

MEMO FOR CABINET BY THE HON. PRIME MINISTERMarsaxxett Harbour Development Project

Following approval in Parliament of the principal elements of the Marsaxxett project the Government Advisory Committee dealing with the Manoel Island project has had further discussions with Consortium representatives. In the light of these discussions agreement has been reached on (a) the Memorandum and Articles of Association of the proposed Joint Company, and (b) the terms of a Management Contract to be entered into eventually between the Consortium and the Joint Company. The agreed texts are at enclosures A and B.

The terms of the Memorandum follow the usual pattern. The objects are stated and there is a full recital of 'powers' which the lawyers consider should be written into the memorandum. There is also the capital clause (5) which sets the level of authorized capital and the respective shares of the two parties; and there is provision for a Board of nine on the approved lines. The Articles contain provisions governing the issue, transmission and transfer of shares which will ensure that Government remains at all times in a majority position in the company. The articles relating to general meetings reflect the majority principle; and the provisions governing the appointment of Directors complete the pattern by making the several Directors answerable to the general meeting (where our share majority will take effect) as well as to their respective appointors. The Chairman, of course, is also answerable to the general meeting.

The Management Agreement has been drawn up along the lines directed by the Government. It is for a fifteen year term, reviewable every three years at our instance, though it can be terminated within a three year term by either party "for a just cause". This extreme provision is there in case circumstances should arise which would make a continuation of the management relationship between the Consortium and MHECO undesirable. Clause (2) spells out the Consortium's responsibilities and duties in detail. You may wish to refer to it. The emphasis is on Board Control, supported by an advisory service which the Consortium will put at the Company's disposal in the several respects set out, and underpinned by close executive control (by the Consortium) over the details of administration and development as the Board of the Company may from time to time assign to them. Clause (3) requires the Consortium to put at the Company's disposal at all times

during the life of the Management Agreement a 'balance of expertise' which would permit it to comply with its obligations to the Company's satisfaction. The Consortium will serve throughout without fee (Clause 4). The Consortium will give what amounts to collateral for their continued 'commitment' to the scheme by agreeing that, for the duration of their service as managers they (a) will not transfer any of their shares in the Company to third parties, and (b) will ensure that no transfer of shares within the Consortium is made to any person not approved by the Joint Company.

With the agreement reached on the Memorandum and Articles the way seems clear for us to proceed with the formation of the Company. Ministers may wish to agree that this should be done on the basis of enclosures A and B. The new Company, when it is formed, will be advised to enter into a relationship with the Consortium in terms of enclosure B. Two other issues remain: negotiation of Manoel Island (and Marina) lease and the question of a Master Plan for Manoel Island. On both matters discussions are still taking place and it will be for the Company eventually to finalise business directly with the Government. The terms of lease have of course already been determined in outline by Ministers and agreed with the Consortium. The Government's dealings will however from now on be with the Company (as distinct from the Consortium) and it will be necessary for the company to accept, and work out further details in respect of, the terms conceded by the Government.

L-ARKIVI NAZZJONALI TA' MALTA

29 SEP 1989

MEMORANDUM

and

ARTICLES OF ASSOCIATION

of

THE MANOEL ISLAND AND MALTA MARINA COMPANY LIMITED

(MHEICO)

L-ARKIVJI NAZZJONALI TA' MALTA

otherwise turn to account such land, buildings and erections and to provide all necessary conveniences and amenities as required for tenants, occupiers and customers.

- (c) To enter into agreements with builders, contractors, agents, tenants and purchasers and to advance money to builders and others on the security of lands with or without buildings erected thereon and to guarantee moneys advanced by others on the security of lands with or without buildings erected thereon and to carry on business of builders, contractors, decorators, builders, contractors, decorators, builders' merchants, carriers, auctioneers, surveyors and valuers, proprietors of hotels, cafes, apartment houses, restaurants, clubs, refreshment rooms, boarding houses, lodging houses, concert and other halls, baths, laundries, licensed victuallers, public amusement contractors, bakers, confectioners, tobacconists, caterers, garage and mooring proprietor, motor car and boat hirers, proprietors and storers, dealers in petrol, oil and other motor and marine requisites or accessories and every other business connected with the development.
- (d) To construct, equip, convert, alter and maintain cinemas, theatres, music halls, concert halls, dance halls, assembly rooms, restaurants, cafes, tea rooms, refreshment rooms, bars, swimming baths, skating rinks, entertaining palaces, amusement parks, casinos, and other places for amusement, recreation or entertainment, with all conveniences, accommodation and amenities and to carry on the business as proprietors and managers of all such places as aforesaid and as film producers, distributors and renters, and as restaurant and refreshment rooms proprietors, wine, spirit and beer merchants, chocolate and sweet merchants, newsmen, booksellers, printers, publishers, entertainment and theatrical agents, electrical and general engineers and contractors.
- (e) To take out, apply for and acquire by original grant or by transfer or assignment or otherwise letters patent, brevets d'invention licences, concessions, secret processes and inventions and to use and exercise the same or to sell, assign and develop the same or grant licences in respect thereof or otherwise turn the same to the advantage of the Company.
- (f) To erect, construct, alter and maintain buildings, erections and works of all kinds, whether on the property of the Company or not.
- (g) To enter into partnership or joint purse agreement with or to make any agreement or arrangement with any other company, firm or person carrying on business similar or complementary to the business

of this Company or any part thereof or amalgamate with any such company, firm or persons.

- (h) To sell the whole or any part of the undertaking of the Company for cash, shares, debentures or any other consideration.
- (i) To acquire by purchase or otherwise and either for cash, shares or debentures in the Company or any other consideration the whole or any part of the business of any person, firm or company carrying on any of the businesses which the Company is authorized to carry on,
- (j) To borrow or raise money in such manner as the Company shall think fit, and in particular by the issue of debentures or other securities or rights and to secure the repayment of any money borrowed or raised by hypothecation, charge or lien upon the whole or any of the Company's property or assets including its uncalled capital, and also by a similar hypothecation charge or lien to secure and guarantee the performance by the Company of any debt, liability or obligation it may undertake.
- (k) To remunerate any company, firm or person for services rendered in the issue or placing of the shares, stock, debentures, debenture stock or other obligations of the Company and to pay all expenses incurred in connection with the creation, issue and placing of any such shares, stock, debentures, debenture stock or other obligation.
- (l) To grant pensions to employees and ex-employees and directors and ex-directors or other officers or ex-officers of the Company, their widows, children and dependants and to subscribe to benevolent and other funds for the benefit of any such persons and to subscribe to or assist in the promotion of any charitable benevolent or public purpose or object.
- (m) To promote or assist in the promotion of any company having objects similar to or complementary to the objects of this Company and to subscribe, underwrite, buy or hold the shares, stock, debentures, debenture stock or other obligations of such company.
- (n) To promote the Company's interests by advertising its products and service in any manner and in particular to give prizes or gifts to customers or potential customers and to promote or take part in competitions, displays and exhibitions.
- (o) To distribute all or any of the assets of the Company in specie between the members of the Company in accordance with their rights.

- (p) To carry out the objects of the Company and to do all or any of the above things either as principals, or agents, contractors or otherwise and either alone or in conjunction with others and either by or through managers, agents, sub-contractors or otherwise.
- (q) To do all such other things as may be deemed incidental or conducive to the attainment of the objects of the Company or any of them.

5. (1) The authorized capital of the Company is two hundred thousand pounds (£200,000) divided into one hundred and two thousand pounds (£102,000) A Ordinary Shares of £1 each and ninety-eight thousand pounds (£98,000) B Ordinary Shares of £1 each.

(2) The initial issued share capital of the Company is five hundred pounds (£500) divided into two hundred and fifty-five (£255) A Ordinary Shares of £1 each 4/- paid and two hundred and forty-five pounds (£245) B Ordinary Shares of £1 each 4/- paid, allotted as follows:-

The Government of Malta	255A Ordinary Shares
Mediterranean Marina Consortium Company (Malta) Limited	245B Ordinary Shares

6. The Board of Directors shall consist of nine directors, of whom four to be appointed by the holders of the A Ordinary shares, another four by the holders of the B Ordinary Shares and the remaining Director, who shall be the Chairman, to be appointed by the Company in General Meeting.

7. The First Directors of the company are:-

ARTICLES OF ASSOCIATION

Preliminary

1. The Regulations contained in Part 1 of the First Schedule to the Commercial Partnerships Ordinance, 1962 (such schedule being hereinafter called "the First Schedule") shall apply to the Company save in so far as they are excluded or varied hereby.
2. Subject to any direction to the contrary given by an extraordinary resolution of the Company, the whole of the unissued share of the Company (whether part of the original or any additional capital) shall be under the control of the Board of Directors: Provided always that - (a) any issue of shares (whether part of the original or any additional capital) shall be so made as to maintain at all times the original proportion in voting powers between the holders of the "A" Ordinary Shares and those of the "B" Ordinary Shares, namely 51% and 49% respectively; (b) all unissued shares of a given class shall before issue be offered to the holders of that class in proportion to the number of shares of that class held by them.
3. Regulation I of Part I of First Schedule shall be read and construed as if the word "extraordinary" were substituted to the word "ordinary".

4. Unless otherwise provided in the terms of issue, each share in the Company shall give right to one vote, irrespective of the letter by which it is denoted.

Transfer and Transmission of Shares

5. The right to transfer the shares of the Company is restricted in the manner and to the extent prescribed in these Articles, provided that in no case may part of a share form the object of a transfer or a transmission.

6. Any "A" Ordinary Share may be transferred to any other holder of an "A" Ordinary Share and any "B" Ordinary Share may be transferred to any other holder of a "B" Ordinary Share.

7. (1) Any member who intends to transfer any "A" Ordinary Share (hereinafter called "the proposing transferor") to any person, other than a holder of an "A" Ordinary Share, shall give notice in writing (hereinafter called "the Transfer Notice") to the Company that he desires to transfer the same. The Transfer Notice shall constitute the Company his agent for the sale of the shares to the members of the Company and shall not be revocable except with the sanction of the Board of Directors or on the expiration of six months from date thereof.

7. (2) The shares specified in the Transfer Notice shall be offered by the Board of Directors at their fair value to all the other holders of the "A" Ordinary Shares, who shall be invited to state in writing within thirty (30) days from the date of the offer whether they are willing to purchase any, and in the affirmative what maximum number of the said shares. At the expiration of the said 30 days the Board of Directors shall allocate the said shares to or amongst the holder or holders of the "A" Ordinary Shares who shall have expressed his or their willingness to purchase as aforesaid, and, if more than one, so far as may be pro-rata between them provided that no holder of an "A" Ordinary Share shall be obliged to take more than the maximum number of shares so notified by him as aforesaid.

(3) Should the said shares or any of them be not taken up by the holders of the "A" Ordinary Shares, the shares not taken up shall be offered at their fair value by the Board of Directors to all the holders of the "B" Ordinary Shares and sub-article (2) of this Article shall apply to this offer with the substitution of references to holders of the "B" Ordinary Shares, to holder or holders of the "B" Ordinary Shares and to the holder of "B" Ordinary Share for references to holders of the "A" Ordinary Shares, to holder or holders of the "A" Ordinary Shares and to the holder of an "A" Ordinary Share respectively in the said sub-article.

(4) In the event of the whole of the said shares not being taken up by the holders of the "A" Ordinary Shares and/or the holders of the "B" Ordinary Shares under the preceding sub-articles of this Article, the proposing transferor may at any time within three calendar months after the expiration of six months beginning on the date of the Transfer Notice transfer the shares not taken up to any person (subject to Article 9 hereof) at any price.

(5) For the purposes of this Article "fair value" means the value of the shares as assessed by the Arbiters of the Company.

8. In the case of a transfer of any "B" Ordinary Share to any other person than a holder of a "B" Ordinary Share or any original subscriber of the Mediterranean Marine Consortium (Malta)

Limited Article 7. hereof shall apply with the substitution of references to "B" Ordinary Share or Shares or holder or holders thereof and to "L" Ordinary Share or Shares or holder or holders thereof for references to "A" Ordinary Share or Shares or holder or holders thereof and to "E" Ordinary Share or Shares or holder or holders thereof respectively in the said Article.

9. The Board of Directors may in their absolute discretion and without assigning any reason therefore decline to register any transfer of any Ordinary Share or Shares to any person other than a member of the Company.

10. If the Board of Directors refuses to register a transfer it shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

11. Any person becoming entitled to a share other than an ordinary share in consequence of the death of a member may, upon such evidence being produced as may from time to time, properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him be registered as the transferee thereof. If the person so becoming entitled shall elect to be registered himself he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share.

12. Regulations 14, 15, 18 and 19 of Part I of the 1st Schedule shall not apply to the Company.

General Meetings

13. No business shall be transacted at any General Meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business. For all purposes the quorum shall consist of two members present in person or by proxy, of whom one must be a holder of any "A" Ordinary Share and the other holder of a "B" Ordinary Share. Regulation 16 of Part I of the First Schedule shall not apply to the Company.

14. A poll may be demanded at any General Meeting by the Chairman or by any member present in person or by proxy and entitled to vote. Regulation 41 of Part I of the First Schedule shall be modified accordingly.

15. Subject to any rights of restrictions for the time being attached to any class or classes of shares, whether on a show of hands or in a poll :-

- (a) Members shall have one vote for each share of which they are the holders.
- (b) Votes may be given either personally or by proxy.

Regulation 45 of Part I of the First Schedule shall not apply to the Company.

An ordinary resolution by the Company in General Meeting shall be deemed to have been validly carried if consented to by a majority of the votes of the members present in person or by proxy.

17. An extraordinary resolution by the Company in General Meeting shall be deemed to have been validly carried if consented to by a number of members present in person or by proxy having in the aggregate not less than three-fourths in nominal value of the

shares conferring the right to attend and vote at a meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

Directors

18. A Director shall hold office until the conclusion of the First Annual General Meeting held after his appointment but may be removed at any time by his appointors.
19. Notwithstanding anything contained in Article 18. hereof, any Director may be removed by the Company in General Meeting in accordance with the provisions of Section 122 of the Commercial Partnerships Ordinance 1962, provided that a vacancy created by such removal shall be filled as a casual vacancy.
20. A casual vacancy created by the removal, death, resignation or incapacity of a Director shall be filled by a person nominated by the appointors of that Director.
21. A Director may, if he is unable to attend a meeting, authorise any other Director to be his Alternate Director; the person so authorised shall have the right to attend and vote for him in his absence at any Board Meeting or Meetings. The person so authorised shall have a vote as a Director for each Director by whom he is so authorised. Any such authority must be in writing and must be deposited at the registered office of the Company or with the Chairman of the Meeting before the Alternate Director attends the first Meeting at which the authority is intended to be acted upon.
22. The Board of Directors shall have the power to transact all business of whatsoever nature not expressly reserved by the Memorandum and Articles of the Company or by any provision contained in any law for the time being in force to be exercised by the Company in General Meeting.
23. A Director may hold any other office or place of profit under the Company (other than that of Auditor) on such terms as to remuneration and otherwise as the Board of Directors may determine.
24. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman shall have a second or casting vote. The Chairman may, and the secretary on the requisition of two directors shall, at any time summon a meeting of the Directors.
25. The quorum necessary for the transaction of the business of the Directors shall be four, of whom two from amongst the appointees of the holders of the "A" Ordinary Shares and two from amongst the appointees of the holders of the "B" Ordinary Shares.
26. If at any meeting of the Board of Directors the Chairman is not present within fifteen minutes after the time appointed for holding the same the Directors present may choose one of their number to be Chairman of the meeting, and he shall have a casting vote.
27. The proviso to regulation 53, regulations 59 to 67

inclusive of Part I of the First Schedule, shall not apply to the Company and all other references in Part I of the First Schedule to retirement by rotation shall be disregarded.

Representation of the Company

28. Deeds of whatsoever nature engaging the Company and all other documents purporting to bind the Company, as well as cheques, bills of exchange, promissory notes and other negotiable instruments shall be signed and executed on behalf of the Company by two Directors of whom one is to be an appointee of the holders of the "A" Ordinary Shares and the other an appointee of the holders of the "B" Ordinary Shares, or by such person or persons jointly or severally as the Board of Directors may by resolution decide.

29. The Chairman or any Director or such person or persons delegated in writing for that purpose by the Board of Directors shall represent the Company in judicial proceedings, provided that no proceedings may be instituted by the Company without the Board's authority.

AGREEMENT made this the day of
BETWEEN

WHEREBY the said parties form and constitute between
themselves a limited liability company whose articles of association and articles are the following: -

MEMORANDUM OF ASSOCIATION

1. The name of the Company is THE MANOEL ISLAND
AND ISLE MARINA COMPANY LIMITED (LIMITED).
2. The registered office of the Company shall be
at , or any other address in Malta as the
Board of Directors may from time to time determine.
3. The objects for which the Company is established
are:-
 - (a) To acquire by title of temporary emphyteusis
Manoel Island and stretches of water frontage
in Marsamxett Harbour subject to such terms
and conditions as the Company may think fit.
 - (b) To carry out and administer the development
of Manoel Island.
 - (c) To develop marina facilities in Marsamxett
harbour and to administer the operation of
the Marina.
 - (d) To provide suitable protection for the safe
accommodation at all times of Yachts in
Marsamxett Harbour using marina facilities.
4. For the attainment of these objects the Company
shall have power:-
 - (a) To carry on the business of land, property
and marina development and the promotion
thereof, and to buy, take on lease, or
otherwise acquire, and to sell, let on lease,
or otherwise turn to account, lands and
buildings, and any rights and privileges
connected therewith and in particular to
develop any such land by laying out, constru-
cting and maintaining roads, sewers, drains
and waterworks and by erecting buildings
thereon and laying out parks, gardens, sports,
and recreation grounds and providing other
amenities and conveniences.
 - (b) To purchase, take on lease or otherwise
acquire land with or without buildings or other
erections thereon of any and every description
and to build, construct and procure the
building or construction of houses, flats,
maisonettes, offices, shops, suites, chambers,
hotels, factories and other buildings or
erections of any and every description and to
sell, let on lease or agreement, manage or

L-ARKIVJI NAZZJONALI TA' MALTA

2. continued

- (d) submit to the Board of MIMCO at regular intervals all necessary progress charts, programmes, net-work schedules and analyses, cost forecasts and financial statements, and further present a regular report to the said Board as to the progress of the scheme in all its aspects;
 - (e) advise the Board of MIMCO on the appointment of such public relations, advertising and marketing advisors as may from time to time be thought necessary and be responsible for their direction and control; and
 - (f) generally exercise such executive control over the details of administration and development as the Board of MIMCO may from time to time assign to them.
3. The Consortium will ensure that the range and balance of expertise put at the disposal of MIMCO at the commencement of this Agreement will be maintained to the reasonable satisfaction of the Board of MIMCO during its continuance and for this purpose will consult with MIMCO on any proposed change of the Directors of the Consortium.
4. The Consortium will carry out their duties and obligations arising out of this Agreement without fee.
5. So long as this Agreement is in force, the Consortium -
- (a) Will not transfer any B Ordinary Shares held by them in MIMCO to third parties;
 - (b) Will ensure that no transfer of shares of the Consortium is made to any person not approved of by MIMCO.

IN WITNESS whereof the said parties have hereunto set their hands on the day month and year first above written.