MBR | MALTA BUSINESS REGISTRY

User Guidelines

Proposed amendments to the:

Companies Act (System of Interconnection of Registers) Regulations, S.L. 386.18;

Companies Act (Use of Digital Tools and Processes) Regulations, S.L. 386.25

Cross-border Divisions of Limited Liability Companies Regulations, S.L. 386.26

Cross-border Conversions of Limited Liability Companies Regulations, S.L. 386.27

Cross-border Mergers of Limited Liability Companies Regulations, S.L. 386.28

Purpose

- To transpose the second phase of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law
- To provide legal certainty in matters relating to the cross-border mobility of limited liability companies and the exchange of information in this regard through the system of interconnection of registers

Various Companies Laws Amendments - Provisions

- Regulation 2 – scope

PART I - Amendments to the Companies Act (System of Interconnection of Registers) Regulations [hereinafter referred to as the "principal regulations"]

- Regulation 4 – amends regulation 6 of the principal regulations

PART II - Amendments to the Companies Act (Use of Digital Tools and Processes) Regulations [hereinafter referred to as the "principal regulations"]

- Regulation 6 – amends regulation 12 of the principal regulations
- Regulation 7 – adds new regulation to the principal regulations

PART III - Amendments to the Cross-border Divisions of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

- Regulation 9 – amends regulation 3 of the principal regulations
- Regulation 10 – amends regulation 7 of the principal regulations
- Regulation 11 – amends regulation 10 of the principal regulations
- Regulation 12 – amends regulation 11 of the principal regulations
- Regulation 13 – amends regulation 14 of the principal regulations
- Regulation 14 – amends regulation 15 of the principal regulations
- Regulation 15 – amends regulation 17 of the principal regulations
- Regulation 16 – amends regulation 18 of the principal regulations
- Regulation 17 – amends regulation 21 of the principal regulations
- Regulation 18 – amends regulation 26 of the principal regulations
- Regulation 19 - amends the Schedule to the principal regulations
- Regulation 20 – introduces a Second Schedule to the principal regulations

PART IV - Amendments to the Cross-border Conversions of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

- Regulation 22 – amends regulation 3 of the principal regulations
- Regulation 23 – amends regulation 7 of the principal regulations
- Regulation 24 – amends regulation 10 of the principal regulations
- Regulation 25 – amends regulation 11 of the principal regulations
- Regulation 26 – amends regulation 14 of the principal regulations
- Regulation 27 – amends regulation 15 of the principal regulations
- Regulation 28 – amends regulation 17 of the principal regulations
- Regulation 29 – amends regulation 18 of the principal regulations

- Regulation 30 – amends regulation 19 of the principal regulations
- Regulation 31 – amends regulation 21 of the principal regulations
- Regulation 32 - amends the Schedule to the principal regulations
- Regulation 33 - introduces a Second Schedule to the principal regulations

PART V - Amendments to the Cross-border Mergers of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

- Regulation 35 – amends regulation 3 of the principal regulations
- Regulation 36 – amends regulation 6 of the principal regulations
- Regulation 37 – amends regulation 7 of the principal regulations
- Regulation 38 – amends regulation 10 of the principal regulations
- Regulation 39 – amends regulation 11 of the principal regulations
- Regulation 40 – amends regulation 14 of the principal regulations
- Regulation 41 – amends regulation 15 of the principal regulations
- Regulation 42 – amends regulation 17 of the principal regulations
- Regulation 43 – amends regulation 18 of the principal regulations
- Regulation 44 – amends regulation 19 of the principal regulations
- Regulation 45 – amends regulation 20 of the principal regulations
- Regulation 46 – amends regulation 27 of the principal regulations
- Regulation 47 - amends the Schedule to the principal regulations and introduces a Second Schedule to the principal regulations

PART I - Amendments to the Companies Act (System of Interconnection of Registers) Regulations

- ***Interconnection of business registers – regulation 6 of the principal regulations***

  All documents and information submitted to the Registrar and the certificates issued by the Registrar in the course of a cross-border division, conversion and merger shall be made

available through the system of interconnection of registers.

PART II - Amendments to the Companies Act (Use of Digital Tools and Processes) Regulations

- ***Online filing – regulation 12 of the principal regulations***

  Submissions to the Registrar of documents and information in order to conduct a cross-border division, conversion and merger, may be submitted fully online.

- ***Storage of documents by Registrar – regulation 17 of the principal regulations***

  All documents specified in the regulation that are submitted to the Registrar for registration, shall be stored in the register in a machine-readable and searchable format or as structured data.

PART III - Amendments to the Cross-border Divisions of Limited Liability Companies Regulations

- ***Legal certainty – regulations 3, 7, 10, 15, 17, 18, 21, 26 and the Schedule to the principal regulations***

  Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

- ***Approval by the general meeting – regulation 11 of the principal regulations***

  The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

- ***Administrative penalty – regulation 14 of the principal regulations***

An administrative penalty is being introduced in those cases whereby a company fails to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such a penalty is similar to the amounts found under the Eleventh Schedule of the Companies Act.

- ***Administrative penalty information – Second Schedule to the principal regulations***

  The table indicates the regulation from which the obligation arises, the description of the default and the amount due in penalties, both the default penalty and the daily penalty.

PART IV - Amendments to the Cross-border Conversions of Limited Liability Companies Regulations

- ***Legal certainty – regulations 3, 7, 10, 15, 17, 18, 19 and the Schedule to the principal regulations***

  Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

- ***Approval by the general meeting – regulation 11 of the principal regulations***

  The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

- ***Administrative penalty – regulation 14 of the principal regulations***

  An administrative penalty is being introduced in those cases whereby a company fails to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such a penalty is similar to the amounts found under the Eleventh Schedule of the Companies Act.

- ***Documents to be submitted when Malta is the destination jurisdiction of a cross-border conversion - regulation 21 of the principal regulations***

  The regulation is being amended to specifically list the accompanying documents a company is to submit to the Registrar together with the draft terms as approved by the general meeting of the company. The regulation seeks to also require the extraordinary resolution approving the cross-border conversion and the declaration of solvency, when the latter is required in terms of regulation 8.

- ***Administrative penalty information – Second Schedule to the principal regulations***

  The table indicates the regulation from which the obligation arises, the description of the default and the amount due in penalties, both the default penalty and the daily penalty.

PART V - Amendments to the Cross-border Mergers of Limited Liability Companies Regulations

- ***Legal certainty – regulations 3, 6, 7, 10, 15, 17, 18, 19, 20, 27 and the Schedule to the principal regulations***

  Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

- ***Approval by the general meeting – regulation 11 of the principal regulations***

  The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

- ***Administrative penalty – regulation 14 of the principal regulations***

  An administrative penalty is being introduced in those cases whereby a company fails to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such a penalty is similar to the amounts found under the Eleventh Schedule of the

Companies Act.

- ***Administrative penalty information – Second Schedule to the principal regulations***

  The table indicates the regulation from which the obligation arises, the description of the default and the amount due in penalties, both the default penalty and the daily penalty.

Conclusion

Officers of companies are to be made fully aware of the amending Regulations introducing certain obligations, and the administrative penalties arising therefrom. It is advisable that when company officers are unsure about their obligations, they consult a lawyer, accountant, or auditor. 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 Maltese company law and regulations.

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.*

For any other information kindly contact legal.enforcement@mbr.mt / +356 22582300