



ALTERATIONS IN A REGISTERED COMPANY

The Malta Business Registry

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Shareholders' Resolutions and Updated Memorandum and Articles of Association including Change in Company Name

Memorandum & Articles of Association

The memorandum of association of every company shall contain the following information:

- **Whether the company is a public company or a private company;**
- **The name, residence, identification number and nationality of each of the subscribers thereto, and in case of a body corporate acting as subscriber, the name, company registration number and registered address have to be specified;**
- **The name of the company;**
- **The company's registered office in Malta and e-mail address.**
- **The objects of the company and in case of a single member company, the main trading activity has to also be specified;**
- **The maximum authorised amount of share capital, the division thereof into shares of a fixed amount, the number of shares taken up by each of the subscribers (also referred to as the issue share capital) and the amount paid up in respect of each share and, where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;**
- **The number of the directors, the name, identification number, nationality and residence of the directors and, where any of the directors is a body corporate, the name and registered or principal office of the body corporate; the manner in which the representation of the company is to be exercised, and the name of the person or persons vested with such representation;**
- **The name and residence of the company secretary or secretaries;**
- **The period, if any, fixed for the duration of the company; and**
- **In respect of each involved party, due diligence documents would be required.**

In the case of a public company, additional document shall be annexed to the memorandum providing:

The total amount or an estimate of all the costs payable by the company or chargeable to it by reason of its formation up to the time it is authorised to commence business, and of all the costs relating to transactions leading to such authorisation; and

A description of any special advantage granted, prior to the time the company is authorized to commence business, to anyone who has taken part in the formation of the company or in transactions leading to such authorisation.

The memorandum of association may be accompanied **by the articles of association**, which is a document which prescribes the internal regulations of the company.

If the articles of association are not registered, it is assumed that the model articles of association found in the First Schedule to the Companies Act have been adopted.

Furthermore, the registration of the company by the Registrar shall be without prejudice to any other license or other authorization as may be required in respect of the activities carried on by the company under any other law. The proviso as per Article 83(7) of the Companies Act is to be included in the Memorandum.

Any change to the memorandum of the company is to follow the procedure laid down in Article 79 of the Companies Act, mainly through an extraordinary resolution of the company to alter its memorandum. It shall be the duty of the directors and of the company secretary to deliver to the Registrar for registration any resolution as aforesaid within fourteen days after the date of the resolution, together with a revised and updated copy of the memorandum, and of the articles, if any, as amended by the said resolution, incorporating all the changes effected to date.

Change in Name of Company

The name of a company is indicated in its memorandum as provided for under Article 69(1)(c) of the Companies Act.

A shareholders' resolution and updated Memorandum and Articles of Association are required to change the name of the company. The change in the company's name shall occur, whereby the Registrar enters the new name of the company on the register in place of the former name and shall issue a certificate.

Before changing its name, it is suggested for the company to reserve the proposed name beforehand, by submitting the new proposed name through the online portal.

Name reservation is valid for a period of three (3) months. Refusal by the Registrar to reserve a name shall be communicated without delay to the person requesting such reservation. A refusal to reserve a proposed name may be based on the circumstance that such a name would be the same as a name of another company or so nearly similar as in the opinion of the Registrar it could create confusion; or is in the opinion of the Registrar offensive or undesirable; or because it would have been reserved by another company in the preceding three months.

The fee of EUR 50 is applicable when submitting documents to change the name of the Company.

Change in status

Article 213 of the Companies Act stipulates that:

Private company may change its status to a public company

A shareholder's resolution approving such a change together with a new Memorandum and articles, a registration fee of EUR 150 must be delivered to the Registrar for registration together with:

- a. a copy of a balance sheet prepared as at a date being not more than four months before conversion is effective, together with a report of the company's auditors in relation to that balance sheet;**
- b. a written statement by the company's auditors that in their opinion the balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up issued share capital and undistributable reserves;**
- c. a declaration by any director of the company that between the balance sheet date and the date of delivery of the alteration to the Registrar for registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called up issued share capital and undistributable reserves.**

The Registrar shall, upon the registration of the above-mentioned documents issue a certificate of registration altered to reflect that change.

Public company may change its status to a private company

A shareholders resolution passed at the general meeting approving all the necessary alterations together with a new memorandum and articles incorporating all the restrictions prescribed in respect of a private company must be delivered to the Registrar for registration together with a EUR 150 registration fee.

The change would be effective once the above-mentioned documents are registered. The Registrar shall, there upon issue a certificate of registration altered to reflect that change.

Article 213 (13) stipulates that it shall be required to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed or as the court, on a demand of either the company or the dissenting members, thinks fit to order.

Change of currency

A company's share capital, its share premium account when applicable, and its reserves may be converted from the original presentation currency to a different presentation currency, in accordance with the rules set out in Schedule Eight of the Companies Act. Amongst other important rules, particular attention is to be made to allotments and reductions in capital, classes of shares with different nominal values, and any unallocated capital (difference between Authorised and Issued). When a company converts its capital other than to the Euro currency, practitioners should be

attentive to check that the issued share capital in the new presentation currency would **not** fall below the minimum required by law under *Article 72*, when such new capital is converted to Euro as at date the documentation is filed at the MBR. In such instances, injections to make up for the shortfalls must be carried out. While the schedule clearly requires that the first annual accounts following the conversion, the notes shall include full details of the method of conversion and the exchange rates used for the company's capital, a well worded resolution indicating a step-by-step method of conversion is suggested when a company submits the documentation (Resolution & M&A) for a conversion of currency.

Most Common Changes in Company Structure

a. Increase in Authorised and Issued Share capital, Allotment of Shares – Form H

To increase the Authorised Share capital, a company needs to file with the Registrar of Companies a shareholders' resolution and the updated Memorandum and Articles of Association.

The fee in the change of the Authorised share capital will apply [here](#)

To increase the issued share capital, a company needs to file with the Registrar of Companies, a shareholders' resolution and the relevant return (Form H).

Allotment in cash: a bank deposit slip would also be required.

Allotment for other consideration other than cash: Expert's report or Directors' declaration (if amount does not exceed EUR 50,000 or equivalent)

Kindly note that the consideration for the acquisition of shares in a company whether on the original subscription or a subsequent issue, may only consist of assets capable of economic assessment, and furthermore, future personal services and in general any undertakings to perform work or supply services may not be given by way of consideration. Where, on original subscription, the shares are issued for a consideration other than in cash, the full consideration shall be transferred to the company within five years from the date the company is authorised to commence business.

Expert's report

Where shares are issued other than on original subscription for a consideration other than in cash, the full consideration shall be transferred within five years from the date of the decision to issue the shares. A report on any consideration other than in cash shall be drawn up before the shares are issued, as the case may be, by one or more experts who are independent of the company and approved by the Registrar.

The expert's report shall contain at least a description of each of the assets comprising the consideration as well as the methods of valuation which have been used and shall state whether the values arrived at by the application of these methods correspond at

least to the number and nominal value, and, where applicable, to the premium on the shares to be issued for them.

Directors' Declaration

Provided when the said consideration does not exceed the value of EUR 50,000 (or equivalent monetary value) a directors' declaration shall suffice and such report shall not be required.

The report or the directors' declaration shall be delivered to the Registrar for registration before the company is registered or before the shares are issued, as the case may be; and, in default, the Registrar shall accordingly refuse to register the company or the return of the allotments of the shares so issued, and, in the latter case, the issue shall be considered null and void.

Where an amount standing to the credit of any of a company's reserve accounts or of its profit and loss account is applied in paying up to any extent any shares allotted to members of the company or any premiums on shares so allotted, the amount applied shall not be considered as consideration other than in cash for the purposes of this article.

Please note that the Registrar of Companies may not accept for registration any document or notice unless evidence is produced that the document has been notified to the Commissioner of Inland Revenue - MTCA. A receipt stamp is usually given by the MTCA on the relevant document to be submitted to the Registrar as evidence of notification.

The Form H must be accompanied by the necessary due diligence documents and a form BO2 when applicable.

If the return is not submitted on time every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Changes amongst Directors, or Company Secretary or in the Representation of the Company – Form K

Directors and Company Secretary

Every public company must have at least two directors whereas every private company must have at least one director. On the appointment of new director/s, Section B of the form K is to be completed. Every company must have a company secretary. No company may have:

- **As company secretary its sole director unless the company is a private exempt company.**
- **As sole director of the company a body corporate, the sole director of which is company secretary to the company.**

It shall be the duty of the directors of a company to take all reasonable steps to ensure that the company secretary is an individual who appears to them to have the requisite knowledge and experience to discharge the functions of company secretary. The law does not require that the company secretary be resident in Malta. A company secretary may also be a duly registered company service provider in terms of the Company Service Providers Act.

Change in Registered office or email address of a Company – Form Q

Every company shall send to the Registrar of Companies for registration a return of any change in registered office or email address of the company.

The registered office must be in Malta and should be the one used by the company. This return needs to be signed by any director or the company secretary.

A consent letter signed by the owner of the registered address consenting the Company to the use the address as the registered office of the company is required together with the form Q.

If the return is not submitted on time every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Transfer or Transmission of Shares – Form T

In the case of a transfer or of a transmission causa mortis of shares the company shall within fourteen days after the date on which a transfer of any such shares is registered with the company, and within one month from the date on which any such shares transmitted causa mortis have been registered in the name of the person entitled to be registered as the holder thereof, deliver to the Registrar of Companies for registration a notice of the transfer or the transmission causa mortis stating the names, identification numbers, nationality and addresses of the transferees or the names and addresses of the persons entitled to the shares transmitted causa mortis, as the case may be.

Provided that in the case of public companies whose shares are admitted to listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State, the delivery to the Registrar shall take place within ninety days after the date on which a transfer of any such shares is registered with the company, and within ninety days from the date on which any such shares transmitted causa mortis have been registered in the name of the person entitled to be registered as the holder thereof.

Please note that the Registrar of Companies may not accept for registration any document or notice regarding a transfer of shares unless evidence is produced that the said transfer has been notified to the Commissioner of Inland Revenue - MTCA

A receipt stamp is usually given by the MTCA on the relevant document to be submitted to the Registrar as evidence of notification. The Form T must be accompanied by due diligence documents and a form B02 when applicable.

If the return is not submitted on time every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

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