

Marie Louise Coleiro Preca
President

I assent.

.....2015.

**A Bill
entitled**

AN ACT to regulate social enterprise companies and their administration.

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:-

PART I

PRELIMINARY

Short Title.

1. The short title of this Act is the Social Enterprise Act.

Interpretation.

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

“acts of trade” shall be those identified in Article 5 of the Commercial Code;

“benefit to the community” means what a reasonable person might consider to be:

(a) for the benefit of the community as a whole; or

(b) for the benefit of a section of the community;

and for the purpose of this provision “section of the community” consists of any group of individuals which:

(i) share a common characteristic which may be classified as a social purpose and which distinguishes the section of the community from other members of the community; and

(ii) a reasonable person might consider that they constitute a section of the community;

“controlled by a State” means the State has the power to nominate, appoint, change or remove any one of the directors of the company or the company is a public agency;

“director” means any person who is appointed to control, supervise or administer a company and includes 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 a director and only relating to his functions as a director;

"disabled worker" means any person either:

- (a) recognised as disabled under national law; or
- (b) having a recognised, serious, physical, mental or psychological impairment;

"disadvantaged worker" means any person who belongs to a category which has difficulty entering the labour market without assistance, namely a person meeting at least one of the following criteria:

(a) any person who is under twenty five or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment;

(b) any migrant worker who moves or has moved within the European Community or becomes resident in the European Community to take up work;

(c) any person who is a member of an ethnic minority and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;

(d) any person who wishes to enter or to re-enter working life and who has been absent both from work and from education for at least two years, and particularly any person who gave up work on account of the difficulty of reconciling his or her working life and family life;

(e) any person living as a single adult looking after a child or children;

(f) any person who has not attained an upper secondary educational qualification or its equivalent, who does not have a job or who is losing his or her job;

(g) any person older than fifty, who does not have a job or who is losing his or her job;

(h) any long-term unemployed person, that is, any person who has been unemployed for twelve of the previous sixteen months, or six of the previous eight months in the case of persons under twenty five;

(i) any person recognised to be or to have been an addict in accordance with national law;

(j) any person who has not obtained his or her first regular paid employment since serving a period of imprisonment or other penal measure;

“ecclesiastical entity” means a reference to an association of persons or a universality of things which are established by the competent ecclesiastical or other religious authority so that they might, in the name of such authority and in accordance with the provisions of the relevant law, fulfil the specific task entrusted to them in view of the public good, including the imparting of religious teaching, the promoting of public worship and the undertaking of projects which are appropriate to their character and governed by their statutes, under the higher direction of the said authority. Such entities include dioceses, parishes and all institutes of consecrated life and societies of apostolic life;

““normal market levels” means an honorarium, wage, salary or fee which is normally granted by social enterprise companies operating in the same or in a similar area of activity and under the same or similar conditions to persons who have the same or similar qualifications;”

“pious foundation” comprises:

(a) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as juridical persons by the competent ecclesiastical or other religious authorities;

(b) non-autonomous pious foundations, that is, temporal goods given in any way to a public juridical person established by the competent ecclesiastical or other religious authorities and carrying with them a long-term obligation, such period to be determined by applicable law, whether religious or national, and where a long-term obligation consists of binding the juridical person, from the annual income, to celebrate Masses or other religious ceremonies, to perform other determined ecclesiastical functions, or in some other way to fulfil the pious or religious purposes as defined by the applicable religious laws or rules;

and “pious or religious purposes” are understood to be those which concern acts of piety, of the apostolate, or of charity, whether spiritual or temporal;

“prescribed” means 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;

"public agency" means a Government including its ministries and departments, and any other agencies, government entities, commissions and boards established to carry out public administration;

“registrar” means the Registrar of Companies appointed in terms of the Companies Act;

“social enterprise company” means a limited liability company, which is registered in terms of this Act;

“social enterprise organisation” means an organisation, not being a limited liability company, which is registered in terms of this Act;

"social purpose" is a purpose which benefits the community and which includes:

(a) the advancement of education, including physical education and sports;

(b) the advancement of health;

(c) social and community advancement, including the integration of persons who are disadvantaged or disabled;

(d) the advancement of culture, arts and national heritage;

(e) the advancement of environmental protection and improvement, including the protection of animals;

(f) the promotion of human rights, conflict resolution, democracy and reconciliation;

(g) the relief of poverty, pain and suffering, and other humanitarian needs; or

(h) any other purpose as may be prescribed by the Minister by means of regulations made by virtue of this Act;

but does not include a political purpose. For the purposes of this definition "political purpose" means the promotion of the interests of a political party or a political candidate, whether at local, national or international level, or to seek or oppose changes in the law or governmental policy or decisions except when such law or government policies or decisions directly concern the achievement of a social purpose;

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

"the Minister" means the Minister responsible for the economy;

"the Regulator" means the person appointed by virtue of article 12;

"the relevant date" is the date on which this Act comes into force;

"volunteer" means a person who provides unremunerated services but who may receive a refund of any reasonable expenses incurred in connection with these services.

(2) Terms which are not specifically defined in this Act shall have the meaning assigned to them under the Companies Act.

PART II

SOCIAL ENTERPRISE COMPANIES

Definition of a social enterprise company.

3. (1) A social enterprise company is a limited liability company constituted after the relevant date which is established for:

(a) the carrying out of any act of trade which is principally aimed, through the activity itself, towards the fulfillment of a social purpose for the benefit of the community;

or

(b) the carrying out of any act of trade with the additional expressed social purpose of integrating into the labour market persons who are disadvantaged or disabled;

and

which is registered with the Regulator in terms of this Act as a social enterprise company.

(2) An organisation shall not qualify to be registered as a social enterprise company if:

(a) it is not a limited liability company, except as permitted by this Act;

(b) it is controlled by a State;

(c) it is a pious foundation or an ecclesiastical entity;

(d) it is a voluntary organisation whether enrolled or not under the Voluntary Organisations Act;

Provided that nothing in this article shall hinder any organisation identified in paragraphs (a), (c) and (d) above from being the holder of any or all the shares in a social enterprise company.

(3) The Companies Act shall apply to social enterprise companies and their directors and officers with such modifications as may be expressly or impliedly required under the provisions of this Act and the Minister may issue regulations from time to time to determine how specific articles of the Companies Act are to apply in the case of social enterprise companies.

(4) The Minister may issue regulations from time to time to allow other legal forms of organisations established after the relevant date to be registered as social enterprise organisations under this Act, subject to such conditions as may be prescribed.

Qualification.

4. (1) For the purposes of article 3, a social enterprise company shall be considered to be:

(a) carrying out any act of trade which is principally aimed towards the fulfillment of a social purpose when at least seventy per cent of its total income is acquired from such activity;

(b) carrying out an act of trade while integrating into the labour market persons who are disadvantaged or disabled when not less than thirty per cent of the total number of workers engaged or employed by it in any capacity are disadvantaged or disabled workers.

(2) Further criteria which must be satisfied in order to determine the principal activity of a social enterprise company and to further determine which persons may qualify as being disabled or disadvantaged for the purposes of this Act may be prescribed and, in such case, the Minister may issue regulations from time to time to amend the definition of “social purpose”, “disadvantaged worker” and “disabled worker” in article 2 of this Act.

The income of the social enterprise company.

5. (1) Subject to the provisions of sub-article (2), the profits generated from the activities of a social enterprise company shall only be used to fulfil the identified social purposes listed in its memorandum of association and such profits shall be:

(a) used to increase its patrimony through the capitalisation of its profits; or

(b) used in any other manner as may be prescribed.

(2) Notwithstanding anything stated in the memorandum and articles of association of a social enterprise company, only ten per cent of the profits generated by the social enterprise company can be distributed and it shall not be permissible for any individual to enjoy directly or indirectly more than ten per cent of the profits through the holding of shares or other rights in such company, or in any other manner:

Provided that the receipt of interest by any member on a loan granted to a social enterprise company to finance the development or operations of such company shall not be considered to form part of the maximum of ten per cent of the profits referred to in this sub-article even

when payable on a bond or other corporate instrument. Such interest shall also comply with sub-article (5) of this section.

(3) It shall not be lawful for any person to receive income from a social enterprise company for his personal benefit except in the following cases:

- (a) income under contracts of employment or engagement;
- (b) income for the sale of goods or services; or
- (c) interests on loans.

(4) Sub-articles (1) and (2) of this article shall apply irrespective of the manner in which the persons involved in the social enterprise company hold equity, or other participation rights therein and, in the case of a conflict between sub-articles (1) and (2) of this article and the provisions of any other law, sub-articles (1) and (2) of this article shall prevail.

(5) Income received under contracts of employment or engagement or for the sale of goods or services or from interests on loans which are entered into under normally applicable conditions and in the normal course of business of the social enterprise company shall not be treated as participation in the profits of the company for the purposes of the previous sub-articles:

Provided that it shall not be lawful to:

- (a) remunerate a director or other officer at a rate which is higher than normal market levels unless the social enterprise company is satisfied that the director or other officer has specific skills which the organisation needs, in which case, the remuneration may be increased over normal market levels by such percentage as may be stated in guidelines issued by the Regulator or as otherwise approved by him;
- (b) remunerate any person, whether an employee or otherwise, with a wage or a fee which is higher than normal market levels unless the social enterprise company is satisfied that in that particular case specific conditions apply;
- (c) pay interest or other remuneration on loans or financial instruments taken from organisations which are not licensed credit or financial institutions other than in accordance with applicable market conditions or, in any case, not in excess of the limits permitted by article 986 of the Civil Code; or
- (d) pay a price for any property acquired which is higher than the generally established market price for such property disregarding special discounted sales or other deals:

Provided that the basis on which a social enterprise company satisfies itself of such compliance shall be recorded in sufficient detail in the minutes of the Board of Directors prior to such decision being taken, which minutes shall be submitted to the Regulator on written demand if he is investigating any complaint on such matters.

Provided further that the above shall not apply if expressly approved:

- (a) in the memorandum and articles of association of the social enterprise company;
- (b) by the majority of the members of the social enterprise company by resolution in general meeting; or
- (c) by the court on application of the directors.

It shall be the responsibility of the Board of Directors to ensure compliance with these provisions without prejudice to the power of the Regulator to require an audit of the same.

(6) In the case of companies which qualify as social enterprise companies under the provisions of article 3(1)(a), the directors shall seek to maintain a level of cost for persons who are employed or engaged which shall not be more than sixty per cent of the annual turnover of the company so as not to materially prejudice the continuation of the functioning of the company. The Regulator may issue guidelines on the manner and the timeframe in which this obligation is to be assessed and the actions which may be taken by a social enterprise company in periods when income levels fall exceptionally.

(7) The directors and the social enterprise company itself shall be bound by fiduciary obligations to achieve the purposes set out in the memorandum of association of the company as laid down in article 1124A of the Civil Code and any other applicable law.

(8) A social enterprise company may make use of the services of volunteers provided that such volunteers do not constitute more than fifty per cent of the total number of persons engaged by such company.

Companies established prior to the relevant date.

6. (1) Companies which were established prior to the relevant date shall not qualify to be registered as social enterprise companies.

(2) Notwithstanding the provisions of sub-article (1), a company established and existing prior to the relevant date may be registered as a social enterprise company in terms of this Act, if such company:

(a) amends its memorandum of association and its mode of operation so as to comply with the provisions of this Act; and

(b) files an application with the Regulator stating the reasons why it should be registered as a social enterprise company and submits the required documentation to prove that it has complied with the provisions of sub-paragraph (a).

(3) The Regulator shall, after consulting the Minister, accept or refuse to allow the company to register as a social enterprise company stating the reasons for such acceptance or refusal.

(4) The Regulator may allow the company to register as a social enterprise company as stated in the previous sub-article under such terms and conditions and following such modifications

to the memorandum and articles of association and to its mode of operations as he considers necessary, and the Regulator shall register such company as a social enterprise company after ascertaining that the terms and conditions and modifications laid down in the Regulator's acceptance have been fulfilled.

(5) The Regulator's acceptance of the company's application for registration as a social enterprise company shall be entered into the Register of Social Enterprises and shall be accessible to the public.

(6) The Minister may issue regulations to regulate the procedure through which a company established and existing prior to the relevant date may be registered as a social enterprise company.

Organisations established and existing prior to the relevant date.

7. (1) Notwithstanding the provisions of article 3, a legal organisation of any form, other than a limited liability company, which:

(a) was established and existing under the laws of Malta prior to the relevant date; and

(b) was established for the carrying out of any act of trade as indicated in sub-articles (1)(a) and (1)(b) of article 3;

may be registered as a social enterprise organisation, if it files an application with the Regulator stating the reasons why it should be registered as a social enterprise organisation. The Regulator shall, after consulting the Minister, accept or refuse to allow the organisation to register as a social enterprise organisation stating the reasons for such acceptance or refusal.

(2) The Regulator may allow the organisation to register as a social enterprise organisation as stated in the previous sub-article under such terms and conditions and following such modifications to the statute and to its mode of operations as he considers necessary, and the Regulator shall register such organisation as a social enterprise organisation after ascertaining that the terms and conditions and modifications laid down in the Regulator's acceptance have been fulfilled.

(3) The Regulator's acceptance of the organisation's application for registration as a social enterprise organisation shall be entered into the Register of Social Enterprises and shall be accessible to the public.

(4) The Minister may issue regulations on the requirements which organisations established and existing prior to the relevant date must satisfy to be eligible to seek authorisation from the Regulator in terms of sub-article (1) of this article and to regulate the procedure through which such organisations may be registered as social enterprise organisations.

(5) When an organisation is approved for registration under this article all the provisions of this Act which refer to a social enterprise company shall apply to it *mutatis mutandis*. In such cases, the law applicable to the legal form of such organisation shall apply with such modifications as may be necessary due to the context.

(6) An organisation, not being a company, which is authorised by the Regulator to register as a social enterprise organisation in terms of this Act shall be governed by the provisions of the special law applicable to its legal form and also by the provisions of this Act and references to directors, members, memorandum and articles of association and companies shall be interpreted *mutatis mutandis*.

Recognition of social enterprise companies.

8. The Government, government departments, public agencies and entities controlled by the Government shall act upon a Certificate of Registration issued in terms of article 20, as evidence of the status of a social enterprise company and shall not require any further evidence of its existence or status when dealing with such a company:

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

PART III

THE MEMORANDUM OF ASSOCIATION

The contents of the memorandum of association.

9. (1) In addition to the requirements laid down in the Companies Act, the memorandum of association of a limited liability company shall comply with the following requirements for it to be eligible for registration as a social enterprise company:

(a) the name of the social enterprise company shall comply with sub-article (2) of this article;

(b) the memorandum of association shall include a statement that the organisation is a social enterprise company;

(c) the objects for which the social enterprise company is established shall state either:

(i) the social purpose for which the company is constituted, if the social enterprise company is one which may be classified under sub-article (1)(a) of article 3; or

(ii) the purpose of integrating into the labour market persons who are disadvantaged or disabled if the social enterprise company is one which may be classified under sub-article (1)(b) of article 3;

(d) the memorandum of association shall include a statement that investments in the social enterprise company are not intended to entitle the member to participate in more than ten per cent of the profits of the company;

(e) the memorandum of association shall include a restriction on the rights of participating shares in the company so as to comply with sub-article (2) of article 5 of this Act and a waiver of participating rights on dissolution and winding up;

(f) the memorandum of association shall include a provision regarding the manner in which the remaining assets of the social enterprise company shall devolve on dissolution and winding up, if any, which provision shall comply with article 10;

(g) the memorandum of association shall include the name, identity card number or passport number or registration number if any, and address of a person resident in Malta who has been appointed to act as the local representative of the social enterprise company in Malta where necessary in accordance with sub-article (6).

(2) The social enterprise company shall be identifiable by a unique name which shall conform to the law and which shall include the words “Social Enterprise” or “SC” before the words “limited” or “ltd. In the case of a social enterprise organisation, the name shall include the words “Social Enterprise or “SO” .

(3) No company or other organisation shall be permitted to use the words “Social Enterprise” or the letters “SC” or “SO” unless it is one which is established under this Act and any breach of this sub-article shall constitute an offence under this Act.

(4) The Regulator shall refuse registration if, to the best of his knowledge, the name of the company is already used by another registered social enterprise company or if the proposed name is offensive or is likely to be misleading.

(5) The performance of the social purpose to which the profits of the social enterprise company are applied shall be an express fiduciary duty binding the directors of the social enterprise company and the social enterprise company itself.

(6) (a) A social enterprise company, the directors of which are all non-residents of Malta, is required to appoint, prior to registration with the Regulator, an individual or legal person who or which:

- (i) is habitually resident in Malta or has its registered address in Malta and is incorporated under the laws of Malta;
- (ii) is not interdicted or incapacitated or is not an undischarged bankrupt; and
- (iii) has not been convicted of any of the crimes affecting public trust or of theft or of fraud or money laundering or of knowingly receiving property obtained by theft or fraud.

(b) Notices of the appointment, resignation or removal of the local representative shall be filed with the Regulator and where a notice of appointment is given it shall be accompanied by the acceptance in writing of the local representative of such appointment.

(c) The Regulator may at any time refuse or reject any notice of an appointment which he considers is not in compliance with this Act and in such case the social enterprise company shall immediately appoint another local representative.

PART IV

DISSOLUTION, WINDING UP OR CESSATION

Dissolution and winding up.

10. On dissolution and winding up of a social enterprise company, any remaining assets shall be distributed:

(a) to another social enterprise company expressly identified in the memorandum of association having similar purposes as the social enterprise company being dissolved;

or

(b) to a social enterprise company identified by the members in a decision supported by at least seventy-five per cent of all the members and at least a majority of the directors present at a meeting of directors;

or

(c) in the case of any obstacle which cannot be overcome in the manner stated above, to a social enterprise company identified by the Civil Court in its voluntary jurisdiction following an application made by any director of the social enterprise company being dissolved;

or

(d) in any other manner as may be prescribed.

Mandatory Cessation.

11. It shall be an obligation on all directors of a social enterprise company which for any reason ceases to operate as such or to continue to qualify under article 3 of this Act as a social enterprise company to bring the facts to the attention of the Regulator and to dissolve and wind up the organisation in accordance with the directions of the Regulator, unless the Regulator permits the social enterprise company to continue its operations as an ordinary company under such conditions as the Regulator may determine. In such case, the Regulator shall cancel the registration of the social enterprise company and the provisions of article 23 shall apply.

PART V

THE REGULATOR OF SOCIAL ENTERPRISES

Appointment of Regulator.

12. (1) There shall be a Regulator of Social Enterprises 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.

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

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

(5) When the office of the Regulator becomes vacant, a person appointed as Regulator shall hold office temporarily until a successor is appointed and subject to the qualifications in subarticle (3) of this article, 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 of the Regulator.

Removal from office.

13. (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 Regulator.

14. (1) 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 limited liability companies to register as social enterprise companies in terms of this Act;
- (b) providing registration facilities for limited liability companies which are eligible for registration in terms of this Act;
- (c) monitoring the activities of social enterprise companies in order to ensure that they comply with their memorandum and articles of association, with the provisions of this Act, any regulations and any guidelines made thereunder and to ensure that social

enterprise companies implement the necessary policies, regulations and reporting structures to ensure accountability and transparency of their operations;

(d) investigating any complaints relating to social enterprise companies or persons or organisations purporting to be social enterprise companies and their activities, and to take such action as is in his power to redress any justified grievance that may come to his notice;

(e) monitoring the activities of social enterprise companies and the behaviour of the directors of such companies to ensure the observance of high standards of accountability and transparency and compliance with law;

(f) ensuring that the social enterprise company achieves its social purpose, maintains its not-for-profit status and protects its capital base while developing operational surpluses to ensure sustainability;

(g) providing social enterprise companies with information about the benefits and responsibilities deriving from registration in terms of this Act;

(h) providing information and guidelines to persons involved in social enterprise companies, including those performing voluntary work, for the better performance of their role and for the better achievement of the objectives of the social enterprise company in which they serve;

(i) making recommendations to the Minister on legislation and policies in support of the social enterprise sector;

(j) assisting Government, government departments, public agencies and entities controlled by a State in preparing and reviewing policies in support of social enterprise companies and the social enterprise sector in general;

(k) co-ordinating and communicating with the registrar with a view to facilitating registration processes for social enterprise companies and to ensure the continuous monitoring and eligibility of social enterprise companies in terms of this Act;

(l) promoting the social enterprise sector, developing co-operation between social enterprise companies and the Government and co-operation between social enterprise companies amongst themselves;

(m) 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 Regulator shall act impartially and shall not be subject to the direction of any other person or authority.

(3) 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.

(4) The Regulator shall co-operate with the registrar for the better regulation of social enterprise companies and procedures shall be established to ensure that the Regulator and the registrar are aware of the status of a social enterprise company at all times and of any investigation or action which is being taken in respect of such social enterprise company.

(5) The Minister may issue regulations requiring the registrar:

(a) to notify the Regulator of matters specified in the regulations; and

(b) to provide the Regulator with copies of documents specified in the regulations.

(6) The Regulator may, from time to time issue guidelines in relation to the activities of social enterprise companies and such guidelines shall be binding on social enterprise companies.

Other functions of the Regulator.

15. (1) The Regulator shall seek to encourage an environment where the credibility and good reputation of the social enterprise sector is continually enhanced through high standards of operation of social enterprise companies and their directors, of transparency and public awareness and of proper accountability.

(2) The Regulator shall promote and facilitate the development of the social enterprise sector by complying with the obligations imposed and conferred on him by this Act and any regulations made hereunder including:

(a) issuing guidelines, including guidelines to determine when a social purpose may be considered to benefit the community or a section of the community;

(b) providing assistance about and with regard to any matter relating to social enterprise companies; and

(c) promoting and publicising any measures meant to support the sector.

(3) The Regulator, in order to better implement and safeguard the principles of this Act, may issue guidelines relating to:

(a) the members, directors and officers of a social enterprise company regarding:

(i) their remuneration in so far as they act as directors or officers;

(ii) their employment and the wages payable to them; and

(iii) the supply of goods or services by them under a contract of engagement, including as volunteers;

(b) the provision of loans or other financial assistance with or to a social enterprise company; and

(c) the sale of goods and services to a social enterprise company;

and also to establish the relevant market rates or margins applicable thereto.

Manner in which the Regulator is to discharge his functions.

16. The Regulator must adopt an approach to the discharge of his functions which is based on good regulatory practice, that is an approach adopted having regard to:

(a) the likely impact on those who may be affected by the discharge of those functions;

and

(b) the outcome of consultations with social enterprise companies.

Annual Report.

17. (1) The Regulator 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 Regulator's activities during the preceding year;

(b) a general description of the circumstances of the social enterprise sector in Malta and any developments which may have affected such sector;

(c) any recommendations regarding legislation, policies or other matters affecting the social enterprise sector; and

(d) the accounts and other financial records referred to in subarticle (2).

(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. The accounts of the Office of the Regulator shall be audited by an auditor to be approved by the Minister.

PART VI

REGISTER OF SOCIAL ENTERPRISES

Register of Social Enterprises.

18. (1) There shall be a Register of Social Enterprises which shall be maintained by the Regulator and shall contain the following information, supported by the documentation referred to in paragraphs (f) to (l), as the same may be amended or updated as may be prescribed:

(a) the name of the social enterprise company;

(b) the address of the social enterprise company;

(c) the registration number of the social enterprise company;

(d) the names, identity card number or passport number or registration number if any, and addresses of the directors of the social enterprise company;

(e) the name and address of the local representative of the social enterprise company, if applicable;

(f) a copy of the memorandum and articles of association of the social enterprise company issued by the registrar;

(g) annual reports of the social enterprise company which must include:

(i) a description of the activities carried out by the social enterprise company; and

(ii) if the social enterprise company is one which may be classified under sub-article (1)(a) of article 3 an account of the social purpose being fulfilled through the carrying out of the act of trade; or

- (iii) if the social enterprise company is one which may be classified under sub-article (1)(b) of article 3, information regarding the employees of the social enterprise company particularly those who are disabled or disadvantaged;
- (h) the annual accounts of the social enterprise company;
- (i) an organisational chart which must include:
 - (i) the organisational structure of the social enterprise company;
 - (ii) a diagram of the different governing bodies making up the social enterprise company;
 - (iii) an internal breakdown of the functions of each body;
 - (iv) an indication of who the ultimate beneficial owner of the social enterprise company is;
 - (v) a depiction of the management and administrative structure of the social enterprise company, showing the responsibility of each board and any working group/s, the relationships of each board/s and any working group/s to each other, and the hierarchy of management and administration;
 - (vi) an indication of who is responsible for the day to day running of the social enterprise company;
 - (vii) the names and identification numbers of any employees and/or volunteers;
- (j) a business plan which indicates the manner in which the social enterprise company will operate so as not to:
 - (i) prejudice the fulfilment of the social purpose for which it was established, in the case of a social enterprise company which may be classified under article 3(1)(a) of this Act; or
 - (ii) prejudice the integration into the labour market of persons who are disadvantaged or disabled in the case of a social enterprise company which may be classified under article 3(1)(b) of this Act;
 - (iii) grant such gratuitous distributions from the profit or such bonuses to its directors, employees or other officers which will lead to the same results indicated in paragraphs (i) and (ii) above;
- (k) the written consent of the directors to hold office as directors of the social enterprise company after registration; and
- (l) a resolution signed by the directors of the social enterprise company indicating that they resolve to register the social enterprise company with the Regulator.

(2) Social enterprise companies shall be classified in the Register of Social Enterprises in such a manner as the Regulator may deem appropriate.

(3) On registration, the Regulator shall allocate a unique registration number to the social enterprise company which shall be preceded by the letters "SC", or in the case of a social enterprise organisation the letters "SO", which registration number shall be known hereinafter as the "Social Enterprise label" and the social enterprise label shall at all times be quoted by the social enterprise company or the social enterprise organisation on any published materials, letters, notices, advertisements and other documents issued by such social enterprise company.

Application to register.

19. (1) For a social enterprise company to be registered as such, the documents listed in sub-article (2) shall be submitted to the Regulator who shall determine whether it complies with the provisions of this Act.

(2) A social enterprise company may apply for registration by submitting the prescribed application form, to the Regulator, which form shall be accompanied by:

- (a) a copy of the memorandum and articles of association of the social enterprise company which is to be presented to the registrar;
- (b) the written consent of the directors to hold office after registration;
- (c) a resolution signed by the directors of the social enterprise company indicating that they resolve to register the company with the Regulator;
- (d) an organisational chart containing the details outlined in subarticle (1)(i) of article 18 authenticated by at least one director;
- (e) a business plan containing the details outlined in subarticle (1)(j) of article 18 authenticated by at least one director;
- (f) the application fees due to the Regulator; and
- (g) any other document as may be required by this Act or as may be prescribed.

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

(4) The Regulator may accept or refuse any application for registration on the basis of:

- (a) the observance or otherwise of all the formalities required by this Act and as may be prescribed;
- (b) the presence or otherwise of any factors which bar registration under an express provision of this Act or as may be prescribed;
- (c) the legality or otherwise of the proposed purposes and objects of the social enterprise company having regard to the stated purposes and objects of the social enterprise company and the stated intentions of the promoters relating to its activities.

(5) The Regulator 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 Regulator shall proceed with the determination of the application for registration on the basis of the information available to him;
- (b) determine whether the company is eligible for registration as a social enterprise company;
- (c) notify the applicant, in writing, of his determination, and in the case of a decision not to accept an application, the reasons for such determination.

(6) The Regulator shall seek to determine all applications by not later than forty five days from the date of application and where there is no response to an application to the Regulator within this time period, the application shall be deemed to have been refused.

Registration as a social enterprise company.

20. (1) If the Regulator accepts the company's application to be registered as a social enterprise company in terms of this Act, the Regulator shall pass the relevant documents to the registrar for the approval of the company as a limited liability company and on approval the registrar shall proceed with the registration of the limited liability company.

(2) The applicant shall submit a copy of the company's certificate of registration to the Regulator who shall proceed to register the company as a social enterprise company in terms of this Act and shall:

- (a) enter the particulars of the social enterprise company in the Register; and
- (b) issue a Certificate of Registration including the Social Enterprise label of the social enterprise company.

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

(4) The Certificate of Registration issued in terms of this article shall not determine the fiscal status of a social enterprise company or the taxability or otherwise of its income and transactions.

Powers of the Regulator.

21. The Regulator may request the social enterprise company any information and any clarification, and may also carry out any verification, investigation or audit, so as to ascertain that such social enterprise company is complying with the provisions of this Act.

Cancellation of activities.

22. (1) The Regulator may order the cancellation of the registration of a social enterprise company by the issue of a Cancellation Order, which shall come into effect thirty days from the date of notification of such order, to all or any one of the directors, unless an appeal is filed prior to such period, in which case such order shall have effect from the date established by the Tribunal.

(2) A Cancellation Order may be issued if the social enterprise company:

- (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;
- (c) is failing to comply with the provisions of its memorandum and articles of association or of this Act or as may be prescribed;
- (d) is distributing profits to its members directly or indirectly in excess of ten per cent as permitted under sub-article (2) of article 5;
- (e) appears to have continued operating after it has been formally dissolved;
- (f) has not functioned for a period which exceeds twelve consecutive months;
- (g) 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.

(3) Prior to ordering the cancellation of the registration of a social enterprise company by the issue of a Cancellation Order, the Regulator shall grant the social enterprise company a period of time in which to regularise its position and conform with the provisions of this Act. If the social enterprise company 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 social enterprise company in accordance with subarticle (1) above.

(4) The Regulator may appoint any person to assist the social enterprise company to regularise its position.

(5) Until a Cancellation Order comes into effect in accordance with subarticle (1) of this article, the affairs of the social enterprise company shall continue to be administered by the directors 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 Tribunal.

(6) The Regulator shall publish, in a local newspaper, any Cancellation Order which has become final with a brief statement as to the effects of the order which statement shall, prior to publication, be approved by the Tribunal. Such statement shall be re-published regularly for as long as the Regulator may consider necessary to ensure that the necessary public awareness has been achieved.

(7) The registration of a social enterprise company shall terminate *ipso iure* if the company is struck off the register of commercial partnerships.

Effects of cancellation of registration.

23. (1) In the event of cancellation of registration of a social enterprise company, when the Regulator and the registrar have permitted that the company continue as a limited liability company, the directors shall make all the necessary amendments to the memorandum and articles of association of the company including amending its name to remove any references to the term social enterprise.

(2) Notwithstanding anything stated in the company's memorandum and articles of association or in any applicable law, the directors shall be deemed to have all the necessary powers and authority to make all the necessary amendments to such memorandum and articles of association.

(3) In the event of cancellation of registration of a social enterprise company, the directors shall forthwith surrender, to the Regulator, the Certificate of Registration of such social enterprise company and any person failing to surrender such certificate within the time stated in the demand, in writing, made by the Regulator, shall be guilty of an offence against this Act and shall be liable to a fine (*multa*) of two hundred and fifty euro (€250) and a fine (*multa*) of twelve euro (€12) for every day of default.

(4) In the event of cancellation of registration of a social enterprise company, all exemptions, privileges, benefits, advantages or entitlements granted to such social enterprise company by virtue of registration, shall cease to have effect from the date when the decision to cancel takes effect:

Provided that such loss of exemptions, privileges, benefits, advantages or entitlements shall not apply to the acts required to liquidate and dissolve the social enterprise company, including any transfer of property to other social enterprise companies as required by the memorandum and articles of association of the social enterprise company or otherwise in accordance with article 10 of this Act or the provisions of applicable law.

(5) Cancellation for the reasons mentioned in article 22 shall entitle the Regulator to demand the refund of, or fair compensation for, any benefits unjustly received by the social enterprise company or any other person by virtue of its registration in terms of this Act, and the Regulator may issue the relative orders against the social enterprise company and any persons involved in such social enterprise company, or in possession of any property, in the

Cancellation Order or separately, after ensuring that such social enterprise company 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 Tribunal from any determination of liability by the Regulator in terms of this subarticle.

Abusive use of certificate of registration or forgery thereof.

24. (1) Without prejudice to the provisions of any other law, in those cases where the Regulator is of the opinion that a person or a social enterprise company is making or has made abusive use of a Certificate of Registration issued in terms of article 20 or has made or made use of a forgery thereof, the Regulator may:

- (a) prohibit such person from using such Certificate of Registration 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 social enterprise company.

(2) Prior to the taking of any of the actions referred to in subarticle (1)(a) and (b), the Regulator shall notify in writing, any person or social enterprise company who appears to him *prima facie* to have abused a Certificate of Registration, of his findings and of the actions he intends to take and such person or social enterprise company shall be entitled to:

- (a) make submissions to the Regulator within five days from the date of receipt of the written notice; and
- (b) file an appeal to the Tribunal within five days of notification of the decision of the Regulator, which appeal shall suspend any action taken by the Regulator in terms of subarticle (1) until final determination by such Tribunal.

PART VII

ANNUAL RETURN TO BE FILED WITH THE REGULATOR

Annual return.

25. (1) A social enterprise company shall prepare an annual return and file it annually with the Regulator with the content and in the form laid down in Schedule 1 to this Act.

(2) The annual return shall include the following documents as attachments to it:

- (a) an organisational chart containing the information stated in sub-article (1)(i) of article 18;
- (b) a revised and updated copy of the memorandum and articles of association of the social enterprise company as issued by the registrar, if any amendments have been made to such memorandum and articles of association and in such case a declaration signed by at least one director stating what amendments have been made;
- (c) a copy of the annual accounts of the social enterprise company;
- (d) a copy of the annual report of the social enterprise company;
- (e) a Social Objectives Report stating how and to what extent the social enterprise company has achieved the social purposes it has identified and the planned actions meant to ensure continued or enhanced achievement of these purposes using outcome and output indicators;

(f) the annual business plan which will contain the information stated in subarticle (1)(j) of article 18 of this Act.

(3)The annual return for social enterprise companies shall cover a calendar year from the first day of January to the thirty first day of December of each year:

Provided that:

(a) if a social enterprise company was registered between the first day of January and the thirtieth day of September of any year, it shall file the annual return normally but such annual return shall, for the first year only, cover a period of less than twelve months since its registration;

(b) if a social enterprise company was registered between the first day of October and the thirty first day of December of any year, it shall not file an annual return for its first year of registration but it shall file, for the second year only, an annual return up to the thirty first day of December following the year of registration for a period over twelve months but not exceeding fifteen months.

(4) The annual return and all the required documents relating to a social enterprise company shall be filed by not later than the thirtieth day of April of the following year.

(5) A social enterprise company shall comply with all the requirements of the Companies Act in relation to annual returns, accounts and audits.

PART VIII

OFFENCES

Penalties.

30. Where any person acts in breach of any of the provisions of this Act or any regulations or any guidelines made thereunder, and a specific penalty is not provided for the offence under this Act or any regulations or guidelines made thereunder, such person shall, on conviction, be liable to a fine (*multa*) of not less than one hundred and twenty euro (€120) but not more than two thousand five hundred euro (€2,500) 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 or abusive use of status.

31. (1) Any person who, in any manner, forges or alters a Certificate of Registration of a social enterprise company so as to give the impression that he acts on behalf of a social enterprise company shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code.

(2) Any person who, in any manner, makes abusive use of a Certificate of Registration or the Social Enterprise label shall be guilty of an offence under this Act.

Purporting to act as a director.

32. Any person who knowingly acts or purports to act as a director of a social enterprise company without having been duly appointed or elected as a director of such company, 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.

Investigations.

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

(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 Regulator pursuant to this article shall be guilty of an offence.

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

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

Provided that such penalties shall not exceed two thousand five hundred euro (€2,500) for the breach of a directive and one hundred twenty euro (€120) for each day of non-compliance and such penalties shall be paid to the Regulator.

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

PART IX

GENERAL

The powers of the Minister.

34. (1) In addition to other powers to make regulations as already provided herein, the Minister shall have the power to make regulations to:

(a) further regulate social enterprise companies;

(b) introduce new definitions and amend the definitions found in this Act;

(c) further establish the contents of the memorandum and articles of association of social enterprise companies;

- (d) establish the forms for the registration of any social enterprise company;
- (e) establish the form and content of certificates of registration to be issued in terms of this Act and to establish the powers of the Regulator in relation to registration and all related matters;
- (f) regulate the declaration of dividends, the maximum dividend per share, the maximum aggregate dividend, the carrying forward of unused dividend capacity from previous financial years, the interest cap on loans, the initial level and subsequent variation of dividend caps and interest caps, the redemption and purchase of shares, the reduction of share capital, information about dividends, the distribution of assets on winding up and, in the case of loans, information about debts or debentures on which a performance-related rate is payable;
- (g) establish forms for the notification to the Regulator of changes to the memorandum or articles of association of the social enterprise company or to its directors and otherwise;
- (h) establish forms and content of annual accounts and reports and methods of review;
- (i) extend, clarify or define the functions of the Regulator under this Act and provide for ancillary and related matters;
- (j) regulate foreign or international organisations which may qualify as social enterprise companies in terms of this Act and the forms and content for their registration and the terms and conditions of registration;
- (k) further regulate the directors of social enterprise companies;
- (l) further regulate the dissolution, winding up or cessation of social enterprise companies;
- (m) regulate the redomiciliation or continuation of social enterprise companies;
- (n) 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 social enterprise companies;
- (o) establish the forms and procedures to be used for appeals in terms of this Act;
- (p) regulate the conversion of an organisation into a social enterprise organisation and the conversion of a social enterprise company to an organisation of a different legal form;
- (q) lay down rules on the powers of the Tribunal in relation to the interpretation or variation of the memorandum and articles of association and the administration of a social enterprise company;
- (r) 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; and
- (s) lay down rules for the better carrying out of any of the provisions of this Act.

(2) The Minister may make regulations relating to the fiscal status of social enterprise companies, including different rules for the different types of social enterprise companies identified in terms of this Act, and of social enterprise organisations, and may establish the criteria for the granting of any 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 social enterprise companies and social enterprise 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.

SCHEDULE 1
(Article 25)

Annual return

Purpose.

1. The purpose of this annual return is to provide the Regulator and any interested persons with up to date information about the social enterprise company, its directors and its activities, generally. It is important that the exercise be qualitative in that the persons preparing the annual return must give a true account of the facts.

Content and form.

2. The content and form of the annual return, with all the required documents as attachments, that each social enterprise company shall file duly filled with the Regulator, is as follows:

Contents and Form of Annual Return

Annual Return of _____

Name of Social Enterprise Company:
for the twelve month period ending:
Social Enterprise label:
Address:
.....
Postcode
Telephone number(s):
Fax number:
E-mail address/es:
Website:
Name of Contact Person:
Designation:
Mobile/Telephone Number:

If the social enterprise company must nominate a local representative in terms of the Act fill in the details of the local representative. It must be ensured that the address that is included is the address of the local representative in Malta.

Name and Surname:
ID Card Number or Registration Number:
Address:
.....
Postcode:

Telephone number(s):
Mobile number:
E-mail address/es:

A minimum of one signature of a director is required:

Name of director:
Signature of director:
.....

Declaration of Completeness and Correctness.

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

Signature of director:
Name of director:
Date:

Attachments

- Appendix A - Organisational Chart _____
- Appendix B - A revised and updated copy of the memorandum and articles of association of the social enterprise company as issued by the Registrar of Companies, if any amendments have been made to such memorandum and articles of association and in such case a declaration signed by at least one director stating what amendments have been made _____
- Appendix C - a copy of the annual accounts _____
- Appendix D - a copy of the annual report _____
- Appendix E - a copy of the Social Objectives Report _____
- Appendix F - a copy of the business plan _____