

Memorandum for Cabinet by the
Minister of Trade, Industry and Agriculture on proposed
Amendments to the Commercial Partnerships Ordinance, 1962.

The Commercial Partnerships Ordinance was brought into effect on the 19th April, 1965 and from experience gained during the first two years of its administration, various amendments are considered vital.

2. Power to refuse to register "names" of companies as well as power to oblige companies to change undesirable names:

A large number of companies are adopting misleading names or names which clash with various Government institutions others are incorporating the word "Malta" in the name of the company and carrying on activities which might bring the name of this country in disrepute. To quote three glaring cases there are registered (1) The Malta Industrial Development Corporation Ltd; (2) The Central Bank (Registrars) Malta Ltd. and (3) The Malta Banking Company Ltd. with a paid up share capital of £100.

3. Trading activities by foreigners availing themselves of loopholes in the Immigration Regulations and Work Permit Regulations:

The activities of foreigners in trading is almost unrestrained. This is being effected either (a) by the employment of Maltese minor employees or (b) with the connivance of Maltese nationals posing as Managing Directors with the actual work performed by so called tourists e.g. a textile importer as manager of an insurance broker, a cement importer as an importer of meat and fish, a lawyer as manager of a boat charter company and a lawyer as a managing director of a beach concession etc. and it is proposed to issue a trading certificate to authorise companies to carry on trading activities.

It might be argued that such restrictions should not form part of the Commercial Partnerships Ordinance but should be subject of ad hoc legislation. The method adopted is immaterial to this Ministry provided that it is quick and efficient; however, it is worthwhile noting that both eventualities are catered for in the United Kingdom Companies Act 1948 (Secs. 17 and 109)

/4. The haphazard

4. The haphazard drafting of the memorandum of association by inexperienced laymen and the even more erratic way of amending such deeds by company directors is making the work of lawyers asked for professional advice almost impossible. It is proposed to lay down that all paragraphs be numbered and that alterations effected should refer to the number of the clause or article being altered.

5. Delivery of documents constituting a company may only be effected by a subscriber. It is proposed to bring the relative section into line with that dealing with partnerships en non collectif thus authorising a subscriber to appoint an attorney for such purpose.

6. Although the law lays down that all companies should have an auditor, no penalty is laid down in case of default. Public and private companies are covered by other sections under penalties which oblige them to appoint an auditor but private exempt companies are not and may flout the law with complete immunity and a penalty clause is suggested to Sec. 139 of the Ordinance.

7. The Ordinance lays down the procedure to be followed by oversea companies and partnerships which establish a place of business in Malta but nothing is laid down when such a place of business is closed down and it is proposed to provide for this eventuality.

8. The law does not provide any remedy when all the directors and shareholders of a company are residents outside Malta and refuse to comply with the provisions of the Ordinance and to pay the fees therein laid down. This is usually the case where the people concerned have lost all interest in the venture and do not take the trouble to dissolve the company. It is proposed to amend the law to enable the Registrar to strike off such companies from the Register.

9. Hon. Ministers are accordingly invited to agree on the foregoing amendments in order to enable the legal officers to prepare the necessary legislation.

3rd June 1967.