(c) private foundations that are set up for the benefit of family members within the same family, provided that other beneficiaries who are not family members within the same family shall be disregarded for the purposes of this sub-article if they may not in aggregate benefit from more than five per cent of the family business, or if they are only residual beneficiaries who will benefit from the private foundation’s assets only upon termination of the private foundation due to the fact that there are no existing beneficiaries capable of benefitting from the trust at any relevant point in time:
Provided further that where any business assets are held on lease, the family members are the majority of the lessees in the lease agreement.

Ownership of family business.

4. For the purposes of this Act, shares or share capital of a company shall mean:
(a) issued share capital of a company; and
(b) shares shall be equity shares and not preference shares; and
(c) shares allow for rights to dividends; and
(d) shares shall be voting shares; and
(e) shares shall allow for right to assets and profits upon winding up.

Apportionment of ownership.

5. An owner who is also a family member shall not:
(a) in the case of a company, own, whether directly or indirectly, more than eighty percent (80%) of the issued share capital of the family business; or
(b) in the case of a partnership en nom collectif or en commandite, contribute, whether directly or indirectly, more than 80% to the partnership’s assets; or
(c) in the case of a trust, be in a position where he may benefit from more than 80% of the trust property; or
(d) in the case of a business carried out in partnership in any other form, own, whether directly or indirectly, more than 80% of the business assets; or
(e) in the case of indirect ownership, own more than 80% of the shares, interests, other assets or contributions of the business.

Trusts.

6. Where a family business is set up as a trust, registration for the purposes of this Act shall be made after the declarations and documents required in the First Schedule are delivered to the Regulator by the duly licensed pro tempore trustee of the trust.

Registered Family Business.

7. A business shall be a registered family business once it has been accepted for registration by the Regulator in terms of article 28 of this Act.

Identified representative.

8. A registered family business shall clearly identify a representative of the family business and make his contact details available to the Regulator upon such change.

Notification of change.

9. A registered family business shall notify the Regulator of any change set out in article 3 of this Act within ten running days from such change.

Disqualification.

10. A business shall not qualify to be registered as a family business if it has not been actively trading or in operation without interruption for a minimum period of at least three (3) consecutive calendar years.
Objective of Benefits.

11. (1) The intended objective of the benefits provided under this Act are for the transfer of the registered family business from the owners who are family members to other family members within the same family.
(2) Upon receiving benefits it shall not be possible for the registered family business or the family member to transfer or assign in whole or in part the benefits of an incentive granted by virtue of this Act to any other person or business.
(3) When a registered family business intends to apply for any benefits in terms of this Act or any other law the family business shall obtain the issue of an updated certificate from the Regulator attesting that the family business still qualifies as a registered family business in terms of this Act.
(4) The benefits in terms of the Duty on Documents and Transfers Act shall only be granted to a registered family business which has all fiscal returns and contributions duly submitted up to the date of the transfer and the tax due in terms of the Duty on Documents and Transfers Act has been paid in full before the transfer takes place.

Annual Return.

12. A registered family business benefitting from an incentive by virtue of its registration under this Act shall submit the Annual Return found in the Second Schedule to the Act to the Regulator by the end of the calendar year, in the absence of which there shall be a penalty of twenty euro (€20) for each month of delay, and, in the event of non-compliance for a year, registration shall be duly cancelled and all benefits shall be refunded and reimbursed immediately.

Restriction on Transfer.

13. (1) Any acquisition of immovable property in respect of which a benefit has been claimed pursuant to this Act must remain within the registered family business for a minimum period of three (3) years and in the event that such immovable property is transferred, they must be replaced with a similar asset used for the same benefit of the registered family business or such other period as the Regulator may approve.
(2) Any acquisition of shares, interests, contributions or other assets in respect of which a benefit has been claimed pursuant to this Act must remain within the registered family business for a minimum period of three (3) years and in the event that such shares, interests, contributions or other assets are transferred they must be replaced with a similar asset used for the same benefit of the registered family business or such other period as the Regulator may approve.
(3) The owners of the registered family business must undertake to trade and operate the family business during these three (3) consecutive years without interruption immediately following the granting of the benefits or such other shorter period as the Regulator may approve and, in the event that the business ceases to exist in the said period, any benefit claimed shall be refunded and reimbursed.

Decomposition of family business.

14. In the event that a registered family business which has availed itself of and claimed any benefits does not remain constituted and registered as a family business for a minimum period of three (3) consecutive years as referred to in the previous article, the business shall make a refund of the benefits:
Provided that where a business does not remain constituted as a family business due to the unexpected death of a family member, in those cases where the business is owned, whether directly or indirectly, by only two family members, the business shall not be required to refund the benefits acquired for the previous transfer of the business:

Provided further that the Regulator shall be informed by the surviving family member within sixty (60) days from the date of the decease.

Powers of the Minister to make Regulations.

15. (1) The Minister may by regulations prescribe to properly implement the provisions of this Act.
(2) The Minister may also amend the Schedules to this Act by means of regulations.
PART III

THE REGULATOR

Appointment of the Regulator.

16. (1) There shall be a Regulator for Family Businesses who shall be appointed by the Minister for the purpose.
(2) The Regulator shall be appointed for a period of three years and may be re-appointed upon expiration of the term of office for a further period or periods: Provided that during his term as Regulator, 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 Regulator or with impartiality expected from this office or with public confidence therein.
(3) The Minister may also appoint one or more Deputy Regulators to assist the Regulator in the performance of his functions.
(4) When the office of the Regulator becomes vacant, a person appointed as Regulator shall hold office temporarily until a successor is appointed. The Minister may, at any time, during the absence of the Regulator 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 Regulator, until the resumption of office to the Regulator.
(5) The Regulator shall be provided with an adequate number of staff to carry out the functions assigned to him under this Act.

Disqualification from appointment of Regulator.

17. A person shall not be qualified to be appointed, or to remain, a Regulator if he -
(a) is a presiding judge or magistrate; or
(b) is adjudged bankrupt or has entered into any arrangement with his creditors; or
(c) is interdicted or incapacitated; or
(d) is convicted of an offence affecting public trust, theft, or fraud or of knowingly receiving property obtained by theft or fraud; or
(e) is subject to a disqualification under article 320 of the Companies Act.

Removal from office.

18. (1) The Regulator may, at any time, be removed or suspended from office by the Minister on the grounds of proved inability to perform the functions of the office of the Regulator or proved misbehaviour.
(2) The Regulator may, at any time, resign from office by notice in writing addressed to the Minister.

Functions of the Regulator.

19. (1) The Regulator shall assess all applicants seeking to register as a family business under this Act and once registered, ensure their ongoing compliance with the relevant requirements and regulations made hereunder to his satisfaction.
(2) The Regulator shall perform the duties and exercise the functions imposed and conferred on him by this Act and by any regulations made thereunder including:

(a) accepting or refusing applications from businesses to register as family businesses in terms of this Act;
(b) providing registration and enrolment facilities for businesses which are eligible for enrolment in terms of this Act;
(c) monitoring the activities of registered family businesses in order to ensure that they
comply where applicable with the provisions of this Act and/or any regulations and/or any guidelines as prescribed;
(d) where eligible, providing the registered family businesses an updated registration certificate attesting that the business still qualifies as a family business in terms of this Act;
(e) providing family businesses with information and guidance about the requirements, benefits and responsibilities in connection with registrations and enrolments in terms of this Act;
(f) making recommendations to the Minister on legislation and policies in support of the family business sector;
(g) assisting government, government departments, public agencies, authorities and entities controlled by the Government in preparing and reviewing policies in support of family businesses;
(h) investigating written grievances in relation to this Act relating to registered family businesses or businesses purporting to be registered family businesses under this Act, and to take such action as is in his power to redress any justified grievance that may come to his notice;
(i) encouraging and promoting the family business sector as well as developing cooperation between family businesses and the Government;
(j) encouraging family businesses to enter into written agreements concerning the principles of governing the family business;
(k) co-ordinating and communicating with any competent authority with a view to facilitating the registration and enrolment processes for family businesses;
(l) performing any other function or duty that is assigned to him by the Minister under this Act and any regulations made thereunder as well as such other functions as may be assigned to him under any other law.

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

Industrial Premises.

20. When a registered family business is occupying industrial government premises or land on lease or emphyteusis respectively as prescribed under the Business Promotion Act and subject to the business satisfying all the conditions of the tenancy agreement, the Regulator shall recommend to the Malta Enterprise Corporation and/or Malta Industrial Parks to renew the tenancy, which renewal shall not be unreasonably withheld when the objectives of the renewal are to ensure the continuity of the family business between family members.

Financial Administration and Audit Act.

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

Information.

22. (1) The Regulator may request any information from any government entity, public authority or department in order to fulfil his duties.
(2) Any competent authority shall co-operate with the Regulator as required in the performance of his functions under this Act: Provided that the Regulator may issue regulations requiring the submission of any documentation from any competent authority.
Guidelines.

23. The Regulator may, from time to time, issue guidelines in relation to the activities of registered family businesses and any breach or declaration from these guidelines shall be a consideration for the family business to have their registration certification cancelled.

Data.

24. Subject to the provisions of the Data Protection Act, the Regulator shall, for the purposes of this Act, also compile and maintain data in terms of this Act.

Cancellation.

25. Any registered family business not compliant with any rules and regulations under any other Act or legislation may be cancelled at the discretion of the Regulator.

Annual Report.

26. (1) The Regulator shall, by not later than six weeks after the end of each calendar year, prepare and present to the Minister an annual report which shall include:
   (a) a report of the Regulator’s office activities during the preceding year;
   (b) a general description of the circumstances of family businesses in Malta and any developments which may affect the sector;
   (c) any recommendation regarding legislation, regulations, policies or other matters affecting the family business sector;
   (d) accounts and other financial records referred to in this Act.

   (2) The Regulator 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. After the end of each financial year, and not later than the date on which the report in sub-article (1) is to be forwarded to the Minister, the Regulator 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 Regulator.

Register of Family Businesses.

27. (1) There shall be a Register of Family Businesses which shall be maintained by the Regulator and shall contain information and data relevant to the registration process as applicable, as found in the First and Second Schedule, supported by the documentation referred to in The Schedules.

   (2) Upon registration, the Regulator shall allocate a unique registration number to the family business which shall be preceded by the letters “FB”, which registration number shall be known hereinafter as the “Family Business label” and the family business label may be quoted by the registered family business on any published materials, letters, notices, advertisements and other documents issued by such business.

   (3) A list of the names of the family businesses in the Register will be available upon written request. No other information or contents of the Register other than the name of the family business will be available for disclosure except to the competent authorities granting benefits as referred to in the Act.
Application to register.

28 (1) For a family business to be registered as such, the documents listed in the First Schedule shall be submitted to the Regulator who shall determine, to his satisfaction, whether the application complies with the provisions of this Act.

(2) A business may apply for registration by submitting the prescribed application form in the First Schedule to the Regulator.

(3) A non-refundable administration fee shall be submitted with every application irrespective of the outcome of the application.

(4) In considering an application, the Regulator may request the applicant to provide further information about the business or make representations on any matter on which he may have reservations or concerns in relation to the application.

(5) The Regulator may accept or refuse any application for registration on the basis of any of the following:
   (a) the non-observance or otherwise of all the formalities required by this Act and as may be prescribed;
   (b) the legality or otherwise of the purpose and objectives of the business that is not in compliance of the law or ethics in relation to its business activities;
   (c) the fulfilment or otherwise of obligations relating to the payment of social security contributions in accordance with the applicable laws;
   (d) the business has not fulfilled its obligations relating to the payment of taxes due in accordance with the applicable law;
   (e) the business has not supplied the information required under these regulations or has incorrectly supplied them.
   (f) Where the Regulator requires proof from the applicant that none of the cases quoted in sub-articles (c), (d) and (e) above have been met, it shall accept, as sufficient evidence, relevant certification issued by the administrative body in the country of origin or the country whence that person comes showing that these requirements have been met.

Certificates.

29. Certificates of Registration shall be deemed to be public documents and shall be surrendered to the Regulator on his simple demand in writing stating the reasons for such request.

Powers of the Regulator.

30. The Regulator may request from the registered family business any information and any clarification, and may also carry out any verification required so as to ascertain to his satisfaction that such business is in compliance with the provisions of this Act or any rule, regulation or guideline made thereunder. The registered family business shall seek to comply with this request expeditiously and, in default, the Regulator may cancel the Certificate of Registration.

Cancellation of activities.

31. (1) The Regulator may order the cancellation of the registration of a family business by the issue of a Cancellation Order, which shall come into effect immediately.
(2) A Cancellation Order may be issued, at the discretion of the Regulator, if the registered family business:
(a) (a) is not compliant with the criteria, where applicable, in the First and Second Schedule to this Act or any other provisions, rules, regulations and guidelines in accordance with this Act; or
(b) (b) has not functioned, operated, traded or carried on business for a period which exceeds twelve consecutive months without interruption or earlier, as the Regulator deems fit; or
(c) (c) has obtained registration 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 Regulator; or
(d) is not seeking to uphold and maintain the objectives of this Act; or
(e) the use of the Certificate of Registration has been used in an incorrect manner or committed forgery thereof.

(3) Prior to ordering the cancellation of the registration of a family business by the issue of a Cancellation Order, the Regulator shall inform the business in writing of his intentions to issue a Cancellation Order. The Regulator shall grant the business a period of time to give reasons why the Cancellation Order should not be issued. Following this, the Regulator may grant the business a period of time in which to regularise its position and conform to the provisions of this Act. If the business does not do so within this stipulated time period, which may be extended by the Regulator at his discretion, the Regulator shall order the cancellation of the registration of the family business in accordance with sub-article (1) of this article.

(4) The Regulator shall notify and publish, in the Government Gazette, any Cancellation Order which has become final and shall notify all competent authorities accordingly.

(5) The registration of a family business shall terminate ipso iure if the business is struck off, or ceases to operate, function, trade or carry on business under any form.

Effects of cancellation of registration.

32. (1) In the event of cancellation of registration of a family business, the family members shall forthwith surrender, to the Regulator, the Certificate of Registration of such business, and any person failing to surrender such certificate within the time stated as notified by the Regulator shall be liable to an administrative fine of two hundred and fifty euro (€250) and an additional fine of fifteen euro (€15) for every day of default.

(2) In the event of cancellation of registration of a family business, all benefits granted to such business by virtue of registration shall cease to have effect from the date when the decision to cancel takes effect.

(3) Cancellation for the reasons mentioned in article 31(2) shall require the business to refund any benefits received by the business or any other individual by virtue of its registration in terms of this Act unless provided otherwise in this Act, and the Regulator may issue the relative orders against the business and any persons involved in such business.
PART IV

OFFENCES

Forgery or alteration of certificates or misrepresentation or abusive use of status.

33. (1) Any person who in order to obtain and maintain the status of a family business:
(a) in any manner, forges or alters a Certificate of Registration so as to give the impression that he acts on behalf of a registered family business shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code;
(b) who falsely misrepresents the registered family business or makes false representations shall be guilty of an offence under this Act;
(c) who, in any manner, makes abusive use of a Certificate of Registration or the Family Business label shall be guilty of an offence under this Act;
(d) who, without reasonable excuse, prepares any incorrect statement or gives any incorrect information in relation to any matter falling under this Act, shall be guilty of an offence under this Act.

(2) Any person who, or business which, is found guilty of any offence under sub-article (1) of this article shall be liable on conviction to a term of imprisonment from thirteen months to four years.

Abuse of Incentives and Benefits.

34. (1) Any person who wilfully with intent to obtain any benefit under this Act or Regulations issued under this Act or to assist any other person to do so: –
(a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under this Act, any matter which should be included therein; or
(b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under this Act; or
(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or
(d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
(e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance, shall be guilty of an offence,

and shall for each such offence be liable on conviction to a fine (multa) of not less than two thousand euro (€2,000) and not exceeding twelve thousand euro (€12,000) or to imprisonment for any term not exceeding four years, or to both such fine and imprisonment.

(2) Upon any person admitting to or being found guilty of any of the above offences, the Court may on conviction revoke any Certificate issued to the registered family business.

General penalty.

35. If any person or business contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no specific penalty is provided, he shall be guilty of an offence and shall for each offence be liable, on conviction, to a fine (multa) of not less than two hundred and fifty euro (€250) and not more than one thousand and five hundred euro (€1,500).
Investigations.

36. The Regulator may investigate any registered family business for any shortcomings and may refer his findings to the police.

Provision with respect to offences.

37. The provisions of this Act establishing offences and penalties in respect thereof shall not affect the operation of any other law establishing offences and penalties in respect of the same acts or omissions and shall not affect the application of any higher penalty under any other law.

Prescription of proceedings for offences.

38. Proceedings for an offence under this Act may be commenced at any time within five years from the date of commission of the offence upon the complaint of the Regulator.
SCHEDULE 1

(Article 28)

Application Form for Registration as a Family Business

1. Purpose.

The purpose of this application form is to provide the Regulator with the necessary information in accordance with the provisions of this Act to allow him to assess the business as to its qualification as a registered family business.

2. Content and form.

The content and form of the application form, with all the required documents and Appendices as attachments as the case may require, that each family business shall duly file with the Regulator along with the Appendices, are as follows:

Application Form for Registration as a Family Business

• Application Form of ______________ (Insert Official Name)

• Trade name of business:

• Registered Address/Postcode:

• Any other address (apart from the registered address) where the Applicant business carries out business:

• Mobile/Landline/Telephone/Fax number(s):

• E-mail address/es:

• Website:

Where applicable:

• Registration Number:

• VAT number/s:

• Stock Exchange Listing Number:

• Trading Licence Number:

• Name/s of shareholders in the business and the number of shares held:

• Name/s of family members involved in the governance of the business with certified copy of documentary evidence:

• The written consent of the relevant family members to hold office after registration:

• A resolution signed by the family members of the business indicating that they resolve to register the business with the Regulator:

• Compliance Certificate from the VAT Department and the Inland Revenue Department:

Organisation Chart to be certified by an accountant or lawyer with an accompanying bank reference letter of the business which must include:

• the organisational structure of the business;

• the family relationship within this structure;

• the job designation of each family member;

• an indication of who is responsible for the day-to-day running of the business;
• an indication of who the ultimate owners of the business are.

This section is to be completed by each family member.

• Name of Family Member in the business:
• Designation:
• Passport number/I.D Card number:
• Address:
• Family relationship in relation to the founder of the business:
• Any other details/information or other document as may be required by this Act or as may be prescribed:

Declaration of Completeness and Correctness

We hereby confirm that the details provided, including the attached Appendices, are complete and truthful as to their contents.

• Signature of family members:
• Name of family members:
• Date:
Appendices
(where applicable)

- Appendix A – Certified copy of declaration of business assets and contributions confirmed on oath.
- Appendix B – Certified copy of documentary evidence including names of family members holding decision-making powers in the business confirmed on oath.
- Appendix C – Certified copies of passports / I.D cards of family members.
- Appendix D – Where the family business is owned by the trustee of a trust, an authenticated copy of the trust deed including the list of beneficiaries to be delivered by the registered trustee of the family trust.
- Appendix E – Where the family business is held by a private foundation, an authenticated copy of the deed of foundation including any addendum amending the original deed of foundation and the beneficiary statement to be delivered by the administrator.
- Appendix F – The lease agreement of the business.
- Appendix G – Any other document (Please specify).

Administration Fee of €100

Signature of Receiving Officer: ________________
SCHEDULE 2

(Article 12)

Annual return

1. Purpose.

The purpose of this annual return is to provide the Regulator and any related competent authority with up-to-date information about the registered family business benefitting from incentives by means of this Act.

2. Content and form.

The content and form of the annual return, with all the required documents and Appendices as attachments, that each family business shall duly file with the Regulator annually is as follows:

Contents and Form of Annual Return of a Registered Family Business

(a) Annual Return of _____________ (Insert Official Name)
(b) Name of Family business:
(c) Family business label:
(d) Name of Contact Person:
(e) Designation:
(f) Incentive applied for with the competent authority:
(g) Date of approval of benefit from the competent authority:
(h) Any benefit applied for and refused (stating the reason where provided):

Declaration of Completeness and Correctness

We hereby confirm that the details provided, including the attached Appendices, are complete and truthful as to their contents.

Signature of family members:
Name of family members:
Date:
Appendices
(Where applicable)

Appendix A – Revised and updated copy of Schedule 1, indicating any amendments that have been made to any parts thereof, and, in such case, a declaration signed by at least two family members.

Appendix B – Copy of letter of refusal for benefit requested.

Amendment to article 41 of the Duty on Documents and Transfers Act, Cap. 364.

39. Immediately after article 41B of the Duty on Documents and Transfers Act, there shall be added the following new article 41C:

Benefits applicable to registered family business.

41C. Notwithstanding any provision of the Duty on Documents and Transfers Act, (1) Where a family business is transferred as a going concern by an individual to family members as defined in the Family Business Act, and there is a transfer of immovable property being a commercial tenement as defined in article 1525 of the Civil Code (herein after referred to as “property”) that had been used in the said business for a period of at least three years preceding the transfer, in assessing the duty chargeable in terms of the said Act, duty shall be charged on the first five hundred thousand euro (€500,000) of the value of the property transferred as aforesaid at the rate of three euro and fifty cents per one hundred euro or part thereof, provided that the notary who receives any deed of such a transfer shall record in the deed a written declaration by the individual so transferring and the person so acquiring that the conditions laid out in this article are satisfied and the notary shall warn the said persons of the importance of the truthfulness of such declaration:

Provided that this sub-article shall also apply where the said individual transfers property that had been used in a family business carried out by the family members or business for a period of at least three years preceding the transfer:

Provided further that if such property or part thereof is either transferred inter vivos by the family members or family business, as the case may be, during the first three years from the date of acquisition, or ceases to be used in the business within the said period, the duty that would have been payable on the acquisition of the property or part thereof that is so transferred, but for the relief granted under this article, shall be levied at the time of the said transfer inter vivos or at the time the property ceases to be used by the business:

Provided further that where such property or part thereof transferred inter vivos by the family member or family business, as the case may be, is replaced within one year by an immovable property used solely for a similar purpose in the family business (hereinafter referred to as the “replacement property”), in assessing the duty chargeable in respect of the replacement property, duty chargeable and paid in accordance with the previous proviso shall be allowed as a deduction.

(2) For the purposes of paragraphs (a), (b) and (c) of article 42(1) of the Act, in assessing the duty chargeable, when an individual transfers shares or interests in a partnership, trust or foundation to family members referred to in sub article (1) of this article, and such shares or interests in a partnership, trust or foundation are held in a family business which carries
on a business, no account shall be taken of the first one hundred and fifty thousand euro
(€150,000) or such other greater amount as may be prescribed of the value of the shares,
or interests in a partnership, trust or foundation transferred as aforesaid:

Provided that this su- article shall only apply where:
(a) the said family business does not own, directly or indirectly, any immovable property
other than property referred to in sub-article (1) of this article used in the said business
for a period of at least three years preceding the transfer;
(b) the said family business is controlled and beneficially owned, directly or indirectly, to
the extent of more than ninety five per cent by the said individuals or family members.

(3) For the purpose of this article, “business” shall mean a family business registered
with the Regulator in terms of the Family Business Act and shall duly present an updated
Certificate in accordance with the law.

(4) This article shall only apply where the Commissioner issues a certificate attesting that
he is satisfied that the conditions laid out in this article are fulfilled.

(5) Where, in accordance with the second proviso to subarticle (1) hereof, the property or
part thereof is either transferred *inter vivos* by the family members or family businesses,
or ceases to be used in the business, the duty chargeable under the said proviso shall be
due by the family members or business, as the case may be, and shall be remitted to the
Commissioner within fifteen working days from the date on which the property is either
transferred, as aforesaid, or ceases to be used in the business.”
Objects and Reasons:

The objects and reasons of this Bill is to provide a legal framework to assist and facilitate family businesses to prepare themselves for transferring the business from one generation to the next by providing benefits including governance and fiscal benefits for the better management and organisation within the family and the business.
MALTA ENTERPRISE

INCENTIVES FOR THE FAMILY BUSINESS ACT

For individuals or businesses registered and qualifying under the Family Business Act the following incentives shall apply.¹

1. Micro Invest
Eligible individuals or businesses shall benefit from the Micro Invest scheme up to a maximum tax credit of €50,000 over a three-year period.

In Section 3.2 Maximum Aid per Business of the Incentive Guidelines for the Micro Invest Scheme (link below) a new paragraph will be inserted after the second paragraph:

The maximum eligible amount of tax credits that may be awarded to a family business which is in possession of an updated Certificate in accordance with article X of the Family Business Act (Chapter XXXX of the Laws of Malta) shall not exceed the amount of €50,000 over any period of three consecutive years.


Regulation 3 of Subsidiary Legislation 463.09, Tax Credits for Micro Enterprises and the Self-Employed Regulations will be duly amended.

Advisory
Services as per limits established in the applicable Incentive Guidelines (Advisory Services) of the Malta Enterprise Corporation. Based on the Family Business Act, the guideline will have a specific section for registered family businesses enabling support for the services listed below. The total support shall be in line with the Guideline parameters which are currently limited to up to €2,500 per annum per business for a period of five (5) years.

• 2. legal and accountancy services related to business succession. This service will be available to family business owners (family members) and to individuals in the process of acquiring a family business. This service shall be in addition to any other advisory service provided by Malta Enterprise.

• 3. The services of an arbitrator appointed by the Regulator to assist in the valuation of assets and/or shares being transferred and to give a fair value of the assets and shares. The arbitrator’s fees will be sponsored by Malta Enterprise in line with the above-mentioned guidelines on condition that both parties participate actively for arbitration and attend a minimum of 5 sittings, unless the contention is finally determined before (the remainder of the fee is to be settled by the parties equally). The parties agree to a joint single arbitrator from the list of recommended arbitrators on the Regulator’s list. The parties agree to abide by the arbitrator’s opinion and will append their signature to

¹ Subject to final clearances following the White Paper consultation on State Aid and budgetary considerations.
the arbitrator’s opinion which evidences their acceptances that the opinion is final and the final opinion will not be contested in any other forum.

The above will be implemented within the framework provided by the Incentive Guideline for Business Advisory (link below). These guidelines are due to be revised in the following months but, based on the current version, a section will be included under Section 3.1 Details of Incentive:

3.2 Advisory services to Family Business.

Family businesses who are in possession of an updated Certificate in accordance with article X of the Family Business Act (Chapter XXXX of the Laws of Malta) shall be eligible for:

(a) legal and accountancy services up to the amount of €2,500 annually for a period of five (5) years to support succession and the transfer of the business from the current owner to either the persons related to the owner as family members or third parties. This support will be additional to any other advisory support provided through this incentive.

(b) the services of an arbitrator appointed by the Regulator to assist in the valuation of assets and/or shares being transferred and to give a fair value of assets and shares. The arbitrator’s fees shall be supported by Malta Enterprise on condition that:
   (i) both parties participate actively for arbitration and attend a minimum of 5 sittings, unless the proceedings are finally determined before;
   (ii) the parties agree to a joint single arbitrator from the list of recommended arbitrators on the Regulator’s list;
   (iii) the parties agree to abide by the arbitrator’s opinion;
   (iv) the parties will append their signature to the arbitrator’s opinion which evidences their acceptances that the opinion is final and the final opinion will not be contested in any other forum.

Following the confirmation of the above, the fees for the first five (5) sittings shall be paid by Malta Enterprise. Any further fees not covered by these Guidelines shall be settled by the parties equally.

http://www.maltaenterprise.com/sites/default/files/support_measures/business.advisory.guidelines.v_2.3.pdf

Note:
Following the planned revision of the mentioned guidelines there may be changes to the maximum amount of aid and the way the scheme is administered. One option being considered is the use of vouchers. In any case, the aid should remain in line with the above. Regulation 7 of S.L.463.04 Enterprise Support Incentive Regulation and the definition of business in the same S.L. shall be duly amended.
4. Education and Training (up to €1,000 per annum per business)
Management, business and family governance training (not qualified under the qualification framework) and seminars approved by the Regulator for owners of family businesses and employees in their family businesses for the administration and management of the family business in which the family will retain ownership or which will anyway still qualify as family business.

Currently none of the Incentive Guidelines provides for this, yet it would be probably best to include this as a new section under the Business Advisory Incentive Guidelines (already mentioned above). The revision of these guidelines should include a provision to support business training which will include a provision for education and training of family business.

Draft Text:
Training Vouchers of up to €1,000 annually may be awarded for attendance by owners of family businesses as registered under the Family Business Act and their employees in the family businesses for the better administration and management of a family business in which the family will retain ownership or which will anyway still qualify as a family business. The family business must be in possession of an updated Certificate in accordance with article X of the Family Business Act (Chapter XXXX of the Laws of Malta). The vouchers may be awarded in respect of attendance by employees or family members at seminars and information sessions that may be beneficial for the business’s development and growth.

In all cases the training supported:
(i) shall not be level rated under the Malta Qualification Framework; and
(ii) shall not be eligible for aid through other measures administered by Malta Enterprise or other National agencies; and
(iii) must be approved by the Regulator as established in the Family Business Act

Notes:
This needs to be developed so as to ensure that there is no possibility of double funding through other schemes, especially the EU-funded training provided by ETC.

An enabling regulation under the ME Act will be required probably in S.L. 463.04 Enterprise Support Incentive Regulation.

5. Lease renewals
When the eligible individual or business is occupying government premises or land on lease or emphyteusis respectively, and subject to the individual or business satisfying all the conditions of the tenancy agreement, the transfer of the tenancy agreement shall not be unreasonably withheld in line with tenancy conditions applicable at the time of transfer. Transfer of tenancy between family members will be considered as long as business continuity is confirmed.

Industrial Premises.

When a registered family business is occupying industrial government premises or land on lease or emphyteusis respectively, as prescribed under the Business Promotion Act, and subject to the business satisfying all the conditions of the tenancy agreement, the Regulator shall recommend to the Malta Enterprise Corporation and/or Malta Industrial
Parks to renew the tenancy, which renewal shall not be unreasonably withheld when the objectives of the renewal are to ensure the continuity of the family business between family members.

6. Loan Guarantees
A Family Business under the Family Business Act may be eligible for a guarantee of up to €500,000 per business for the purpose of acquiring the business or part thereof. Terms and conditions will be established in the Incentive Guidelines published by Malta Enterprise and further terms and conditions may be considered on a case-by-case basis.

In Section 3.1 The Guarantee of the Incentive Guidelines for the Micro Guarantee Scheme (link below) will be modified as follows (italics denote new text):

The Micro Guarantee may only be used to support a new loan required to finance eligible costs approved by Malta Enterprise. The guarantee shall be capped at the value established by applying the maximum percentage guarantee as established in table one (below) to the loan amount, but shall in no case exceed the value established by applying the same maximum percentage guarantee to a loan of €100,000. In the case of a family business in possession of an updated Certificate in accordance with article X of the Family Business Act the guarantee shall not exceed the value established by applying the maximum percentage guarantee as established in table one (below) to a loan of €500,000.

The first sentence in Section 3.2 Value of Aid will be deleted and the second paragraph of Section 1.1 Scope will also be adjusted accordingly.

To implement the above Micro Loan Guarantee Regulations - Subsidiary Legislation 463.08 shall be duly amended. (Regulations 4 and 6)

7. Investment Aid 2014-2020
The Incentive Guidelines for Investment Aid 2014-2020, launched by Malta Enterprise in 2014, specify that in the case of an acquisition of the assets of an establishment only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment.

The Incentive Guidelines shall allow that where a member of the family of the original owner, or an employee, takes over an enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment.

Following the launch of the Family Business Act, the eligibility for the latter provision will be linked to actual registration of the family business under the Act.