

CHAPTER 512

SMALL BUSINESS ACT

To enhance the operational environment for medium and small enterprises in order to facilitate their setting up and growth. It seeks to identify those areas where the existing regulatory environment can be improved in order to provide solutions that will benefit enterprises and make it easier for them to operate. It further sets up the Enterprise Consultative Council and the College of Regulators, two advisory bodies, which aim to provide a forum for consultation and social dialogue, advise Government on challenges faced by the business enterprise, address grievances which emanate from the business enterprise and come up with remedial action.

1st October, 2011;
1st January, 2015*
21st April, 2017†

ACT XI of 2011, as amended by Acts XVIII of 2015, XXV of 2015, XXVII of 2016 and XII of 2017.

PART I

Definitions and Declaration of Principles

1. The short title of this Act is the Small Business Act. Short title.
2. (1) In this Act, unless the context otherwise requires:
 - "business support measures" means any initiatives such as grants, rebates, exemptions and other forms of facilitation meant to make it easier for businesses to start up and operate;
 - "central entity" means an entity identified by article 5;
 - "College" means the College of Regulators established by article 13;
 - "consultation" means the seeking and giving of advice, information or opinion;
 - "Council" means the Enterprise Consultative Council established by article 10(1);
 - "customer satisfaction survey" is an exercise meant to analyse customer satisfaction and establish customer needs and expectations in order to identify any shortcomings or possible improvements in the service delivery;
 - "explanatory notes" means a document prepared by the department or other entity submitting an instrument to Parliament or the House of Representatives that explains in plain terms what the instrument seeks to achieve and is meant to address, it is

*Interpretation.
Amended by:
XXV. 2015.41;
XXVII. 2016.6.
XII. 2017.2.*

*See article 1(2) of the Act, as originally enacted, and Legal Notice 410 of 2011, which brought into force the provisions of the Act, except articles 3(2)(a) and (b), 4, 13, 15 and 16 thereof; and Legal Notice 1 of 2015 which brought into force article 3(2)(a) and (b) and article 4.

† Articles 13, 15 and 16 were brought into force as from 21st April, 2017 by Legal Notice 114 of 2017.

published and attached with the Act or Legal Notice but does not have legal standing;

Cap. 497. "government agency" means a body listed in the Fourth Schedule to the [Public Administration Act](#);

Cap. 497. "government department" means any entity in the public sector that is listed in the Second Schedule to the [Public Administration Act](#);

"government entity" means an organization, not being a government department, a government agency or a commercial partnership, in which government has a controlling interest, whether or not such an organization is established by law;

"instrument" means both primary and subsidiary legislation, including a bill which has not yet become law, and the transposition of a European Union Directive into Maltese law;

Cap. 463. "the Malta Enterprise" means the entity set up in terms of the [Malta Enterprise Act](#);

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

Cap. 422. "the National Statistics Office" means the Office set up under the [Malta Statistics Authority Act](#);

"public sector entities offering services to business" means the Authority responsible for Planning, the Authority responsible for the Environment and Resources, Jobsplus, the Inland Revenue Department, the Value Added Tax Department, the Department responsible for Commerce, the Malta Enterprise, the Regulator responsible for Energy and Water Services, the Authority responsible for Medicines, the Authority responsible for Competition and Consumer Affairs, the Authority responsible for Communications, the Customs Department, the Authority responsible for Financial Services, the Authority responsible for Gaming and any other entity as may be identified by the Minister from time to time;

"the Small Business Advisory Committee" means the body established by article 10(6);

"SME" means small and medium enterprises as defined in [Commission Recommendation 2003/361/EC](#) of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

"SME Test" means the impact assessment as set out in Schedule II;

"user guidelines" means a document prepared by the department or other entity that intends to enforce a new instrument in order to explain to the public in plain terms what will be required to abide by the provisions of the law, and what will be expected of it to ensure compliance.

(2) In the interpretation and application of this Act, the Minister shall, in such manner as he deems appropriate, give due consideration to the provisions of the European Charter for Small Enterprises.

PART II

**Functions of government departments and entities
which relate to business**

3. (1) Further to the fulfilment of the powers, functions and responsibilities attributed to a government department, government entity or government agency under the Public Administration Act, and under any other legislation concerning their area of competence, a government department, government entity or government agency shall endeavor to facilitate the carrying out of business activities.

General functions attributed to a government department, government entity or government agency.
Cap. 497.

(2) In fulfilment of its function under sub-article (1), a government department, government entity or government agency shall:

- (a) prior to submitting to Parliament or laying before the House of Representatives an instrument, assess the effect which the proposed instrument might have on SMEs' operating environment;
- (b) within two months from the date of its publication in the Gazette communicate the instrument, which has passed through Parliament or been laid before the House of Representatives, to all sectors affected by its introduction, and shall inform the affected business sectors of the date of the coming into force of the instrument:

Provided that no instrument, to which this sub-article applies, may come into force before the lapse of the two months referred to in this paragraph;

- (c) draw up explanatory notes in terms of Schedule III and ensure that they are published concurrently with, and attached to, the instrument;
- (d) compile and publish User's Guidelines to explain the requirements being imposed in any new instrument in accordance with paragraph (b), in sufficient time before the coming into force of such instrument to facilitate compliance; and
- (e) compile basic information on all pertinent rules and regulations within its remit as well as of business facilitation measures relevant to the setting up and running of an enterprise, and make this information easily available.

4. (1) In its function of carrying out an impact assessment in terms of article 3(2)(a) -

Assessment function.
Amended by:
XVIII. 2015.2.

- (a) in case of subsidiary legislation, a government department, government entity or government agency shall fill in the Impact Assessment Framework as set out in Schedule I, or as may be further established under any other legislation;

(b) any instrument which is determined to have an effect on SMEs, shall be accompanied by a report on the outcome of a SME Test which is to be carried out by the government department, government entity or government agency concerned following the procedure set out under Schedule II.

(2) The application of the SME Test under sub-article (1)(b) shall be carried out in coordination with the central entity identified under article 5, which entity shall solely be responsible for overseeing the implementation of Section 5 of the Impact Assessment Framework.

(3) The Impact Assessment Framework referred to in sub-article (1)(a) shall be published in the English version only.

Central entity.

5. (1) There shall be identified by Government a central entity which will have the necessary expertise in terms of human resource, knowledge or qualification in the application of the SME Test.

(2) It shall be the function of the central entity to:

(a) assist a government department, government entity or government agency in the application, analysis and interpretation of the SME Test;

(b) facilitate consultation by the government department, government entity or government agency with the relative SME bodies and representatives, including the Council and sub-committees nominated by the Council in terms of articles 10(6) and 11(3), on the proposed instrument in order to determine the effect which the said instrument might have on SMEs;

(c) help identify alternative measures aimed at mitigating the negative effect on SMEs identified in the SME Test without derogating from the aims which the instrument is meant to achieve.

(3) In the carrying out of its functions, the central entity shall:

(a) act objectively, transparently and efficiently;

(b) ensure that a uniform approach is applied by all government departments, government entities or government agencies in fulfilling the obligation under article 4(1); and

(c) act impartially from the government department, government entity or government agency proposing the instrument.

Function related to the provision of information.

6. In its function to provide information in terms of article 3(2)(e), a government department, government entity or government agency shall:

(a) organise all information within its remit related to the services provided by Government and information required by Government, which is necessary for the set up of an enterprise in Malta or for an enterprise to

operate and maintain an existing business in Malta;

- (b) provide the information collated under paragraph (a), to the Malta Enterprise or to such other entity in terms of article 8, in both official languages, and in a form to facilitate its communication by electronic means;
- (c) keep the information updated at all times and communicate such updates to the Malta Enterprise at once.

7. (1) Further to the fulfilment of the powers, functions and responsibilities attributed to a public sector entity offering services to business under any legislation concerning their area of competence, a public sector entity offering services to business shall carry out a customer satisfaction survey every two years, with the aim to establish the impact which its service is having on the enterprise sector.

Functions attributed to public sector entities offering services to business.

(2) The survey identified under sub-article (1) shall be conducted by the National Statistics Office, and shall include the collection, compilation, analysis, and publication of the data.

(3) All relative costs incurred by the National Statistics Office in the fulfilment of its function under sub-article (2) shall be shared amongst the public sector entities offering services to business.

(4) In the exercise of its function under sub-article (1), the public sector entity concerned shall collaborate with the National Statistics Office and shall make arrangements for the exchange of information and other forms of assistance as may be necessary.

(5) The results of the survey conducted under sub-article (2) shall be communicated to the College by the public sector entity concerned, which shall also make public actions that will be taken to rectify identified deficiencies. Any remedial actions shall take place within one year of the result of the survey conducted under sub-article (2).

8. Further to the fulfilment of the powers, functions and responsibilities attributed to Malta Enterprise under its legislation and any legislation concerning its area of competence, the Malta Enterprise, or such other entity so appointed by the Minister for such purpose, shall make available to the public all the information which it collects from the government department, government entity or government agency in terms of article 6(b), ensuring that this represents a complete reference of all Government imposed obligations and support measures applicable to businesses. Moreover it shall make this information available through a website which it shall create for such a purpose, and shall keep the information on the website updated at all times. This information will not replace the actual legislation or regulation.

Centralised information centre.

9. (1) It shall be the duty of any organization representing businesses to promote the drawing up, and where this is already existing, the wider and better use, of a business code of ethics amongst its members.

Promotion of code of ethics.

(2) In the exercise of its function under sub-article (1), the

organization concerned shall strive to enhance the relationship between clients and providers in the sector, by promoting the adoption of the principles which emanate from the code of ethics.

(3) A guide to the drawing up of a code of ethics is provided under Schedule IV.

PART III

Establishment of bodies

Establishment and composition of the Enterprise Consultative Council.
Amended by: XVIII. 2015.3; XII. 2017.3.

10. (1) There shall be a Council, to be called the Enterprise Consultative Council.

(2) The Council shall be a consultative and advisory body to the Government through the Minister, having a distinct legal personality, and shall consist of the following:

- (a) a Chairperson, who shall be the Minister;
- (b) fifteen other members representing the entities or Ministries responsible for enterprise or whose remit is relevant to the sector namely:
 - (i) the Department responsible for Commerce;
 - (ii) Malta Enterprise;
 - (iii) the Authority responsible for Competition and Consumer Affairs;
 - (iv) the Directorate responsible for Enterprise Policy within the Ministry responsible for the Economy;
 - (v) the Economic Policy Division within the Ministry responsible for Finance;
 - (vi) the Authority responsible for Financial Services;
 - (vii) the Department responsible for Local Government;
 - (viii) the Ministry responsible for Gozo;
 - (ix) the Authority responsible for Toursim;
 - (x) the Authority responsible for Planning;
 - (xi) the Ministry responsible for Rural Affairs;
 - (xii) the National Statistics Office;
 - (xiii) the Commissioner for Revenue;
 - (xiv) the Ministry responsible for Education and Employment; and
 - (xv) the Authority responsible for the Environment and Resources;
- (c) eleven members nominated by representatives from constituted bodies, namely the Malta Chamber of Commerce, Enterprise and Industry, the General Retailers and Traders Union, the Malta Hotels and Restaurants Association, the Gozo Business Chamber, the Gozo Tourism Association, the Malta Employers' Association, the National Council of Women, the Maltese Association of Women in Business, the

Foundation for Women Entrepreneurs, the Maltese Association for the Family Enterprises and the Institute of Financial Services Practitioners; and

(d) the Governor of the Central Bank of Malta, *ex officio*.

(3) For each of the members nominated in accordance with sub-article (2)(b), (c), and (d), there shall be an equal number of substitute members representing those same sectors or organizations and who shall have the right to attend meetings in the absence of the nominated members.

(4) The term of office of the members shall be of one year.

(5) The Council may act notwithstanding any vacancy amongst its members provided that there is a quorum present at the meeting.

(6) Subject to the provisions of this Act, and of any regulations made thereunder, the Council shall appoint a sub-committee to be known as the Small Business Advisory Committee, which shall be made up of persons selected from the business community with experience of running different types of micro enterprises or having worked with small businesses.

(7) The Minister may, after consultation with the Council, make regulations regarding the procedures to be adopted by the Council, including the quorum for meetings, the filing of casual vacancies, loss of mandate and substitution of members. For the purpose of this article, a quorum shall be made up of an equal proportion of representatives from both sectors, with a minimum of ten representatives.

11. (1) It shall be the function of the Council to -

Functions of the Council.

(a) make recommendations to Government on issues relating to the enterprise sector;

(b) make recommendations to Government on the formulation of policies in the field of small and medium enterprises;

(c) work towards improvements in the operating environment for small enterprises;

(d) review, discuss and provide advice on legislative proposals that have a significant impact on the enterprise sector;

(e) monitor the proper implementation of government policy;

(f) instigate research, monitor, evaluate and advocate measures for an environment conducive to a high level of service provision; and

(g) perform such other functions as may be assigned to it under this Act or any other law.

(2) In the discharge of its functions, the Council shall:

(a) work on identifying issues which hinder enterprise growth, development and competitiveness;

(b) follow such policy guidelines as may be set out by

Government;

- (c) promote cost-conscious and effective regulation;
- (d) promote synergies in the application of government policy within the Administration; and
- (e) undertake research work in-house, or through outsourcing, on relevant issues.

(3) The Council shall have the power to appoint sub-committees, whose members shall be nominated from constituted bodies, to address specific issues, and review proposals affecting SMEs.

Establishment of
Council
Secretariat.
Amended by:
XVIII. 2015.4;
XII. 2017.4.

12. The administrative affairs of the Council shall be managed by the Council Secretariat, and shall fall within the competence of the Directorate responsible for Enterprise Policy within the Ministry responsible for the Economy, and the Council, with the approval of the Minister, may appoint such officers as may be necessary for the due and efficient discharge of the functions to the Council.

(2) The Council Secretariat shall be responsible for the Council's technical and secretarial services, and shall, *inter alia*, be responsible for:

- (a) the provision of administrative and secretarial services required by the Council, the Committee or the sub-committee nominated in terms of article 10(6);
- (b) ensuring that all information that may be required for the Council members to effectively carry out their functions is made available;
- (c) ensuring that all follow up action is taken in order to implement directions or decisions taken by the Council or the sub-committee;
- (d) providing information and carrying out preparatory work for the purpose of the Council's activity reports, and overseeing and assessing execution of these tasks;
- (e) ensuring that office services are provided for the running of the Council and the sub-committee;
- (f) exercising any other responsibility as may be delegated by the Chairperson on behalf of the Council; and
- (g) ensuring that the Council and the Committee operate in strict adherence with Government financial regulations which shall apply to the Council and to the Committee.

Establishment of
College of
Regulators.
Amended by:
XXV. 2015.41;
XII. 2017.5.

13. (1) There shall be a College, to be called the College of Regulators.

(2) The College shall be a consultative and advisory body to the Government through the Minister, having a distinct legal personality, and shall consist of the following:

- (a) a Chairperson, to be appointed by the Minister; and
- (b) sixteen members nominated by Government,

representing the government representatives on the constituted bodies, namely the Authority responsible for Financial Services, the Authority responsible for Competition and Consumer Affairs, the Customs Department, the Authority responsible for Gaming, the Regulator responsible for Energy and Water Services, the Authority responsible for Tourism, the Authority responsible for Communications, the Authority responsible for Occupational Health and Safety, the Authority responsible for Planning, the Authority responsible for the Environment and Resources, the Department responsible for Environmental Health, the Directorate responsible for Plant Health, the Directorate responsible for Veterinary Regulation, the Directorate responsible for Fisheries Control, the Authority responsible for Medicines and the Department responsible for Commerce.

- (3) (a) For each of the members nominated in accordance with sub-article (2)(b), there shall be equal number of substitute members representing those same authorities who shall have the right to attend meetings in the absence of the nominated members.
- (b) The College may act notwithstanding any vacancy amongst its members, provided that there is a quorum present at the meeting.
- (4) The term of office of the members shall be of one year.
- (5) The Minister may, after consultation with the College, make regulations regarding the procedures to be adopted by the College, including quorum for meetings, the filling of casual vacancies, loss of mandate and substitution of members.

- 14.** (1) In the discharge of its functions, the College shall:
- (a) establish and maintain a regulatory co-operation system among its members;
- (b) ensure better use of regulation to promote efficiency, economy and competition within the enterprise sector;
- (c) establish a work programme as proposed and submitted by the members and as formally endorsed by the Minister;
- (d) hold regular joint meetings with the Council and discuss topics of importance for the enterprise sector;
- (e) make recommendations to Government in respect of topics which have been discussed within the College and following joint meetings with the Council;
- (f) make recommendations to Government in respect of reviews of policies;
- (g) exchange information among its members on current regulatory issues and trends within the enterprise sector; and
- (h) carry out such other functions as the Government may

Functions of the College.

assign to the College from time to time.

- (2) In the discharge of its functions, the College shall:
- (a) develop measures for the promotion of efficiency, better economy and competition within the enterprise sector;
 - (b) identify regulatory barriers which hinder the growth of the enterprise sector and make recommendations to address such issues;
 - (c) aim at reinforcing and maintaining communication networks between all representatives or members by way of regular exchange of status of affairs and information; and
 - (d) undertake research work in-house, or through outsourcing, on relevant issues.

Meetings and reporting.
Amended by:
XII. 2017.6.

15. The College shall:
- (a) meet at least once every four months or more frequently as may be deemed necessary by the College;
 - (b) report to the Minister every six months on the work carried out; and
 - (c) publish an annual report which shall include a general report of developments during the period to which it relates in respect of matters discussed during meetings.

College Secretariat.
Amended by:
XVIII. 2015.5;
XII. 2017.7.

16. (1) The administrative affairs of the College shall be managed by the College Secretariat, and shall fall within the competence of the Directorate responsible for Enterprise Policy within the Ministry responsible for the Economy.

(2) The College Secretariat shall be responsible for the College's technical and secretarial services, and the provisions of article 12(2) shall *mutatis mutandis* apply to the College Secretariat.

PART IV

Miscellaneous

Power to make regulations.

17. The Minister may make regulations generally for giving effect to the provisions of this Act, and for the better carrying out of the provisions of this Act.

Exemption.

18. (1) The Minister may, by order published in the Gazette and subject to any conditions, restrictions or limitations, exempt specific instruments from the application of this Act or part thereof or from any obligation imposed under this Act.

(2) The Minister may revoke any order made under this article.

Nomination of SME Envoy.

19. The Minister may appoint a person to be designated as the "SME Envoy" whose tasks shall be, amongst other things:

- (a) to defend and promote the interests of SMEs with a

view of ensuring that they are mainstreamed *a priori* in any national initiatives, whether regulatory or otherwise;

- (b) to promote initiatives to implement the principles enshrined in this Act; and
 - (c) to co-ordinate national action with the Member States of the European Union and the European Union, particularly with the Commission SME Envoy.
-

Substituted by:
XVIII. 2015.6.

Schedule I
(Article 4)
Impact Assessment Form

1. Summary				
<i>Full title of proposed legislation including document referencing (e.g. EU Directives, etc).</i>				
Parent Act(s):		 Act (Cap.)	
Rationale:			<i>Identify a clear need which is in the national interest for government to address.</i>	
Objectives of proposed legislation:			<i>Clearly state what the proposal intends to achieve.</i> <ul style="list-style-type: none"> • Objectives should be in line with the SMART¹ principle. • Objectives should demonstrate that they encapsulate the principles of Transparency, Accountability, Proportionality, Consistency and be targeted at cases where action is needed 	
Options considered:			<i>A wide set of options should be considered including the 'do nothing' option and the 'alternative to regulation' options.</i>	
Preferred option:			<i>Indicate the preferred option and the reason for this being the preferred option on the basis of the Impact Assessment including at least the following considerations:</i> <ul style="list-style-type: none"> • Short listing from all options considered • Outcome of consultation • Outcome of other assessments 	
Compelling reason for publication:			<i>State the current situation and the valid reasons for publication of proposed Legal Notice.</i>	
Deadline for publication:			Deadline due to:	
.....	20.....	EU commitment <input type="checkbox"/>	National Agenda <input type="checkbox"/>
Does legislation emanate from an EU Directive?		No <input type="checkbox"/> Yes <input type="checkbox"/>	Insert Name of Directive	

¹ SMART - Specific, Measurable, Achievable, Relevant, and, Time-bound.
Further reading: European Commission, 2009. Impact Assessment Guidelines. HM Government, 2011. IA Toolkit



2. Consultation Process ³ (In line with Directive 6 Issued under the PAA) See also Part 8			
<i>A matrix indicating proposals received and how these were integrated into the proposal. In the case of rejection of proposals, the reason behind such rejection is to be provided.</i>			
Internal Consultation	Yes <input type="checkbox"/> No <input type="checkbox"/>		
External Consultation	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Feedback received	Attached	Yes <input type="checkbox"/> No <input type="checkbox"/>	
No feedback	Yes <input type="checkbox"/>		

³ Proponents are to ensure that the Consultation Exercise is in conformity to Directive 6 issued under the Public Administration Act and its official Guideline entitled 'Parameters for Consultation Exercises with Stakeholders' available at <http://infra.gov.mt/file-attachments/2011-2/other/directive-6-consultation-exercises-with-stakeholders>



3. Social Impact⁴	
<p>Are there any envisaged social impacts on citizens (positive or negative) in any of the following areas?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Where possible quantify the monetary value of each impact (costs and benefits)⁵</p>	
Social benefits:	
Health:	
Education:	
Spending power:	<i>Apart from a qualitative description, the equivalent cost should be calculated using 'Supply Chain Management'</i>
Administrative burden⁶:	<i>Apart from a qualitative description, the financial burden should be calculated using 'Supply Chain Management'</i>
Impact on Government⁷	
<i>Outline any implications to government's policy on social issues</i>	

⁴ Examples: demographic & economic changes, social impacts on lifestyle, quality of life and general well-being.

⁵ Monetary values should be quantified with respect to the 'do nothing' scenario.

⁶ Proponents should seek the guidance of the Management Efficiency Unit.

⁷ Such as: prevention approaches, sustainability, improvement of efficiency, capacity building & partnerships with NGOs.



5. Impact on Small and Medium Sized Enterprises¹⁰

In conformity with the Small Business Act, Cap. 512

Does this legislation affect the business environment?

Yes No

If yes, please attach SME Test report as endorsed by the Small Business Act Implementation Unit, within the Ministry responsible for the Economy, together with the Explanatory Notes and User Guidelines

6. Gozo's Regional Impact¹¹

<p>Social Impact:</p>	<p><i>Outline qualitatively and where possible quantitatively the social impacts on the region, such as reducing insularity, logistical costs, business continuity and functions.</i></p>
<p>Economic Impact:</p>	<p><i>Outline qualitatively and where possible quantitatively the economic impacts on the region, such as value-added industry.</i></p>
<p>Environmental Impact:</p>	<p><i>Outline qualitatively and where possible quantitatively the environmental impacts on the region, such as agro-tourism, employment and social assistance.</i></p>

¹⁰ Includes, but is not limited to, legislation related to agriculture, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use.

¹¹ Applicable only to legislation related, but not limited, to agriculture, fisheries, general energy & alternative energy, industry, transport, waste management, water management & separation management, telecommunications, tourism, town & country planning, noise pollution, chemical hazards or land use.



7. Enforcement and Implementation¹²	
How will this regulation be communicated?	
Who will enforce this regulation?	
Are skills required available?	
Risks:	

¹² This section should take into consideration the adoption of risk-based approaches, data sharing, the use of administrative data, e-government, interaction and collaboration between departments and government entities, and the use of administrative fines.



8. Conclusion

NOTE - Political Summary

This document presumes that the Minister and the Permanent Secretary have discussed the contents hereof. There is a presumption that the Minister will set out an Executive Summary of the Consultation Report in the Memo to be presented in Cabinet.

The Executive Summary for the purposes of the Impact Assessment is to include, as a minimum:

- **A shortlist of options presented during consultation, with an explanation of the selection process conducted to create the shortlist.**
- **Internal and external stakeholders consulted.**
- **Timing of consultation.**

*The scope of the statement in the **Memo** is to ensure that there is political ownership of the proposals. This is of vital importance in particular where no meaningful feedback or where, due to cogent reasons that need to be spelt out, the stakeholder feedback cannot be taken on board.*

Compliance to/Strategies of Government as may be applicable:

9. Sunset Clause

Sunset clauses are part of Government's commitment; is it envisaged that the proposed legislation contains a sunset clause / sunset clauses?

Yes No

Kindly indicate hereunder which article/clause/regulation/rule etc., of the proposed legislation is subject to a sunset clause:

Ministry/Entity responsible to carry out an evaluation:



10. Signatories		
Contact Details:	<i>contact details of PERSON RESPONSIBLE in case of queries</i>	
Name of official responsible:	<i>Name of TECHNICAL PERSON RESPONSIBLE for the drafting of the LN</i>	
Ministry / entity responsible:		
Telephone number:		
Email:		
Signature of OFFICIAL responsible for drawing up this document	Signature of DIRECTOR responsible for policy	Signature of PERMANENT SECRETARY
Date:		
FOR CABINET OFFICE USE		
Date received:		
Date checked:		
Checked by:		
Assessment:		
Action:	<i>For Cabinet use ONLY</i>	



Schedule II

(Article 4)

SME Test guidelines

(1) Consultation with SMEs representatives

New proposed legislation having a direct impact on the business environment has to be discussed at the Enterprise Consultative Council (ECC) or a specifically set up sub-committee of the Council. In this discussion the entity responsible for preparing the legislation has to outline the main objective of the proposal and identify specific aspects of the proposed legislation, particularly whether proposed legislation includes:

- a new compliance cost
- requirement for new equipment
- impact on staff time
- indication as to whether a one-size fits all approach is being applied and if yes, why?
- indication as to whether proposed measures outweigh costs of implementation (e.g. environmental concerns).

(2) Preliminary assessment of businesses likely to be affected

During this stage, it should be established whether SMEs are among the affected population, in particular the sector(s) more likely to be affected.

Relevant sources of information should be explored including SME representatives. A non-exhaustive list of elements to consider includes, when applicable, items such as:

- the number of businesses to be affected
- the proportion of the employment concerned in the different categories of enterprises affected
- the weight on the different kind of SMEs in the sector(s) (micro, small and medium ones)
- if the preliminary assessment leads to the conclusion that SMEs are amongst the affected parties, further analysis should be carried out and - where appropriate - taken into account when defining the objectives and developing the policy options in the impact assessment.

(3) Measurement of the impact on SMEs

The distribution of the potential costs and of the benefits of the proposals with respect to the business size, differentiating between micro, small, medium and large enterprises should be analysed qualitatively and, if possible quantitatively. It is important to establish to which extent the proposal affects SMEs' competitiveness or the business environment in which it will affect their operations by establishing the:

- Financial costs - created by the obligation to pay fees or duties;
- Substantive costs - created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards (e.g. the purchase of new equipment, training of staff, additional investments to be made);
- Administrative costs - created by the obligation to provide information on the activities or products of the company including one-off and

recurring administrative costs (e.g. resources to acquire or provide information);

- Cost and impacts identified for small and micro enterprises should be compared with those for larger enterprises.

Additionally one may also consider other factors such as:

- possible loss of competitiveness due to external factors such as the availability of finance,
- tax regimes, access to resources or skills, etc.;
- possible changes in the behaviour of competitors, suppliers or customers;
- possible impacts on barriers to entry, competition in the market and market structure;
- possible impact on innovation, understood as both technological and non-technological;
- innovation (process, marketing, etc.);
- benefits, if applicable, coming from the proposal (burden reduction, improved productivity and competitiveness, greater investments or innovation etc.).

(4) Assessment of alternative options and mitigating measures

If the abovementioned cost/benefit analysis indicates that small and micro are facing a relatively higher burden, one might consider the use of specific measures in order to ensure a level playing field and the respect of the proportionality principle. When the analysis made under the previous section shows that small and micro businesses are disproportionately affected or disadvantaged compared to larger companies, one should consider (one a case by case basis) using possible mitigating measures:

- Complete or partial size-related exemptions for small or micro-businesses (example: businesses below certain thresholds do not have to comply with certain specific obligations when this does not invalidate the original purpose of the legislation)
- Temporary reduction or exemptions (example: transition periods during which small and micro enterprises are exempted or longer intervals for certain obligations)
- Tax reductions or direct financial aid to compensate costs incurred provided this is compatible with existing legislation (on competition or international trade)
- Reduced fees (example: when these fees are particularly high and/or represent a fixed cost that would be felt disproportionately by small and micro enterprises)
- Simplified reporting obligations for small and micro enterprises (example: in the area of statistics, explore possible synergies with already existing reporting obligations)
- Specific information campaigns or user guides, training and dedicated help-desks/offices (example: specific help-desks providing tailored information for small businesses)
- Systematically consider general simplification initiatives which can particularly benefit small and micro enterprises (example: possibility to

use on-line facilities, simplified inspections)

When assessing possible mitigation measures for SMEs, it is important that the costs this could produce are also fully considered and included in the final assessment.

Schedule III

(Article 3)

Explanatory Notes

(i) Explanatory Notes must be published alongside every instrument that has been identified as having an impact on the business sector.

(ii) The government department, government entity or government agency sponsoring the instrument is responsible for drafting the Explanatory Notes to accompany it. The draft must be agreed with by the Office of the Attorney General, which will check that it is consistent with the instrument.

(iii) The Explanatory Notes are not intended to be an exhaustive description of the instrument or to be a substitute for it. Their purpose is to make the instrument accessible to readers who are not legally qualified and who have no specialised knowledge of the subject matter.

(iv) The Notes are not legislation. They do not form part of the instrument and are not amendable by Parliament or the House of Representatives nor endorsed by them. They are not designed to resolve ambiguities in the text of the instrument since if ambiguities are identified as the instrument progresses, they should be amended accordingly. The Notes should make clear that they do not purport to be authoritative rulings on the interpretation of the proposed legislation, as only the courts can give these.

(v) The Notes should usually contain the following items: Introduction, Summary and background, Overview of the structure of the instrument, Commentary, and concluding sections.

(vi) If the instrument implements a European Directive, the Explanatory Notes should include in the form of an annex a set of “Transposition Notes” illustrating how the Government intends to transpose all the main elements of the Directive(s) into Maltese law.

Schedule IV

(Article 9)

Ethical Values in SMEs

Drawing up a code of ethics

A code of ethics is the main tool for implementing an ethics policy. It translates core values into specific commitments and expected behaviour in relation to the organisation’s key stakeholder groups (i.e. customers, employees, suppliers and contractors, providers of finance and community). A code will also be a good place to address environmental responsibilities and to state how the company seeks to relate to its competitors. It is also helpful to ask employees about ethical issues that concern them and on which they would like guidance when drawing up a code.

Typical issues to be addressed in a code of ethics

A code of ethics should pledge to:

1. Accurately represent what the enterprise is capable of in all marketing, advertising and promotional materials.
 2. Accurately represent available skills, recognizing limitations and only offering professional services that it feels competent to provide.
 3. Inform prospective clients of any conditions that could limit the enterprise's effectiveness.
 4. Place each client's best interest first and foremost, making reasonably certain that the enterprise has the necessary skills and resources to provide the support needed before entering into a client relationship.
 5. Clearly communicate the terms and conditions of any client relationship, identifying the responsibilities of all parties, and documenting these provisions in a signed agreement.
 6. Honour all contracts, agreements and commitments.
 7. Only make commitments that are within the enterprise's power and abilities to deliver.
 8. Accept responsibility for all work it does, admit mistakes and do whatever is possible to rectify any problems that arise.
 9. Maintain accurate and sufficient records of all client work.
 10. Safeguard and protect all private and confidential information entrusted to it or obtained in the course of any working relationship.
 11. Not release any client information without prior consent or unless given instruction or permission by client to do so on his behalf.
 12. Ensure that electronic and hardcopy record disposal is handled in a confidential and secure manner.
 13. Protect the interest of its clients at all times.
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