
CHAPTER 334**MALTA FREEPORTS ACT**

To provide for the establishment of a Freeport system in Malta and to regulate its operation.

20th April, 1990

ACT XXVI of 1989, as amended by Legal Notice 103 of 1995, and Acts X of 1997, IV of 2001 and IV of 2003.

ARRANGEMENT OF ACT

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SCHEDULE

PART I

PRELIMINARY

- Short title. **1.** The short title of this Act is the Malta Freeports Act.
- Interpretation.
Amended by:
X. 1997.2;
IV. 2001.35. **2.** **(1)** In this Act, unless the context otherwise requires -
- "Authority" means the Freeport Authority constituted under article 5;
- "body of persons" means any partnership, fellowship, society or other association of persons, whether vested with legal personality or not;
- "certified public accountant and auditor" means an individual who holds a warrant to act in this capacity issued under the Accountancy Profession Act, or a partnership of such individuals duly registered under the said Act;
- Cap. 281. "company" means -
- (i) any partnership constituted under the Companies Act, being a partnership *en nom collectif*, *en commandite* or a limited liability company;
- (ii) a body of persons constituted or registered outside Malta, and of a nature similar to the aforesaid partnerships;
- (iii) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;
- "Comptroller" means the Comptroller of Customs and includes any other person having an express or implied authority to act for the said Comptroller in carrying out the provisions of this Act;
- Cap. 337. "customs duty" means duty charged or chargeable under the Import Duties Act;
- "excise laws" means:
- the Beer (Excise Duty) Act, 1993* ; and
- Cap. 382. the Excise Duty Act;
- "Freeport" means any area of Malta comprised within a Freeport zone in accordance with the provisions of article 3;
- Cap. 123.
Cap. 372. "income tax" means tax charged or chargeable under the Income Tax Act and the Income Tax Management Act;
- "Income Tax Acts" means a collective reference to the Income Tax Act and the Income Tax Management Act;
- "licensed company" means a company licensed by the Authority to operate within a Freeport under article 11;
- "Minister" means the Minister responsible for Freeports;
- "person" includes a body of persons;

*Repealed by Act XVI of 1995 (Chapter 382).

"prescribed" means prescribed by regulation under this Act.

(2) Any reference in this Act to any law or provision thereof, shall be construed as a reference to that law or provision as from time to time in force and shall include a reference to any enactment replacing such law or provision (including the imposition of any taxes whatsoever analogous to or in substitution to those contained in such enactments or provisions) and to any subsidiary legislation made thereunder.

(3) Words and expressions used in this Act with reference to another law shall, so far as necessary to give effect to this Act, and consistently with the provisions thereof, have the same meaning as they have in the law with reference to which they are used in this Act.

(4) Any reference in this Act to a criminal offence committed abroad, or against the law of another country other than Malta, or to an act which if committed in Malta would be a criminal offence against the law of Malta, shall be construed as limited to offences which are extraditable for the purposes of article 5 of the Extradition Act.

Cap. 276.

(5) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

PART II

FREEPORTS

3. (1) The areas of Malta shown on the plan enrolled by the Secretary General of the Government of Malta in the records of the Chief Notary to Government, Dr. Franco Pellegrini, of the 25th April, 1989, shall, for all intents and purposes of this Act and of any other law, constitute Freeport zones. The said areas are indicated in the plan shown in the Schedule.

Declaration of
Freeports.

(2) The Prime Minister may, by Order approved by resolution of the House of Representatives and published in the Gazette, amend the Schedule:

Provided that the provisions of article 27 shall apply to any amendment to the Schedule whereby any such area or part thereof ceases to be a Freeport zone:

Provided further that no land shall be included in a Freeport unless such land shall immediately prior to its inclusion be held by Government under title of absolute ownership, or be in the process of acquisition by Government under such title in terms of the Land Acquisition (Public Purposes) Ordinance; and in the latter case the provisions of article 32 of the said Ordinance shall not apply:

Cap. 88.

Provided also that where land has been included in a Freeport zone as aforesaid it shall vest in the Authority by operation of this Act, without the need of any further formality, under the same title

under which it was held by the Government, and where the land is still in the process of acquisition as aforesaid, the acquisition shall be continued by the Government and on its acquisition it shall vest in the Authority by operation of this Act without the need of any further formality.

Exemption from certain legislation.
Cap. 268.

4. (1) The provisions of the Disposal of Government Land Act, shall not apply to any land as defined in article 2 of the said Act when such land is situated within a Freeport.

Cap. 283.

(2) The provisions of the Carriage of Goods by Sea (Regulation) Act, shall not apply to goods landed or loaded in a Freeport.

PART III

FREEPORT AUTHORITY

Freeport Authority.
Amended by:
X. 1997.3.
Cap. 168.

5. (1) Malta Freeport Corporation Limited, a limited liability company (No. C9353) registered under the Commercial Partnerships Ordinance* on the 25th day of January 1988 shall be deemed to be constituted under this Act and shall constitute the Freeport Authority, hereinafter in this Act referred to as "the Authority".

Cap. 168.

(2) All rights and obligations of whatever nature of the said Malta Freeport Corporation Limited constituted and registered under the Commercial Partnerships Ordinance* as aforesaid, and all acts done by the said company shall, after the coming into force of this article, be deemed to be rights and obligations of, and acts done by, the Authority.

(3) It shall be the duty and function of the Authority:

- (a) to administer the affairs of Freeports with a view to fostering the economic development of Malta by encouraging the establishment of industrial and economic enterprises therein;
- (b) to liaise with all Ministries and departments of Government and all bodies and other authorities established by law in the application of the provisions of article 6(2);
- (c) to advise Government on all matters relating to Freeports;
- (d) to do all such other acts as may be necessary or conducive to the attainment of any or all of the said objectives.

(4) Without prejudice to the generality of the provisions of subarticle (3), the Minister may vest the Authority with such supervisory and executive powers, and may impose on the Authority such conditions, obligations and restrictions as to him

*Repealed by Act XXV of 1995 (Cap. 386.)

may seem necessary for the proper and fruitful establishment, development, maintenance, operation, management, control and conservation of Freeports.

(5) Subject to the other provisions of this Act, the Authority shall continue to be regulated by its memorandum and articles of association, and by the Companies Act, so however that:

Cap. 386.

- (a) the Authority shall not be dissolved or merged with another company;
- (b) the Authority shall not alter its memorandum or articles of association, unless such alteration is first approved by resolution of the House of Representatives; and
- (c) no share in the Authority shall be allotted except to the present members of the company, and no change in ownership of shares in the Authority carrying a right to vote in a general meeting or otherwise to appoint directors shall be effected unless such allotment or such change is authorised by a resolution of the House of Representatives.

(6) The Authority shall each year publish in the Gazette and in two daily newspapers in Malta its profit and loss account and balance sheet, audited by a certified public accountant and auditor, together with any notes thereto, by not later than six months after its accounting date. Such report shall, together with a copy of a report of the Board of directors of the Authority be placed by the Minister on the Table of the House of Representatives, not later than two months after they are made; so however if the House is not in sitting on the lapse of the said two months, these shall be laid on the Table of the House not later than one week after it next meets.

(7) The Authority shall afford to the Minister full facilities for obtaining information with respect to its property and activities, and shall furnish him with returns, accounts and other information with respect thereto, and afford him facilities for the verification of the information so furnished in such manner and at such times as the Minister may request.

(8) The Minister may, after consultation with the Authority, give to the Authority directions of a general character not inconsistent with the provisions of this Act, and the Authority shall give effect to any such directions.

6. (1) Without prejudice to the generality of the powers conferred upon the Authority by this Act, the Authority may:

Powers of the Authority.
Amended by:
X. 1997.4.

- (a) do all such acts as may be necessary or conducive to the attainment of the objectives, duties and obligations of the Authority;
- (b) enter into agreements with companies that seek to become licensed to operate in a Freeport;
- (c) allocate areas, spaces, factories, wharves, and any other facility or structure which may be available in a

Freeport on such terms as the Authority determines appropriate:

Provided that the Authority may not by title of sale or any other similar title alienate any immovable property situate within a Freeport:

Provided further that a temporary emphyteusis for not more than fifty years shall not be considered to be a title similar to sale;

- (d) exercise, perform, and discharge all such powers, duties and functions as are by or under this Act vested in or assigned or delegated to the Authority;
- (e) determine the rents, charges, dues and other levies to be paid in or in connection with any aspect of a Freeport or of the services and facilities made available thereunder;
- (f) by notice in the Gazette, make rules for the control and management of a Freeport and all activities carried on therein or connected therewith;
- (g) do all such other acts as are incidental to or consequential upon the exercise, performance and discharge of its powers, duties, and functions under this Act.

(2) The Authority shall, notwithstanding any other law but subject to the provisions of this Act, be the centre and channel wherein and through which all Ministries and departments of Government and all bodies or other authorities established by law shall act in all matters with respect to all Freeports and all activities related thereto, and with respect to companies which are licensed, or which seek to be licensed by the Authority, and as the centre and channel through which any such company shall apply for and obtain any permit, licence or other authorisation, or any other thing it may require, and through which it shall communicate with any of the authorities aforesaid:

Provided that this subarticle shall not be construed to mean that any investigation, inspection or other similar act which any such authority may deem expedient to have carried out and any information such authority may require, for the purposes of any of its functions under the law, with respect to a licensed company, shall be carried out or obtained by the Authority:

Provided further that this subarticle shall not be construed to derogate from the powers and duties of any Ministry, department of Government or any body or other authority established by law with respect to matters relating to defence, public order and health.

(3) It shall be the duty of the Authority to carry out the functions conferred on it by subarticle (2) promptly and efficiently; and it shall be its particular duty to ensure that any act or thing to be done by virtue of the aforesaid subarticle is done to the satisfaction of the Ministry, department, body or other authority for which it is required to act.

7. Every agreement which the Authority enters into under article 6(1)(b) shall be reduced to writing, and every such agreement shall constitute a binding contract for the purposes of article 27.

Agreements entered into by the Authority.

8. (1) Where the Authority is satisfied that in the case of a company licensed to operate in a Freeport it would be consistent with the aims and objectives of the policy under which the Freeport was constituted, the Authority may provide for the company industrial buildings, structures and land in the Freeport including, on such terms as may be agreed, industrial buildings and structures constructed or altered according to the requirements of the relative company:

Provision of industrial structures, etc.

Provided that immovable property in a Freeport shall not be transferred to a licensed company under any title for a term beyond the term of the licence, original or extended, of the company to which it is so transferred and that the title under which any such immovable property is transferred shall terminate automatically on the termination of the licence of the company to which it is so transferred.

(2) The industrial buildings and structures contemplated in subarticle (1) shall include especially factories, warehouses (whether refrigerated or not), storage areas, sheds, tanks, pipelines and such commercial and industrial equipment as may be necessary.

(3) The Authority shall also make available such immovable property in a Freeport under such conditions as may be appropriate for the purposes of article 9.

9. (1) Subject to the provisions of the applicable laws, if any, it shall be the duty of the Authority to ascertain that every Freeport shall be provided with the following utilities, that is to say:

Provision of utilities.

- (a) electric power supply;
- (b) potable and other water;
- (c) postal services;
- (d) telecommunications;
- (e) banking and insurance services;
- (f) fire fighting services;
- (g) waste disposal arrangements;
- (h) adequate road systems;
- (i) wharves, jetties and other similar structures;
- (j) transport for goods and passengers to and from the Freeport;
- (k) security systems including adequate public lighting.

(2) Nothing in this article shall be deemed to impede the Authority from procuring the provision of such other utilities as may be required for the proper operation of any Freeport, or to exonerate it from its duty of procuring the provision thereof.

Certificates of origin and of non-manipulation.

10. (1) The Authority may, having regard to a substantial transformation achieved in the identity of goods or articles and to the value added through any processing or other operation carried out in a Freeport, release a certificate indicating that Malta is the origin of any such goods or articles.

(2) The Authority may, where it is so satisfied, release a certificate to the effect that any goods or articles which have been transhipped through a Freeport have not suffered any manipulation in the Freeport so as to transform their identity.

(3) It shall not be lawful for any person unless a certificate has first been obtained from the Authority under the provisions of this article to indicate in any manner that -

- (a) goods or articles which have been subjected to any process or other transformation whatsoever in a Freeport have Malta as their origin;
- (b) any goods or articles transhipped through a Freeport have not suffered any manipulation in the Freeport.

PART IV

LICENSED COMPANIES

Licensed companies.

11. (1) The Authority may grant licences to companies to carry out in a Freeport a trade or business being principally -

- (a) the labelling, packaging, sorting, warehousing, storage, exhibition or assembly of any goods, materials, commodities, equipment, plant or machinery; or
- (b) any activity concerned solely with the conduct of a Freeport including, but not limited to, stevedoring, wharfage, operation of terminals and container handling; or
- (c) the rendering of services analogous or complementary to the activities referred to in paragraph (a),

and the status as a licensed company shall be evidenced by the issue of a licence for this purpose by the Authority.

(2) No company shall be granted a licence contemplated by this Act unless its activities are, in the opinion of the Authority, wholly or mainly carried on or exercised within a Freeport.

(3) For the purpose of subarticle (2), the following activities carried on or exercised outside a Freeport by a licensed company shall not be deemed to infringe the rule therein set out:

- (a) the management and administration of a company, its trade, business or property and the holding thereof;
- (b) the execution of instruments, transactions, negotiations or agreements relative to a company's trade or business;

(c) the transit of goods or their commodities to and from a Freeport.

(4) The Authority shall have the exclusive right to license companies to operate in a Freeport. Licences and the relative benefits shall only be granted to companies which engage in activities that advance the objectives of Freeports.

12. (1) The Authority shall revoke the licence of any company which carries on any activity, or has income accruing to it or derived by it, which consists of or originates from any transaction, operation or other activity which is a criminal offence against the law of Malta, or would be such an offence if carried out in Malta, or has received or has in its possession or control money or other property the receipt, ownership, possession or control of which is, or would be, such an offence as aforesaid.

Company ceasing to be a licensed company for illegal activities.

(2) All income, money or other property as is referred to in subarticle (1) shall be liable to seizure and shall be forfeited in favour of the Authority and become its property absolutely:

Provided that any person wishing to challenge any such seizure or forfeiture may sue the Authority before the First Hall of the Civil Court and the provisions of article 73 of the Customs Ordinance shall apply to such an action, so however that any reference in that article to the Comptroller and to the Ordinance shall be read and construed as a reference to the Authority and to this Act, respectively.

Cap. 37.

13. (1) In issuing licences for operations in a Freeport, the Authority shall ensure that a Freeport shall be open to all goods, irrespective of their nature, quantity and country of origin, consignment or destination; nor shall there be any limit of time during which goods may be retained in a Freeport.

Goods in Freeports.

(2) Notwithstanding the provisions of subarticle (1) -

- (a) the Government and the Authority shall have power to impose such prohibitions or restrictions as to them may seem justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;
- (b) the Authority shall have power to require that goods which are dangerous or likely to spoil other goods or which, for any other reason whatsoever, require special facilities, be placed in premises specially equipped to receive them.

14. (1) The Authority shall not issue a licence to any company for the purposes of article 11 if the company, in the opinion of the Authority, is engaged in any operations connected with alcoholic spirits, tobacco products or those other commodities as the Authority may from time to time determine by notice in the

Reserved operations in Freeports.

Gazette, unless the relative operations are conducted by a recognised manufacturer of the commodities.

(2) The Authority shall not allow any part of a Freeport to be utilised as a bonded store for customs duty purposes in relation to goods which are or which will be imported into Malta but outside a Freeport.

(3) The Authority shall not issue a licence to any company unless it is satisfied that the said company is occupying, under any title valid at law, or is being allowed by the Authority to make use of immovable property in a Freeport whether on its own or in conjunction with other licensed companies.

(4) The Authority may permit any person whomsoever to have access to and operate in a Freeport, even if such person cannot, for any reason whatsoever, be a licensed company for the purposes of article 11 of this Act if, in the opinion of the Authority -

- (a) it would be useful, necessary or conducive to the better development or functioning of a Freeport that such person be granted such access and be allowed to operate in the Freeport; or
- (b) permission and access as aforesaid are necessary pursuant to the provisions of article 9.

Certificates and fees.

15. (1) The Authority may from time to time release certificates as it may deem appropriate attesting that a company, or a company in the process of formation, is, or will be, a licensed company pursuant to the provisions of this Act, and such certificate shall be conclusive evidence for the purposes of article 24 and for all purposes of this Act, and for all related, corollary or ancillary matters, to the effect that the said company is, or will be, so licensed.

(2) A licensing fee of one thousand liri shall, unless otherwise prescribed by the Minister on or after the fifth anniversary of the enactment hereof, be payable to the Authority by every company to whom a licence is issued pursuant to the provisions of this Act; and an annual fee of like amount shall thereafter be payable upon each anniversary of the company being granted a licence:

Provided that no alteration to the licence fee shall have effect before the expiration of one year from the publication of such alteration in the Gazette.

PART V

FISCAL REGIME

Exemption from customs duty and the excise laws.
Amended by:
X. 1997.5.

16. (1) Subject to the provisions of this Act, all goods imported into a Freeport by a licensed company or by the Authority shall be exempt from customs duty:

Provided -

-
- (a) such goods are imported exclusively for the construction, alteration, reconstruction or extension of an industrial building or structure within a Freeport or for any extension thereof, or for the purpose of effecting repairs to such an industrial building or structure or the extension thereof, or constitute equipment, spare parts, machinery or plant, contained in any such industrial building or structure or extension thereof, or are intended to replace any equipment, machinery or plant in any such industrial building or structure or extension thereof, and in all cases for the purposes of the Authority or of the trade or business carried on or intended to be carried on by the company; or
 - (b) such goods are raw materials, components, intermediate products, by-products, unfinished goods, or other goods imported for the purposes for which a company has been granted a licence by the Authority under the provisions of this Act.
 - (2) Every company which imports into a Freeport any goods free of customs duty under subarticle (1) shall -
 - (a) keep proper and sufficient records of the goods which it so imports; and
 - (b) permit the Authority at all reasonable times to inspect the said records and to have access to any premises of the company for the purpose of examining any such goods which it may believe to be therein and of satisfying itself of the accuracy of the said records.
 - (3) No goods imported into a Freeport by the Authority or by a licensed company free of customs duty under the provisions of subarticle (1) shall be sold, given away or otherwise disposed of other than to the Authority or another licensed company except -
 - (a) through re-export from Malta, whether in the same state as when imported, or otherwise, or, subject to such restrictions as to importation as would be applicable had such goods been imported from outside Malta, by transfer into Malta outside a Freeport on the payment of customs duty in accordance with the provisions of subarticle (6); or
 - (b) in the case of an industrial building or structure for the construction, alteration, reconstruction, extension or equipment of which such article was imported into a Freeport to the person for whom such industrial building or structure was constructed; or
 - (c) in the case of materials, components or accessories imported into a Freeport for any purpose referred to in article 11(1):
 - (i) if incorporated in the goods or commodities in respect of which they were imported; or
 - (ii) subject to such restrictions as to importation as would be applicable had such goods been

imported from outside Malta, by transfer into Malta outside a Freeport after payment of the amount of customs duty which would have been payable upon the importation of such materials or components but for subarticle (1).

(4) When goods imported into a Freeport by the Authority or by a licensed company free of customs duty are sold, given away or otherwise disposed of to the Authority or a licensed company in terms of subarticle (3), then such goods shall for the purposes of this Act be deemed to have been imported by the Authority or by the company to which they are sold, given away or otherwise disposed of.

(5) Subject to such conditions and the giving of such security as he may determine, the Comptroller shall -

(a) allow any goods destined for a Freeport to be landed in Malta free of customs duty:

Provided that in all cases, the said goods shall (unless otherwise permitted by the Comptroller) be transferred into the Freeport within seven working days of having been landed;

(b) allow the transit of any goods destined for export from a Freeport to any port or airport in Malta without levying customs duty thereon:

Provided that the said goods shall (unless otherwise permitted by the Comptroller) be loaded on a ship or aircraft within seven working days of having exited from the Freeport.

(6) Whenever any goods which have entered a Freeport free of customs duty in accordance with the provisions of this article are transferred out of a Freeport and remain in Malta otherwise than for the purpose contemplated in subarticle (5)(b) or, if owned by the Authority, for use by the Authority in pursuance of its duties or functions hereunder outside a Freeport, such goods shall as soon as so transferred be deemed to have been imported into Malta and subject to customs duty under the relative provisions of the Import Duties Act where applicable:

Cap. 337.

Provided that in the case of any goods which have been processed in a Freeport and qualify for certification as having been made in Malta pursuant to the provisions of article 10, the nature of the goods, the value and the quantity to be taken in consideration in determining customs duty shall, at the request of the person liable to pay duty, be those which would be taken into account had the goods not been processed as aforesaid.

(7) Where customs duty has been paid in respect of any goods upon their importation into Malta, no claim for refund of such duty shall be competent solely on the grounds that such goods are later transferred into a Freeport.

(8) The excise laws shall not apply to any goods produced in a Freeport unless such goods are entered for consumption in Malta

outside a Freeport.

17. (1) The Authority shall -

- (a) ascertain that every Freeport is equipped with adequate control systems to prevent evasion of customs and excise duties that would be payable to the Government but for the provisions of this Act;
- (b) ensure that every area designated as a Freeport pursuant to the provisions of this Act is properly enclosed; and
- (c) determine the entry and exit points thereof,

Safeguards for
customs and excise
duties.

and in every such matter the Authority shall conform with any requirements of the Comptroller in respect thereof, unless the Prime Minister otherwise directs.

(2) Any person entering a Freeport from any place in Malta outside a Freeport zone or leaving a Freeport other than to a destination outside Malta with any goods shall answer such questions as the Comptroller may put to him with respect to the said goods and shall, if required by the said Comptroller, produce those goods for examination at such place as the Comptroller may direct.

(3) At the time when a vehicle is entering or leaving a Freeport the Comptroller may board the vehicle and search any part of it.

(4) The Authority shall not permit any person to take up residence within a Freeport.

(5) The Authority may deny access to a Freeport to any person who does not provide such guarantees as it may deem necessary regarding the proper application of any rules, regulations or orders in respect thereof.

(6) Every licensed company shall make available to the Authority such records in writing relating to the goods it is importing or will be importing into a Freeport as may be necessary to identify their nature, quantity and country of origin, consignment or destination, which records shall be available for inspection by the Comptroller.

(7) The Minister may, with the advice of the Authority, by regulations published in the Gazette, make provision with respect to the movement of goods into, and the removal of goods from any Freeport, and the keeping, securing and the treatment of goods which are within a Freeport.

(8) Without prejudice to the generality of subarticle (7), regulations made thereunder may make provisions -

- (a) permitting goods in a Freeport to be destroyed without payment of customs or excise duties, in such circumstances and subject to such conditions as the Authority may determine;
- (b) requiring that specified operations within a Freeport are to be carried out in such manner and subject to

such restrictions as may be imposed by or under the regulations;

- (c) establishing the penalty which may be imposed by any court in the event of non-compliance with any conditions or restrictions imposed in virtue of paragraph (b):

Provided such penalty shall not exceed a fine (*multa*) of five thousand liri together with the forfeiture of the goods to which the offence refers;

- (d) specifying the information to be given to the Authority in respect of goods imported into a Freeport and the form in which, persons by whom, and time within which, such information must be given.

Exemption from
income tax.
Amended by:
X. 1997.6.

18. (1) A licensed company shall be exempt from paying income tax on the gains or profits arising to it from a trade or business exercised in a Freeport pursuant to the provisions of article 11.

(2) For the purposes of the Income Tax Acts, the income or part thereof of any company for any year of assessment in respect of which exemption from income tax operates under the provisions of this article shall be computed in the manner set out in the said Acts and in accordance with their provisions:

Provided that the provisions of the Income Tax Acts, shall be superseded or replaced as necessary by the provisions of this Act.

(3) Interest and royalties paid by a licensed company in respect of or related to operations or transactions exempt from income tax under the provisions of subarticle (1) shall also be exempt from income tax:

Provided that such exemption shall not operate where interest or royalties are paid to a person ordinarily resident or domiciled in Malta.

Tax free dividends.

19. (1) Any dividends (or part thereof) distributed by a licensed company out of its gains or profits, or part thereof, which, under the provisions of this Act, have been relieved from the payment of income tax, shall be exempt from income tax in the hands of the members of the company in receipt of such distribution:

Provided that the provisions of this subarticle shall not apply to a dividend distributed to a person ordinarily resident or domiciled in Malta.

(2) Where a dividend to which subarticle (1) applies is distributed to a member which is also a company (in this subarticle referred to as "the second company"), the said dividend shall likewise be distributable by the second company to its own members in the form of dividends exempt from income tax in the hands of the recipients, and where a member of the second company is again a company, the preceding provisions of this subarticle shall apply *mutatis mutandis* as though references to the

first company were references to that member, and the principle set out in this subarticle shall continue to be applied for as long as the gains or profits or part thereof to which this article applies are distributed by way of dividends:

Provided that the provisions of this subarticle shall cease to operate where a dividend is distributed to a person ordinarily resident or domiciled in Malta.

20. Notwithstanding the provisions of the Duty on Documents and Transfers Act, no duty shall be payable thereunder in respect of:

- (a) the allotment of any newly issued shares or stock of a licensed company;
- (b) the purchase, transfer, assignment or negotiation of any share or stock of such a company;
- (c) the purchase, sale or other transfer of any asset by a licensed company or by the Authority, other than a sale or other transfer to a person domiciled or ordinarily resident in Malta unless such person is the Authority or another licensed company;
- (d) the transfer of any hypothec, mortgage or other charge over any asset of a licensed company or of the Authority;
- (e) valuations made on behalf of a licensed company or of the Authority;
- (f) receipts given by a licensed company or by the Authority;
- (g) any application filed by a licensed company or by the Authority;
- (h) insurance policies issued in favour of a licensed company or of the Authority.

Exemption from duty.
Amended by:
X. 1997.7.
Cap. 364.

20A. (1) With effect from such date* as may be determined by the Minister by order in the Gazette, the provisions of articles 18, 19 and 20 shall only be applicable to companies which were licensed under this Act on the day immediately preceding such date, and the said articles shall continue to apply to these companies up to and including the year of assessment 2021.

Transitory provisions with respect to articles 18, 19 and 20.
Added by:
IV. 2001.35.
Amended by:
IV. 2003.18.

(2) Notwithstanding the provisions of subarticle (1), with effect from the year of assessment 2004, no person shall be entitled to the benefits provided by articles 18 and 19 and with effect from the first day of January 2003 no person shall be entitled to the benefits provided by article 20:

Provided that a person may qualify for such benefits as may be applicable to him under the Business Promotion Act.

Cap. 325.

*See Legal Notices 134 and 243 of 2001 .

Exemption from
Exchange Control.
Cap. 233.

21. (1) Subject to the provisions of subarticle (2), licensed companies shall be exempt from the provisions of the Exchange Control Act, to the extent that such exemption shall ascertain:

- (a) free and unrestricted foreign exchange transfers by licensed companies;
- (b) that no limits shall be set regarding the holding of shares in licensed companies by persons not resident in Malta;
- (c) unrestricted repatriation of dividends paid by licensed companies where the dividends are exempt from income tax under the provisions of article 19;
- (d) free transfers of shares in licensed companies;
- (e) unrestricted repatriation of the proceeds of liquidation of licensed companies;
- (f) right of free management by licensed companies of their foreign currency;
- (g) the unrestricted repatriation of any sum due as wages or salaries to expatriate employees referred to in article 22:

Provided that such exemptions shall not apply (except for normal banking transactions) in respect of transactions and operations carried out with persons resident in Malta.

(2) The exemptions granted by this article shall only be due to licensed companies in which Maltese citizens (including companies) are entitled to less than forty per cent of the nominal value of the issued share capital, excluding any part thereof which, neither as regard dividends nor as regard capital, carries any right to participate in any distribution of profits beyond a specified amount.

Expatriate
employees.
Amended by:
IV. 2001.35.
Cap. 217.

22. (1) The Authority may certify that an individual who is not an exempt person under the Immigration Act, would, if granted a licence under the said Act to be employed with a licensed company, or with the Authority, contribute through his technical or managerial knowledge and experience towards the proper and fruitful establishment, development, maintenance, operation, management, control or conservation of a Freeport or the Authority, and of their operations.

Cap. 123.

(2) Where subject to the provisions of the Immigration Act, an individual who is not domiciled in Malta or who, if so domiciled, is not ordinarily resident therein, is employed with a licensed company or with the Authority, the income tax on the chargeable income of such an individual shall be charged at the rates contemplated by the Income Tax Act, so however that any rate of tax in excess of thirty cents on every lira shall be reduced to thirty cents.

(3) Individuals referred to in subarticle (2) who are employed with a licensed company or with the Authority, and such licensed company and the Authority in respect of such individuals, shall be entitled to be exempt from the provisions of the Social Security Act, and of any enactment replacing that law.

Cap. 318.

(4) The used personal belongings, including one motor car suitable for family use, of any individual referred to in subarticle (2) of this article, imported into Malta not later than six months after his first taking up residence in Malta, may be so imported free of customs duty:

Provided that duty shall be payable on anything imported free of duty under this subarticle if and when such thing is sold, assigned or otherwise transferred to a person resident in Malta:

Provided further that with effect from such date as may be determined by the Minister by order in the Gazette, the provisions of this subarticle shall only be applicable with respect to importations made prior to that date.

(5) With effect from such year of assessment* as may be determined by the Minister by order in the Gazette, the provisions of subarticles (2) and (3) shall only apply with respect to remuneration paid in the year preceding that year of assessment and in the following four years, provided that such remuneration is paid to individuals in respect of whom this article applied in the year preceding the year of assessment determined by the Minister as aforesaid.

23. (1) Notwithstanding anything contained in the Death and Donation Duty Act[†], no duty shall be payable thereunder in respect of any interest in a licensed company possessed by any person when -

Exemption from death and donation duty.
Cap. 239.

- (a) such interest is comprised in a chargeable transmission under the said Act, and
- (b) the former owner thereof before the happening of the chargeable transmission and the new owner after its happening are both persons not domiciled in Malta, and
- (c) the interest is an interest to which the provisions of this article apply.

(2) The provisions of this article apply to an interest in a licensed company being -

- (a) any share in or debenture thereof;
- (b) any dividend distributed or due to be distributed by the said company;
- (c) any money loaned or advanced to the company, and any other credit whatsoever, irrespective of the way in which the loan or advance has been made, or has

*See Legal Notice 134 of 2001.

†Repealed by Act XVI of 1993.

resulted, and the security granted therefor;

- (d) any interest on money or other income paid or due to be paid by the company before the happening of the chargeable transmission.

General rule regarding exemptions.

24. The exemptions contemplated by this Part shall only apply to transactions and operations which are relevant to the purposes for which the Authority has been appointed pursuant to the provisions of article 5(1), or for which a company has been or will be licensed pursuant to the provisions of article 11(4).

PART VI

ADMINISTRATIVE ARRANGEMENTS

Records and certification. Amended by: X. 1997.8.

25. (1) No exemption or other benefit which may be granted or obtained under this Act shall be so granted or obtained, and no entitlement thereto shall exist notwithstanding anything contained in this Act unless -

- (a) proper and sufficient records and accounts, including appropriate supporting documentation, have been maintained for the relative period, by the relative licensed company;
- (b) separate accounts have been kept as may be necessary to identify and quantify the exemption or benefit;
- (c) such computations, returns, statements, particulars or documents as may be necessary to establish clearly the entitlement to an exemption or benefit are submitted as appropriate, including submission to the Authority.

Cap. 386.

(2) No claim, statement, account or document whatsoever that is in any way connected with the entitlement or presumed entitlement to any exemption or benefit contemplated under the provisions of this Act shall be considered or taken into account unless certified by a certified public accountant and auditor to the same effect that the balance sheet and profit and loss account of a company are to be certified under the provisions of the Companies Act, and for the purposes of this subarticle the provisions of articles 179 and 181 of the said Act shall apply.

Information required by the Authority.

26. Any licensed company or other person purporting or seeking to obtain or enjoy any exemption or other benefit under the provisions of this Act, or who has obtained such an exemption or other benefit, shall -

- (a) furnish to the Authority and to any other authority such information, accounts, statements and other documents which the Authority or that other authority may deem to be necessary for the purposes of this Act;

- (b) attend or send a representative to attend before the Authority or other authority and answer any question lawfully made in connection therewith;
- (c) provide the Authority or other authority with reasonable access to all premises, places, books and other documents, and allow copies to be made thereof.

27. (1) Where a licensed company or its officers or employees are granted or become entitled to an exemption or other benefit under the provisions of this Act, there shall be deemed to have come into existence a contract between the company or its officers or employees and the Government, or the Authority, as the case may be, guaranteeing for a period of fifteen years from the grant of the relative licence, the grant and enjoyment of the relative exemption or other benefit in accordance with the provisions of this Act.

Guarantee of exemptions and benefits.

(2) Where any exemption or other benefit is not due as of right under the provisions of this Act to any beneficiary, but depends on the use of discretion vested in any person or authority, the use by such person or authority of the discretion so vested in him in favour of a beneficiary shall constitute a contract between the beneficiary and the Government, or the Authority, as the case may be, guaranteeing for a period of fifteen years from the use of such discretion, the grant and enjoyment of the exemption or other benefit in accordance with the provisions of this Act.

(3) The guarantees given by this article shall apply also against retrospective action, whether by legislation or otherwise, as would nullify any rights, exemptions or privileges so guaranteed.

(4) The provisions of this article shall be without prejudice to the controlling and regulatory provisions laid down in this Act.

(5) A licensed company or other beneficiary may, at any time, by notice in writing, elect not to be granted or to take any incentive or benefit otherwise due to it or him under the provisions of this Act. Such notice shall specify the date from which its election shall be operative, which date shall invariably be the first day of a year, or of a year of assessment or of any other financial period, and shall be irrevocable and indefinite in respect of the matters on account of which it has been made.

28. (1) Where a licensed company fails to comply or cause compliance with any of the conditions attached to the grant of an exemption or other benefit under this Act or engages in activities inconsistent with the objectives of a Freeport, the Authority may either revoke the grant of the exemption or other benefit or by notice in writing require such company within thirty days of such notice -

Revocation for non-compliance.

- (a) to comply or cause compliance with such conditions or to terminate any activity inconsistent with a Freeport; or
- (b) to establish to the satisfaction of the Authority that failure to comply or cause compliance with such

conditions, was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such conditions, within such time as the Authority may consider reasonable.

(2) Where a company establishes to the satisfaction of the Authority that failure to comply or cause compliance with any conditions attached to the grant of any incentive or benefit under this Act was due to some cause beyond its control, and that there are actual prospects of complying or causing compliance with such conditions within a reasonable time, the Authority may authorise such reasonable postponement for the purpose of compliance with such conditions, as it thinks fit.

(3) Where a licensed company -

(a) having been required so to do by notice under subarticle (1), fails to establish to the satisfaction of the Authority that its failure to comply or cause compliance with any conditions attached to the grant of any exemption or other benefit was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such conditions within a reasonable time; or

(b) having been allowed a postponement under subarticle (2) of this article, fails within the period of such postponement to comply or cause compliance with such conditions,

the Authority may revoke any exemption or other benefit granted to the company under this Act, and such revocation shall be operative from such date as may be determined by the Authority.

(4) Where the grant of any exemption or other benefit to a licensed company under this Act is revoked in accordance with the provisions of this article, such company shall pay to the Government or to the Authority, as the case may be, any sums which it would have paid to the Government or the Authority but for the provisions of this Act.

Procedure
regarding disputes.

29. (1) The Authority shall not -

(a) revoke any licence granted under article 11; or

(b) revoke any grant or exemption or other benefit under this Act,

unless the company in question has -

(a) been notified in writing of the action the Authority proposes to take; and

(b) has had an opportunity for a hearing before the Authority.

(2) Any dispute relating to the interpretation of the provisions of any agreement under this Act or the right of any party under this Act or the exercise by the Authority of any powers vested in it by this Act (except for the matters contemplated in articles 8, 9, 10, 11 and 14) shall, unless the parties agree otherwise, be referred for arbitration and settlement to the Appeals Board constituted under article 28 of the Industrial Development Act:

Cap. 325.

Provided that no appeal shall lie from any award made by the said Board:

Provided further that proceedings before the Board shall be regulated, *mutatis mutandis*, as if reference under this article were an appeal filed to the Board under the said Act.

(3) Except for the purpose or in execution of a judgment given in pursuance of any action mentioned in subarticle (5), no property of any kind belonging to a licensed company shall be subject to any precautionary or executive act or warrant as is mentioned in the Code of Organization and Civil Procedure.

Cap. 12.

(4) No director or other officer of any licensed company, and no person being a member of or having an interest in any such company, shall be subject to any precautionary or executive act or warrant as aforesaid in respect of any obligation or other liability of the company.

(5) An action referred to in subarticle (3) is either-

- (a) an action for the enforcement of an obligation or other liability of the company; or
- (b) an action for the recovery of any property acquired or held by the company, or otherwise in its possession or control, and originating from any transaction, operation or activity referred to in article 12(2).

(6) Notwithstanding the foregoing provisions of this article, no warrant or other act shall be issued by the court unless the applicant first satisfies the court that the warrant or other act may be issued under this article.

30. (1) The Minister may from time to time make regulations generally for carrying out or putting into effect the provisions of this Act and may, in particular, by those regulations prescribe for any such matters as are authorised by this Act to be prescribed.

Power to make regulations.

(2) Regulations made by the Minister or rules made by the Authority, as the case may be, under any of the provisions of this Act may be made in the English language only.

PART VII

OFFENCES AND PENALTIES

31. Any person who, without reasonable excuse, prepares any incorrect statement or gives any incorrect information in relation to

Penalty for making incorrect statements, etc.

any matter or thing falling under this Act, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five hundred liri and not exceeding five thousand liri.

Provisions relating to fraud, etc.

32. Any person who wilfully with intent to obtain any incentive or benefit 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 one thousand liri and not exceeding ten thousand liri or to imprisonment for any term not exceeding two years, or to both such fine and imprisonment.

General penalty.

33. If any person contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no special punishment is provided, such person shall be guilty of an offence and shall for each such offence be liable, on conviction, to a fine (*multa*) of not less than one hundred liri and not more than five hundred liri.

Provision with respect to offences.

34. The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the same acts or omissions and shall not, in particular, affect the application of any higher punishment under any other law.

Prescription for proceedings.

35. Proceedings for an offence under this Act may be commenced at any time within five years from the date of the commission of the offence.

SCHEDULE
[ARTICLE 3]

