

# User Guidelines

## Proposed amendments to the Companies Act - Cap. 386 of the Laws of Malta

### Purpose

The aim of these amendments is to:

- To streamline requirements to reflect the needs of the financial industry;
- to improve the communication requirements between the Registrar and the commercial partnerships through the upkeep of a proper electronic mail address;
- to include in the Minister's legislative powers, the faculty to provide for regulations in relation to the registered office of commercial partnerships and formation of limited liability companies intended to operate in specific economic sectors.

### Companies Act - Provisions

- Definitions - **article 2 of the principal Act**

Removes the definition of "exempt company", ending the separate status previously given to certain private companies.

- Increase in contributions and matters regarding appointment or cessation of a partner – **article 19 of the principal Act**

There shall no longer be the necessity for a new partnership deed to be submitted to the Registrar each time there is an increase in contributions by a partner or contribution by a new partner because such change shall take place immediately upon the receipt of the contribution by the partnership.

The partners having the administration or the representation of the partnership shall deliver to the Registrar the resolution confirming that the contributions have been received by the partnership in the preceding calendar year. This resolution is to be delivered to the Registrar within three months from the end of the calendar year in which such an increase in the contribution of the partnership is affected.

In order to prevent abuse, if the increase in contribution has happened in the same calendar year as when any interests in the partnership are to be transferred, the partner/s having the administration and representation of the partnership shall, deliver to the Registrar a resolution of the partners confirming the increase in contributions made during the calendar year.

In the case of an inter vivos assignment of interest in whole or in part of any partner, unless the deed states otherwise, there shall be required the prior consent in writing of all the other partners, while no such consent shall be required for any assignment causa mortis of a partner's interest.

Additionally, there shall be an amendment in the provisions of the principal Act in respect of the form for the notice of the cessation of a partner, whether upon an assignment of his interests or upon the demise or otherwise, and in respect of the appointment of a new partner. The new wording in the respective provisions of the principal Act in respect of the form of notice to the Registrar, there shall be the name, addresses and identification details of the person being appointed or ceasing to be a partner, as applicable.

The requirement for the publication of a statement, in terms of article 401(1)(e), has been extended to also include the appointment of a partner or an assignment of a partner's interest in terms of article 19. The cessation of a partner shall now take effect immediately, and not after three months following the publication of the statement of cessation. Creditor protection measures have been introduced vis-à-vis provisos to the article so that a creditor may object within the three-month publication period and thus in the case of there being judicial proceedings, the court may either order the interest to be re-transferred

or the assignment of the interest of the partners, as the case may be, on sufficient security being given by the partnership.

- Operative period - **article 21 of the principal Act**

This article has been amended to remove the three-month delay until any assignment by a partner of all his interest in the partnership becomes operative. All other instances will still have the three-month stay-period as provided in article 21(1).

- Applicability of provisions – **article 52 of the principal Act**

The provisions governing partnerships en nom collectif shall apply to partnerships en commandite or limited partnerships, except where inconsistent. The amendments seek to clarify the fact that:

Insofar as the partnerships en commandite or limited partnerships are concerned, the notice in article 19(3) in respect of the cessation of a partner or the appointment of a new partner shall only be published by the Registrar limitedly in respect of any general partner.

Insofar as the partnerships en commandite or limited partnerships are concerned, the second and third provisos to article 19(3) shall not apply with respect to appointments or cessations of limited partners.

- Memorandum & Articles of Association – **article 69 of the principal Act**

A new requirement for company officers to ensure that company electronic mail address exists and is monitored regularly.

- Directors' declaration – **article 73 of the principal Act**

The report on any consideration other than in cash is no longer applicable in cases where the said consideration does not exceed the monetary equivalent value of 50,000 euros. In case this exemption applies, the directors would need to deliver a declaration to the Registrar for registration, and article 73(6) shall still apply. This means that in default, the Registrar shall accordingly refuse to register the company or the return of the allotments of the shares so issued.

- Change in company's electronic mail address – **article 79 of the principal Act**

Apart from the obligation to send the Registrar for registration a return informing him about a change in the registered office of the company, officers of the company are now also obliged to inform the Registrar of a change in the electronic mail address of the company, within 14 days of the change.

- Regulations about investment companies – **article 84 of the principal Act**

When making regulations relating to investment companies, the Minister under the Companies Act may now act on the advice of the Registrar, apart from the advice of the Malta Financial Services Authority.

- Regulations regarding cell companies – **article 84E of the principal Act**

The Minister's powers to make regulations with respect to cell companies is not limited to shipping and aviation companies, but encapsulates all companies.

- Civil liability for misstatements - **article 94 of the principal Act**

The proviso to article 94(1) is being deleted, thus removing the exemption from liability in certain instances. The core provision applies, keeping the joint and several liability of persons responsible for the issue of a prospectus by reason of an untrue statement contained therein.

- Conditions where a company may acquire its own shares - **article 107 of the principal Act**

Paragraph (b) of sub-article (1) is being deleted as it refers to article 100, a deleted provision from a previous amending Act of the Companies Act.

- Usufruct of shares – **new article 117A of the principal Act**

To provide legal certainty in situations whereby shares encompass the real right of usufruct, clarifying voting rights associated with the usufructuary, whereby such rights if any, are to be stipulated in the act

establishing the real right of usufruct and/or in the memorandum and articles of the company.

- Pledging of securities – **article 122 of the principal Act**

A sub-article is being added, providing legal certainty for the pledgors and pledgees of securities that the pledgee may act in the manner provided for under article 1887 of the Civil Code and that such right is also prescribed in the relevant agreement governing the pledge of securities.

- Appointed administrators by the court - **article 146 of the principal Act**

Legal certainty is being provided by ensuring that the person appointed by the court or competent authority as administrator, legal representative or as the person *de facto* responsible of a company, incorporates also the possibility of a person being assigned judicial representation.

- Fines (*Multi*) – **articles 154, 163, 268, 306, 307, 308, 309, 311, 313, 314, 315, 317, 320, 329B, 409, 416, 417, 418, 419, 420, 421 and 422 of the principal Act**

An alignment is being made throughout the Companies Act in order to remove decimal values from fines imposed. Fines imposed by the Act are not being increased. For instance, a fine previously indicated as Euro 4,658.75 is being reduced to Euro 4,658.

- Individual accounts – **article 167 of the principal Act**

Sub-article (4) is being deleted. The content and form of individual accounts are to comply with sub-article (3) thereof, therefore the requirement of sub-article (4) to provide additional information is not necessary.

- Consolidated accounts - **article 171 of the principal Act**

Sub-article (4) is being deleted. The content and form of consolidated accounts are to comply with all sub-articles thereof, therefore the requirement of sub-article (4) to provide additional information is not necessary.

- Publication of financial statements and directors' report – **article 172 of the principal Act**

The paragraphs of this article are being amended to include also the remuneration report as part of the documentation required to be drawn up and published in accordance with the requirement of the Act, to which the directors of company have a collective responsibility.

- European Single Electronic Format reporting standard – **articles 176, 178, 179 and 183 of the principal Act**

Where a company is required to report and file in accordance with the European Single Electronic Format reporting standard, the respective balance sheet, directors' report, auditors' report and annual accounts are prepared and filed in such a manner with the respective competent authority other than the Registrar, the same copies shall be transmitted to the Registrar directly through an application programming interface or similar electronic means, without the necessity for the company to file an ulterior copy with the Registrar.

- Consolidated directors' report – **article 177 of the principal Act**

Legal clarification is being introduced through such an amendment, providing legal certainty that the consolidated directors' report and its content applies when the consolidated accounts are required under the Act.

- Exemption to deliver directors' report to Registrar – **article 183(2) of the principal Act**

Amendments are purely for legal certainty to clarify those circumstances whereby a company is not required to deliver a directors' report.

- Turnover qualification – **article 185 of the principal Act**

The terms “turnover” is being substituted with “net turnover”.

- Application to other commercial partnerships – **article 191 of the principal Act**

Clarifies that the provisions of article 184 of the principal Act do not apply to partnerships governed by article 191 of the principal Act.

- Distributions – **article 193 of the principal Act**

The constituents of undistributable reserves are being added, through a new paragraph (g) which provides that they shall constitute also revaluation reserves, unless the latter represent a gain which has been actually realised.

- Distribution to be justified with reference to company's accounts – **article 197 of the principal Act**

The amount of distribution which may be made is being amended to clarify that “provisions” are no longer qualified as per previous provision.

- Exempt companies – **article 211 of the principal Act**

The term “exempt” is no longer used. The same qualifications and conditions apply to such companies as long as the conditions provided under sub-article (2) are provided in the company's memorandum and articles.

- Change of status of certain companies – **article 213 of the principal Act**

It is clarified that the term “exempt” no longer applies, however the same conditions hold, and certain private companies may be relieved from complying with certain provisions of the Act, as long as the memorandum and articles so indicate. A company will revert to complying with all the provisions of the Act in case it no longer continues to fulfil the conditions under article 211.

- Simplified dissolution procedure – **new article 214A of the principal Act**

A new simplified dissolution procedure is introduced for certain situations when a company would not have traded, has no assets and has no obligations due with the Government of Malta or any Government agency or authority, amongst other obligations as provided by the new article.

- Liquidator's statement – **article 322 of the principal Act**

Legal clarification that in the course of a pending winding up procedure, the liquidators' statement is to be sent to the Registrar for registration upon the expiry of a period of 12 months, and then at subsequent period of six months.

- Defunct procedure – **article 325 of the principal Act**

A new procedure which is sought to facilitate court proceedings and reduce administrative timelines is being introduced. The amendment provides an administrative solution in the event that a company's name is struck off from the register but whose name was subsequently ordered by the court to be restored in the register for a definite time period. Following such a period the name is subsequently removed once again from the register but there would still be interested parties to have the company's name kept on the register.

In the above circumstance, the change in the law provides that the interested party/parties shall, prior the expiration of the above time-period, together with the Registrar file a joint court application asking for an extension of the time period for which the company's name is to remain restored in the register.

On pain of nullity, the application is to include any necessary documentary evidence.

- Publications by the Registrar – **article 401 of the principal Act**

Article 84 is being added to the list of publication requirements to be done by the Registrar in terms of paragraph (e) of sub-article (1). Furthermore, reference to article 19 of the principal Act is being added.

- Minister's powers to make regulations – **article 425 of the principal Act**

Two new powers are being added to legislate specifically in relation to the registered office and electronic mail address of companies, and to cater for better regulation and governance in relation to companies operating in specific economic sectors.

- Savings provisions in relation to Companies Act, 1995 – **article 431 of the principal Act**

Reference to offshore companies is being deleted due to the latter being no longer recognisable or possible to operate in Malta.

- Legal certainty – **First, Fourth, Sixth and Eleventh Schedules to the principal Act**

Reference in the First Schedule to the term “exempt” is being re-worded to match other changes in article 211 of the Act.

In the Fourth Schedule, reference to article 213B (2) is being added, alongside 213B(1), (5), (6), (7) and (8).

Contents of the directors' report are being increased to include the new sub-paragraph (f) to paragraph 1 of the Sixth Schedule, whilst sub-paragraph (e) of paragraph 3 is being deleted.

The Eleventh Schedule is being amended to clarify any legal gaps in the provisions relating to administrative penalties. Decimal values are also being deleted.

## Conclusion

Officers of companies are to be fully aware of the amending Act. It is advisable that when they are unsure about their obligations, they consult a lawyer, accountant, or auditor. Any required prescribed forms will be issued under the respective legislative regulations through a Legal Notice. Failure to make the necessary filings or take the necessary action within the requested time frames will result in penalties being imposed on the company and officers of the company. Penalties can be avoided if the company officers are familiar with the Maltese company law and regulations thereto.

***N.B.** The User Guidelines contained within this document is solely intended to serve as guidelines and should not be construed as legislation. This document should not be considered as an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. The Guidelines do not purport to be an authoritative ruling on the interpretation of the legislation. Please refer to the related legislation for a more comprehensive understanding.*

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