SEPTEMBER 2020 | ISSUE #2

THE REGISTRY'S DIGEST

Official customer newsletter of the Malta Business Registry

A WORD FROM THE REGISTRAR

I am pleased to present the second issue of the Malta Business Registry's newsletter. In this issue, we focus on two of the most important recent developments within the Malta Business Registry (MBR): the Registry's latest legislative amendments and its Master Privacy Policy and Data Minimisation document.

These implementations represent fundamental milestones for the MBR because they highlight the Registry's commitment to developing consistent improvements and updates that enable and strengthen its role as a Register. Both of these recent developments ensure that the MBR's functions are in line with the law, while also allowing us to continue providing our clients with the best possible service.

Make sure to visit our website and remain up to speed with all the goings-on at the Registry by subscribing to receive future issues of the MBR's Newsletter: https://mbr.mt/.

Mr. Joseph Farrugia,
Registrar

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The Registry's highlights and updates:

NEWS

News

UPDATE - Online Filing of Annual Return BO Confirmation

According to Legal Notice 247 of 2020, the Annual Return - BO Confirmation is required to be filed within 42 days from the made up date of the Annual Return. This Form can no longer be uploaded as part of the Annual Return process but instead can be uploaded from Online Filing - Form Beneficial Owners.Failure to submit the BO Confirmation within the prescribed period, a penalty will be incurred. For more information, kindly refer to this link: https://bit.ly/3jbmT0j

Important Notice to Subject Persons and Administrators of Legal Organisations

The Act XVII of 2020, amending the Second Schedule to the Civil Code (hereinafter referred to as the Second Schedule) has been published on 11th August 2020. This notice is being brought to the attention of all subject persons and administrators of legal organisations. For more information, kindly refer to this link: https://bit.ly/2QofzCk

Ordering Certificates Online

Both Registered and Non-Registers Users can now order certificates through our website. Kindly view the guide below for instructions. Should you have any issues, kindly contact us on support.mbr@mbr.mt. Ordering certificates online guide: https://bit.ly/3huSuK3

Annual General Meeting of Public Companies

The Companies Act (Public Companies - Annual General Meetings Regulations), 2020 is applicable to those public companies (hereinafter referred to as “company/companies”) whose annual general meeting was due during the global COVID-19 pandemic. For more information, kindly refer to this link: https://bit.ly/3j8vzET

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Recent Legislative Amendments

BY DR. DAMIAN PAUL CASSAR, LEGAL AND ENFORCEMENT UNIT

Legal Notice 247 of 2020

The Companies Act (Register of Beneficial Owners) (Amendment) Regulations 2020, hereinafter referred to as the "BO Regulations" (S.L. 386.19), entered into force on 16th June 2020. The amendments introduced by this Legal Notice grant new powers and measures to enable the Registrar of Companies, hereinafter referred to as the "Registrar", to be in possession of accurate and up-to-date information on beneficial owners of commercial partnerships.

The BO Regulations stipulate that when a company submits a declaration containing information on its beneficial owners, a certified true copy of the official identification document for every beneficial owner must be submitted to the Registrar. The identification document should be government-issued and certified by a warranted professional.

Similarly, upon submitting a notice of change in the beneficial ownership of a company, a certified true copy of the official identification document for every new beneficial owner must also be submitted to the Registrar. A notice in the form set out in the First Schedule must also be delivered to the Registrar when a transfer or transmission of shares occurs. This notice is to be delivered for registration in accordance with Article 120(3) of the Companies Act, hereinafter referred to as the "Act" (Cap. 386 of the Laws of Malta) or where there is an increase or reduction of the issued share capital or a restructuring of a company's share capital or changes in the voting rights. The foregoing notices of changes in beneficial ownership are required to be duly completed and signed by at least one director of the company or the company secretary and delivered to the Registrar within 14 days following the date on which the change has been recorded with the company.

A further obligation introduced by the BO Regulations is for a company to file a return in the form set out in the First Schedule upon each anniversary of its registration, indicating any change in the details of its beneficial owners as provided for in Regulation 6A or to confirm that no change in the relevant details has taken place. This return is to be signed by at least one company director or company secretary and be delivered to the Registrar for registration within 42 days from the company's anniversary date.

A change in the senior managing officials of a company also requires the respective company to deliver to the Registrar a notice indicating the change. This should be done in the form set out in the First Schedule of the BO Regulations and within 14 days after the date on which the change has been recorded with the company. At any time, a company may also deliver to the Registrar a return in the form set out in the First Schedule indicating any change in the details of its beneficial owners. When such a change involves a change in name or official identification number, a certified true copy of the new identification document of the beneficial owner must also be submitted to the Registrar.

Under the amended BO Regulations, the powers of the Registrar in matters concerning registration have been widened. The Registrar may:

- Refuse to register any company document if the beneficial ownership information has not been submitted or if the Registrar is not satisfied that the company has provided accurate and up-to-date information on all the beneficial owners of the company;

- Restrict new incorporations for directors involved in other Maltese-registered companies that have failed to submit information on beneficial owners;

- Before registering a new company or return, take such steps and require such information or documentation as may be deemed necessary to ascertain the correctness of the beneficial ownership information submitted to the Registrar, as provided for by Regulation 9(1); and,

- Strike off companies that fail to file their beneficial ownership information.

The amended BO Regulations provide measures that may be utilised to ensure adequate, accurate and current information. In accordance with Regulation 12, the Registrar may carry out physical on-site inspections at the registered office of any company in Malta or at the place specified in the company's Memorandum or Articles of Association.

This right given to the Registrar shall not be restricted, obstructed or precluded in any manner. Any discrepancies which may result between the beneficial ownership information held by the Registrar and that held by the competent authorities or subject persons, as the case may be, shall be addressed and resolved by the Registrar. Therefore, the onus is placed on the Registrar to decide when it is necessary to update the beneficial ownership information in these circumstances. In the eventuality that updates are required, every officer within the company shall be liable to a penalty, which has now increased to €100,000.

The liquidator is also obliged to keep the Register of Beneficial Owners of the company for a period of 10 years from the published date of when the company's name was struck off the Register.

> ***In the eventuality that updates are required, every officer within the company shall be liable to a penalty, which has now increased to €100,000***

Legal Notice 248 of 2020

By virtue of Article 84E of the Act, the Companies Act (Shipping and Aviation Cell Companies) Regulations 2020, hereinafter referred to as the "SACC Regulations", were introduced on 16th June 2020. The SACC Regulations apply specifically to cell companies carrying out activities in shipping and aviation and prevail in instances whereby provisions in the Act are inconsistent with the SACC Regulations.

The concept of cell companies is not new to local legislation. Cell companies have already been established in the fields of insurance and securitisation vehicles, as well as incorporated cell companies and incorporated cells to carry on business in the financial services sector. The SACC Regulations complement this legislative framework, extending the concept to companies in the shipping and aviation sectors. Companies of this type shall, without prejudice to provisions under the Act, include the expression "Mobile Assets Protected Cell Company" or "MAPCC" as per Regulation 5(1), distinguishing them from other types of cell companies. Companies with such a structure may be constituted as a cell company to carry on business in the shipping and aviation industry as defined by Article 84E of the Act. A company may also be converted into a cell company if it carries out business in this industry and is authorised to do so by its Memorandum and Articles of Association.

A cell company may create one or more cells to segregate and protect its cellular assets in the manner provided in the SACC Regulations. The cell company's assets shall be either cellular assets or non-cellular assets. The former comprises the assets of the cell company that are attributable to the cells of that cell company, while non-cellular assets comprise the assets of the cell company that are not attributable to the cells of that cell company. Cellular assets comprise those represented by the proceeds of cell share capital and reserves and all other assets attributable to the cell.

In accordance with Regulation 9, a cell company may, in respect of any of its cells, create and issue shares ("cell shares"), the proceeds of which comprise "cell share capital" in the cellular assets attributable to the cell in respect of which the cell shares were issued. The proceeds of the issue of shares, other than cell shares created and issued by a cell company, shall be comprised in the non-cellular assets of the company. Furthermore, a cell company may pay a "cellular dividend" in respect of cell shares.

The cell companies under the SACC Regulations are obliged to inform third parties that they are dealing with a cell company and that there are two regulations which specifically deal with creditors and recourse of creditors to cellular assets. By virtue of Regulation 14, cellular assets attributable to any cell of a cell company may be transferred to another person wherever resident or incorporated. Such a transfer may also take place to a cell company. The BO Regulations shall apply mutatis mutandis to cell companies and their cells.

Act XXXI of 2020

Passed on 23rd June 2020, this Act of Parliament brought amendments to Articles 142 and 320 of the Act."

Article 142 of the Act concerns those instances in which a person is not considered to be qualified to hold office as company director or company secretary. The conditions for disqualification remain unchanged following the amendments, meaning that such disqualifications continue to apply in cases where:

- A person is interdicted, incapacitated or classified as an undischarged bankrupt;
- One is a minor who has not been emancipated;

- One is subject to a disqualification order as set out by Article 320 of the Act; or

- One is convicted of any crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

In the latter case, the amendments provide specific time periods within which the disqualification remains valid against the person convicted of any such crime. These periods are set out accordingly in Article 142(d)(i) to (vi) of the Act, namely:

(i) In perpetuity if the punishment for the crime he or she has been convicted of is imprisonment for life;

(ii) For a period of 15 years if the punishment for the crime he or she has been convicted of is imprisonment for between 25 and 30 years;

(iii) For a period of 10 years if the punishment for the crime he or she has been convicted of is imprisonment for between 10 and 25 years;

(iv) For a period of 8 years if the punishment for the crime he or she has been convicted of is imprisonment for between 5 and 10 years;

(v) For a period of 5 years if the punishment for the crime he or she has been convicted of is imprisonment for between 4 and 10 years; and

(vi) For a period of 3 years if the punishment for the crime he or she has been convicted of is imprisonment for less than 4 years.

The amendment to the Act further stipulates that the disqualification period in terms of this proviso shall not be less than the term of imprisonment that the person would have been subject to.

Another change brought about by this Act of Parliament consists of the addition to the powers assigned to the Registrar. The Registrar may now restrict a person from being appointed as a director or company secretary of a proposed or existing commercial partnership. The restriction applies to an individual currently occupying the office of a director or company secretary or who has occupied such roles in an existing Maltese-registered company and who breached the provisions of the Act at least three times within a period of two years.

The period is reckoned from the first breach, applicable against the person being still in default of one or more breaches, as provided for in Article 142(4) of the Act.

Subsequently, Article 142(5) provides that any person who feels aggrieved by the restriction imposed by the Registrar, which has barred the person from being appointed company director or secretary, may bring an application before the court against the Registrar, asking for the removal of such restriction.

The amendments to Article 320 of the Act concern the grounds upon which the court may make a disqualification order against a person as set out in sub-Article (2)(a) and (b). For the court to decide whether to issue a disqualification order, an application needs to be filed by the Attorney General, the Registrar or, following the amendments, by the Official Receiver.

The court may decide to issue such a disqualification order in the circumstance when during the time one held the office of a company director, he or she is found to have been in breach of the provisions contained in the Act for the third time in a period of two years, reckoned from the first breach. The other reasons for which a disqualification order may be made by the court remain unchanged: in cases whereby a person is (or has been) a director of a company which at any time becomes insolvent, whether while being a director or subsequently, and when one's conduct as a director of that company makes him or her unfit to be involved in the management of a company, whether one's conduct is considered alone or together with one's conduct as a director of any other company or companies.

For the court to decide whether to issue a disqualification order, an application needs to be filed by the Attorney General, the Registrar or, following the amendments, by the Official Receiver

Legal Notice 288 of 2020

Following the challenges faced by companies due to the COVID-19 pandemic, measures were needed to facilitate the good order of companies. On 10th July 2020, the Companies Act (Public Companies - Annual General Meetings) Regulations 2020, hereinafter referred to as the "AGM Regulations", entered into force.

The AGM Regulations are applicable to public companies, whose annual general meeting was due to take place during the COVID-19 pandemic but could not convene following the imposition of certain restrictions by the Superintendent of Public Health.

According to Article 128(1) of the Act, in each year, companies are required to hold a general meeting as their annual general meeting. The period which may elapse between one annual general meeting and the next is that of not more than 15 months. In light of this provision, the AGM Regulations have provided an extension of five months to this period.

> ***The AGM Regulations are applicable to public companies, whose annual general meeting was due to take place during the COVID-19 pandemic but could not convene following the imposition of certain restrictions by the Superintendent of Public Health.***

Furthermore, the AGM Regulations provide for both annual general meetings and extraordinary meetings to be held remotely, following the rules set out in Regulation 5(2). These being that: (1) a quorum is to be reached as set out in the Memorandum and Articles of Association of the company, (2) the quorum may consist of persons who are present by proxy, and (3) no shareholder is allowed to physically attend the meeting. The shareholders are only able to appoint the Chairman of the meeting as their proxy and have the faculty to indicate on the proxy form the manner in which the Chairman (in his or her capacity as their proxy) is to vote on each resolution. The AGM Regulations give the faculty to shareholders to ask questions relating to a meeting's agenda in advance. These questions may be put either electronically or in a letter addressed to the company. They are to be answered by the directors of the same company or by such person(s) as the directors may delegate for the purpose. In the notice convening the general meeting, there is to be included an invitation to ask questions and the shareholders may submit their questions in writing up to 48 hours before the meeting. Answers to these questions are to be given by the company on its website within 48 hours from the meeting's termination. In this regard, the company is permitted to provide a single overall answer to questions that have the same content and a possibility is given for the company to take reasonable measures to ensure the identification of the shareholder or proxy.

Following the foregoing provisions, Regulation 6 further specifies that notwithstanding Regulation 5, the annual general meeting or extraordinary meeting of a company may be held virtually if the Articles of Association of the company so provide. In this case, the means used for holding such a virtual meeting, as well as the procedure of how any member is entitled to attend, vote and participate in the discussion, are to be clearly indicated in the notice issued to convene the meeting.

The AGM Regulations also provide for the extension of the period allowed for the laying before and approval of the company's accounts by the company in the general meeting. The accounting period specified in Article 182(2)(b) of the Act has been extended by five months. Consequently, the 42-day period referred to in Article 183 of the Act shall start to run from the period extended as indicated in Regulation 8(1). This extension of such time periods can be availed of by a company, although its Memorandum and Articles stipulate that a shorter time period than that specified in Article 182(2)(b) of the Act may be established.

A company that avails itself of the foregoing extension is to deliver a notice to the Registrar in the form set out in the Schedule to the AGM Regulations for its registration. Failure to deliver this notice under Regulation 8(2) shall incur a default penalty of €500. Every company officer found to be in default shall be liable to this penalty.

Act XLVII of 2020

This Act of Parliament amends the Second Schedule to the Civil Code, hereinafter referred to as the "Second Schedule". Published on 11th August 2020, these amendments widen the functions of the Registrar of Companies. The Registrar is now also obliged to exercise the functions of a Registrar of Legal Persons as specified in the Second Schedule and any subsidiary legislation made to the Second Schedule. This amendment has established one central register for all legal persons and their beneficial owners.

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MBR's Master Privacy Policy and Data Minimisation

BY DR. GERALDINE SPITERI LUCAS, CHIEF LEGAL OFFICER AND DATA PROTECTION OFFICER

Having first made information publicly available via an online portal way back in 2004, the Malta Business Registry has always been at the forefront of transparency. Since its inception, the system has been consistently enhanced to ensure both further transparency as well as greater data security and compliance with data protection legislation.
In June 2020, the MBR updated its Master Privacy Policy to provide a more detailed explanation about how the MBR collects and uses data. Via the MBR's retention policies, how and where the collected data is stored is also clarified, as well as how it is being made public. The MBR's Master Privacy Policy can be accessed via the MBR's website: https://mbr.mt/privacy-policy/.

Although companies generally fall outside the scope of the General Data Protection Regulation ("GDPR"), at any time during their lifetime, all companies can be associated with a natural person. With respect to active companies, an amount of personal data is disclosed, including the identity of the individual(s) together with his/her/their identification document number and residential address. In this context, therefore, 'personal data' refers to any information that relates to an identified or identifiable natural person and, consequently, a company's documents – accessible via the MBR's online portal – do include information amounting to personal data.

One of the GDPR's core principles is for personal data to be accurate and kept up to date. It is important to note, though, that the MBR has no right to ask natural persons to update their personal data once their company has been struck off. The MBR's Master Privacy Policy specifically provides that personal data stored and processed by the MBR are adequate, relevant and limited to what is necessary in relation to the purposes for which the information is processed. Therefore, while the MBR does store physical files relating to struck-off companies and which can be used by third parties and the MBR in certain lawful instances, it remains important to ensure that any necessary data retained and made publicly available on the MBR's portal are accurate. Again, it is stressed that the original data will not have been deleted and will remain physically stored – safely – at the MBR.

Moreover, access is granted to a number of public authorities who may require that information for reasons of public security and/or compliance with and enforcement of Maltese and/or international laws.
Consequently, and in line with the principle of data minimisation, once a company has been struck off, only minimal information is kept publicly accessible via the MBR's portal. In such cases, the only information remaining visible to the general public on the MBR's portal is the name, registered office, date of incorporation and date on which the company was struck off. However, the Registrar will remain in possession of documents relating to struck-off companies, and anyone can perform a physical inspection of the documents in question at the MBR's premises, or they can order such documents via orders.mbr@mbr.mt.

It is important to clarify that an individual may always file a subject access request with the MBR to receive a copy of any personal data relating to him/her. This can be done free of charge, but it does not mean that charges for other documents may not be imposed by the MBR.

Removing data no longer needed by the general public (such as details of struck-off companies that may not, in fact, be accurate and/or up to date) is perfectly in line with the principle of data minimisation. To reiterate, just because data are not published on the MBR's portal, it does not mean that the activities of struck-off companies are no longer monitored or subject to scrutiny. Just by way of an example, companies that are struck off voluntarily or following a court order require the appointment of a liquidator (a warranted lawyer or accountant) who is obliged to assume responsibility for the data for at least ten years and to make the necessary reports if any suspicious transactions are identified.

The MBR's Master Privacy Policy can be accessed via https://mbr.mt/privacy-policy/.

GET TO KNOW OUR EMPLOYEES

IN THIS ISSUE WE WILL BE ASKING DR. KEZIA AZZOPARDI SOME QUESTIONS

Dr. Kezia Azzopardi

Senior Analyst,
International & Corporate Tax Unit

What excites you most about working in your sector?
I Need a good hard think about this one. I feel that with tax it's either a love or hate relationship with no in-between category and I feel I fall in the former. It is a challenging sector and has recently taken on a very fast pace of change. I'm not one to usually shy away from a challenge so this has been a plus for me – although sometimes it does get a bit overwhelming I must admit. Tax has tentacles in a lot of other sectors and this adds to the challenge but makes it very interesting at the same time.

How do you start your morning routine?
Coffee, a run or training followed by school and work runs.

What's something you'd still like to learn?
To accept that some things will not change no matter how hard I try. On a lighter note – I'd like to get the hang of diving.

Gourmet dining or homemade cooking?
Good homemade cooking with an occasional gourmet meal.

If you could have any superpower, what would it be?
A highly intuitive sixth sense of foreknowledge.

Which is your favourite spot on the island?
Home.

Book, film, series, or music?
Depends on the mood – music is on during most of my waking hours but my first choice (if I had more time) would be series.

If you weren't in this career, what would you be doing?
Probably pursuing a career in the medical field.

Dr. Kezia Azzopardi is a Senior Analyst with a decade of experience at the International & Corporate Tax Unit. She forms part of the Legal and Technical Section within the Unit and is a strong believer in teamwork. Dr. Azzopardi Graduated with a Doctor of Laws from the University of Malta in 2009 and admitted to the Bar in 2010. Kezia participates in a number of OECD and EU forums dealing with specific areas of international tax law.

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