CHAPTER 168

COMMERCIAL PARTNERSHIPS ORDINANCE*

To regulate commercial partnerships.

(19th April, 1965)†

Enacted by ORDINANCE X of 1962, as amended by Legal Notice 4 of 1963; Acts: I of 1965, XXI of 1966, XII of 1970; Legal Notice 148 of 1975; Acts: XI of 1977, XXVIII of 1979, IX of 1982, XIII of 1983, XXXIV of 1988, IV of 1991 and XXIV of 1995; and Legal Notice 410 of 2007.

ARRANGEMENT OF ORDINANCE

		Articles
	Short title	1
Part I.	Preliminary Provisions	2-3
Part II.	General Provisions	4-6
Part III.	Partnership "En Nom Collectif"	7-50
Part IV.	Partnership "En Commandite"	51-66
Part V.	Partnership "Anonyme" or Limited Liability Company	67-161
	Formation of Company and Matters incidental thereto	67-81
	Share Capital and Debentures	82-110
	Management and Administration	111-146
	Private Companies	147-149
	Dissolution and Winding up	150-161
Part VI.	Conversion and Amalgamation of Partnerships	162-168
Part VII.	Association "En Participation"	169-176
Part VIII.	Partnerships constituted or registered outside Malta	177-190
	Provisions as to establishment of place of business in Malta	177-187
	Prospectuses	188-190
Part X.	General	191-195

SCHEDULES

First Schedule	Part I	Regulations for the Management of a Limited Liability Company
	Part II	Regulations for the Management of a Private Company
Second Schedule		Matters to be specified in a Prospectus and Reports to be set out therein
	Part I	Matters to be specified
	Part II	Reports to be set out
Third Schedule	Part I	General Provisions as to Balance Sheet and Profit and Loss Account
	Part II	Exceptions for Special Classes of Company
	Part III	Interpretation of Schedule
Fourth Schedule		Contents and Form of Annual Return

*Repealed by Act XXV of 1995 (Chapter 386); but reproduced in view of articles which are still applicable - *see* Chapter 386.

†See article 1 of the Ordinance as originally enacted, part of which has been omitted under the Statute Law Revision Act, 1980, and Legal Notice 5 of 1965.

Short title.
Amended by:
L.N. 4 of 1963;
XI. 1977.2.

1. The short title of this Ordinance is the Commercial Partnerships Ordinance.

PART I

PRELIMINARY PROVISIONS

Interpretation.
Amended by:
I.1965.14;
L.N. 148 of 1975;
XI. 1977.2;
IX. 1982.2;
XXIV.1995.362.

2. In this Ordinance, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

"the court" means the Civil Court, First Hall;

"debenture" includes debenture stock, bonds and other securities of the company;

"director" includes any person occupying the position of director by whatever name called;

"Minister" means the Minister responsible for trade and includes, to the extent of the authority given, any person authorised by the Minister in that behalf for any purpose of this Ordinance;

"officer", in relation to a company, includes a director, manager or secretary, but does not include an auditor;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription any shares or debentures of a company;

"Registrar" means the Registrar of Partnerships;

"share" includes stock except where a distinction between stock and shares is expressed or implied.

Law governing commercial partnerships.

3. Commercial partnerships shall be governed by this Ordinance:

Provided that where no provision is made in this Ordinance, the usages of trade or, in the absence of such usages, the civil law shall apply.

PART II

GENERAL PROVISIONS

Formation of partnership.

4. (1) Persons associated for the exercise of one or more acts of trade may, by complying with the requirements of this Ordinance, form a commercial partnership.

(2) A commercial partnership has a legal personality distinct from that of its members.

Different kinds of partnerships.

5. A commercial partnership may be either -

(*a*) a partnership *en nom collectif;* or

(*b*) a partnership *en commandite;* or

(*c*) a partnership *anonyme* or limited liability company.

Indication of particulars concerning partnerships in business letters, etc.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

6. (1) In all business letters, trade catalogues and trade circulars issued or sent by a partnership, there shall be stated in legible characters the name and the registered office of the partnership and there shall be similarly stated, in respect of a partnership *en non collectif* or of a partnership *en commandite*, the names or initials and the surnames of the persons having the representation thereof, and, in respect of a limited liability company, the names or initials and the surnames of the individual directors and, in the case of a director being a body corporate, the name of the body corporate.

(2) Where a partnership is being wound up, every business letter, invoice or other document issued by or on behalf of the partnership or a liquidator thereof, being a document on or in which the name of the partnership appears, shall contain a statement that the partnership is being wound up.

(3) If a partnership fails to comply with any of the requirements of this article, every person having the administration or the representation of the partnership and, in respect of a limited liability company every officer of the company, and where a partnership is being wound up, every liquidator, who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

PART III

PARTNERSHIP *EN NOM COLLECTIF*

Definition.

7. A partnership *en nom collectif* operates under a partnership-name and has its obligations guaranteed by the unlimited and joint and several liability of all the partners:

Provided that no action shall lie against the individual partners unless the property of the partnership has first been discussed.

Agreement to pay share of profits.

8. An agreement to pay a share of the profits of a partnership to a person in total or partial remuneration for his services shall not, of itself, make him a partner.

Partnership-name.

9. The names of partners only may form part of a partnership-name:

Provided that the name of a person who has ceased to be a partner may be retained in a partnership-name.

Penalties for use of partnership- name including name of fictitious person, etc.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

10. Subject to the provisions of article 9 -

(*a*) any person who knowingly makes use of a partnership-name which includes the name of a person who is not partner or the name of a fictitous person or knowingly makes use of a name falsely implying the existence of a partnership, shall be liable to a penalty not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69);

(*b*) whosoever permits or suffers his name to be used in the name of a partnership of which he does not form part, shall, for such fact alone, be held liable unlimitedly and jointly and severally with the partners for all the obligations contracted by the partnership under that name.

Contributions deemed to be made in ownership.

11. Things contributed to the partnership shall be deemed to have been transferred in full ownership, unless the contrary is proved:

Provided that, where any of the partners has contributed his own services only, the contributions made by the other partners shall be deemed to have been made in usufruct.

Contribution of a debt owing to a partner.

12. Where a partner has contributed to the partnership a debt owing to him, he shall not be discharged until the partnership obtains payment of the amount for which the debt was contributed and, in case of non-payment at the due date, he shall be liable, jointly and severally with the debtor, for the said amount with interest from the date the debt contributed fell due.

Valuation of contribution.

13. Where the value of a thing contributed to the partnership has not been otherwise determined, the current value thereof at the date at which its delivery is due shall be deemed to be the true value.

How partnership is constituted.

14. A partnership *en nom collectif* shall not be validly constituted unless a deed of partnership is entered into and a certificate of registration is issued under this Ordinance in respect thereof.

Contents of deed of partnership.
Amended by: I. 1965.2.

15. The deed of partnership must state:

(*a*) the name, surname and residence of each of the partners;

(*b*) the partnership-name;

(*c*) the registered office in Malta of the partnership;

(*d*) the objects of the partnership, that is to say, whether the objects are trade in general or a particular branch of trade, and, in the latter case, the nature of the trade;

(*e*) the contribution of each of the partners;

(*f*) the period fixed for the duration of the partnership.

Registration of deeds of partnership.

16. (1) The deed of partnership shall be delivered for registration and publication to the Registrar who, being satisfied

that it complies with the requirements of article 15 and of sub-article (2), shall register it.

(2) Where the deed of partnership is a public deed or a private writing enrolled in the records of a notary public, an authentic copy thereof shall be delivered in lieu of the original.

(3) The aforesaid delivery shall be made by any one of the partners or his authorised agent.

Duty of Registrar and effect of registration.

17. On the registration of the deed of partnership the Registrar shall certify under his hand that the partnership is registered and the partnership shall come into existence and shall be capable of commencing business under the partnership-name as from the date of the certificate:

Provided that, if registration is obtained before the date fixed in the deed of partnership for the commencement of the partnership, the certificate shall indicate such date, and the partnership shall come into existence and shall be capable of commencing business as from such later date.

Where certificate of registration is not issued.

18. Unless and until a certificate of registration is issued under this Ordinance in respect of a partnership *en nom collectif* or until the date indicated in a certificate of registration as the date on which a partnership *en nom collectif* shall come into existence -

(*a*) any two or more persons carrying on business under a name falsely implying the existence of a partnership shall have, as against one another and limitedly to property acquired from such business, such rights only as are by law conferred on joint owners;

(*b*) any obligation contracted in favour of third parties in good faith under a name falsely implying the existence of a partnership shall be jointly and severally binding on those persons who, if a certificate as aforesaid had been issued, would have been partners carrying on business under that name.

Changes in deed of partnership. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

19. (1) Every change relating to the administration or the representation of a partnership, the dissolution of a partnership before the period fixed for its duration, any enlargement of the said period not expressly contemplated in the deed of partnership and generally any alteration or addition to the deed of partnership shall be made in writing and, subject to the provisions of article 21, shall not take effect unless and until the relative instrument or, where such instrument is a public deed or a private writing enrolled in the records of a notary public, an authentic copy thereof is delivered to the Registrar for registration and publication and is registered by him.

(2) Where a partner ceases to be a partner or where a person whose name does not appear in the deed of partnership or in any alteration or addition thereto becomes a partner of an already existing partnership, a notice to that effect shall, within one month, be delivered to the Registrar for registration and publication by the

partner or partners having the administration or the representation of the partnership.

(3) If default is made in complying with any of the provisions of sub-article (2), the partner or partners having the administration or the representation of the partnership shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Where alteration consists in change of partnership-name.

20. Where the alteration to the deed of partnership consists in a change of the partnership-name, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

Reductions in contribution of a partner and dissolution of a partnership before period fixed for its duration.
Amended by: XI.1977.2.

21. (1) Any reduction in the contribution of a partner, other than a contribution consisting in personal services, and the dissolution of the partnership before the period fixed for its duration shall not be operative until three months from the date of publication of the statement referred to in article 192(1)(d) relating to the instrument effecting such reduction or dissolution.

(2) Any creditor of the partnership whose debt existed prior to the registration of the reduction or of the dissolution may object thereto, by writ of summons, within the period of three months as aforesaid and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the reduction of the contribution or the dissolution of the partnership, as the case may be, on sufficient security being given by the partnership.

Right of creditors of a partner to oppose enlargement of duration of a partnership.
Amended by: XI.1977.2.

22. Where the duration of a partnership is enlarged beyond the periods contemplated in the deed of partnership, the separate creditor of a partner may object to such enlargement by writ of summons filed within three months from the date of the publication of the statement referred to in article 192(1)(*d*) relating to the instrument effecting such enlargement and, upon good cause being shown, the court shall direct the partnership to liquidate such partner's interest in the partnership within three months of the judgment.

Duties of Registrar of Courts.
Amended by: XXIV.1995.362.

23. The Registrar of Courts shall, without delay, cause a copy of any writ of summons filed under articles 21 and 22 and of any judgment given thereon to be served on the Registrar for registration and publication.

How deed of partnership may be altered.

24. Unless otherwise provided in the deed of partnership, any alteration or addition thereto may only be made with the unanimous consent of the partners.

Administration and representation of a partnership.

25. In so far as the deed of partnership does not otherwise provide, the administration and representation of the partnership shall vest in each of the partners severally.

How partnership may be bound.

26. (1) A partnership may not be bound in favour of third parties except by a partner acting under the partnership-name and having the representation of the partnership either by virtue of the deed of partnership or by operation of law.

(2) Where any such partner has acted as aforesaid, the partnership shall be bound even though it derives no benefit.

New partners.

27. (1) Where a person becomes a partner of an already existing partnership, he shall thereby become liable for all the obligations of the partnership, even if incurred before the date at which he became a partner.

(2) Any agreement to the contrary shall be of no effect in regard to third parties.

Distribution of profits.

28. A partnership shall not distribute profits until it has made good all losses.

How rights of creditors of a partner are enforceable.

29. The separate creditors of a partner may enforce their rights, during the continuance of the partnership, on the share of the profits due to their debtor and, on the dissolution of the partnership, on such portion of the assets of the partnership as is due to their debtor on the partnership being wound up.

A partner may not compete with partnership.

30. (1) A partner shall not, in competition with the partnership and without the express consent of the other partners, carry on business on his own account or on account of others or be a partner with unlimited liability in another partnership.

(2) If a partner acts in contravention of the provisions of sub-article (1), the partnership may, at its option, either take action for damages and interest against the offending partner or demand payment of any profit made by him in violation of the aforesaid prohibition.

(3) The exercise of the rights conferred by sub-article (2) shall be barred by the lapse of one year from the date of the contravention.

Death of a partner.

31. Saving any provision to the contrary in the deed of partnership, in the event of death of one of the partners the surviving partners shall liquidate the deceased partner's interest in the partnership in favour of his heirs, unless the surviving partners unanimously elect either to dissolve the partnership or to continue the partnership with the heirs, if, in the latter case, such heirs accept.

Expulsion of a partner.

32. (1) A partner may be expelled from the partnership by a decision of the majority of the other partners -

(*a*) if he is unable to make his contribution or fails to make it within a reasonable time after being called upon to do so;

(*b*) if he commits a serious breach of duty as a partner;

(*c*) if he contravenes the provisions of article 30(1);

(d) if he is interdicted or incapacitated;

(*e*) in such other cases for which provision is made in the deed of partnership.

(2) Any decision taken as aforesaid shall be communicated in writing to the expelled partner and shall not take effect until the

lapse of fifteen days from the receipt of such communication.

(3) The expelled partner may, by writ of summons filed within fifteen days from the receipt of the aforesaid communication, object to the decision and the court shall have power to stay the execution of the said decision pending its judgment.

(4) Where the partnership consists of two partners only, the expulsion of a partner may only be ordered by the court at the suit of the other partner.

Cessation of membership.

33. A partner shall cease to be a partner if -

(*a*) he is adjudged bankrupt;

(*b*) his interest in the partnership has been liquidated under the provisions of article 22.

Rights of persons ceasing to be partners.

34. (1) A partner who has been expelled or has otherwise ceased to be a partner shall be entitled to have his interest in the partnership liquidated.

(2) There shall be included in the liquidation of the interest of a partner who has been expelled or who has otherwise ceased to be a partner any profit or loss deriving from business in course of transaction.

Dissolution of partnerships *en nom collectif*.

35. A partnership *en nom collectif* is dissolved -

(*a*) when the period fixed for its duration expires;

(*b*) if the undertaking forming its object is completed or cannot be completed;

(*c*) if all the partners so agree;

(*d*) if the partnership is adjudged bankrupt;

(*e*) if the number of partners is reduced below two and remains so reduced for more than six months;

(*f*) if, in the opinion of the court, there exist grounds of sufficient gravity to warrant dissolution;

(*g*) in such other cases for which provision is made in the deed of partnership.

Notice of dissolution. *Amended by: XII.1970.2. XXIV.1995.362.*

36. On the dissolution of a partnership, and in no case later than fifteen days after such dissolution, the partners having the administration or the representation thereof shall deliver to the Registrar for registration and publication a notice of the dissolution:

Provided that, where a partnership is dissolved by order of the court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts.

How a partnership *en nom collectif* may be wound up.

37. (1) Where the manner in which the partnership is to be wound up is not provided for in the deed of partnership or is not determined by agreement between the partners, the partnership shall be wound up by one or more liquidators.

(2) If the partners do not agree as to the person who is to be

appointed liquidator, the appointment shall be made by the court.

(3) The liquidator shall, within ten days after his appointment, deliver to the Registrar for registration and publication a notice of his appointment.

Power to remove liquidator.

38. A liquidator, whether appointed by the partners or by the court, may be removed from office either by the partners, if they so agree, or by order of the court, on a demand by writ of summons made by any of the partners, if the court is satisfied that there exist sufficient grounds to warrant his removal.

Remuneration of liquidator.

39. The remuneration of the liquidator may be fixed by agreement between the partners and the liquidator, failing which it shall be fixed by the court.

Costs of winding up payable in priority to other claims.

40. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the partnership in priority to all other claims.

Penalty.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

41. If default is made in complying with any of the requirements of article 36 and of article 37(3), every partner or liquidator, as the case may be, who is in default, shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Powers until provision is made for winding up.

42. Until such time as provision is made for the winding up of the partnership, such acts only as are of ordinary administration may be performed.

Duties of partners vested with administration.

43. Where a liquidator is appointed, the partners vested with the administration of the partnership shall -

(*a*) deliver to the liquidator all the assets and all the books and other documents of the partnership and shall draw up accounts relating to their administration for the period since the preceding accounts; and

(*b*) together with the liquidator, draw up a balance sheet showing the state of affairs of the partnership as at the date of the dissolution.

Powers of liquidators.

44. (1) The liquidator shall represent the partnership and shall have power to perform all acts conducive and ancillary to the winding up of the affairs of the partnership:

Provided that he shall not refer any matter to arbitration or make any compromise unless so authorised in writing by the partners.

(2) The liquidator shall not undertake any new transaction.

(3) Where more than one liquidator is appointed, they shall act jointly and shall be jointly and severally liable for their acts, unless the partners have otherwise provided.

Liquidator not to distribute assets before paying debts.

45. (1) The liquidator shall not distribute any assets of the partnership among the partners unless either the debts and liabilities of the partnership have been paid or sufficient funds have

been set aside for the payment thereof.

(2) Where the assets of the partnership are insufficient to meet its liabilities, the liquidator may demand from the partners payment of the contribution, if any, due by them, irrespective of the date when it falls due, and, if necessary, the sums required for the payment of the aforesaid liabilities in the proportion in which the liabilities of the partnership are to be borne by the partners.

Duty of liquidator to give information, to render account and prepare scheme of distribution.

46. (1) The liquidator shall, at the request of any of the partners, inform the partners as to the state and progress of the liquidation.

(2) As soon as the affairs of the partnership are wound up, the liquidator shall render an account of the winding up and of his receipts and payments and draw up a scheme of distribution.

Rules applicable to distribution of assets.

47. In the distribution of the assets of a partnership the following provisions shall apply in so far as no provision in that behalf is made in the deed of partnership, that is to say:

(*a*) where a thing has been contributed in usufruct or enjoyment, it shall be restored to the partner contributing it and the partnership shall be held liable in damages if the thing has perished or deteriorated for any cause attributable to any of the partners, saving the right of the partnership to the reimbursement of any sums so paid against the partner who is at fault;

(*b*) the assets of the partnership shall first be applied in repayment of the contributions and any balance shall be distributed among the partners in proportion to their share in the profits of the partnership;

(*c*) where it has been agreed that the distribution of the assets shall be made in kind, the provisions governing partition of common property shall apply.

Approval of accounts and scheme of distribution.

48. (1) The liquidator shall by judicial act serve on each of the partners a copy of the accounts and of the scheme of distribution mentioned in article 46(2).

(2) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by writ of summons by any of the partners within two months of the service of the judicial act referred to in sub-article (1).

Striking of name of partnership off Register.

49. On the approval of the accounts, the liquidator shall deliver to the Registrar for registration a notice of such approval and the Registrar shall thereupon strike the name of the partnership off the register.

Preservation of books of account, etc., after dissolution.

50. The books of account and the documents of the partnership shall be kept by the person elected for that purpose by the majority of the partners and shall be so kept for a period of ten years from the date at which the name of the partnership was struck off the register.

PART IV

PARTNERSHIP *EN COMMANDITE*

Definition.

51. A partnership *en commandite* operates under a partnership-name and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners, called general partners, and by the liability, limited to the amount, if any, unpaid on the contribution, of one or more partners, called limited partners.

Applicability of provisions governing partnerships *en nom collectif*.

52. The provisions governing partnerships *en nom collectif* shall apply to partnerships *en commandite* except in so far as they are inconsistent with the provisions of this Part.

Partnership-name.

53. (1) The name of a limited partner may not be included in the partnership-name of a partnership *en commandite*.

(2) If a limited partner permits or suffers his name to be included in a partnership-name, he shall be bound, in regard to third parties, unlimitedly and jointly and severally with the general partners for all the obligations of the partnership.

Contribution of limited partner not to include personal services.

54. The contribution of a limited partner may not include personal services.

Contents of deed of partnership.

55. The deed of partnership, in addition to the particulars prescribed by article 15, shall specify which of the partners are general partners and which of them are limited partners, and in default the partnership shall resolve itself into a partnership *en nom collectif*.

Rights of general partners.

56. The general partners shall have all the rights and all the duties of partners in a partnership *en nom collectif*.

Administration and representation.

57. The administration and representation of the partnership may only be entrusted to one or more general partners.

Appointment of partners to administer and represent partnership.

58. Unless otherwise provided in the deed of partnership, the general partners shall have the right to appoint the partners who are to administer and represent the partnership and to dismiss from office the partners so appointed.

Limited partner cannot take part in management of partnerships.

59. (1) A limited partner shall not perform any act of administration nor transact business on behalf of the partnership except by virtue of a power of attorney given for specified acts or transactions.

(2) If a limited partner acts in contravention of the aforesaid prohibition, he shall be bound, in regard to third parties, unlimitedly and jointly and severally with the general partners for all the obligations of the partnership and shall moreover be liable to be expelled from the partnership in accordance with the provisions of article 32.

Communication of yearly accounts to limited partners.

60. At the end of each financial year the balance sheet and profit and loss account of the partnership shall be communicated to the limited partners, who, for the purpose of ascertaining their correctness, shall have a right of access to the books of account and other documents of the partnership.

Article 30 not to apply to limited partners.

61. The provisions of article 30 shall not apply to a limited partner.

Limited partner not bound to restore profits received in good faith.

62. A limited partner shall in no case be bound to restore profits received in good faith.

Assignment of interest by limited partner.

63. Unless the deed of partnership otherwise provides, a limited partner may assign his interest in the partnership:

Provided that, if the contribution of a limited partner is not fully paid up, any assignment of his interest in the partnership shall not have effect, in regard to the partnership, unless it is made with the consent of all the general partners.

Death of limited partner.

64. Unless the deed of partnership otherwise provides, in the event of death of a limited partner, the partnership shall continue with his heirs.

Dissolution of partnership *en commandite*.

65. (1) A partnership *en commandite*, besides being determinable for any of the causes mentioned in article 35, shall be dissolved if no general partner or no limited partner remains, unless, within six months, the partner who has ceased to be a partner shall have been substituted.

(2) Where no general partner remains, the limited partners may, for the said period of six months, appoint one of their number for the performance of acts of ordinary administration.

(3) A limited partner appointed as aforesaid shall not be subject to the provisions of article 59(2).

Division of capital into shares.

66. (1) Without prejudice to the foregoing provisions of this Part, the capital of a partnership *en commandite* may be divided into shares.

(2) The provisions relating to shares in a limited liability company shall apply to the shares in a partnership *en commandite* in so far as they are not inconsistent with the foregoing provisions.

PART V

PARTNERSHIP *ANONYME* OR LIMITED LIABILITY COMPANY

Formation of Company and Matters Incidental thereto

Definition.

67. A partnership *anonyme* or limited liability company (hereinafter referred to as a "company") is formed by means of a capital divided into shares and has the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them.

How company is constituted.

68. A company shall not be validly constituted unless a memorandum of association is entered into and a certificate of registration is issued under this Ordinance in respect thereof.

Contents of memorandum. *Amended by: I. 1965.3.*

69. The memorandum of every company must state:

(*a*) the name, surname and residence of each of the subscribers thereto;

(*b*) the name of the company;

(*c*) the registered office in Malta of the company;

(*d*) the objects of the company;

(*e*) the amount of share capital with which the company proposes to be registered, the division thereof into shares of a fixed amount, the number of shares taken by each of the subscribers and the amount paid up in respect of each share;

(*f*) the number of the directors and the name and surname of the first director or directors, and in the case of any such director being a body corporate, the name of the body corporate.

Name of company. *Amended by: XII. 1970.3; XIII.1983.5. Substituted by: XXXIV. 1988.55. Amended by: L.N. 410 of 2007.*

70. (1) Subject to the provisions of this article, a company may be designated by any name, but such name shall have "limited" as the last word.

(2) A company shall not be registered by a name which:

(*a*) is the same as a name of another registered company or so nearly similar as in the opinion of the Registrar it could create confusion; or

(*b*) is in the opinion of the Registrar offensive or otherwise undesirable; or

(*c*) has been reserved for registration for another company upon a notice in writing to the Registrar given not earlier than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this article without delay to the person requesting the registration.

(3) A company shall not be registered by a name which includes the word "nominee" unless it is a company qualified to be registered as a nominee company under the Malta Financial Services Authority Act.

Cap. 330.

(4) A person or persons trading or carrying on business or other activity:

(*a*) under a name or title of which "limited" or a contraction or imitation thereof is the last word and

which is not the name of a company duly registered under this Ordinance; or

(*b*) under a name or title which contains the word "nominee", or a contraction or imitation thereof, and which is not the name of a company in possession of a warrant, currently in force, issued under the Malta Financial Services Authority Act, or the Trusts and Trustees Act, authorising such company to act as a nominee company for the purpose of those Acts,

Cap. 330.
Cap. 331.

shall be liable on conviction to a penalty of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not more than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and to a further penalty not exceeding twenty-three euro and twenty-nine cents (23.29) for any day during which the offence continues.

Objects of company.

71. The objects of a company shall be clearly defined and may not be trade in general.

Minimum share capital.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

72. (1) The share capital of a company shall not be less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

(2) Where the share capital is one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69), it shall be fully subscribed in the memorandum, and where it exceeds such amount, a minimum of one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) shall be subscribed in the memorandum.

(3) Not less than twenty per cent of the nominal amount of each share taken shall be paid up on the signing of the memorandum.

Articles of association.

73. (1) There may be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in the First Schedule hereto, these regulations shall be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Registration of memorandum and articles.
Amended by: XII. 1970.4.

74. (1) The memorandum and articles, if any, shall be delivered for registration and publication to the Registrar who, being satisfied that all the requirements of articles 68 to 73 and of article 122(1) have been complied with, shall register them.

(2) Where the memorandum or the articles are drawn up in a public deed or in a private writing enrolled in the records of a notary public, an authentic copy thereof shall be delivered in lieu of the original.

(3) The aforesaid delivery shall be made by any one of the subscribers to the memorandum or his authorised agent.

Duty of Registrar and effects of registration.

75. On the registration of the memorandum and articles, if any, of a company the Registrar shall certify under his hand that the company is registered, and the company shall come into existence and shall be capable of commencing business as from the date of the certificate:

Provided that if registration is obtained before the date fixed in the memorandum for the commencement of the company, the certificate shall indicate such date and the company shall come into existence and shall be capable of commencing business as from such later date.

Where certificate of registration is not issued.

76. All persons carrying on business in the name of a company in respect of which a certificate of registration has not been issued under this Ordinance or before the date indicated in a certificate of registration as the date on which a company shall come into existence shall be personally and jointly and severally liable for their dealings with third parties acting in good faith and shall have, as against one another and limitedly to property acquired from such business, such rights only as are by law conferred on joint owners.

Alterations and additions to memorandum and articles.
Amended by: I. 1965.4; XIII. 1983.5; L.N. 410 of 2007.

77. (1) A company may by extraordinary resolution alter or add to its memorandum and articles:

Provided that -

(i) where the alteration consists in a change of the registered office in Malta of the company such alteration may be effected by a resolution of the directors; and

(ii) where the alteration consists in the conversion of any shares into stock or in the reconversion of that stock into shares, such alteration may only be made if the shares to be converted are paid up shares and if the stock is reconverted into paid up shares, but, if the company is so authorised by its memorandum or articles, it may by ordinary resolution convert any paid up shares into stock and reconvert that stock into paid up shares of any denomination.

(2) It shall be the duty of the directors to deliver to the Registrar for registration and publication a copy of any resolution as aforesaid, authenticated in accordance with article 81, within fifteen days after the date of the resolution.

(3) Any alteration or addition to the memorandum or articles of a company shall not take effect, unless and until it is registered as provided in sub-article (2).

(4) If default is made in complying with the provisions of sub-article (2), every director of the company who is in default shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Reduction of share capital.
Amended by: XI. 1977.2; XXIV.1995.362.

78. (1) Notwithstanding the provisions of the last foregoing article, where the alteration consists in a reduction of the share capital and such reduction involves either diminution of liability in respect of unpaid share capital or the payment to any member of any paid up share capital, any such reduction shall not take effect until three months from the date of the publication of the statement referred to in article 192(1)(*d*) relating to the resolution effecting such alteration:

Provided that if a creditor of the company whose debt existed prior to the registration of the reduction objects thereto by writ of summons filed within the period of three months reckoned as aforesaid and shows good cause why it should not take effect, the court shall either uphold the objection or allow the reduction on sufficient security being given.

(2) The Registrar of Courts shall without delay cause a copy of any writ of summons filed under sub-article (1) and of any judgment given thereon to be served on the Registrar for registration and publication.

Change of name of company.

79. Where a company changes its name under the provisions of article 77 the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

80. Notwithstanding anything in the memorandum or articles of a company, no member shall be bound by any alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise pay money to, the company:

Provided that this article shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Authentication of documents.

81. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company.

Share Capital and Debentures

Issue of applications for shares in or debentures of a company to be made with a prospectus.
Amended by: I. 1965.5.

82. (1) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the company is registered and the form is issued with a prospectus which complies with the requirements of the next following article:

Provided that this article shall not apply to a form of application issued either -

(*a*) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which are not offered to the public.

(2) The issue of a prospectus or of a form of application for shares in or debentures of a company to existing members or debenture holders of the company shall not be deemed to be an offer to the public, whether an applicant will or will not have the right to renounce in favour of other persons.

Dating of prospectus and matters to be stated therein.

83. (1) Every prospectus shall be dated and shall state the matters specified in Part I of the Second Schedule hereto and set out the reports specified in Part II of that Schedule.

(2) A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this article or purporting to effect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

Penalty. *Amended by: I. 1965.6; XIII. 1983.5; L.N. 410 of 2007.*

84. Any person responsible for the issue, circulation or distribution of a prospectus or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of article 82 or of article 83(1) shall be liable to a penalty not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69):

Provided that a director or other person responsible for the prospectus shall not incur liability if -

(*a*) as regards any matter not disclosed he proves that he was not cognizant thereof; or

(*b*) he proves that the contravention arose from an honest mistake of fact on his part; or

(*c*) the contravention was in respect of matters which, in the opinion of the court, were immaterial or otherwise such as ought, having regard to all the circumstances of the case, reasonably to be excused:

Provided further that in the event of failure to include in a prospectus a statement with respect to matters specified in paragraph 16 of the Second Schedule hereto, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

Prospectus including a statement by experts. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

85. (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless -

(*a*) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof; and

(*b*) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of the provisions of this article, every person who is knowingly a party to the issue thereof shall be liable to a penalty not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

(3) In this article the expression "expert" includes engineer,

valuer, accountant and any other person whose profession gives authority to a statement made by him.

Registration of prospectus. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

86. (1) No prospectus shall be issued unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(*a*) any consent to the issue of the prospectus required by the last preceding article from any person as an expert; and

(*b*) a copy of any contract required by paragraph 14 of the Second Schedule hereto to be stated in a prospectus or, in the case of a contract not reduced in writing, a memorandum giving full particulars thereof.

(2) If a prospectus is issued in contravention of this article, every person who is knowingly a party to the issue of the prospectus shall be liable to a penalty not exceeding eleven euro and sixty-five cents (11.65) for every day from the date of the issue of the prospectus until a copy thereof is delivered as aforesaid with the required documents endorsed thereon or attached thereto.

Restriction on alteration of terms mentioned in prospectus.

87. The terms of a contract referred to in the prospectus shall not, previously to the statutory meeting, be varied except subject to the approval of the said meeting.

Civil liability for mis-statements in prospectus.

88. (1) The persons who are responsible for or who have authorised the issue of a prospectus shall be jointly and severally liable for any damage sustained by a person subscribing for shares or debentures on the faith of that prospectus, by reason of any untrue statement included therein:

Provided that a person who has given the consent required by article 85 shall not be liable as a person who has authorised the issue of a prospectus except in respect of an untrue statement made by him as an expert.

(2) No person shall be liable under this article if -

(*a*) he proves that he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the statement was true; or

(*b*) he proves, as regards an untrue statement made by an expert, that he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the person making the statement was competent to make it; or

(*c*) on becoming aware of the untrue statement before any allotment is made under the prospectus, he gave reasonable public notice of the untruthfulness of the statement.

Document containing offer of shares or debentures for sale to be deemed prospectus.

89. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus and all the rules relating to prospectuses shall apply and have effect accordingly.

(2) It shall be presumed, unless the contrary is proved, that the allotment or agreement to allot was made with a view to the shares or debentures being offered for sale to the public if it is shown -

(*a*) that an offer for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Article 86 as applied by this article shall have effect -

(*a*) as if it further required a prospectus to have attached thereto a copy of any contract under which the said shares or debentures have been or are to be allotted or, in the case of a contract not reduced in writing, a memorandum giving full particulars thereof; and

(*b*) as though the persons making the offer were persons named in the prospectus as directors of a company.

Interpretation of provisions relating to prospectus.

90. For the purposes of the foregoing provisions -

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any document appearing on the face thereof or by reference incorporated therein or issued therewith.

No allotment of share capital unless seventy-five per cent subscribed.

91. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless seventy-five per cent of the share capital so offered has been subscribed.

(2) Not less than ten per cent of the nominal amount of each share taken shall be paid up on allotment.

No allotment after lapse of three months from issue of prospectus.

92. No allotment shall be made of shares in or debentures of a company in pursuance of a prospectus after the lapse of three months from the issue of the prospectus.

Time of the opening of the subscription lists.

93. (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus and no proceedings shall be taken on applications made in pursuance of a prospectus until at least the beginning of the third working day or such later time (if any) as may be specified in the prospectus, after the publication in a daily newspaper of a notice stating that a prospectus has been issued.

(2) The beginning of the said third working day or such later

time as aforesaid is hereafter in this Ordinance referred to as "the time of the opening of the subscription lists".

(3) In the application of this article to a prospectus offering shares or debentures for sale the foregoing sub-articles shall have effect with the substitution of references to sale for references to allotment.

Revocability of applications for shares or debentures.

94. An application for shares in or debentures of a company which is made in pursuance of a prospectus shall not be revocable until after the expiration of the third working day after the time of the opening of the subscription lists, or the giving, before the expiration of the said third working day, by some person responsible under article 88 for the prospectus, of a public notice having the effect under that article of excluding the responsibility of the person giving it.

Return as to allotments. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

95. (1) Whenever a company makes any allotment of its shares, the company shall, within one month thereafter, deliver to the Registrar for registration -

(*a*) a return of the allotments, stating the names and addresses of the allottees and the amount paid on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing or a document containing the particulars of the contract, constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which the allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(*c*) where applicable, a declaration that the requirements of article 91 have been complied with.

(2) If default is made in complying with this article, every officer of the company who is in default shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Company may not hold its own shares.

96. (1) It shall not be lawful for a company to hold any of its own shares.

(2) Where under any provision contained in the memorandum or articles of a company any share is forfeited to the company, any such share shall, until disposed of or until the forfeiture is cancelled, carry no voting rights.

Company may not hold shares in its holding company nor provide financial assistance for purchase of or subscription for its own, or its holding company's shares. *Amended by: I.1965.7.*

97. (1) It shall not be lawful for a company -

(*a*) to hold shares in a company which is its holding company; or

(*b*) to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company.

(2) For the purposes of this Ordinance a company shall be deemed to be a subsidiary of another (in this Ordinance referred to as the "holding company") only if -

(*a*) that other either -

(i) holds more than half in nominal value of its issued share capital, excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution; or

(ii) is entitled to more than half its voting power; or

(*b*) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

Conditions for payment of commissions, discounts, etc.

98. It shall not be lawful for a company to pay a commission or make a discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, unless -

(*a*) authority therefor is given by the memorandum or articles; and

(*b*) the commission, discount or allowance does not exceed ten per cent of the price at which the shares are issued or the amount authorised by the memorandum or articles, whichever is the less; and

(*c*) in the case of shares offered to the public for subscription, the amount or rate per cent of the commission, discount or allowance as well as the number of shares which persons have agreed in consideration thereof to subscribe absolutely, are disclosed in the prospectus.

Application of premium received on issue of shares.

99. (1) Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this article, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything

in the foregoing sub-article, be applied by the company -

(*a*) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or

(*b*) in writing off the preliminary expenses of the company or the expenses of or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(*c*) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

Redeemable preference shares.

100. (1) Where a company, duly authorised by its memorandum or articles, issues preference shares which are, or at the option of the company are to be liable, to be redeemed -

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purpose of the redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) the premium, if any, payable on redemption must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(*d*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this article, apply as if the capital redemption reserve fund were paid up share capital of the company.

(2) The capital redemption reserve fund may, notwithstanding anything in this article, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Rights of holders of special classes of shares and variations thereof. *Amended by: XXIV.1995.362.*

101. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than

fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may by writ of summons filed within twenty-one days of the consent or the resolution, demand that the variation shall not have effect.

(2) On any such demand the court, if it is satisfied, having regard to all circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the plaintiff, shall disallow the variation.

(3) The Registrar of Courts shall without delay cause a copy of any writ of summons filed under sub-article (1) and of any judgment given thereon to be served on the Registrar of Partnerships for registration.

(4) Articles 77(2) and (4) shall apply to any consent or resolution given or taken in terms of sub-article (1).

Numbering of shares.

102. Each share in a company shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Transfer of shares.

103. It shall not be lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer or an authentic copy thereof has been delivered to the company:

Provided that nothing in this article shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted *causa mortis.*

Registration of transfer at request of transferor.

104. On the application of the transferor of any share in or debenture of a company, the company shall enter in its register of members or of debentures, as the case may be, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Issue of certificates. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

105. (1) Every company shall, within two months after the allotment of any of its shares or debentures and within two months after the date on which a transfer of any such shares or debentures is lodged with the company, and within one month from the date on which any such shares or debentures transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver the certificates of all shares, the debentures and the certificates of all debenture stock allotted, transferred or transmitted *causa mortis* to the persons entitled thereto, unless the conditions of issue of the shares or debentures otherwise provide.

(2) The expression "transfer" for the purposes of this article

means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) If default is made in complying with any of the provisions of this article, every officer of the company who is in default shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Share warrants.

106. (1) A company, if so authorised by its memorandum or articles, may, with respect to any fully paid up shares, issue a warrant, in this Ordinance referred to as a "share warrant", stating that the bearer of the warrant is entitled to the shares therein specified and may provide, by coupons or otherwise, for the payment of the future dividends on shares included in the warrant.

(2) The shares specified in a share warrant may be transferred by the delivery of the warrant.

Register of members.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

107. (1) Every company shall keep a register of its members and enter therein the following particulars:

(*a*) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number, so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which each person was entered in the register as a member; and

(*c*) the date at which any person ceased to be a member:

Provided that on the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant and shall enter in place of the aforesaid requirements the following particulars:

(i) the fact of the issue of the warrant;

(ii) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and

(iii) the date of the issue of the warrant:

Provided further that where the company has converted any of its shares into stock and has registered the conversion with the Registrar as provided in article 77(2), the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (*a*) of this sub-article.

(2) The register of members shall be kept at the registered office of the company.

(3) If default is made in complying with any requirement of this article, every officer of the company who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

Register of debentures. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

108. (1) Every company shall keep a register of debentures and enter therein the names and addresses of the registered holders and particulars of the debentures held by them respectively.

(2) The register of debentures shall be kept at the registered office of the company.

(3) If default is made in complying with any requirement of this article, every officer of the company who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

Inspection of registers. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

109. Except when duly closed under the provisions of this Ordinance, and subject to such reasonable restrictions as the company in general meeting may impose -

(*a*) the register of members shall be open to the inspection of any member without charge; and

(*b*) the register of debentures shall be open to the inspection of the registered holders of any such debentures and of any member of the company without charge, and of any other person on payment of a fee of twelve cents (0.12) or such less sum as may be prescribed by the company, for each inspection.

Power to close registers.

110. (1) A company may, on giving notice by advertisement in a daily newspaper, close the register of members for any period or periods not exceeding in the whole thirty days in each year.

(2) The register of debentures may be closed in accordance with the provisions contained in the memorandum or articles or in the debentures or, in the case of debenture stock, in the stock certificates, during such period or periods, not exceeding in the whole thirty days in any one year, as may be therein specified.

Management and Administration

Statutory meeting.

111. (1) Every company shall within a period of not less than two months nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the "statutory meeting":

Provided that where a company has, within the aforesaid period of two months, issued a prospectus inviting the public to subscribe for its shares, the statutory meeting shall be held not less than one month nor more than three months from the date at which any allotment of its shares has been made under that prospectus.

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Ordinance referred to as the "statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required by this sub-article, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by two of the directors of the company or, if there is only one director, by that director, and shall state:

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating, in the case of shares partly paid up, the extent to which they are so paid up, and, in either case, the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; and

(*d*) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The directors shall cause a copy of the statutory report certified as required by this article, to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

(5) The members present at the meeting shall be at liberty to discuss any matter arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(6) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

Holding of annual general meeting.

112. Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as a company holds its first annual general meeting within eighteen months of its registration it need not hold it in the year of its registration or in the following year.

Penalty. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

113. If default is made in complying with the provisions of articles 111 and 112, every officer of the company who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

Convening of extraordinary general meeting on requisition.

114. (1) The directors of a company shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up share capital of the company as at the date of the deposit carried the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists may themselves convene a meeting in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors, but a meeting so convened shall not be held after the expiration of three months from the date of the deposit of the requisition.

(4) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

Length of notice for calling meetings.

115. A general meeting of a company shall be deemed not to have been duly convened unless at least fourteen days' notice has been given in writing, and any provision in the company's memorandum or articles shall be construed as requiring fourteen days' notice in writing in so far as it provides for the calling of a meeting of a company (other than an adjourned meeting) by a shorter notice:

Provided that a meeting of the company shall, notwithstanding that it is called by a shorter notice, be deemed to have been duly convened if it is so agreed by all the members entitled to attend and vote thereat.

General provisions as to meetings and votes. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

116. The following provisions shall have effect in so far as the articles of a company do not make other provisions in that behalf:

(*a*) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by the First Schedule to this Ordinance;

(*b*) two members personally present shall be a quorum;

(*c*) any member elected by the members present at a meeting may be chairman thereof;

(*d*) every member shall have one vote in respect of each share or each twenty-three euro and twenty-nine cents (23.29) of stock held by him.

Power of court to order meeting.

117. If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of the company may be called, or to conduct the meetings of that company in the manner prescribed by the articles or this Ordinance, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Proxies.
Amended by: I. 1965.8.

118. (1) Any member entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to demand a poll.

(2) The appointment of a proxy shall be in writing.

(3) In every notice calling a meeting of a company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy and that a proxy need not also be a member.

Right to demand a poll.

119. Any provision contained in a company's memorandum or articles shall be void in so far as it would have the effect either -

(*a*) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(*b*) of making ineffective a demand for a poll on any such question which is made either -

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Extraordinary resolutions.

120. A resolution shall be an extraordinary resolution where -

(*a*) it has been taken at a general meeting of which notice

specifying the intention to propose the resolution as an extraordinary resolution has been duly given; and

(*b*) it has been passed by a number of members having the right to attend and vote at any such meeting holding in the aggregate not less than fifty-one per cent in nominal value of the shares conferring that right or such other higher percentage as the memorandum or articles may prescribe.

Directors.

121. (1) The business of a company shall be managed by one or more directors, who may exercise all such powers of the company as are not, by this Ordinance or by the memorandum or articles of the company, required to be exercised by the company in general meeting.

(2) Unless otherwise provided in the memorandum or articles of a company any two of the directors, or, if there is only one director, that director, shall represent the company.

Restrictions on appointment of director.

122. (1) A person shall not be capable of being appointed director of a company by the memorandum unless, before the registration of the memorandum, he has by himself or by his agent authorised in writing -

(*a*) signed and delivered to the Registrar for registration consent in writing to act as such director; and

(*b*) either signed the memorandum for a number of shares not less than his qualification, if any, or signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any.

(2) Without prejudice to the aforesaid restrictions, where a director is, by the memorandum or articles of a company, required to hold a specified share qualification, and is not already qualified, he shall vacate his office if he fails to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the memorandum or articles, or if at any time thereafter he ceases to hold his qualification; and he shall be incapable of being reappointed director of the company until he has obtained his qualification.

(3) For the purposes of any provision in the memorandum or articles requiring a director or manager to hold a specified share qualification the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

Removal of directors.

123. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him.

(2) On receipt of a notice of an intended resolution to remove a director under this article the company shall forthwith send a copy thereof to the director concerned and the director (whether or not he is a member of the company) shall be entitled to be heard on the

resolution at the meeting.

(3) A vacancy created by the removal of a director under this article, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) Nothing in this article shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this article.

Casual vacancy.

124. (1) A casual vacancy may be filled by the continuing director or directors, and, without prejudice to the aforesaid powers of the directors, it may be filled by the company in general meeting.

(2) A person appointed by the directors to fill a casual vacancy shall hold office until the next following annual general meeting and shall be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

(3) A person appointed to fill a casual vacancy by the company in general meeting shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.

Disqualification for appointment as director.
Substituted by: IV. 1991.2.

125. A person shall not be qualified for appointment or hold office as director of a company if -

(*a*) he is interdicted or incapacitated or is an undischarged bankrupt; or

(*b*) he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

Director may not compete with company.

126. (1) A director may not, in competition with the company and without the approval of the company given at a general meeting, carry on business on his own account or on account of others or be a partner with unlimited liability in another partnership.

(2) Where a director acts in violation of the prohibition contained in this article, the company may, at its option, either take action for damages and interest against him or demand payment of any profits made by him in contravention of this article.

Prohibition of loans, etc., to directors.

127. It shall not be lawful for a company -

(*a*) to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this article shall apply either -

(i) to anything done, with the approval of the company given at a general meeting, to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(ii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business;

(*b*) to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company in general meeting.

Duty of director to disclose interest in a contract with company. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

128. (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest to the other directors either at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the contract or proposed contract, at the next meeting of the directors held after he became so interested.

(2) Any director who fails to comply with the provisions of this article shall be liable to a penalty not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

Return as to changes among directors. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

129. (1) Every company shall send to the Registrar for registration and publication a return of any change among its directors, specifying the date of the change, within fourteen days from the happening thereof.

(2) If default is made in complying with sub-article (1), every officer of the company who is in default shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Joint and several liability of directors.

130. (1) The liability of the directors in damages for any breach of duty shall be joint and several:

Provided that where a particular duty has been entrusted to one or more of the directors, only such director or directors shall be liable in damages.

(2) A director shall not be liable for the acts of his co-directors if he proves either -

(*a*) that he did not know of the breach of duty before or at the time of its occurrence and that on becoming aware of it after its occurrence he signified forthwith to the co-directors his dissent in writing; or

(*b*) that, knowing that the co-directors intended to commit a breach of duty, he took all reasonable steps to prevent it.

Provisions as to liability of officers and auditors.

131. Any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise be attached to him in respect of negligence, default or breach of duty of which he may be guilty in relation to the company shall be void:

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

Minutes of proceedings. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

132. (1) Every company shall cause minutes of all proceedings of general meetings and all proceedings at meetings of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose) be open to the inspection of any member without charge.

(4) If a company fails to comply with the requirements of sub-articles (1) and (3), every officer of the company who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

Keeping of books of account. Cap. 13.

133. (1) A company shall be deemed to comply with the requirements of articles 13 to 18 of the Commercial Code if it keeps proper books of account with respect to -

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) For the purposes of sub-article (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid

if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be at all times open to inspection by the directors:

Provided that if books of account are kept at a place outside Malta there shall be sent to, and kept at a place in, Malta and be at all times open to the inspection of the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared, in accordance with this Ordinance, the company's balance sheet and its profit and loss account.

Profit and loss account and balance sheet.

134. (1) The directors of every company shall, not later than eighteen months after its registration and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account for the period, in the case of the first account since the registration of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account is made up.

General provisions as to contents and form of accounts.

135. (1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account shall give a true and fair view of the profit and loss of the company for the financial year.

(2) Without prejudice to the general requirements of sub-article (1) or to any other requirement of this Ordinance, and save as expressly provided in Part II of the Third Schedule hereto, a company's balance sheet and profit and loss account shall comply with the requirements of the said Third Schedule, so far as applicable thereto.

(3) The accounts which, in pursuance of this Ordinance, are to be laid before every company in general meeting shall contain particulars showing -

(*a*) the amount of any loans which during the period to which the accounts relate have been made by the company or by any other person under a guarantee from or a security provided by the company to any director or officer of the company, including any such loans which were repaid during the same period;

(*b*) the amount of any loans made in the manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof;

(*c*) the total amount paid to the directors or past directors as remuneration for their services, inclusive of all fees, percentages, compensation for loss of office, pensions, superannuation allowances or gratuities or similar payments, or other emoluments paid to them by, or receivable by them from, the company or any subsidiary thereof.

Signing of balance sheet.

136. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) The profit and loss account shall be annexed to the balance sheet, and the auditor's report shall be attached thereto.

(3) Any accounts so laid shall be approved by the board of directors before the balance sheet is signed on their behalf.

Directors' report to be attached to balance sheet.

137. There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Third Schedule to this Ordinance.

Inspection of accounts.

138. Every balance sheet, including every document required by law to be annexed, which is to be laid before a company in general meeting, together with the auditor's report, shall be open to inspection at the registered office of the company, by any member or debenture holder of the company for at least ten days immediately preceding the meeting at which it is to be laid before the company and until approved by the company in general meeting.

Penalty.
Amended by: XIII. 1983.5; L.N. 410 of 2007.
Cap. 13.

139. If default is made in complying with any of the requirements of articles 13 to 18 of the Commercial Code or of article 133, as the case may be, or with any of the requirements of articles 134 to 138, any person being a director of a company who fails to take all reasonable steps to secure compliance by the company with the aforesaid requirements shall in respect of each default, be liable to a penalty not exceeding four hundred and sixty-five euro and eighty-seven cents (465.87):

Provided that it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the aforesaid requirements were complied with and was in a position to discharge that duty.

Appointment and remuneration of auditors.
Amended by: XXIV.1995.362.

140. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) Where at an annual general meeting no auditors are appointed, the vacancy shall be filled by the Judge of the Civil Court, First Hall, on an application made by any of the directors or by any member of the company, and the auditors so appointed shall

hold office until the conclusion of the next following annual general meeting.

(3) The first auditor or auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting, unless they are previously removed and others are appointed in their place by the company in a general meeting.

(4) The directors may fill any casual vacancy in the office of an auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(5) The remuneration of the auditors of a company -

(*a*) in the case of an auditor appointed by the directors or by the Judge of the Civil Court, First Hall, may be fixed by the directors or by the Judge, as the case may be;

(*b*) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this sub-article, any sum paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

Disqualification for appointment as auditor. *Amended by: L.N. 4 of 1963; I. 1965.9. Substituted by: XXVIII. 1979.16.* Cap. 281.

141. (1) A person shall not be qualified for appointment as auditor of a company unless he is an individual who holds a warrant to act as auditor issued under the Accountancy Profession Act, or is a partnership of auditors duly registered under the said Act and -

(*a*) in the case of an individual, he is not -

(i) an officer or servant of the company; or

(ii) a partner or in the employment of an officer or servant of the company; or

(iii) related by consanguinity or affinity in the direct line, or, up to the third degree, in the collateral line, to any officer of the company;

(*b*) in the case of a partnership none of the partners is an individual who is not qualified to be appointed as auditor of the company.

(2) The provisions of sub-article (1) in regard to the appointment of an auditor shall also apply in regard to the holding of such appointment.

Auditor's report.

142. (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the following matters:

(*a*) whether they have obtained all the information and explanations which to the best of their knowledge and

belief were necessary for the purposes of their audit;

(*b*) whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them;

(*c*) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;

(*d*) whether, in their opinion and to the best of their knowledge and according to the explanations given to them, the said accounts give the information required by this Ordinance in the manner as required and give a true and fair view, in the case of the balance sheet, of the company's affairs as at the end of its financial year, and, in the case of the profit and loss account, of the profit or loss for its financial year.

(2) The auditor's report shall be read before the company in general meeting.

Right of access to books and to attend at general meetings.

143. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the officers of the company such information and explanations as he thinks necessary for the performance of the duties of the auditors.

(2) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Annual return.

144. (1) Every company shall, once at least in every year, make a return in the form set out in the Fourth Schedule to this Ordinance showing the matters therein specified as on the fourteenth day after the date of the annual general meeting for the year:

Provided that -

(*a*) a company need not make a return under this sub-article either in the year of its registration or, if it is not required by article 112 to hold an annual general meeting during the following year, in that year;

(*b*) where a company has converted any of its shares into stock and registered the conversion as provided in article 77(2), the list shown in paragraph 3 of the Fourth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph;

(*c*) the return may, in any year, if the return for either of

the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 3, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

(2) The annual return, duly completed, must be signed by at least one director of the company and forwarded to the Registrar for registration within forty-two days after the annual general meeting for the year.

Documents to be annexed to annual return. *Amended by: IV. 1991.3.*

145. There shall be annexed to the annual return, not being the annual return of a company whose objects are limited to the sole purposes of owning, managing, administering or, operating ships and transactions ancillary thereto:

(*a*) a written copy, certified by at least one director of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and

(*b*) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

Penalty. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

146. If default is made in complying with the provisions of articles 144 and 145, every officer of the company who is in default shall be liable to a penalty not exceeding eleven euro and sixty-five cents (11.65) for every day during which the default continues.

Private Companies

Definition.

147. (1) A private company is a company which by its memorandum or articles -

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members to fifty; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this article, be treated as a single member.

Provisions not applicable to private companies.

148. The provisions of articles 106 and 111 and of articles 122(1) and (3) shall not apply to a private company.

Exemption of private company from requirements of article 145, etc. *Amended by: XXVIII. 1979.16; XXIV.1995.362.*

149. (1) A private company shall be excepted from the requirements imposed by article 145 if, but only if -

(*a*) the conditions mentioned in the next following sub-article are satisfied at the date of the return and have been satisfied at all times since the commencement of

this Ordinance; and

(*b*) there is sent with the return a certificate signed by at least one director of the company that to the best of his knowledge and belief the said conditions are and have been satisfied as aforesaid:

Provided that if at any time it is shown that the said conditions are then satisfied in the case of a private company, the Judge of the Civil Court, First Hall, may, on the application of the company and after hearing any of the directors of the company and the Registrar, direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

(2) The said conditions are:

(*a*) that the number of persons holding debentures of the company is not more than fifty; and

(*b*) that no body corporate is the holder of, or has any interest in, any shares or debentures of the company or is a director of the company, and neither the company nor any of the directors is party or privy to an arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members or debenture holders thereof.

(3) For the purposes of this article -

(*a*) shares held by another private company which is itself excepted under this article shall not disqualify a company from being also so excepted if, taking all the following companies together, that is to say -

(i) the company whose exemption is in question (hereinafter referred to as the "relevant company");

(ii) any company holding shares to which this paragraph has to be applied in determining the relevant company's right to be excepted as aforesaid; and

(iii) any further company taken into account for the purposes of this paragraph in determining the right to be so excepted of any company holding any such shares as aforesaid,

the total number of persons holding shares in those companies is not more than fifty, the companies themselves being disregarded;

(*b*) any interest of the company itself in any of its shares or debentures shall be disregarded;

(*c*) where two or more persons hold one or more shares in or debentures of a company jointly, they shall be treated as a single member or person.

(4) A company with respect to which the conditions mentioned

in sub-article (2) are satisfied and have been satisfied at all times since the commencement of this Ordinance or since the giving by the Judge of the Civil Court, First Hall, of a direction under the proviso to sub-article (1) shall also be excepted from the provisions of article 127(*a*) and of article 141 (1)(ii) and (iii).

Dissolution and winding up

Dissolution of companies.

150. A company is dissolved -

(*a*) when the period fixed for its duration expires;

(*b*) if the undertaking forming its objects is completed or cannot be completed;

(*c*) if the share capital of the company is reduced below the statutory minimum;

(*d*) if the number of members is reduced below two and remains so reduced for more than six months;

(*e*) if the company is adjudged bankrupt;

(*f*) if the company so resolves by extraordinary resolution;

(*g*) if, in the opinion of the court, there exist grounds of sufficient gravity to warrant dissolution;

(*h*) in such other cases for which provision is made in the memorandum or articles.

Notice of dissolution and calling of meeting for appointment of liquidator. *Amended by: XII. 1970.5; XXIV.1995.362.*

151. (1) On the dissolution of a company, and in no case later than fifteen days after such dissolution, the directors shall deliver to the Registrar for registration and publication a notice of the dissolution:

Provided that where a company is dissolved by order of the court notice of the dissolution shall be given as aforesaid by the Registrar of Courts.

(2) Except where a company is dissolved by a resolution taken at a general meeting and a liquidator is appointed at that meeting, the directors shall call a general meeting of the company, to be held not later than thirty days after the date of the dissolution, for the purpose of appointing one or more liquidators.

Appointment, removal and remuneration of liquidator.

152. (1) The liquidators shall be appointed, and may be removed from office, by an extraordinary resolution taken at a general meeting of the company:

Provided that if a resolution submitted for the appointment of a person as liquidator fails to obtain the required majority, the directors shall, within ten days of the holding of the meeting, apply to the court for the appointment of a liquidator, and the appointment shall be made by the court:

Provided further that a liquidator, whether appointed by the company or by the court, may be removed from office by order of the court on a demand, by writ of summons made by members of the company holding in the aggregate not less than one-tenth of the

paid up share capital of the company, if the court is satisfied that there exist sufficient grounds to warrant his removal.

(2) The remuneration of the liquidator shall be fixed by the company in general meeting, subject nevertheless to the right of the liquidator to demand that it be fixed or varied by the court.

(3) All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Notice of appointment of liquidator.

153. The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for registration and publication a notice of his appointment.

Penalty. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

154. If default is made in complying with any of the requirements of articles 151, 152 and 153, every director or liquidator, as the case may be, who is in default shall be liable to a penalty not exceeding four euro and sixty-six cents (4.66) for every day during which the default continues.

Powers of directors and convening of general meetings.

155. (1) Until such time as a liquidator is appointed, the directors shall have power to perform such acts only as are of ordinary administration.

(2) On the appointment of a liquidator all the powers of the directors shall cease.

(3) After the appointment of a liquidator a general meeting of the company may be convened by the liquidator or liquidators in office, or, if the office is vacant, by any member of the company, in the manner provided by this Ordinance or by the articles.

Applicability of articles 43, 44 and article 45(1).

156. The provisions of articles 43 and 44 and of article 45(1) shall apply to the winding up of a company with the substitution of references to directors for references to partners vested with the administration of the partnership in article 43, and with the substitution of references to an extraordinary resolution taken by the company in general meeting for references to partners in article 44, and with the substitution of references to members for references to partners in article 45(1).

Calls for payment of unpaid share capital.

157. (1) Where the assets of a company are insufficient to meet its liabilities the liquidator may make calls on all or any of the members for payment of any unpaid share capital of the company which he considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the members among themselves; and in making a call the liquidator may take into consideration that some of the members may partly or wholly fail to pay the call.

(2) The liquidator may, on production of a list certified by him of the names of the members liable in payment of any calls and of the amounts due by each of them, apply to the court for the enforcement of any such calls by any of the means mentioned in article 273(*a*), (*b*) and (*d*) of the Code of Organization and Civil

Cap. 12.

Procedure.

(3) Where a call is made under the provisions of this article, the person from whom a sum is due shall pay interest thereon from the day appointed for payment to the time of actual payment at the rate of six per cent *per annum*.

Duties of liquidator where winding up continues for more than one year. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

158. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with the provisions of this article, he shall be liable to a penalty not exceeding twenty-three euro and twenty-nine cents (23.29) in respect of each default.

Duties of liquidator when affairs have been completely wound up. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

159. (1) As soon as the affairs of the company are wound up the liquidator shall make an account of the winding up and of his receipts and payments and shall draw up a scheme of distribution indicating the amount due in respect of each share from the assets of the company.

(2) The liquidator shall cause the accounts to be audited by one or more auditors appointed by the company in general meeting, and shall, as soon as the account is audited, call a general meeting of the company for the purpose of laying before it the account, the scheme of distribution and the auditors' report and giving any explanation thereof.

(3) Within one week after the meeting the liquidator shall send to the Registrar for registration a copy of the account and of the scheme of distribution signed by him, together with the auditor's report and shall make a return to him of the holding of the meeting and of its date:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat.

(4) If the liquidator fails to comply with the requirements of sub-article (3), he shall be liable to a penalty not exceeding eleven euro and sixty-five cents (11.65) for every day during which the default continues.

Approval of accounts and scheme of distribution.

160. The accounts and scheme of distribution drawn up and audited in accordance with the provisions of the last foregoing article shall be deemed to have been approved by all the members of the company if no objection thereto is lodged, by writ of summons, by any member of the company, within three months from the date at which a copy thereof has been delivered to the Registrar as provided in sub-article (3) of the last foregoing article.

Name of company to be struck off the register.

161. (1) On the approval of the accounts and of the scheme of distribution the liquidator shall deliver to the Registrar for registration a notice of such approval and the Registrar shall

thereupon strike the name of the company off the register.

(2) The liquidator shall, together with the aforesaid notice, deliver the books and other documents of the company to the Registrar, who shall keep them for a period of ten years from the date at which the name of the company was struck off the register.

PART VI

CONVERSION AND AMALGAMATION OF PARTNERSHIPS

Conversion of partnerships.

162. (1) A partnership may, by complying with the requirements prescribed for the formation of the kind of partnership into which it is to be converted, be converted into a partnership of that kind.

(2) Where the partnership to be converted is either *en nom collectif* or *en commandite* the conversion may only be made with the consent of all the partners:

Provided that where one or more limited partners holding in the aggregate not more than one-fourth of the total contribution of the limited partners, or one-tenth of the share capital of the partnership, have not given their consent, the partnership shall be entitled, for the purposes of the conversion, to liquidate and reimburse to the dissenting partner his interest in the partnership or to redeem the shares held by him on such terms as may be agreed or as the court, on a demand of either the partnership or the limited partner, thinks fit to order.

(3) Where the partnership to be converted is a company, the conversion may only be made if it has been approved by an extraordinary resolution taken at a general meeting of the company; and the company shall be entitled for the purpose of the conversion, to redeem the shares held by the dissenting members 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.

Amalgamation of partnerships.

163. The provisions of article 162(2) and (3) shall apply to the amalgamation of any two or more partnerships, whether such an amalgamation is effected by the formation of a new partnership or by the merger of one or more partnerships into another existing partnership, with the substitution of references to amalgamation for references to conversion.

Registration of the conversion or amalgamation of partnerships.

164. (1) The resolution approving the conversion or amalgamation of partnerships together with the instruments giving effect to the resolution, or an authentic copy thereof, shall be delivered for registration and publication to the Registrar who, being satisfied that the requirements of article 162 or of article 163, as the case may be, have been complied with, shall register it.

(2) The aforesaid delivery shall be made by any of the partners or directors of the new partnership or of the continuing partnership, as the case may be.

Where partnership ceases to exist on conversion or amalgamation. *Substituted by: I. 1965.10.*

165. Upon the conversion or amalgamation of one or more partnerships which has become effective either through the lapse of the period referred to in article 167 or, where objection is made under that article, by a decision of the court, the Registrar shall, where a partnership ceases to exist, strike the name of the partnership off the register and, where the circumstances so demand issue a certificate of registration altered to meet the circumstances of the case; and where a conversion or an amalgamation which has been registered under this article becomes ineffective by a decision of the court under article 167, the Registrar shall amend the registration accordingly.

Partners with unlimited liability to remain bound unless creditors consent to conversion.

166. The conversion of a partnership shall not discharge partners with unlimited liability from liability for the obligations of the partnership contracted prior to the registration of the conversion unless it is proved that the creditors of the partnership have given their consent to the conversion.

Rights of creditors to oppose conversion or amalgamation. *Amended by: XI.1977.2.*

167. (1) The conversion or the amalgamation of two or more partnerships shall not take effect until three months from the date of the publication of the statement referred to in article 192(1)(*c*) relating to the instrument effecting such conversion or amalgamation.

(2) During the aforesaid period of three months any creditor of the partnership whose debt existed prior to the registration of the conversion or of the amalgamation may by writ of summons object to the conversion or to the amalgamation, and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the conversion or the amalgamation on sufficient security being given.

Continuing or new partnership succeeds partnership ceasing to exist.

168. A continuing partnership or, where in consequence of amalgamation a new partnership is formed, the new partnership shall succeed to all the rights and liabilities of the partnership or partnerships ceasing to exist.

PART VII

ASSOCIATION *EN PARTICIPATION*

Definition.

169. An association *en participation* is a contract whereby a person assigns to another person, for a valuable consideration contributed by the latter, a portion of the profits and losses of a business or of one or more commercial transactions.

Consent of associates required for admission of other associates.

170. Saving any agreement to the contrary, the associating party may not have other associates in the same business or transactions without the consent of his associates.

Relations of parties *vis-a-vis* third parties and among themselves.

171. (1) In regard to third parties the ownership of, or other rights over, a thing contributed by an associate shall vest in the associating party.

(2) In the relations of the parties among themselves, saving any

agreement that a thing contributed is to be restored in kind, the associate shall, on the termination of the association, be entitled to the reimbursement of the value of his contribution.

Only associating party acquires rights and assumes obligations.

172. A third party shall acquire rights and assume obligations against and in favour only of the associating party.

Rights of associating party and of associates.

173. The management of the business or of the transactions in respect of which the association was formed shall vest only in the associating party:

Provided that the associate may, where it is so agreed and to the extent agreed, supervise such business or transactions:

Provided further that the associate shall, in all cases, be entitled to an account of any transaction that is completed and, where the association lasts for more than one year, to an annual account of the management of the business or transactions in respect of which the association was formed.

Liability of associate.

174. Unless otherwise agreed, the associate shall bear the losses in the same proportion in which he partakes in the profits, and his liability shall be limited to his contribution.

Agreements allowed between parties.

175. Saving the provisions of the preceding articles, an association *en participation* may be formed in such manner, in such proportions of interests and upon such conditions as may be agreed upon by the parties.

No formalities required for association *en participation.*

176. No written instrument is required for an association *en participation* and such associations are not subject to the formalities prescribed in regard to partnerships.

PART VIII

PARTNERSHIPS CONSTITUTED OR REGISTERED OUTSIDE MALTA

Provisions as to establishment of place of business in Malta

Application of articles 178 to 182.

177. The next following five articles shall apply to all companies registered or incorporated outside Malta (hereinafter referred to as "oversea companies") which, after the commencement of this Ordinance, establish a place of business within Malta or which have, before the commencement of this Ordinance, established a place of business within Malta and continue to have a place of business within Malta at the commencement of this Ordinance.

Documents, etc., to be delivered by oversea companies carrying on business in Malta.

178. (1) Oversea companies which, after the commencement of this Ordinance, establish a place of business within Malta shall, within one month of the establishment of the place of business, deliver to the Registrar for registration and publication -

(*a*) an authentic copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in

the English or Maltese language, a certified translation thereof into either of such languages;

(*b*) a list of the directors and secretary, if any, of the company together with the following particulars, that is to say:

(i) in the case of an individual, his name and surname, his usual residential address, his nationality and his business occupation, if any, or, if he has no business occupation, particulars of any directorship he may hold; and

(ii) in the case of a body corporate, its registered or corporate name and registered or principal office;

(*c*) the names and addresses of some one or more persons resident in Malta authorised to represent the company in Malta.

(2) Oversea companies which have, before the commencement of this Ordinance, established a place of business within Malta and continue to have an established place of business within Malta at the commencement of this Ordinance shall deliver to the Registrar for registration and publication the documents and particulars specified under sub-article (1)(*a*), (*b*) and (*c*) within three months of the commencement of this Ordinance.

Return to be delivered by oversea company where documents, etc., altered.

179. If any alteration is made in -

(*a*) the charter, statutes or memorandum and articles of an oversea company or any such instrument as aforesaid; or

(*b*) the directors or secretary of an oversea company or the particulars contained in the list of the directors and secretary; or

(*c*) the names or addresses of the persons authorised to represent an oversea company in Malta,

the company shall, within one month of any such alteration, deliver to the Registrar for registration and publication a return containing the particulars of the alteration, signed by a director, secretary or other authorised officer of the company.

Accounts of oversea company. *Substituted by: I. 1965.11.*

180. (1) Every oversea company shall, in every calendar year, make out and deliver to the Registrar for registration a balance sheet and profit and loss account in such form, and containing such particulars and including such documents as, under the provisions of this Ordinance, the directors would, if the company had been a company registered under this Ordinance, be required to make out and lay before the company in general meeting:

Provided that the Registrar may accept for registration a balance sheet and profit and loss account prepared in the form required under the law of the place of the company's registration or incorporation if, in his opinion, such accounts give substantially the same information as, or greater information than, that required

to be given in the accounts referred to in article 135.

(2) Notwithstanding that the balance sheet and profit and loss account prepared in the form required under the law of the place of the company's registration or incorporation do not give substantially as much information as that required in the accounts referred to in article 135, the Registrar may, in his absolute discretion, nevertheless agree to accept such accounts for registration in compliance with sub-article (1); but in that event, subject as provided by sub-article (4), the company shall also deliver to the Registrar for registration -

(*a*) a profit and loss account made out as nearly as may be in the form and containing the particulars required by article 135 and giving a true and fair view of the profit and loss, during the period to which it relates, on the company's operations in Malta as if such operations had been conducted by a separate company formed in Malta under this Ordinance;

(*b*) a statement, as at the end of the period to which the profit and loss account referred to in paragraph (*a*) of this sub-article relates, showing the company's assets locally situated in Malta classified distinguished and valued in accordance with the provisions of article 135 and Part I of the Third Schedule to this Ordinance, and the nature and amount of the specific charges on such assets; and

(*c*) a report on the account and statement referred to in the foregoing paragraphs of this sub-article by an auditor qualified in accordance with article 141 stating that in his opinion and to the best of his information the accounts and statements are in accordance with the books and records of the company and give the information required by this Ordinance in the manner therein required and give a true and fair view of the matter therein stated:

Provided that this sub-article shall not apply to any company which has at any time made in Malta any invitation to the public to acquire any of its shares or debentures or to deposit money with it.

(3) In the profit and loss account referred to in article (2)(a), the company shall be entitled to make such apportionments and to add such notes and explanations as shall, in its opinion, be necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Malta and for this purpose may debit a reasonable rate of interest on capital employed in Malta.

(4) Notwithstanding that the Registrar agrees to accept a balance sheet and profit and loss account under sub-article (2) he may waive compliance with paragraphs (*a*), (*b*) and (*c*) of that sub-article or any of such paragraphs if satisfied that compliance therewith is impracticable having regard to the nature of the company's operations in Malta.

(5) If any such document as is mentioned in the foregoing sub-articles is not written in the Maltese or English languages there shall be annexed to it a certified translation thereof into either of such languages.

Other obligations of oversea company.

181. Every oversea company shall -

(*a*) in every prospectus inviting subscriptions for its shares or debentures in Malta state the country in which the company is registered or incorporated; and

(*b*) cause the name of the company and of the country in which the company is registered or incorporated to be stated in legible characters in all business letters, trade catalogues and trade circulars of the company.

Penalties. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

182. If an oversea company fails to comply with any of the foregoing provisions of this Part, any officer or agent of the company who is in default shall be liable to a penalty not exceeding one hundred and sixteen euro and forty-seven cents (116.47), or, in the case of a continuing offence, eleven euro and sixty-five cents (11.65) for every day during which the default continues.

Application of articles 184 to 187.

183. The next following four articles shall apply to all partnerships, other than companies, constituted outside Malta and having a legal personality distinct from that of their members (hereinafter referred to as "oversea partnerships") which, after the commencement of this Ordinance, establish a place of business within Malta or which have, before the commencement of this Ordinance, established a place of business within Malta and continue to have a place of business within Malta at the commencement of this Ordinance.

Documents, etc., to be delivered by oversea partnerships carrying on business in Malta.

184. (1) Oversea partnerships which, after the commencement of this Ordinance, establish a place of business within Malta, shall within one month of the establishment of the place of business, deliver to the Registrar for registration and publication -

(*a*) an authentic copy of the instrument constituting or defining the constitution of the partnership, and, if the instrument is not written in the English or Maltese language, a certified translation thereof into either of such languages;

(*b*) a list of the persons vested with the administration or the representation of the partnership, and, in respect of each such person, his name and surname, his usual residential address, his nationality and his business occupation, if any;

(*c*) the names and addresses of some one or more person resident in Malta authorised to represent the partnership in Malta.

(2) Oversea partnerships which have, before the commencement of this Ordinance, established a place of business within Malta and continue to have an established place of business within Malta at the commencement of this Ordinance shall deliver to the Registrar for registration and publication the documents and

particulars specified under article (1)(*a*), (*b*) and (*c*), within three months of the commencement of this Ordinance.

Return to be delivered by oversea partnerships where documents, etc., altered.

185. If any alteration is made in -

(*a*) the instrument constituting or defining the constitution of an oversea partnership; or

(*b*) the persons vested with the administration or the representation of an oversea partnership or the particulars contained in the list of such persons; or

(*c*) the names or addresses of the persons authorised to represent an oversea partnership in Malta,

the partnership shall, within one month of any such alteration, deliver to the Registrar for registration and publication a return containing the particulars of the alteration signed by a person vested with the representation of the partnership.

Other obligations of oversea partnerships.

186. Every oversea partnership shall cause the name of the partnership and of the country in which the partnership is constituted to be stated in legible characters in all business letters, trade catalogues and trade circulars of the partnership.

Penalties.

187. If an oversea partnership fails to comply with any of the foregoing provisions of this Part, all persons carrying on business in the name of the partnership shall be personally and jointly and severally liable for their dealings with third parties acting in good faith.

Prospectuses

Dating of prospectus and particulars to be contained therein. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

188. (1) It shall not be lawful for any person to issue, circulate or distribute in Malta any prospectus offering for subscription shares in or debentures of a company registered or incorporated or to be registered or incorporated outside Malta, whether the company has or has not established, or when constituted will or will not establish, a place of business in Malta unless the prospectus is dated and -

(*a*) contains particulars with respect to the following matters:

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the registration or incorporation of the company was effected;

(iii) an address in Malta where the said instrument, enactments or provisions, or copies thereof, and, if the same are not in the English or Maltese language, a certified translation thereof into either of such languages can be inspected;

(iv) the date on which and the country in which the company was registered or incorporated;

(v) whether the company has established a place of business in Malta, and, if so, the address of its

principal office in Malta;

(*b*) subject to the provisions of this article, states the matters specified in Part I of the Second Schedule to this Ordinance and sets out the report specified in Part II of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (*a*) of this sub-article shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Second Schedule for the purposes of this sub-article, paragraph 2 thereof shall have effect with the substitution for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (*a*) or (*b*) of the foregoing sub-article, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Malta a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-article (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in Malta does not contravene the provisions of article 189:

Provided that this sub-article shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by sub-article (1) (*a*) and (*b*), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if the conditions under which a director or other person responsible for a prospectus is exempt from liability by article 84 are satisfied.

(5) This article shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this article shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of this article shall be liable to a fine not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

Application of articles 85, 86 and 88.

189. Articles 85, 86 and 88 shall extend to every prospectus issued, circulated or distributed in Malta offering for subscription shares in or debentures of a company registered or incorporated or to be registered or incorporated outside Malta, whether the company has or has not established, or when formed will or will not establish, a place of business in Malta.

Interpretation of provisions as to prospectuses.

190. (1) Where any document by which any shares in or debentures of a company registered or incorporated outside Malta are offered for sale to the public would, if the company concerned had been a company registered under this Ordinance, have been deemed by virtue of article 89 to be a prospectus, that document shall be deemed to be a prospectus for the purposes of this Part.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part.

PART IX

GENERAL

Power of Prime Minister to appoint Registrar.
Amended by: L.N. 4 of 1963.

191. The Prime Minister shall appoint a person to be Registrar of Partnerships and may appoint persons to assist such Registrar, conferring on any such persons all or any of the powers of the Registrar under this Ordinance.

Additional duties of Registrar.
Amended by: I.1965.12; XII.1970.6. Substituted by: IV. 1991.4. Amended by: XXIV.1995.362.

192. (1) In addition to the other duties prescribed by this Ordinance, it shall be the duty of the Registrar -

(*a*) to ensure compliance with any provision of this Ordinance requiring an act to be done or to be omitted to be done under a penalty;

(*b*) to institute proceedings for the recovery of any penalty under this Ordinance in the Civil Court, First Hall;

(*c*) to retain and register any document which is required to be delivered or given to or served on him for registration under any of the provisions of this Ordinance;

(*d*) where under any of the provisions of this Ordinance -

(i) any document is required to be delivered or given to or served on him for publication; or

(ii) any certificate is issued by him on the registration or change of name or conversion or amalgamation of a partnership, or the name of a partnership is struck off the register,

to cause without delay a statement to be published in the Government Gazette showing the date at which the registration, delivery or service was made, or at which the name of the partnership was struck off the register, and the general nature of the document or certificate, and giving such particulars as are

necessary to distinguish the partnership to which the statement relates.

(2) Where the Registrar gives notice in writing to any person that such person has become liable to a penalty under this Ordinance specifying the nature of the infringement and indicating an amount as due by way of penalty in respect of such infringement, the person to whom the notice is given shall without prejudice to the provisions of the following sub-articles, be deemed to have incurred a penalty under this Ordinance and the amount indicated as aforesaid as due by way of penalty shall be deemed to be the penalty due under this Ordinance in respect of the infringement specified in the notice.

(3) A notice as is referred to in sub-article (2) shall upon the service of a copy thereof by means of a judicial act on the person indicated in the notice constitute an executive title for effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure unless such person shall within thirty days from the date of such service institute proceedings before the Civil Court, First Hall, objecting to the penalty so fixed. Cap. 12.

(4) Where any person desires to institute proceedings objecting to a penalty referred to in sub-article (2), such proceedings shall be instituted by application against the Registrar. Special court proceedings.

(5) The application shall, under pain of nullity, state clearly and concisely the nature of the complaint, the facts out of which the complaint arises, the reasons why such complaint should be upheld and the claim that the penalty is not due at law or is due at law only in a smaller amount.

(6) The court shall not annul or reduce a penalty as aforesaid unless such penalty cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount fixed by the Registrar.

(7) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce, and shall indicate in his application the names of all the witnesses he intends to produce stating, in respect of each, the proof of which he intends to make.

(8) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(9) The application, and the notice of the date fixed for hearing shall be served on the Registrar without delay, and the said Registrar shall file his reply thereto within fifteen days after the date of the service of the application.

(10) The Registrar shall, in his reply, state clearly and concisely whether he agrees to the facts set out in the application, and the reasons why he objects to the claim; he shall moreover state in his reply the names of the witnesses in support of his reasons and shall attach thereto all the documents in support thereof.

(11) On the day fixed for the hearing of the application, the

court shall consider the issues of fact and of law as are ascertainable only from the application, reply or documents filed, by either of the parties, or from the evidence indicated by either of the parties in the application or reply, as the case may be, or from the oral pleading of either of the parties.

(12) The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties, or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

Cap. 12.

(13) Saving the preceding provisions of this article, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the First Hall of the Civil Court shall apply in relation to any such application.

Cap. 12.

(14) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in sub-article (3) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to.

(15) The decision of the court upon an application referred to in sub-article (4), confirming the imposition of a penalty fixed by the Registrar or reducing any such penalty, shall upon becoming *res judicata* be deemed to be a judgment of the court ordering the payment by the applicant of the penalty as confirmed or reduced.

(16) An appeal from a decision of the Civil Court, First Hall, upon an application referred to in sub-article (4), shall be made by means of an application to be filed within six working days of the date of the decision; the person against whom the appeal is entered shall within six working days from the service upon him of the application file a reply to the appeal.

Powers of Registrar to investigate affairs of partnership. *Amended by: XI. 1977.2.*

193. (1) For the purposes of article 192(1)(*a*) the Registrar shall have power to investigate the affairs of any partnership and to require any information and the production of any document from any partner or from any officer or auditor of a company.

(2) Any matter coming to the knowledge of the Registrar, or of any other person by reason of his office, in pursuance of the provisions of this article shall be treated as secret and confidential, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

(3) If any partner or if any officer or auditor of a company prevents or obstructs the Registrar, or any other officer authorised by him in writing, in the execution of his duties or refuses to comply with any request made under the provisions of sub-article (1) or, in complying with any such request, wilfully or recklessly furnishes any false information, the Registrar may certify the obstruction or the refusal or the false information under his hand to the court, and the court may thereupon inquire into the case and deal with the offender in like manner as if he had been guilty of contempt of the court.

Inspection, etc., of documents kept by Registrar.

194. Saving the provisions of article 193(2), any person may -

(*a*) inspect the documents kept by the Registrar;

(*b*) require a certificate of the registration of any partnership or a copy or extract of any other document, to be certified by the Registrar:

Provided that in relation to documents delivered to the Registrar with a prospectus in pursuance of article 86(1)(*b*) and of article 89(3)(*a*), the right conferred by this article shall be exercisable only during the fourteen days beginning with the date of publication of the notice prescribed in article 93.

Power of Minister to make regulations. *Substituted by: I.1965.13. Amended by: XII.1970.7.*

195. (1) The Minister may from time to time make regulations -

(*a*) respecting fees to be levied and paid in relation to the registration, publication, inspection or issue of documents, certificates, copies, or extracts, required or allowed under this Ordinance;

(*b*) respecting the forms to be used for the purpose of this Ordinance;

(*c*) prescribing anything that may be prescribed; and

(*d*) generally for any other matter incidental or supplementary to any of the foregoing matters.

(2) Where in respect of any of the services or other acts to be performed by the Registrar a fee is prescribed under sub-article (1), the Registrar may decline to perform such service or other act until the appropriate fee is paid; and any instrument, notice, return or other document delivered, given or forwarded to the Registrar under this Ordinance shall, if a fee is prescribed as aforesaid in respect of the registration or publication thereof, be deemed not to have been delivered, given or forwarded as required by this Ordinance until the appropriate fee is paid.

FIRST SCHEDULE

Amended by: XIII. 1983.4.

(Article 73)

PART I

REGULATIONS FOR THE MANAGEMENT OF A LIMITED LIABILITY COMPANY

Share Capital and Variation of Rights

1. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

2. Subject to the provisions of article 100 of the Commercial Partnerships Ordinance, (hereinafter referred to as "the Ordinance") any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by extraordinary resolution determine.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply.

4. The company may exercise the power of paying commissions or of making discounts or allowances provided it complies with the requirements of article 98 of the Ordinance. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive one certificate for all his shares or several certificates each for one or more of his shares upon payment of 12c5 for every certificate after the first or such less sum as the directors shall from time to time determine. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 12c5 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company on investigating evidence as the directors think fit.

Calls on Shares

6. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company, at the time or times and place so specified, the amount called on his

shares. A call may be revoked or postponed as the directors may determine.

7. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

8. If a sum called in respect of a share is not paid before or on the date appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 6 per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

9. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

10. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

11. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding 6 per cent per annum, as may be agreed upon between the directors and the members paying such sum in advance.

Transfer and Transmission of Shares

12. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

13. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

14. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve.

15. The directors may also decline to recognise any instrument of transfer unless-

(*a*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

(*b*) the instrument of transfer is in respect of only one class of share.

16. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

17. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such

registration shall not be suspended for more than thirty days in any year.

18. Any person becoming entitled to a share in consequence of the death of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death.

19. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that member.

20. A person becoming entitled to a share by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

21. In respect of a share held jointly by several persons the name of only one of such persons shall be entered in the register of members. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed, *vis-a-vis* the company, to be the registered holder of the share so held.

Forfeiture of Shares

22. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, require payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued, by means of a notice which shall also name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment, at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

23. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

24. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and the company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, who shall thereupon be registered as the holder of the share. At any time

before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

25. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of the forfeiture, were payable by him to the company in respect of the shares; but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Conversion of Shares into Stock

26. The company may by ordinary resolution convert any paid up shares into stock, and re-convert any stock into paid up shares of any denomination.

27. The holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances permit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

28. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by any amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

29. Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

General Meetings

30. Subject to the provisions of the Ordinance the annual general meetings shall be held at such time and place as the directors shall appoint.

31. All general meetings other than annual general meetings shall be called extraordinary general meetings.

32. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by article 114 of the Ordinance. If at any time there are not in Malta sufficient directors capable of acting to form a quorum any director or any two members of the company may convene an extraordinary general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the directors.

Notice of General Meetings

33. A general meeting of the company shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other

manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed by all the members entitled to attend and vote thereat.

34. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

35. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

36. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, ten per cent of the members present in person or by proxy, not being less than two members present in person, shall be a quorum.

37. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

38. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

39. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

40. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned or of the business to be transacted at an adjourned meeting.

41. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded -

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution:

Provided that where a resolution requires a particular majority in value, the resolution shall not be deemed to have been carried on a show of hands by the required majority unless there be present at that meeting, whether in person or by proxy, a number of members holding in the aggregate the required majority as aforesaid.

The demand for a poll may be withdrawn.

42. Except as provided in regulation 44, if a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

43. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

44. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of Members

45. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder. On a poll votes may be given either personally or by proxy.

46. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

47. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

48. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such

other place in Malta as is specified for that purpose in the notice convening the meeting, not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

49. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit:

Limited

"I/We ....., of .... residing at ..... being a member/members of the above-named company, hereby appoint .... of .....or failing him ..... of .....as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held on the ..... day of .....19 ..... , and at any adjournment thereof.

Signed this day of 19

This form is to be used in favour of * the resolution. Unless otherwise instructed, against

the proxy will vote as he thinks fit."

*Strike out whichever is not desired.

50. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Directors

51. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

52. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

Borrowing Powers

53. The directors may exercise all the powers of the company to borrow money, and to hypothecate or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed

the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and Duties of Directors

54. The directors shall exercise their powers subject to any of these regulations, to the provisions of the Ordinance and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

55. The directors shall have power to appoint any person to be the attorney of the company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

56. A director shall not vote at a meeting of the directors in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to -

(*a*) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(*b*) to any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(*c*) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(*d*) any contract or arrangement with any other company in which he is interested only as an officer of the company or as a holder of shares or other securities,

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

57. The directors shall cause minutes to be made in books provided for the purpose -

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of

the directors, and of committees of directors.

58. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Rotation of Directors

59. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

60. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

61. A retiring director shall be eligible for re-election.

62. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto.

63. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than fourteen days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

Proceedings of Directors

64. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Malta.

65. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

66. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

67. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be

chairman of the meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors, and subject to any such regulations, it shall regulate its proceedings in like manner as if its meetings were meetings of the directors.

69. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

70. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

71. A managing director shall receive such remuneration as the directors, subject to the approval of the company in general meeting, may from time to time determine.

72. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

73. The directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them:

Provided that no person shall be appointed or hold office as secretary who is the sole director of the company.

Dividends and Reserve

74. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

75. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

76. No dividend shall be paid otherwise than out of profits.

77. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may

from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

78. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

79. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

80. No dividend shall bear interest against the company.

Accounts

81. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Capitalisation of Profits

82. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares:

Provided further that the directors may in giving effect to such resolution make such provision by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions.

Notice

83. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address in Malta) to the address, if any, in Malta supplied by him to the company for

the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

84. Notice of every general meeting shall be given in the manner hereinbefore authorised to -

(*a*) every registered member except those members who (having no registered address in Malta) have not supplied to the company an address in Malta for the giving of notices to them; and

(*b*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Indemnity

85. Every director, managing director, agent, auditor or secretary and in general any officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

PART II

REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY

1. The regulations contained in Part I of this Schedule (with the exception of regulation 14) shall apply.

2. The company is a private company and accordingly-

(*a*) the right to transfer shares is restricted in manner hereinafter prescribed;

(*b*) the number of members of the company is limited to fifty:

Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

(*c*) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(*d*) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. Subject to the provisions of the Ordinance, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

5. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information,

supported (if the directors so require) by an affidavit, which they may consider necessary for the purposes of determining whether or not the company satisfies the conditions mentioned in article 149(2) of the Ordinance.

SECOND SCHEDULE

(Articles 83, 84, 86, 188)

MATTERS TO BE SPECIFIED IN A PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

PART I

Matters to be specified

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to remuneration of the directors.

3. The names and addresses of the directors.

4. Particulars as to -

(*a*) the amount which, in the opinion of the directors, is to be raised by the issue of the shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say:

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares or debentures subscribed for under it;

(*c*) the consideration, if any, given or to be given for it or for the right to it;

(*d*) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9. In regard to any property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, the following particulars, that is to say:

(*a*) the names and addresses of the vendors;

(*b*) the amount paid or payable in cash, shares or debentures to the vendor, specifying the amount, if any, in respect of goodwill, and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

(*c*) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director of the company had any interest direct or indirect.

Every person shall for the purpose of this Schedule be deemed to be a vendor who has entered into a contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where -

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

In this paragraph the expression "vendor" includes a grantor on emphyteusis and a lessor, the expression "sale" includes an emphyteutical grant and a lease, the expression "purchase money" includes the consideration for the emphyteutical grant or for the lease, and the expression "sub-purchaser" includes a sub-emphyteuta and a sub-lessee.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

12. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

13. The names and addresses of the auditors, if any, of the company.

14. The dates of, parties to, name of receiving notary, if any, and the general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

16. Full particulars of the nature and extent of the interests, if any, of any director in the promotion of, or in the property proposed to be acquired by, the company, or where the interest of such a director consists in being a joint owner of a firm or a partner in a partnership other than a company, the nature and extent of the interest of the firm or partnership, with a statement of all sums paid or agreed to be paid to him or to the firm or partnership in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or partnership in connection with the promotion or formation of the company.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

Reports To Be Set Out

18. A report by the auditors of the company with respect to -

(*a*) the profits and losses of the company in respect of each of the five financial years, or where the company has been carrying on business for less than five years, in respect of each of such years, immediately preceding the issue of the prospectus; and

(*b*) the assets and liabilities of the company at the last date to which the accounts of the company were made up; and

(*c*) the rates of the dividends, if any, paid by the company in respect of each class of shares in respect of each of the five financial years, or such less number of years as aforesaid, immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,

and, if no accounts have been made up in respect of any part of the period of five years or of such shorter period as aforesaid, ending on a date three months before the issue of the prospectus, containing a statement of that fact.

19. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied, directly or indirectly in the purchase of any business or in the acquisition by the company of shares in any other company which, by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company, a report made by accountants (who shall be named in the prospectus and who are qualified under this Ordinance for appointment as auditor of a company) upon -

(*a*) the profits or losses of the business or of that other company in respect of each of the five financial years, or such shorter period as aforesaid, immediately preceding the issue of the prospectus; and

(*b*) the assets and liabilities of the business or of that other company at the last date to which the accounts of the business or of the company were made up.

20. Any of the aforesaid reports shall either indicate by way of a note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made, and in either case give the reasons therefor.

THIRD SCHEDULE

(Articles 135, 137)

PART I

Amended by:
L.N. 4 of 1963;
XI. 1977.2;
L.N. 410 of 2007.

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

Balance Sheet

1. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified -

(*a*) any part of the issued capital that consists of redeemable preference shares, and the earliest date on which the company has power to redeem those shares;

(*b*) the amount of the share premium account;

(*c*) particulars of any redeemed debentures which the company has power to re-issue.

2. There shall be stated under separate headings, so far as they are not written off-

(*a*) the preliminary expenses;

(*b*) any expenses incurred in connection with any issue of share capital or debentures;

(*c*) any sums paid by way of commission in respect of any shares or

debentures;

(*d*) any sums allowed by way of discount in respect of any debentures; and

(*e*) the amount of the discount allowed on any issue of shares at a discount.

3. (1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that -

(*a*) where the amount of any class is not material it may be included under the same heading as some other class; and

(*b*) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets shall also be distinguished from current assets.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

4. (1) The method of arriving at the amount of any fixed asset shall, subject to the next following sub-paragraph, be to take the difference between -

(*a*) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(*b*) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value,

and for the purpose of this paragraph the net amount at which any assets stand in the company's book at the commencement of the Ordinance (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of the Ordinance cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of the Ordinance and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) The foregoing sub-paragraph shall not apply -

(*a*) to assets for which the figures relating to the period beginning with the commencement of the Ordinance cannot be obtained without unreasonable expense or delay; or

(*b*) to assets the replacement of which to provide for wholly or partly -

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue; or

(*c*) to any investments of which the market value (or in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or

(*d*) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown -

(*a*) the aggregate of the amounts referred to in paragraph (*a*) of that sub-paragraph; and

(*b*) the aggregate of the amounts referred to in paragraph (*b*) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (*b*) of this paragraph, there shall be stated -

(*a*) the means by which their replacement is provided for; and

(*b*) the aggregate amount of the provision (if any) made for renewals and not used.

5. The aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings:

Provided that this paragraph shall not require a separate statement of any of the said three amounts which is not material.

6. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material) -

(*a*) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(*b*) where -

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sum since applied and amounts still retained for the purposes thereof,

the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions aforesaid is divided into sub-headings this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

7. (1) There shall be shown under separate headings:

(*a*) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments;

(*b*) if the amount of goodwill and of any patents and trade marks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertained and as so shown or ascertained as the case may be;

(*c*) the aggregate amount of bank loans and overdrafts;

(*d*) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head (*b*) of the foregoing sub-paragraph shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

8. Where any liability of the company is secured by a privilege or a hypothec on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

9. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares which any person has an option to subscribe for, together with the following particulars of the option, that is to say -

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares subscribed for under it.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(8) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(9) The basis on which foreign currencies have been converted into euro, where the amount of the assets or liabilities affected is material.

(10) The basis on which the amount, if any, set aside for Malta income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of the Ordinance, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account

10. There shall be shown -

(a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(*b*) the amount of the interest on the company's debentures and other fixed loans;

(*c*) the amount of the charge for Malta income tax, including, where practicable, as Malta income tax, any taxation imposed elsewhere to the extent of the relief, if any, from Malta income tax;

(*d*) the amounts respectively provided for redemption of share capital and for redemption of loans;

(*e*) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(*f*) the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;

(*g*) the amount of income from investments, distinguishing between trade and other investments;

(*h*) the aggregate amount of the dividends paid and proposed.

11. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

12. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for Malta income tax is computed.

(4) Whether or not the amount stated for dividends paid and proposed is for dividends subject to deduction of income tax.

(5) Except in respect of the first profit and loss account laid before the company after the commencement of the Ordinance, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which any items shown in the profit and loss account are affected -

(*a*) by transaction of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(*b*) by any change in the basis of accounting.

PART II

Exceptions For Special Classes Of Company

13. (1) A banking or discount company shall not be subject to the requirements of Part I of this Schedule other than -

(*a*) as respects its balance sheet, those of paragraphs 1 and 2, paragraph 3 (so far as it relates to fixed and current assets), paragraph 7 (except sub-paragraph (i) (*c*)), paragraph 8, and paragraph 9 (except sub-paragraph (8)); and

(*b*) as respects its profit and loss account, those of paragraph 10 (*h*), paragraph 11 and sub-paragraphs (1), (4) and (5) of paragraph 12,

but, where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking or discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by the Ordinance.

(3) In this paragraph the expression "banking or discount company" means any company which satisfies the Minister that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

PART III

Interpretation of Schedule

14. (1) For the purposes of this Schedule, unless the context otherwise requires -

(*a*) the expression "provision" shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(*b*) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(*c*) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account and the expression "revenue reserve" shall mean any reserve other than a capital reserve,

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where -

(*a*) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of the Ordinance; or

(*b*) any amount retained by way of providing for any known liability,

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

15. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on any stock exchange of repute, and the expression "unquoted investment" shall be construed accordingly.

FOURTH SCHEDULE

Amended by: XIII. 1983.4. Substituted by: L.N. 410 of 2007.

(Article 144)

CONTENTS AND FORM OF ANNUAL RETURN

ANNUAL Return of ..... Limited, being made up to the ..... day of ....., 20 (being the fourteenth day after the date of the annual general meeting for the year 20).

1. *Address*

(Address of the registered office of the company)

2. *Summary of Share Capital and Debentures*

(*a*) Nominal Share Capital

Nominal Share Capital €..... divided into:

(Insert number and class)		shares of	..... each
.....	.....	shares of	..... each
.....	.....	shares of	..... each
.....	.....	shares of	..... each

(*b*) Issued Share Capital and Debentures

	Number	Class
Number of shares of each class taken up to the date of this return (which number must agree with the total shown on the list as held by existing members).	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
Number of shares of each class issued subject to payment wholly in cash.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	.....	..... shares
	.....	..... shares
	.....	..... shares

Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	issued as paid up to the extent of € ..... per share .... shares issued as paid up to the extent of € ..... per share .... shares issued as paid up to the extent of € ..... per share .... shares issued as paid up to the extent of € ..... per share .... shares

Number of shares (if any) of each class issued at a discount.	Number	Class
	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares

Amount of discount on the issue of shares which has not been written off at the date of this return. € .....

Amount called up on number of shares of each class.		Number	Class
	€ ....per share on	.....	..... shares
	€ ....per share on	.....	..... shares
	€ ....per share on	.....	..... shares
	€ ....per share on	.....	..... shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited. € .....

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.		Number	Class
	€ .... on	.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares

		Number	Class
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash	€ .... on	.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares
		.....	..... shares

Total amount of calls unpaid ..... € .....

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures ..... € .....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return ..... € .....

Total number of shares of each class forfeited.	Number	Class
	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares

Total amount paid (if any) on shares forfeited. ..... € .....

Total amount of shares for which share warrants to bearer are outstanding. € .....

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return.

Issued: € .....
Surrendered: € .....

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind.	.....

3. List of Past and Present Members

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 20 , and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the registration of the company.

Folio in register ledger containing particulars	Names and addresses	Account of Shares			Remarks
		Number of shares held by existing members at date of return*§	Particulars of shares transferred since the date of last return, or, in the case of the first return, of the registration of the company by (*a*) persons who are still members and (*b*) persons who have ceased to be members**		
			Number §	Date of registration or transfer	
			(*a*)	(*b*)	

*The aggregate number of shares held by each member must be stated, and the aggregates must be added up so as to agree with the number of the shares stated in the Summary of Shares Capital and Debentures to have been taken up.

§When the shares are of different classes these columns should be sub-divided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

**The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

4. *Particulars of Directors*

Particulars of the persons who are directors of the company at the date of this return.

Name (In the case of an individual, name or names and surname. In the case of a body corporate, the corporate name)	Nationality	Usual residential address (In the case of a body corporate, the registered or principal office)	Business occupation and particulars of other directorships

Signed ..... Director