

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

THE COMPANIES ACT

The Companies Act, 1995 came into force on 1 January 1996. The Companies Act replaced the commercial Partnerships Ordinance of 1962 which had originally introduced modern company law principles into Maltese law.

The Act built on the existing rules and broad structures, improving and updating them to meet the needs of a more sophisticated and complex financial and commercial environment. It not only modernised and upgraded Maltese company law, but it also introduced the principles and standards established in the Company Law Harmonisation Directives of the European Union.

The Act defines the powers and duties of the Registrar of Companies who is responsible for ensuring compliance with the provision of the Act. Such person is appointed by the Minister of Finance.

The Act provides the statutory basis for the regulation of commercial partnerships. A commercial partnership may be of the following kind:

- the limited liability company, based on the English company model;
- the partnership ‘en nom collectif’, where the partners have unlimited liability for the debts of the partnership;
- the partnership ‘en commandite’ where at least one partner has unlimited liability for the debts of the partnership. This category is similar to the limited partnership existing in certain foreign countries..

These commercial partnerships, once constituted, enjoy a distinct legal personality.

The Act also recognises and regulates corporate investment vehicles such as the SICAVs which is a limited liability company with variable share capital and the INVCO which is an investment company with fixed share capital. These two structures are useful collective investment vehicles.

The Act has a number of important features:

- (a) there is a clearly defined emphasis on corporate responsibility, whereby directors and other company officers are expected to perform and to conduct themselves with reasonable diligence and competence;
- (b) detailed provisions as to the form and content of the accounts of a company on the fourth and seventh company law harmonisation directives;
- (c) detailed provisions which allow for the mergers and division or de-merger of companies;
- (d) a company may denominate its share capital in a foreign currency and to draw up its accounts in same currency;
- (e) clear and practical provisions regulating the pledging of company shares and other securities;

- (f) rules to safeguard the interest of third parties who deal in good faith with the company;
- (g) detailed provisions that govern the possibility of a company acquiring its own shares;
- (h) mechanisms which allow for the possibility of a change in a company's status - from a public company to a private company and vice versa;
- (i) structures and rules for the dissolution and winding up of companies, providing for two main

forms of winding-up procedures:

- winding up by the Court
- voluntary winding up.