SUBSIDIARY LEGISLATION 234.42

MERCHANT SHIPPING (SHIPPING ORGANISATIONS - PRIVATE COMPANIES) REGULATIONS

1st May, 2004*

LEGAL NOTICE 223 of 2004, as amended by Legal Notices 181 and 186 of 2006, 411 of 2007 and 31 of 2020.

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Title.

1. (1) The title of these regulations is the Merchant Shipping (Shipping Organisations - Private Companies) Regulations.

(2) These regulations shall come into effect on the 1st May 2004 except as hereunder provided.

Shipping companies formed under the Commercial Partnerships Ordinance. Cap. 168. Cap. 386. *Amended by: L.N. 31 of 2020.*

(3) These regulations shall apply , with effect from the 1st August 2004, to shipping companies formed and registered under the Commercial Partnerships Ordinance , with the exception of regulation 37, which shall apply with effect from the 1st May 2004:

Provided that should a shipping company elect to be governed by the Companies Act, it shall file a notice in accordance with the provisions of subregulation (4) and these regulations shall not apply to such shipping companies.

(4) (a) Any shipping company which is registered and existing as of the 30th April, 2004 which elects to be governed by the Companies Act shall file a notice to that effect in terms of the Ninth Schedule by not later than the 1st August, 2004.

(*b*) In such event, the company shall be bound to comply with the Companies Act within ninety days from the filing of the notice with the Registrar of Companies.

(*c*) In the event of the company failing to comply with the requirements of the Companies Act within the said time limit, the company shall be regulated by the regulations with effect from the 1st August, 2004 and the filing of the notice shall have no effect.

(5) For the purposes of sub-regulations (3) and (4) and of Part VIII, "shipping company" means a company whose objects are limited to the sole purpose of owning, managing, administering or operating ships and to transactions ancillary thereto formed and registered under the Commercial Partnerships Ordinance.

Cap. 168.

PART I

PRELIMINARY PROVISIONS

Purpose. Cap. 234

2. These regulations shall apply to any organisation formed as a private limited liability company and qualifying as a shipping organisation in terms of article 84Z of the Merchant Shipping Act unless it ceases to so qualify.

Interpretation. *Amended by: L.N. 411 of 2007; L.N. 31 of 2020*

3. (1) In these regulations, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

"the Act" means the Merchant Shipping Act; Cap. 234.

"appointed day" means the date appointed by the Minister for the coming into force of these regulations;

"approved country or jurisdiction" means such country or jurisdiction as may be established from time to time by guidelines issued by the Registrar;

"auditor" means a person who is an individual who holds a warrant to act as auditor issued under the Accountancy Profession Cap. 281.

Act or is a partnership of auditors duly registered under the said Act;

"body corporate" means any entity having a legal personality distinct from that of its members, and includes a foreign body corporate;

"certificate of registration", when used in relation to a company, means a certificate of registration issued under these regulations and the Companies Act and the words "registration", "registered" and their derivatives shall be construed accordingly;

Cap. 386.

"Companies Act" means Chapter 386 of the Laws of Malta;

"company" means a company formed and registered under Part III of these regulations;

"court" means the Civil Court;

"debenture" includes debenture stock, bonds and any other debt securities of a company;

"director" includes any person occupying the position of director of a company by whatever name he may be called carrying out substantially the same functions in relation to the direction of the company as those carried out by a director;

"directors' report" in relation to a company, means the directors' report required by regulation 73;

"euro" refers to the currency unit of the participating states in the European Monetary Union;

"expert", except where otherwise specifically defined in these regulations, means an auditor whether Maltese or foreign and whether or not assisted by a specialist valuer;

"extraordinary resolution" has the meaning given to it by regulation 50;

"instrument of continuation" includes any document or certificate confirming that a company has been registered as continuing in an approved country or jurisdiction other than Malta;

"in writing" includes any electronic representation except in so far as relates to documents delivered to the Registrar for registration;

"member" means a shareholder of a company;

"notice" shall mean a notice in writing of any kind;

"officer" in relation to a company, means a director but does not include an auditor;

"ordinary resolution" has the meaning given to it by regulation 50;

"parent company" is a company which -

(*a*) has a majority of the members' voting rights in another undertaking (subsidiary undertaking); or

(*b*) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted

with the administration of another undertaking (a subsidiary undertaking) and is at the same time a member of that undertaking; or

(*c*) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a member, pursuant to a contract entered into with that undertaking or to a provision in that undertaking's memorandum or articles of association; or

(*d*) is a member of an undertaking and controls alone pursuant to an agreement with other members of that undertaking (a subsidiary undertaking), a majority of members' voting rights in that undertaking; or

(*e*) holds a participating interest in another undertaking and actually exercises a dominant influence over the undertaking (a subsidiary undertaking) or manages the subsidiary undertaking on a unified basis together with it;

and the term "parent undertaking" shall be construed accordingly;

"participating interest" shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to those undertakings' activities. The holding of twenty per cent of the capital of another undertaking shall be presumed to constitute a participating interest unless the contrary is shown. An interest in shares includes an interest which is convertible into an interest in shares and an option to acquire an interest in shares. Interests in shares held by subsidiary undertakings or held by third parties on behalf of the company or its subsidiary undertakings shall be deemed to be held by the company;

"private company" means a private company as defined in regulation 6;

"Registrar" means the person appointed as Registrar of Companies under the Companies Act; Cap. 386.

"security" includes a share, debenture or any other similar instrument issued by a company;

"share" includes stock except where a distinction between stock and shares is express or implied;

"shareholder" means a person entered in the register of members of a company pursuant to regulation 38;

"true and fair view" in relation to accounts refers to the requirements of regulation 66(3).

(2) For the purposes of these regulations, where a document required to be delivered to the Registrar for registration is required to state the name and residence or address of a person, it shall be deemed to require further the official identification, by number or otherwise of such person, as may be applicable.

(3) Where a matter is not specifically dealt with under these regulations, reference shall be made to the provisions of the Companies Act on such matter including any relevant regulations Cap. 386.

issued under the Companies Act.

PART II

GENERAL PROVISIONS

Legal personality.

4. A company to which these regulations apply has a legal personality distinct from that of its member or members, and such legal personality shall continue until the name of the company is struck off the register, whereupon the company ceases to exist.

Indication of particulars in business letters, etc.

5. (1) In all its business letters and order forms a company shall mention in legible characters its name, the fact that it is a limited liability company, its registered office and registration number.

(2) Where a company is being wound up, every letter, invoice or other document by or on behalf of the company, being a document on or in which the name of the company appears, shall in addition to the requirements of the preceding paragraph of this regulation, contain a statement that the company is being wound up and shall contain the names of the liquidators.

(3) If default is made in complying with the provisions of subregulations (1) and (2) every officer or liquidator, as the case may be, of the company who is in default shall be liable to a penalty.

PART III

FORMATION OF COMPANIES

Chapter I - Private Companies

Definition.

6. (1) A private company is a company which, besides fulfilling the requirements of these regulations for it to hold the status of a private company, is one 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) A private company shall not -

(*a*) offer to the public, whether for cash or otherwise, any shares in or debentures of the company; or

(*b*) allot or agree to allot, whether for cash or otherwise, 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; or

(*c*) have the power to issue share warrants to bearer.

(3) Where a private company contravenes the provisions of subregulation (2), every officer thereof who is in default shall be liable to a penalty.

Resolutions in writing.

7. Subject to the provisions of these regulations, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at the 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.

Single member companies. *Amended by: L.N. 31 of 2020.*

8. (1) Companies regulated by these regulations may be constituted by and have a single member notwithstanding any other provision of these regulations.

(2) A company may have a single member upon registration or it may become a single member company through the acquisition of all its shares by one person *inter vivos* or *causa mortis*, in which case it shall file a notice to that effect within fourteen days in terms of the Seventh Schedule.

(3) The single member shall exercise the powers of the general meeting of the company and the decisions taken by him in this capacity shall be recorded as minutes of the general meeting and the provisions of these regulations regulating general meetings shall be construed accordingly. The decisions referred to in this paragraph shall be deemed to be resolutions of the company for the purposes of the application of the provisions of these regulations:

Provided that the provisions of this paragraph shall not prejudice the rights of the auditors of the company under the provisions of regulation 87 of these regulations and the directors of the company under the provisions of regulation 52, and the rights granted to persons as are, by the articles of the company, entitled to receive notices of, attend and be heard at general meetings of the company.

(4) When a single member of a company is also the sole director of the company all provisions of these regulations and any memorandum and articles of association relating to general meetings shall be deemed to refer to the board of directors, and resolutions of the board of directors shall qualify as general meeting resolutions when the latter are required by law or the articles of the company.

(5) The single member shall record in writing all the agreements between him and the company as represented by him in a minute book kept by the company specifically for the purpose:

Provided that current operations concluded under normal conditions need not be recorded in such minute book.

(6) When a company ceases to be a single member company, it shall within fourteen days, deliver to the Registrar for registration a notice specifying the fact that it is no longer a single member company and the provisions of this regulation shall not apply to such company from the date it has ceased to be a single member company.

(7) All decisions taken by the single member as aforesaid shall be considered as extraordinary resolutions for the purposes of these regulations.

(8) If default is made in complying with the provisions of subregulations (2) and (6) every officer of the company who is in

default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Change of status of company. Cap. 386.

9. (1) A private company may change its status to a public company in terms of the Companies Act whereupon the company shall no longer be regulated by these regulations but shall be subject to the provisions of the Companies Act.

(2) A public company may change its status to a private company in terms of these regulations whereupon it shall no longer be regulated by the Companies Act but shall be subject to the provisions of these regulations.

Chapter II - Formation of a Company

Definition.

10. A company is formed by means of a capital divided into shares held by two or more members unless it is a single member company. The liability of each member is limited to the amount, if any, unpaid on the shares respectively held by each of them.

How a company is constituted.

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

Contents of memorandum and share capital in any convertible currency. *Amended by: L.N. 411 of 2007; L.N. 31 of 2020.*

12. (1) The memorandum of every company shall state:

(*a*) that it is a shipping organisation for the purposes of the Act;

(*b*) that the company is a private company;

(*c*) the name and residence of each of the subscribers thereto;

(*d*) the name of the company;

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

(*f*) the objects of the company which shall be limited to one or more of the activities referred to in sub-article (1) of article 84Z of the Act;

(*g*) the amount of share capital with which the company proposes to be registered (hereinafter referred to as "the authorised capital"), the division thereof into shares of a fixed amount, the number of shares taken up by each of the subscribers and the amount paid up in respect of each share and, where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;

(*h*) the number of the directors, the name and residence of the first directors and, where any of the directors is a body corporate, the name and registered or principal office of the body corporate;

(*i*) the manner in which the representation of the company is to be exercised, and the name of the first person or persons vested with such representation:

Provided that the company may appoint other persons in addition to the said named representatives

to represent the company in a class or classes of cases by means of a clause in the memorandum or articles of association, by a resolution of the board of directors or by means of a power of attorney issued by such named representatives;

(*j*) the period, if any, fixed for the duration of the company.

(2) (*a*) The share capital of a company may be denominated in any currency which is a convertible currency within the meaning assigned to it by the Central Bank of Malta Act, and, for the purposes of these regulations, the euro, shall be a convertible currency. Cap. 204.

(*b*) A company may by extraordinary resolution change the currency in which its share capital is expressed, and for this purpose the conversion rules set out in the provisions of the Eighth Schedule shall apply in respect of any company regulated by these regulations.

(*c*) For the purposes of applying the provisions of these regulations relating to minimum share capital, share capital expressed in a currency other than euros shall be calculated on the basis of the euro equivalent at the date of -

(i) the registration of the memorandum, in the case of formation of a company; or

(ii) the registration of the extraordinary resolution, in the case referred to in subregulation (2)(*b*); or

(iii) the registration of the extraordinary resolution effecting a reduction of the issued share capital, in the case where a company reduces its issued share capital.

(3) Without prejudice to the provisions of regulation 24, a copy of the extraordinary resolution referred to in subregulation (2)(*b*) shall be delivered to the Registrar for registration and shall not be effective until it is so registered.

(4) The exchange rate to be used shall be the average of the buying and selling rates prevailing at the date of registration referred to in subregulation (2), as the case may be.

13. (1) A company may be designated by any name, but such name shall end with the words "private limited company" or the word "limited" or its abbreviation "ltd.". Name of company. *Amended by: L.N. 31 of 2020.*

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

(*a*) is the same as a name of another commercial partnership 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 commercial partnership by a notice in writing to the

Registrar given not more than three months before the date of the second request:

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

Provided further that in applying paragraph (*b*), the Registrar shall have regard to the business or proposed business of the company, to the protection of the names of individuals who are not connected in any way with the company, and to the names of the members.

Objects of company. *Substituted by: L.N. 31 of 2020.* Cap. 234.

14. The objects of a company registered shall be limited to one or more of the activities referred to in sub-article (1) of article 84Z of the Act and to transactions ancillary thereto.

Minimum share capital. *Amended by: L.N. 411 of 2007.*

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

(2) Where the authorised share capital is equal to the minimum aforesaid, it shall be fully subscribed in the memorandum, and where it exceeds such minimum, at least that minimum shall be subscribed in the memorandum.

(3) At least twenty per cent of the nominal value of each share taken up shall be paid up on the formation of the company.

(4) The ordinary shares of a company shall not be redeemable, and every company shall at all times have ordinary shares.

Articles of Association. *Substituted by: L.N. 31 of 2020.*

16. (1) There may be registered with the memorandum, articles of association (hereinafter referred to as "articles"), which shall be 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 model regulations contained in the First Schedule, such model 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:

Provided that this provision shall not apply in relation to model regulation 22 of the First Schedule, unless that provision is expressly reproduced in the memorandum or articles of the company.

Chapter III - Registration

Registration of memorandum and articles.

17. The memorandum and articles, if any, shall be delivered for registration to the Registrar who, being satisfied that all the requirements of regulations 11 to 16 and of regulation 53 have been complied with, shall register them.

Duty of Registrar and effects of registration.

18. (1) 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 as stated under these regulations, and the company shall come into existence and shall be authorised to

commence business as from the date of registration which date shall be indicated in the certificate.

(2) A certificate of registration given in respect of a company is conclusive evidence that the requirements of these regulations in respect of registration and of matters precedent and incidental to it have been complied with and that the company is duly registered as a private company under these regulations.

Where certificate of registration is not issued.

Cap. 386.

19. (1) All persons carrying on business or entering into agreements in the name of or on behalf of a company in respect of which a certificate of registration has not been issued under these regulations and the Companies Act, in terms of these regulations shall, unless otherwise agreed, be personally and jointly and severally liable for their dealings with third parties entered into by them in the aforementioned capacity.

(2) Failing agreement to the contrary, the persons referred to in subregulation (1) shall have, as against one another and in respect of the assets and liabilities arising out of the business carried on in the company's name or on its behalf, the rights and obligations of joint owners.

(3) Notwithstanding the provisions of subregulation (1), the dealings referred to in that subregulation shall, with respect to a third party who has dealt in good faith with persons purporting to act in the name of or on behalf of a company in respect of which a certificate of registration has not been issued with effect from the date on which the company shall come into existence, be treated as having been undertaken by the company: provided that in such an event the provisions of subregulation (1) shall not apply. The company shall be entitled to be indemnified by the persons who had acted in its name or on its behalf in respect of its liability under this subregulation towards the said third party.

(4) When an agreement is entered into in the name of a company and it is expressly stated that the company is in formation, any such agreement shall be valid and binding on the parties thereto upon registration of the company and the preceding paragraphs of this regulation shall not apply.

Alterations and additions to memorandum and articles.

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

Provided that it shall be permissible for the members without prejudice to the company remaining a shipping organization to authorise, and subject such authorisation to restrictions as they deem fit, the board of directors to alter or add to the memorandum and articles clauses which -

(*a*) amend the name of the company;

(*b*) amend the registered address;

(*c*) amend the articles of the company relating to internal administration provided the rights of the members are not affected; and

(*d*) amend the objects and powers of the company so as to facilitate the carrying on of the business of the

company as a shipping organisation.

(2) It shall be the duty of the directors to deliver to the Registrar for registration a printed copy of any resolution as aforesaid within fourteen days after the date of the resolution, together with a revised and updated copy of the memorandum, and of the articles, if any, as amended by the said resolution and incorporating all the changes effected to date relating to the directors, the representation of the company or any transfer or transmission of shares or any allotment of shares. Any previous amended text of the memorandum and articles, if any, may be discarded by the Registrar when a subsequent amended text is delivered to him for registration:

Provided that in the event of a discrepancy between the text of any amended memorandum and articles, if any, and the text of the original memorandum and articles, if any, registered in accordance with the provisions of regulation 17, the latter text together with resolutions registered in accordance with the provisions of subregulation (2) shall prevail.

Notwithstanding the provisions of subregulation (2), where the alteration consists in a change in the registered office in Malta of the company, the directors shall send to the Registrar for registration a return of any change in the registered office, specifying the date of the change, together with the new registered office, within fourteen days from the happening thereof.

(3) Any alteration or addition to the memorandum or articles of a company shall not take effect vis-à-vis third parties, unless and until it is registered.

(4) If default is made in complying with the provisions of subregulation (2), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(5) The responsibility for ensuring that any proposed amendments to the articles of association, if any, of a company, are correct, complete and in full compliance with these regulations and any other applicable law shall lie with the directors of the company.

Change of name of company.

21. Where a company changes its name under the provisions of regulation 20, 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.

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

22. 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 regulation 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.

23. (1) A document or proceeding requiring authentication by a company may be signed by a director, or other authorised officer of the company or other person authorised in writing.

(2) All documents supplied to the Registrar shall be authenticated in accordance with this regulation.

Chapter IV - Changes to a company's share capital

Reduction of issued share capital.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006; L.N. 31 of 2020.

24. (1) Notwithstanding the provisions of regulation 20(3), where the alteration consists in the reduction of the issued share capital, any such reduction shall not take effect until three months from the date of the publication of the statement to this effect in the Gazette or on a website maintained by the Registrar and in a daily newspaper showing the date at which the reduction was made and giving such details as are necessary to distinguish the company to which the statement relates:

Provided that if a creditor of the company whose debt existed prior to the publication of the statement mentioned in this paragraph objects thereto by sworn application 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:

Provided further that a reduction in share capital shall be void to the extent that it reduces the capital to less than the minimum prescribed by regulation 15 of these regulations.

(2) The Registrar of Courts shall without delay cause a copy of any sworn application filed under subregulation (1) and of any judgment given thereon to be served on the Registrar for registration.

(3) The total or partial waiving of the unpaid part of the issued shares and the release of the holders of those shares from their obligation to pay up that unpaid part shall, notwithstanding anything contained in the memorandum or articles of a company, in all cases be considered as a reduction in share capital.

(4) Where there are different classes of shares the decision by the general meeting concerning a reduction in the issued share capital shall be subject to a separate vote for each class of shareholders whose rights are affected by the reduction, and for every separate vote taken the same majority shall be required as where the shares are not divided into different classes.

(5) An alteration consisting in the reduction of the issued share capital whose purpose is to offset losses incurred or to include sums of money in a reserve shall take effect immediately on the registration of the resolution concerning such a reduction and the provisions of subregulation (1) relating to the rights granted to creditors of the company shall not apply:

Provided that, following this operation, the amount of such reserve is not more than ten per cent of the reduced issued share capital:

Provided further that any such reserve shall be used only for offsetting losses incurred or for increasing the issued share capital by the capitalisation of such reserve.

(6) In the cases referred to in subregulation (5) the amounts deriving from the reduction of the issued share capital may not be used for making payments or distributions to shareholders or to discharge shareholders from the obligation to pay calls on their shares:

Provided that if the provisions of subregulations (1) and (2) relating to the rights granted to the creditors of the company are followed for the purpose of reducing any sum of money contained in any such reserve, as is referred to in subregulation (5), the amounts deriving therefrom may be used for making payments or distributions to shareholders.

(7) The notice convening the general meeting at which the extraordinary resolution for the reduction of issued share capital is to be taken, shall, specify the purpose expressly and the way in which it is to be carried out.

Increase in issued share capital and director's authority to issue shares.

25. (1) Any increase in the issued share capital of a company shall be decided upon by an ordinary resolution of the company, unless the memorandum or articles require a higher percentage than that required for an ordinary resolution.

(2) The memorandum or articles of a company may permit the board of directors to issue shares up to the authorised share capital as may be specified in the same memorandum and articles.

(3) Where there are several classes of shares, if resolution of the general meeting is required, in terms of subregulation (1), it shall be subject to a separate vote for each class of shareholders whose rights are affected by that resolution and the provisions relating to the majority required for the resolution by virtue of subregulation (1) shall apply for each class.

(4) A copy of any such ordinary or extraordinary resolution referred to in subregulations (1) and (3) shall be delivered to the Registrar for registration, within fourteen days after the date of the relative resolution, failing which every officer of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(5) The provisions of subregulations (1) to (4) shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

(6) Where an increase in the issued share capital is not fully taken up, the issued share capital shall be increased by the amount of subscriptions received only if the conditions of the issue so provide.

(7) Whenever a company makes any allotment of its shares, the company shall, within one month thereafter, deliver to the Registrar in accordance with the provisions of the Seventh Schedule for registration -

(*a*) a return of the allotments stating the number and the nominal amount of the share comprised in the allotment, the names and addresses of the allottees and the amount paid and that due, and payable, on each share, whether on account of the nominal value of the share or by way of premiums; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing or, where the contract is not reduced to writing, 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 rendered to other consideration in respect of which the allotment was made, and a return stating the number and nominal value 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.

Chapter V - Maintenance of share capital and protection of class rights

Undertaking may not subscribe for or acquire shares in its parent company or provide financial assistance for the purchase of, or subscription for, its own or its parent company's shares.

26. It shall not be lawful for an undertaking -

(*a*) to subscribe for, hold, acquire or otherwise deal in shares in a company which is its parent company; or

(*b*) except after notice has been given in the prescribed form in accordance with the Seventh Schedule, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, to give any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in the company or its parent company.

Effect of a company's own shares as security.

27. The acceptance of a company's own shares by way of pledge or other form of security shall be treated as an acquisition by the company of such shares.

Forfeiture or surrender of shares.

28. Any share in a company may be forfeited from any shareholder in favour of the company and any shareholder may surrender any or all of his shares in a company in favour of that company if the shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof and as long as provision to that effect is contained in the memorandum or articles of the company.

Conditions for payment of commissions, discounts, etc.

29. (1) It shall be lawful for a company to pay a commission or make a discount or allowance to any person in consideration for 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:

Provided that -

(*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*) the amount or rate per cent of the commission, discount or allowance and the number of shares which persons have agreed in consideration thereof to subscribe absolutely shall be disclosed in any circular or notice whereby the shares are privately offered; and

(*d*) in no event may the value of such shares be reduced to below their nominal value as a result of the payment of such commission, discount or allowance.

(2) If shares are issued in contravention of the provisions of this regulation the holder thereof shall be bound to pay the company an amount equal to the amount of the commission, discount or allowance given in excess of that permitted by this regulation, with annual interest at the rate of two percentage points over the Central Bank of Malta minimum discount rate.

Application of premium received on issue of shares.

30. (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 immediately paid in full and transferred to an account, to be called "the share premium account", and the provisions of these regulations relating to the reduction of the issued share capital of a company shall, except as provided in this regulation, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything contained in the foregoing subregulation, 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.

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

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or, in accordance with subregulation (4), out of the proceeds of a fresh issue of shares made for the purpose of the redemption;

(*b*) no such shares shall be issued unless the following conditions are satisfied as regards the terms and manner of redemption -

(i) the date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's memorandum or articles or, if the memorandum or articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued;

(ii) any other circumstances in which the shares are to be or may be redeemed must be specified in the company's memorandum or articles;

(iii) the amount payable on redemption must be specified in, or determined in accordance with, the company's memorandum or articles, and in the latter case the memorandum or articles must not provide for the amount to be determined by reference to any person's discretion or opinion; and

(iv) any other terms and conditions of redemption shall be specified in the company's memorandum or articles;

(*c*) no such shares shall be redeemed unless they are fully paid up and the terms of redemption shall require full payment on redemption;

(*d*) the premium, if any, payable on redemption shall 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;

(*e*) 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 distribution as dividend, be transferred to a reserve to be called "the capital redemption reserve", a sum equal to the nominal amount of the shares redeemed, and the provisions of these regulations relating to the reduction of the issued share capital of a company shall, except as provided in this regulation, apply as if the capital redemption reserve were paid up share capital of the company.

(2) The capital redemption reserve may, notwithstanding anything contained in this regulation, 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.

(3) Preference shares redeemed under this regulation shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly:

Provided that a redemption of preference shares by a company shall not be taken as reducing the amount of the

company's authorised share capital.

(4) Without prejudice to the provisions of subregulation (3), where a company is about to redeem preference shares, it shall have the power to issue shares up to the nominal value of the preference shares to be redeemed as if those preference shares had never been issued.

(5) A notice of the redemption of preference shares referred to in the preceding paragraphs of this regulation shall be delivered by the company to the Registrar for registration, within fourteen days after the date of redemption.

(6) If default is made in complying with the provisions of subregulation (5) every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Rights of holders of special classes of shares and changes or variations thereof. *Amended by: L.N. 181 of 2006; L.N. 186 of 2006.*

32. (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 change of any shares in the company from one class into another or for 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 and of any other class affected thereby or the sanction of a resolution passed at a separate meeting of the holders of those shares and of the holders of any other shares affected thereby, and in pursuance of the said provision the shares are changed from one class into another or 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 either of the issued shares of that class or of any other class affected thereby, being persons who did not consent to or vote in favour of the resolution for the change or variation, may by sworn application filed within twenty-one days of the consent or the resolution, demand that the change or 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 change or variation would unfairly prejudice the holders of shares, the class of which is being changed or the rights of which are being varied, or the holders of any other class of shares affected thereby, shall disallow the change or variation.

(3) The Registrar of Courts shall without delay cause a copy of any sworn application filed under subregulation (1) and of any judgment given thereon to be served on the Registrar for registration, and the said sworn application shall, on pain of nullity, include a demand to that effect.

(4) Regulation 20(2) and (4) shall apply in respect of any consent or resolution given or taken in terms of subregulation (1).

(5) Where no provision is made by the memorandum or articles for authorising the change or variation referred to in subregulation (1), no such change or variation may be made.

Chapter VI - Miscellaneous provisions about shares and debentures

Numbering of shares.

33. 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 they remain fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Transfer of shares or debentures.

34. (1) Notwithstanding any provisions contained in any other law, a transfer of shares in or debentures of a company may be made by private writing unless the memorandum and articles, if any, provide for another form.

(2) 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.

Registration of transfer or transmission of shares or debentures.

35. (1) On the application of the transferor or of the transferee 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 and address of the transferee and where the application is made by the transferor the entry shall be made in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) If a company refuses to register a transfer of shares or debentures, it shall, within two months after the date on which the transfer was lodged, send to the transferee notice of the refusal.

(3) The directors of a company shall be obliged to register the transfer of any shares in the company in favour of any person who has acquired those shares as a result of any court sanctioned sale thereof.

(4) On the application of the person to whom the right to any share in or debentures of a company has been transmitted *causa mortis*, the company shall register in its register of members or debentures, as the case may be, the name and address of such person.

(5) If a company refuses to register a transmission as is referred to in subregulation (4), it shall, within two months after the date on which the transmission is lodged, send to the person to whom the right to any shares or debentures of a company has been transmitted *causa mortis*, notice of the refusal.

(6) If default is made in complying with the provisions of subregulations (2) or (5), every officer of the company who is in default, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Issue of certificates.

36. (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 registered 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, debentures or 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 regulation means a transfer on which the relevant duty, if any, has been paid and is 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) In the case of a transfer or of a transmission *causa mortis* of shares the company shall within fourteen days after the date on which a transfer of any such shares is registered with the company, and within one month from the date on which any such shares transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver to the Registrar for registration a notice of the transfer or the transmission *causa mortis* stating the names and addresses of the transferees or the names and addresses of the persons entitled to the shares transmitted *causa mortis*, as the case may be.

(4) If default is made in complying with any of the provisions of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Pledging of securities. *Amended by: L.N. 31 of 2020.*

37. (1) Securities may, provided it is expressly permitted in the memorandum or articles of the company or under the conditions of issue of those securities, be pledged by their holder in favour of any person as security for any obligation. The pledge of securities shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee:

Provided that in relation to transfers of shares, any restriction resulting from the Memorandum or Articles of the company shall, subject to the provisions of paragraph (10) of this regulation, be deemed not to apply to transfers by the pledgee in terms of paragraph (6) of this regulation or resulting from any judicial sale.

(2) Notice of the pledge shall be delivered by the pledgor or the pledgee to the Registrar for registration within fourteen days of the granting of the pledge. The company whose securities have been pledged, shall also be notified of the pledge in writing within the said period and the company shall record that fact in the register of holders of the respective securities.

(3) Failure to deliver notice of the pledge to the Registrar or the company within the time stated in the preceding sub-regulation shall not render invalid the pledge entered into between the parties; however the pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice.

(4) Saving the provisions of subregulation (3), during the existence of a pledge of securities, any transfer or other assignment, made by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void.

(5) Notwithstanding the provisions of subregulation (4), any transfer or other assignment of securities made with the consent of the pledgee shall be valid and the securities to be transferred shall continue to be subject to the pledge.

(6) Without prejudice to the right of the pledgee to apply for the judicial sale of the securities and notwithstanding the provisions of the Civil Code or of the memorandum or articles of the company, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the company, the pledgee shall be entitled to: Cap. 16.

(*a*) dispose of the securities which are pledged in his favour; or

(*b*) appropriate and acquire the shares himself, in settlement of the debt due to him or of part thereof.

(7) For the purposes of subregulation (6) the value of the securities may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgee to the pledgor in terms of the said subregulation (6), and no prior agreement thereon shall be valid:

Provided that, in case of disagreement, the fair value for the sale or appropriation of the securities shall be determined by a certified public accountant or a certified public accountant and auditor appointed by the court on the application of the pledgee or in such other manner as the parties may agree in writing.

(8) For the purposes of subregulation (7), the fair value of the securities shall be that obtaining on the date of the notice referred to in subregulation (6).

(9) The pledgee shall, in selling the securities in accordance with the provisions of subregulation (6), be obliged to seek the best price being not less than their fair value as determined in accordance with subregulation (7). In the event that a buyer cannot be found for the securities at their fair value, the pledgee may apply to the court for the securities to be sold at less than their fair value as aforesaid subject to such conditions as the court may deem fit.

(10) The pledgee shall be obliged, prior to the exercise of the right granted by subregulation (6), to offer the shares to other shareholders of the company in accordance with any pre-emption rights relating to the transfer of shares as laid down in the memorandum or articles of that company, and, in the absence of such preemptive rights, to all the other shareholders of the company in proportion to their holdings. In either case the shareholders shall be entitled to purchase the shares at the price determined in accordance with subregulation (7). Such offer shall be kept open for at least ten working days.

(11) In the exercise of his rights under this regulation, the pledgee shall only sell or appropriate such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining shares shall be released to the pledgor:

Provided that it shall be lawful for a pledgee to sell all the shares pledged in the event that it is not possible to achieve a fair

price for the sale of only part of the pledged shares and any excess in the proceeds shall be released to the pledgor.

(12) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities including voting rights and the right to receive dividends and interest payments:

Provided that, should the agreement between the parties not make provision for such matters, all rights pertaining to a holder of securities shall, for the duration of the pledge, be exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the company, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee:

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the company, dividends or interest payments due on securities which are pledged shall, during such time as the pledge is registered in the register of holders of the respective securities, be paid by the company to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(13) Notice of termination of the pledge shall be delivered by the pledgor or the pledgee to the Registrar for registration within fourteen days of the termination of the pledge. The company, securities in which have been pledged, shall also be notified in writing of the termination of the pledge within the said period and the company shall record that fact in the register of holders of the respective securities.

(14) In the event that the parties to a pledge agreement submit any dispute thereunder to arbitration all references in this regulation to the court shall be deemed to refer to the arbitration tribunal.

Register of members.

38. (1) Every company shall keep a register of its members and shall 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 where the company has converted any of its shares into stock and has registered the conversion with the Registrar, 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*).

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of these regulations, be treated as a single member; and, unless otherwise provided in the memorandum or articles, 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 in relation to the company to be the member of the company in respect of all the shares so held.

(3) The register of members shall be kept at the registered office of the company or at such other place as specified in the memorandum or articles and in such form as may be determined.

(4) If default is made in complying with any requirement of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Register of debentures.

39. (1) Every company shall keep a register of debentures and shall 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 or at such other place as may be specified in the memorandum or articles and in such form as may be determined therein.

(3) Where two or more persons hold one or more debentures jointly, they shall for the purposes of these regulations be treated as a single debenture holder; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of debentures. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed vis-à-vis the company to be the holder of all the debentures so held.

(4) If default is made in complying with any requirement of this regulation, every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Inspection of registers.

40. Except when duly closed in accordance with the provisions of regulation 41, 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 of the company without charge; and

(*b*) the register of debentures shall be open to the inspection of any person without charge.

Power to close registers.

41. (1) A company may, on giving notice to the members, close the register of members to inspection for any period or periods not exceeding in the whole thirty days in each year.

(2) The register of debentures may be closed to inspection in accordance with 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.

(3) The memorandum or articles may provide that, during such time as the register of members or the register of debentures is closed in accordance with the provisions of subregulations (1) or (2), no new particulars may be entered therein.

Trustees and nominees.

42. Unless otherwise provided in its articles, a company formed and registered in Malta shall not recognise any nominee relationship or trust in respect of any security issued by it, and the company shall not recognise, even when having notice thereof, any interest or other right in such security, but shall only recognise the registered holder thereof.

Chapter VII - Meetings and Resolutions

Holding of annual general meeting.

43. (1) 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.

(2) Every general meeting other than an annual general meeting shall be an extraordinary general meeting.

(3) If default is made in complying with the provisions of subregulation (1), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Convening of extraordinary general meeting on requisition.

44. (1) The directors of a company shall, on the requisition of a member or 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 shall state the objects of the meeting and shall be signed by the requisitionist or requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by the requisitionist, or if there is more than one requisitionist in any one document by all of them.

(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 requisitionist or requisitionists may 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 requisitionist or

requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionist or requisitionists by the company, and any sum so paid shall be due personally by the directors who were in default and may 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 general meetings.

45. 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: L.N. 411 of 2007.

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

(*a*) notice of any general meeting of a company shall be given to every member of the company and shall be served at the address specified in the register of members in the manner in which notices are required to be served by the First Schedule;

(*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 euro or the equivalent of stock held by him unless otherwise provided in the terms of issue of such shares or stock;

(*e*) service of notice at the last known address of the shareholder as appears in the register of members shall be deemed to be an effective service of notice. It is the duty of the shareholders to inform the company of any change of address.

Powers of court to order meeting.

47. (1) 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 these regulations, the court may, either on its own motion or on the demand of either of the parties to the proceedings during the course of such proceedings or, in the absence of any proceedings, 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.

(2) The provisions of subregulation (1) shall also apply to the calling of meetings of the board of directors of a company, if the court considers that the circumstances justify such course of action.

Proxies.

48. (1) Notwithstanding anything contained in the memorandum or articles of a company, 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. If default is made in complying with this paragraph, every officer of the company who is in default shall be liable to a penalty.

(4) A provision in a company's memorandum or articles shall be void in so far as it would have the effect of requiring an instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting for that appointment to be effective.

(5) A company shall not issue at its own expense to some only of the members entitled to be sent a notice of a meeting and to vote thereat by proxy, invitations to appoint as proxy a person or one of a number of persons specified in the invitations. If default is made in complying with this paragraph, every officer of the company who is in default shall be liable to a penalty:

Provided that an officer shall not be liable to a penalty by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The provisions of this regulation shall apply to meetings of any class of members of a company as they apply to general meetings of the company.

Right to demand a poll.

49. (1) Any provision contained in the memorandum or articles of a company 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.

(2) The instrument appointing a proxy to vote at a meeting of the company shall be deemed to confer authority to demand or join in demanding a poll; and for the purposes of subregulation (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

(3) On a poll taken at a meeting of a company or a meeting of any class of members of that company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Extraordinary and ordinary resolutions.

50. (1) Unless otherwise provided in the memorandum, a resolution shall be an extraordinary resolution where it has been passed by more than fifty percent of the members having the right to attend and vote at any such meeting:

Provided that an extraordinary resolution shall be taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given.

(2) Unless otherwise provided in the memorandum or articles, an ordinary resolution shall be passed by a member or members having the right to attend and vote at a meeting holding in the aggregate more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting.

Chapter VIII - Management and Administration

Power of company to borrow money, hypothecate or charge its undertaking, etc.

51. (1) In this regulation:

"guarantee" shall mean the undertaking of any obligation by whatever name whereby the company agrees to perform an obligation in the event of failure to do so by any other person;

"corporate benefit" shall mean any financial, commercial, trading or reputational benefit to be derived by the company, its holding company, its subsidiaries or subsidiaries of its holding company, any related company or its subsidiaries, its trading partners or counterparts or its members but not only its officers.

(2) A company shall, unless otherwise provided in its memorandum or articles, have the power to borrow money and to guarantee the obligations of any third party and, for such purpose,

to hypothecate or charge its undertaking, property and uncalled capital or any part thereof including as security for its direct obligations or for those of third parties, and to issue debentures, debenture stock and other securities whether outright or as security for its direct liabilities or obligations or for those of any third party:

Provided that when the grant of a guarantee for the obligations of a third party by a company is made on a purely gratuitous basis, with no corporate benefit being derived therefrom by the company, unless the memorandum states otherwise, the issue of such guarantee shall require the consent of the members by extraordinary resolution:

Provided further that nothing in this regulation shall render invalid any guarantee granted by any company which was entered into prior to the coming into force of these regulations.

Directors.
Amended by: L.N. 31 of 2020.

52. (1) Every company shall have at least one director, and where a company has one director, all references in these regulations to two or more directors shall be construed as references to such one director.

(2) The business of a company shall be managed by the directors who may exercise all such powers of the company, including those specified in regulation 51.

(3) Notwithstanding anything contained in the memorandum and articles of association relating to the names in which the representation of the company is to be exercised, anything done by the board of directors of a company which exceeds the limits of their authority or by any director which is beyond his powers, shall be binding on the company unless that act exceeds the powers granted to the board of directors or to a director, as the case may be by virtue of these regulations.

(4) Any limitation on the powers of the board of directors or of any director of the company shall not be relied on as against third parties, independently of whether that limitation, published or not, arises from the memorandum or articles or from any resolution of the general meeting or from a decision of the board of directors of the company.

(5) Where an act of the company falls outside the company's objects, the company shall not be bound if it proves that, when the act was done, the third party knew that it was outside the company's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the memorandum and articles of the company shall not in itself be sufficient to prove that the third party knew, or could not have been unaware, that the act was outside the company's objects.

(6) When a vacancy arises in the board of directors the vacancy can be filled by a general meeting or equivalent resolution or in its absence a board of directors' resolution. In the absence of either one any member may apply to the court to appoint a director until the next annual general meeting.

(7) A person appointed by the court in accordance with the provisions of subregulation (6) shall hold office until the next annual general meeting although he shall be eligible for re-election.

(8) The provisions of subregulation (6) shall furthermore be without prejudice to the provisions of regulation 54(1) to (5) and of regulation 99(2)(*b*)(iv) and to the right of the company to fill any such vacancy in general meeting.

Appointment of directors.

53. (1) Where a director is by the memorandum required to hold a specified share qualification, he shall either sign the memorandum for a number of shares not less than his qualification or sign and deliver to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares:

Provided that 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 re-appointed director of the company until he has obtained his qualification.

(2) Unless otherwise provided in the memorandum or articles of a company, a director of a company other than the first directors shall be appointed by ordinary resolution of the company in general meeting.

(3) Where the holders of a particular class of shares have the right to appoint one or more directors, in terms of the memorandum and articles of the company, such appointment shall be made by a member or members holding in the aggregate more than fifty per cent in nominal value of the shares represented and entitled to vote at the meeting of the holders of the shares of that class.

Removal of directors and casual vacancies.

54. (1) A company may remove a director before the expiration of his period of office by a resolution taken at a general meeting of the company and passed by a member or members having the right to attend and vote, holding in the aggregate shares entitling the holder or holders thereof to more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting.

(2) The provisions of subregulation (1) shall apply notwithstanding anything in the company's memorandum or articles or in any agreement between it and the director.

(3) On receipt of a notice of an intended resolution to remove a director under this regulation 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.

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

(5) Nothing in this regulation shall be taken as -

(*a*) depriving a person removed hereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any other appointment terminating with the termination of his appointment as director; or

(*b*) derogating from any power to remove a director which may exist apart from this regulation.

(6) (*a*) Unless otherwise provided in the memorandum or articles of a company, 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.

(*b*) 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.

(*c*) 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.

Representation of the company.

55. (1) Where for any reason the representation of a company ceases to be vested in any person or persons, the company shall appoint another person or persons to exercise such function. The appointment shall be made by ordinary resolution taken at a general meeting notice of which shall be issued within fourteen days from the date when the vacancy occurs.

(2) The company may by ordinary resolution replace any person or persons vested with the representation of the company.

(3) Where and for as long as, the representation of the company cannot be exercised in accordance with the memorandum of the company, any director shall represent the company in judicial proceedings against it.

Disqualification for appointment as director.

56. (1) A person shall not be qualified for appointment or to hold office as director of a company if -

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

(*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;

(*c*) he is a minor who has not been emancipated to trade;

(*d*) he is subject to a disqualification order under article 320 of the Companies Act or equivalent legislation overseas.

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(2) Notwithstanding the provisions of these regulations or of the memorandum and articles of a company relating to the formalities of the appointment of a director or other officer and to his qualification, any irregularity concerning the appointment of a director or other officer of a company raised after the completion of the publication of his appointment shall not be relied upon by the company as against third parties unless the company proves that such parties were aware of the irregularity at the relevant time.

(3) Third parties who were not aware of the irregularities referred to in subregulation (2) at the relevant time may rely on that irregularity as against the company.

Directors competing with company.

57. (1) Unless authorised in the memorandum or articles of a company a director may not, in competition with the company and without the approval in writing of all the members of the company given at a general meeting, carry on business on his own account nor may he be a partner with unlimited liability in another partnership which is in competition with that company.

(2) Where a director acts in violation of the prohibition contained in this regulation, 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 regulation.

(3) The provisions of this regulation shall be without prejudice to any other remedy which a company may have against a director for breach of duty.

Prohibition of loans, etc., to directors.

58. 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 parent 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 paragraph 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.

59. (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in his personal capacity 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 regulation shall be liable to a penalty.

Return as to changes among directors and in representation of company. *Amended by: L.N. 31 of 2020.*

60. (1) Every company shall send to the Registrar for registration a return of any change among its directors or the person who is vested with the representation of the company, specifying the date of the change together with the name and residence of any new director, within fourteen days from the happening thereof in terms of the Seventh Schedule:

Provided that the Registrar may, before registering the return, take such steps and require such information as he may deem necessary to ascertain the correctness of the return and to determine whether the provisions of these regulations have been complied with.

(2) Where the company has appointed a company secretary the directors shall send the return referred to in sub-regulation (1). The return shall also be submitted in the case of any change in the company secretary.

(3) If default is made in complying with the provisions of subregulation (1), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Joint and several liability of directors for breach of duty.

61. (1) The personal 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.

62. 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 engaged by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would in the absence thereof have been attached to him in respect of negligence, default or breach of duty or otherwise 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.

63. (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, or at such other place, including a place outside Malta, as may be specified in the memorandum or articles, 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 of the company without charge.

(4) If a company fails to comply with the requirements of subregulations (1) or (3), every officer of the company who is in default shall be liable to a penalty.

Chapter IX - Accounts, Audit and Annual Return

Annual Accounts Cap. 13. *Substituted by: L.N. 31 of 2020.*

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64. (1) The provisions of articles 163, 167, 170 to 183 and articles 185 to 187 of Part V, Title I, Chapter X and the Third and Sixth Schedule of the Companies Act shall apply *mutatis mutandis* to companies formed and registered under these regulations, provided that the balance sheet total and turnover mentioned in sub-article (1) of article 185 of the Companies Act shall be read as follows:

- balance sheet total: six million euro (6,000,000);
- turnover: twelve million euro (12,000,000);
- and provided further that the aggregate balance sheet total and aggregate turnover mentioned in sub-article (5) of article 185 of the Companies Act shall be read as follows:
- aggregate balance sheet total: six million euro (6,000,000) net or seven million and two hundred thousand euro (7,200,000) gross;

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- aggregate turnover: twelve million euro (12,000,000) net or fourteen million and four hundred thousand euro (14,400,000) gross:

Provided further that companies which qualify as small companies shall also be entitled to the exemptions mentioned in sub-article (2) of article 185 of the Companies Act and in the provisos to sub-article (2) of article 183 of the Companies Act.

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(2) The penalties in the Eleventh Schedule of the Companies Act which would be applicable to any default in terms of the articles mentioned in sub-regulation (1) shall apply

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Accounting periods. *Amended by: L.N. 31 of 2020.*

65. (1) A company's accounting periods shall be of not more than one year except the first accounting period which may be of not less than 6 months and not more than eighteen months from the date of registration.

(2) Accounting periods shall be from and to such dates as are determined by the directors from time to time during an accounting period.

(3) In the case specified in subregulation (2), the company shall within fourteen days file a notice with the Registrar for registration in terms of the Seventh Schedule.

General provisions as to content and form of individual accounts.

66. *Deleted by Legal Notice 31 of 2020.*

Duty to prepare consolidated accounts.

67. *Deleted by Legal Notice 31 of 2020.*

Form and content of consolidated accounts.

68. *Deleted by Legal Notice 31 of 2020.*

Consolidated accounts - size exemption. *Amended by: L.N. 411 of 2007.*

69. *Deleted by Legal Notice 31 of 2020.*

Exemption for parent companies included in accounts of larger groups.

70. *Deleted by Legal Notice 31 of 2020.*

Disclosure required in notes to the accounts.

71. *Deleted by Legal Notice 31 of 2020.*

Approval and signing of annual accounts.

72. *Deleted by Legal Notice 31 of 2020.*

Contents of the directors' report.

73. *Deleted by Legal Notice 31 of 2020.*

Approval and signing of directors' report.

74. *Deleted by Legal Notice 31 of 2020.*

Auditor's report.

75. *Deleted by Legal Notice 31 of 2020.*

76. *Deleted by Legal Notice 31 of 2020.*

Persons to whom a copy of the accounts of a company are to be sent.

77. *Deleted by Legal Notice 31 of 2020.*

Directors to lay accounts before the general meeting.

78. *Deleted by Legal Notice 31 of 2020.*

Period for laying of accounts.

79. *Deleted by Legal Notice 31 of 2020.*

Copies of accounts to be provided to Registrar.

80. (1) Every company shall upon each anniversary of its registration, make a return in the form set out in the Fifth Schedule showing the matters therein specified and made up to the date of such anniversary:

Annual return. *Amended by: L.N. 31 of 2020.*

Provided that -

(*a*) where a company was, immediately before the coming into force of these regulations in default with respect to the delivery of one or more annual returns, this regulation shall not affect the obligation of the company to make such a return or returns or the payment of any penalty arising from such a default;

(*b*) where a company has converted any of its shares into stock and registered the conversion as provided in regulation 20, the list of past and present members shown in Part 3 of the Fifth Schedule, shall 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 part.

(2) The annual return, duly completed, shall be signed by at least one director of the company and forwarded to the Registrar for registration within forty-two days after the date to which it is made up.

(3) If default is made in complying with the provisions of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

81. *Deleted by Legal Notice 31 of 2020.*

Exemptions for small companies. *Amended by: L.N. 411 of 2007.*

82. *Deleted by Legal Notice 31 of 2020.*

Accounts in any convertible currency. *Amended by: L.N. 411 of 2007.*

Chapter X - Auditors

83. (1) A company shall, at each general meeting at which the annual accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which the accounts are laid. The company may appoint joint auditors and reference in these

Appointment of auditors. *Amended by: L.N. 31 of 2020.*

regulations to auditor or auditors shall be deemed to include references to single or joint auditors as the case may be.

(2) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which the annual accounts are laid, and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If the directors fail to exercise their powers under subregulation (2), the powers may be exercised by the company in general meeting.

(4) If no auditors are appointed or re-appointed as required by the foregoing subregulations, the court on an application made by any of the directors or by any member of the company or by the Registrar may appoint a person to fill the vacancy.

(5) In the case specified in subregulation (4), the company shall within two weeks of the general meeting at which an auditor or auditors should have been appointed by virtue of subregulation (1), give notice to the Registrar that his power to apply to the court has become exercisable.

(6) If a company fails to give the notice required by subregulation (5), every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Filling of casual vacancies.

84. (1) The directors shall at any time before the general meeting of the company at which the annual accounts are laid fill a casual vacancy in the office of auditor:

Provided that the company in general meeting may fill such a casual vacancy itself.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Where it is proposed -

(*a*) to appoint an auditor to fill a casual vacancy in the office of auditor by resolution of the general meeting; or

(*b*) to re-appoint by resolution of the general meeting a retiring auditor who was appointed by the directors to fill a casual vacancy, as auditor, or to appoint a new auditor instead of that auditor,

notice specifying in terms of the proposed resolution shall be given forthwith to the person proposed to be appointed and, if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(4) Any director who fails to comply with the provisions of subregulation (1) shall be liable to the same penalty as that provided for in regulation 83(6).

Disqualification from appointment as auditor.
Amended by: L.N. 31 of 2020.

85. (1) A person shall be disqualified from appointment as auditor or from holding the office of auditor of a company if -

(*a*) in the case of an individual, he has at any time during the previous three years been -

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

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of the company; or

(iv) 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.

(2) An auditor must at all times adhere to the rules on independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued from time to time in terms of the Accountancy Profession Act.

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Right to information.
Amended by: L.N. 411 of 2007.

86. (1) The auditors of a company shall have a right of access at all times to the company's accounting records, accounts and vouchers, and shall be entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company who knowingly or recklessly makes to the company's auditors a statement, whether written or oral which -

(*a*) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and

(*b*) is misleading, false or deceptive in a material particular;

shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euros and seventy-five cents (4,658.75) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) A subsidiary undertaking which is registered in Malta, and the auditors of such an undertaking, shall give to the auditors of any parent company of the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a subsidiary undertaking fails to comply with the provisions of this paragraph, every officer thereof who is in default shall be liable to a penalty; and if an auditor fails without reasonable cause to comply with this paragraph he shall be liable to a penalty.

(4) A parent company having a subsidiary undertaking which is not registered in Malta shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a parent company fails to comply with the provisions of this subregulation, every officer of the company who

is in default shall be liable to a penalty.

Right to attend company meetings.

87. A company's auditors shall be entitled -

(*a*) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;

(*b*) to attend any general meeting of the company; and

(*c*) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Remuneration of auditors.

88. (1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. The remuneration of auditors appointed by the directors or the court shall be fixed by the directors or the court as the case may be.

(2) There shall be stated in the notes to the accounts the amount of the remuneration of the company's auditors in their capacity as such; and where consolidated accounts are prepared, the notes to the consolidated accounts shall state the total remuneration paid to the auditors of the parent company in respect of all undertakings included in the consolidation, and also the total remuneration paid to all other auditors in respect of such undertakings.

(3) For the purposes of this article, "remuneration" includes sums paid in respect of expenses.

(4) The provisions of this regulation shall apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value. The nature of any such benefit shall also be disclosed.

Removal of auditors.
Amended by: L.N. 31 of 2020.

89. (1) Notwithstanding anything in a company's memorandum or articles or in any other agreement, the company may at any time remove an auditor from office in the same manner as that specified in regulation 54(1).

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice thereof to the Registrar for registration. If a company fails to give the notice required by this subregulation, every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

(3) Nothing in this regulation shall be taken as depriving a person removed under its provisions of compensation for damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that of auditor.

(4) An auditor of a company who has been removed shall have, notwithstanding his removal, the rights conferred by regulation 87 in relation to any general meeting of the company -

(*a*) at which his term of office would otherwise have

expired; or

(*b*) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that regulation to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Rights of auditors who are removed and not appointed.

90. (1) Notice specifying the text of and reasons for a proposed resolution of a general meeting of a company whereby it is intended to -

(*a*) remove an auditor before the expiration of his term of office; or

(*b*) appoint as auditor a person other than a retiring auditor;

shall be sent forthwith by the company to the person proposed to be removed, to the person proposed to be appointed and to the retiring auditor, as the case may be.

(2) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution representations in writing to the company not exceeding a reasonable length and request their notification to members of the company.

(3) The company shall, unless the representations are received by it too late for it to do so -

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

Resignation of auditor.
Amended by: L.N. 31 of 2020.

91. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office and he shall so resign if he ceases to be qualified as an auditor or if he fails to satisfy the conditions of qualification provided in regulation 86. The notice shall not be effective unless it is accompanied by the statement required by regulation 93.

(2) An effective notice of resignation shall operate to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within fourteen days of the deposit of a notice of resignation send a copy of the notice to the Registrar for registration. If default is made in complying with this subregulation, every officer of the company who is in default shall

be liable to a penalty and, for every day during which the default continues, to a further penalty.

Rights of resigning auditor.
Amended by: L.N. 31 of 2020.

92. (1) The provisions of this regulation shall apply where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) The resigning auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The resigning auditor may request the company to circulate to its members -

(*a*) before the meeting convened on his requisition; or

(*b*) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;

a statement in writing of the circumstances connected with his resignation as referred to in subregulation (1).

(4) The company shall, unless the statement is received too late for it to comply -

(*a*) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and

(*b*) send a copy of the statement to every member of the company to whom notice of the meting is or has been sent.

(5) If the directors do not within twenty-one days from the date of the deposit of a requisition under this regulation proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned in subregulation (2) shall be liable to a penalty.

(6) If a copy of the statement is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the statement be read out at the meeting.

(7) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by regulation 87 in relation to any such general meeting of the company as is mentioned in subregulation (3)(*a*) or (*b*), and, in such a case, the references in that regulation to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by person ceasing to hold office as auditor.

93. (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than fourteen days before the general meeting at which auditors are to be reappointed; in any other case, the statement shall be deposited not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(3) Where the statement is of circumstances which the auditor requests to be brought to the attention of the members or creditors of the company, the company shall within fourteen days of the deposit of the statement either -

(*a*) send a copy of it to every person who under regulation 76 is entitled to be sent copies of the annual accounts; or

(*b*) submit an application to the court for an order that there are grounds of sufficient gravity to warrant that the statement should not be circulated.

(4) Where the company submits an application to the court, the court shall notify the auditor of the application and shall hear both parties before making a decision on the company's application.

(5) Unless the auditor receives notice of such an application before the end of the period of twenty-one days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the Registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter -

(*a*) it shall direct that copies of the statement need not be sent ou;[and

(*b*) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within fourteen days of the court's decision send to the persons mentioned in subregulation (3)(*a*) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within fourteen days of the court's decision -

(*a*) send copies of the statement to the persons mentioned in subregulation (3)(*a*); and

(*b*) notify the auditor of the court's decision,

and the auditor shall within seven days of receiving such notice send a copy of the statement to the Registrar.

Failure to comply with regulation 93. *Amended by: L.N. 31 of 2020.*

94. (1) If a person ceasing to hold office as auditor fails without just cause to comply with the provisions of regulation 93 he shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

(2) In proceedings for a default under subregulation (1) it shall be a defence for the person against whom action is taken to show that he took all reasonable steps and exercised all due diligence to avoid that default.

(3) If a company makes default in complying with the provisions of regulation 93, every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Chapter XI - Distribution of Profits and Assets

Certain distributions prohibited.

95. (1) A company shall not make a distribution except out of profits available for the purpose.

(2) For the purposes of this Chapter, "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of -

(*a*) an issue of shares as fully or partly paid bonus shares;

(*b*) the redemption or purchase of any of the company's own shares out of capital, including the proceeds of any fresh issue of shares, or out of undistributable reserves;

(*c*) the reduction of the issued share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of issued share capital not paid up, or by paying off paid up issued share capital; and

(*d*) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Chapter, a company's profits available for distribution shall be its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of issued share capital duly made.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued share capital.

Consequence of unlawful distribution.

96. (1) When a distribution made by a company to any of its members is made in contravention of the preceding provision such members shall be bound to repay such sums to the company on a demand in writing of the company or any interested person:

Provided that nothing in this paragraph shall prohibit a company from distributing interim dividends:

Provided further that a decision to do so is based on a reasonable expectation that the amount distributed will form part of the distributable assets of the company at the end of the accounting

period.

(2) The provisions of this regulation shall apply without prejudice to any obligation imposed apart from this regulation on a member of a company to repay a distribution unlawfully made to him.

Saving for other restraints on distribution.

97. The provisions of this chapter shall be without prejudice to any other provision of law, or any provision of the company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

PART IV

DEFUNCT COMPANIES

Defunct companies. *Amended by: L.N. 31 of 2020.*

98. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month of sending the letter receive an answer thereto, he may send to the company by post and publish a notice in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta that, at the expiration of three months from the date of the last publication of the said notice, the company's name shall, unless cause is previously shown to the contrary or the Registrar is satisfied that there are sufficient grounds not to proceed with the striking off, be struck off the register; and the assets of the company shall devolve upon the Government of Malta.

(3) If, in any case where a company is being wound up voluntarily, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator in terms of regulation 131 are overdue by six months or more, the Registrar may publish in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta, a notice that at the expiration of three months from the date of the last publication of the said notice, the winding up of the company shall, unless cause is previously shown to the contrary, be deemed to be concluded and consequently that the company's name be struck off the register. The Registrar shall also cause a copy of the said notice to be sent by post to the company and to the liquidator, if any. At the expiration of the aforesaid period of three months the winding up of the company shall, unless cause is previously shown to the contrary, be deemed to be concluded and the Registrar shall strike the name of the company off the register and the company's assets shall devolve upon the Government of Malta.

(4) If any member or creditor of the company, or any other person who appears to the court to have an interest feels aggrieved by the fact that the name of the company has been struck off the

register by virtue of this regulation, the court on an application made by the member or creditor or such other person before the expiration of five years from the publication of the notice of the striking off provided for in subregulations (2) and (3) may, if satisfied that it is proper that the name be restored to the register, order that such name be restored to the register, and upon an official copy of the order being delivered by the Registrar of Courts to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by its order give such directions and make such provisions as seem fit for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. The Registrar shall forthwith proceed to publish a notice in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta that the name of the company has been restored to the register.

(5) A notice to be sent under this regulation to a liquidator may be addressed to the liquidator at his last known place of business or address, and a letter or notice to be sent under this regulation to a company may be addressed to the company at its registered office.

(6) Notwithstanding that the name of the company has been struck off the register in terms of the preceding provisions of this regulation, the liability, if any, of every director or other officer of the company and of every member of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

PART V

DISSOLUTION AND CONSEQUENTIAL WINDING UP OF COMPANIES

Causes of dissolution and consequential winding up.

99. (1) Unless otherwise stated in these regulations, a company shall be dissolved and consequently wound up voluntarily in the following cases:

(*a*) the company has by resolution resolved that the company be dissolved and consequently wound up by the court;

(*b*) the company has by resolution resolved that the company be dissolved and consequently wound up voluntarily.

For the purposes of this subregulation a resolution of the company shall be either a resolution supported by the majority of the directors or an extraordinary resolution taken at a general meeting of the shareholders as may be required in terms of the memorandum and articles of association of the company.

(2) In addition to the modes of dissolution referred to in subregulation (1) -

(*a*) a company may be dissolved and wound up by the Court when the company is unable to pay its debts; and

(*b*) a company shall be dissolved by the court in the following cases:

(i) when the period fixed for its duration expires;

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

(iii) if the share capital is reduced below the statutory minimum;

(iv) if no director is in office;

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

(vi) in such other cases for which provision is made in the memorandum and articles.

(3) In the cases of dissolution falling within subregulation (2)(*b*), the court shall, at its discretion, determine whether the company shall be wound up by the court or, if it is satisfied that there is sufficient support for the process to be carried out by the majority of the members, voluntarily.

(4) For the purposes of subregulation (2)(*a*), a company shall be deemed to be unable to pay its debts -

(*a*) if a debt due by the company has remained unsatisfied in whole or in part after twenty four weeks from the obtaining of a final judgement against the company;

(*b*) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

(5) For the purposes of this Part, a company shall be wound up by the Court if it is wound up in accordance with the provisions of Sub-Part I of this Part; and a company shall be wound up voluntarily if it is wound up in accordance with the provisions of Sub-Part II of this Part.

(6) Nothing in this Part shall prejudice the rights of any creditor under the Act to enforce his claim directly against a ship.

(7) In addition to the modes of dissolution and winding up above referred to the court may dissolve a company and deem it to be wound up in the case specified in regulation 101.

SUB-PART I - WINDING UP BY THE COURT

Chapter I - General provisions

Dissolution and winding up application. *Amended by: L.N. 411 of 2007.*

100. An application to the court (hereinafter referred to as the "winding up application") for the winding up of a company shall be made by means of an application which may be made either by the company or by any of its members or directors, or by any creditor having a debt due and unpaid in excess of twenty-three thousand and two hundred and ninety-three euros and seventy-three cents (23,293.73)or by all or any of them together or separately.

Powers of the court.

101. (1) On the hearing of the winding up application, the court may either dismiss the application or make an order acceding

thereto (hereinafter referred to as a "winding up order") and such other orders, including provisional orders, and adjourn the hearing conditionally or otherwise as it thinks fit; but no winding up order shall be made before the application has been served on such persons as the court in the circumstances, and upon information given by the applicant, deems it appropriate to call upon to make their submissions.

(2) Where the sole asset of the company is a ship subject to a registered mortgage or other maritime claims and the outstanding sums due under the mortgage or such maritime claims exceed the value of the ship, the court shall not order the winding up of the company until it is satisfied that there are excess funds deriving to the company in Malta in relation to which a winding up order may usefully be made.

(3) In the event contemplated in the preceding subregulation, the court shall await the outcome of any enforcement proceedings by the mortgagee or maritime claimants, whether in Malta or overseas and whether private or public, by the mortgagee in terms of article 42 of the Act, or by any maritime claimant enjoying a right of preference in terms of article 37C of the Act, after which it shall determine the issue.

(4) Should it result to the court that there are no excess proceeds of sale or that there have been ranking of creditor proceedings over the proceeds of sale of the ship, the result of which is final and binding on all creditors, and there is no business of the company which needs to be wound up, it shall not order the winding up of the company but shall instead declare the company dissolved and wound up. The court shall order that upon the filing with the Registrar of authenticated evidence of the sale of the ship or the closure of ranking of creditors, which evidence shall be filed at the registry for public notice, the company shall immediately and without further procedures, be struck off the register. In such event any residual rights of the company shall be vested in the shareholders of the company by operation of law or be dealt with as may be determined by the court at its discretion.

(5) Should it result that there are any funds in Malta deriving to the company from proceedings contemplated in the preceding paragraph, the court may order the winding up of the company in accordance with these regulations.

(6) If the winding up application is presented by members of the company on the basis that there are grounds of sufficient gravity to warrant the dissolution and winding up of the company, the court, if it is of the opinion that such grounds exist but that the applicants are entitled to some other remedy, including the liquidation of only their shares, apart from the dissolution and winding up of the company, shall only make a winding up order so long as the applicants are not acting unreasonably in seeking to have the company dissolved and wound up instead of pursuing that other remedy. On the demand of any interested party, the court shall have all the necessary powers to provide such remedy, as it considers reasonable in the circumstances to ensure that the

company is in a position to carry on its business.

Power to stay proceedings against company.

102. At any time after the filing of a winding up application, and before a winding up order has been made, the company, or any creditor, may apply to the court for a stay of judicial proceedings pending against the company, and the court may stay those proceedings accordingly on such terms as it thinks fit:

Provided that no proceedings instituted by a holder of a registered mortgage or a privileged creditor over a ship owned by a company shall be stayed.

Dispositions of property etc., after date of deemed dissolution.

103. In a winding up by the court -

(*a*) any disposition of the property of the company other than a ship by a mortgagee, and

(*b*) any transfer of shares other than shares which have been pledged, or

(*c*) any transaction involving the closing out of a netting provision in terms of the Set-off and Netting on Insolvency Act, Cap. 459.

made after the date of its deemed dissolution, shall be void, unless the court otherwise orders.

Warrants not to be carried into effect against company.

104. When a company is being wound up by the court, any act or warrant, whether precautionary or executive, other than a warrant of prohibitory injunction or any impediment of departure or warrant of seizure of a ship by a holder of a registered mortgage or a privileged creditor, issued or carried into effect against the company after the date of its deemed dissolution, shall be void, unless authorised by a court with specific reference to the company being in a state of dissolution.

Deemed date of dissolution.

105. (1) Where, before the filing of a winding up application, an extraordinary resolution had been passed by the company for it to be dissolved and consequently wound up voluntarily, the company shall be deemed to have been dissolved at the time of the passing of the resolution, and unless the court, upon proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the company shall be deemed to have been dissolved at the time of the filing of the winding up application.

Consequences of a winding up order.

106. (1) On the making of a winding up order, or on the dismissal of a winding up application, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

(2) Where a winding up order has been made or a provisional administrator has been appointed in accordance with the provisions of regulation 107, no action or proceeding, other than any action instituted by a holder of a registered mortgage or a privileged creditor, shall be proceeded with or commenced against the company or its property except by the leave of the court and subject to such terms as the court may impose.

Chapter II - Liquidators in a winding up by the court

Appointment and powers of provisional administrator.

107. (1) The court may appoint a provisional administrator at any time after the presentation of a winding up application.

(2) The provisional administrator shall carry out such functions and shall have such powers as the court may confer on him by the order appointing him.

(3) The provisional administrator holds office until such time as the winding up order is made or the winding up application is dismissed unless before such time he resigns or he is removed by the court upon good cause being shown.

(4) The court shall appoint a liquidator on making up a winding up order and the liquidator shall not resume office until he has notified the acceptance of his appointment to the Registrar in accordance with the Seventh Schedule.

General provisions as to liquidators.

108. (1) A liquidator appointed by the court may resign or, on sufficient cause being shown, be removed by the court.

(2) More than one person may be appointed to exercise the function of liquidator of a company, and the remuneration of each liquidator so appointed shall be determined on such basis as the court may direct.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act which is by these regulations required or authorised to be done by the liquidator is to be done by all or any one or more of the persons so appointed.

(5) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody and control of company's property.

109. Where a company is being wound up by the court, the liquidator or the provisional administrator, as the case may be, shall take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the company to be entitled:

Provided that nothing herein shall entitle a liquidator or provisional administrator to dispossess -

(*a*) a mortgagee in possession of a ship subject to a registered mortgage in his favour; or

(*b*) the holder of a possessory lien in terms of the Act,

or to do any other act which will in any manner hinder or obstruct the exercise of rights of the holder of the registered mortgage including the right to take possession of the ship in accordance with the Act.

Powers of liquidator.

110. (1) The liquidator in a winding up by the court shall have the power, with the sanction either of the court or of any liquidation committee -

(*a*) to bring or to defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(*c*) to pay creditors according to their ranking at law;

(*d*) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the company or whereby the company may be rendered liable, and to refer any such matter to arbitration;

(*e*) to represent the company in all matters and to do all such things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the court shall, in particular, have the power -

(*a*) unless the company is prohibited from selling any ship under the terms of any registered mortgage or any court order, to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents;

(*c*) to raise on the security of the assets of the company any money requisite;

(*d*) to appoint a mandatory to act for him in his capacity as liquidator for particular purposes;

(*e*) to do all such acts as may have been undertaken by the company towards any holder of a registered mortgage, and to consult with such mortgagee as may be necessary, in relation to any ship owned by the company and subject to a mortgage:

Provided that nothing in this regulation shall permit the liquidator to impede or obstruct the exercise of rights by the mortgagee in terms of the Act or the terms of the mortgage.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this regulation shall be subject to the control of the court, and any interested person may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

111. (1) Subject to the provisions of these regulations, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directives that might be given by resolution of the creditors at any general meeting of the creditors as well as to directives given by

the general meeting of the shareholders but in case of conflict precedence shall be given to the directives of the creditors and in case of disagreement among the creditors precedence shall be given to the directives of the holders of a registered mortgage.

(2) The liquidator may summon general meetings of the creditors or the officers and the members of the company for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or the officers or the members of the company, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors.

(3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding up.

(4) Should the liquidator, after investigating the affairs and situation of the company establish that the company is the owner of a sole ship which ship has either been sold, by a mortgagee privately or through a judicial sale, or is in the process of being sold through enforcement proceedings by a holder of a registered mortgage or a privileged creditor and that it is unlikely that there will be excess of funds for distribution to other creditors or the shareholders, the liquidator shall inform the court of the situation and provide the court with his opinion as to whether continuation of the liquidation will serve any purpose and the provisions of regulations 101 and 125 shall apply.

(5) Subject to the provisions of these regulations, the liquidator shall use his own discretion in the management of the assets of the company.

(6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court and the court may confirm, reverse or modify the act or decision complained of, and make such order on the matter as it thinks just.

(7) A liquidator who has acted in accordance with the direction of the court or in accordance with specialist advice shall not be liable for any effects of his actions. Nor shall a liquidator be liable for any loss or expense incurred by him in carrying out his duties except where he has acted fraudulently or negligently or in breach of law or of the directions of the court.

Books to be kept by liquidator.

112. Every liquidator of a company which is being wound up by the court shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed.

Payments of liquidator into bank.

113. (1) Upon his appointment the liquidator shall notify the Registrar of any bank account which the liquidator shall use for the purposes of receiving and making payments on behalf of the company. The liquidator shall not be entitled to receive and make payments until he has made such notification.

(2) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into an account or accounts other than an account or accounts which have

been notified to the Registrar.

(3) In the event that any proceeds from the sale of a ship are received by the liquidator, the rights of preference of a holder of a registered mortgage and of a privileged creditor shall continue to apply over the sale proceeds in substitution of the ship in accordance with the Act.

(4) It shall not be lawful to issue precautionary or executive warrants over any accounts opened by the liquidator in accordance with this regulation.

Audit of liquidator's accounts.

114. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar, and to such other place as the Registrar may direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a proper form, shall be made in duplicate, and shall be duly certified by the liquidator.

(3) The Registrar may, at the company's expense, cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the auditor appointed by the Registrar with such vouchers and information as the auditor may require and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be delivered to the Registrar for registration and the other copy shall be delivered to the court for filing, and each copy shall be open to inspection of any person on payment of the prescribed fee.

Control over liquidators.

115. (1) If an application is made to the court by any creditor complaining on the conduct of a liquidator of a company the court shall inquire into the matter and take such action thereon as it may think expedient.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and the Registrar may, if he thinks fit, apply to the court to examine the liquidator or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the liquidator.

Release of liquidator from his appointment.

116. (1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, or has resigned, or has been removed from office, the Registrar shall, on the liquidator's application to be released, cause a report to be prepared on the liquidator's accounts at the company's expense. On being satisfied that the liquidator has complied with all the requirements laid down by the Registrar and, after taking into consideration the report and any objection which may be raised by any creditor or person

interested against the release of the liquidator, the Registrar shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court made by the liquidator.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks fit, holding the liquidator responsible for the consequences of any act or default which he may have made contrary to his duty.

(3) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of anything which he did or which he failed to do in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but the court may, on the application of any creditor or person interested, revoke such order on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where a liquidator has not previously resigned or been removed, the release shall operate as a termination of his appointment.

(5) The Registrar shall, upon granting or withholding the release referred to in this regulation, register it accordingly.

Chapter III - General powers of the court in a winding up by the court

Power to stay winding up.

117. (1) The court may at any time after a winding up order, on the application either of the liquidator or any creditor, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On an application under this regulation the court may, before making an order, require the liquidator to furnish to the court a report with respect to any facts or matters which are in its opinion relevant to the application.

(3) A copy of every order made under this regulation shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

Delivery of property to liquidator.

118. The court may, at any time after making a winding up order, require any person who holds any money, property or books and papers in his hands to which the company is *prima facie* entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, books or papers to the liquidator forthwith or within such time as the court directs:

Provided that no such order may be issued in relation to any property under the control of a holder of a registered mortgage or a pledge.

Appointment of special manager.

119. (1) The liquidator may, if satisfied that the business of the company, or the interests of the creditors generally, require the appointment of a special manager of the estate or business of the

company or any ship belonging to the company other than himself, apply to the court, and the court may, on such application, appoint a special manager of the said estate or business or ship to act during such time as the court may direct, with such powers as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Fixing of time for proofs of debt.

120. The court may fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

Inspection of books of company.

121. The court may, at any time after making a winding up order, make such order for inspection of books and papers of the company by creditors as the court thinks fit, and any books and papers in the possession of the company may be inspected by creditors in accordance with that order.

Payments of costs of winding up out of assets.
Amended by:
L.N. 31 of 2020.

122. (1) The court may, subject to and without prejudice to the rights of priority of all maritime privileges and mortgages and without prejudice to any rights of possession over a ship or any proceeds of sale, insurance or otherwise as stated in the Act, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit.

(2) In so doing the court shall have regard to the following general order of priority:

(*a*) expenses properly chargeable or incurred by the liquidator in preserving, realising or collecting any of the assets of the company;

(*b*) the cost of any security provided by a provisional administrator, liquidator or special manager;

(*c*) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;

(*d*) the remuneration of the provisional administrator or the special manager, if any;

(*e*) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;

(*f*) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;

(*g*) any necessary disbursements by the liquidator in the course of his administration;

(*h*) the remuneration of any person employed by the liquidator to perform any services for the company, as

required or authorised by the provisions of these regulations;

(*i*) the remuneration of the liquidator;

(*j*) the amount of any income tax on chargeable gains accruing on realisation of any asset of the company.

Summoning of persons suspected of having property of company, etc. *Amended by: L.N. 31 of 2020.*

123. (1) The court may, at any time after the making of any order under Part V, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, and any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine any person referred to in subregulation (1) on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require such person to produce any books and papers in his custody or power relating to the company, but when he claims any right over books or papers produced by him, the production shall be without prejudice to the right claimed by him, and the court shall have jurisdiction in the winding up to determine all questions relating to that right.

(4) If any person so summoned refuses to come before the court at the time appointed, not having a lawful impediment which is made known to the court at or before the time of the sitting and allowed by it, the court may order his arrest in order to be brought before the court for examination.

(5) These provisions shall not apply to the holders of a registered mortgage of a ship who may be in possession of property of a company in terms of such mortgage and related agreements.

Liquidator may exercise certain powers of court.

124. The powers conferred and the duties imposed on the court by these regulations in respect of the following matters:

(*a*) the holding and conduct of meetings to ascertain the wishes of creditors;

(*b*) the payment, delivery, conveyance, surrender or transfer of money, property books or papers to the liquidator;

(*c*) the making of calls;

(*d*) the fixing of a time within which debts and claims must be proved;

may, subject to the provisions of this regulation or any other provision of these regulations, be exercised or performed by the liquidator, subject to the control of the court.

Striking of name of the company off the register.

125. (1) When the affairs of the company have been completely wound up, or the circumstances specified in regulation 111(4) the court, if the liquidator makes an application in that behalf, shall make an order that the name of the company be struck

off the register under such conditions as to publicity and notifications as it deems fit.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the Registrar of the Courts to the Registrar who shall comply therewith.

SUB-PART II - VOLUNTARY WINDING UP

Chapter I - General provisions

Appointment, remuneration and removal of liquidators. *Amended by: L.N. 31 of 2020.*

126. (1) A person shall not be qualified to act as liquidator unless he is an advocate or is an individual who is a certified public accountant or certified public accountant and auditor or is registered with the Registrar as fit and proper to exercise the function of liquidator.

(2) A person who is qualified to act as liquidator in virtue of sub-regulation (1), may not act as liquidator if he has held the office of director or has held any other appointment with or in connection with that company, at any time during the four years prior to the date of dissolution of the company as determined in accordance with the provisions of these regulations:

Provided for the purposes of this sub-regulation, director includes a person in accordance with whose directions or instructions the directors of the company are or have been accustomed to act.

(3) The liquidators shall be appointed, and may be removed from office, by an extraordinary resolution taken at a general meeting or where so provided by the memorandum or articles of the company, at a meeting by the board of directors of the company:

Provided that if a resolution submitted for the appointment of a person as a liquidator fails to obtain the required majority at a general meeting of the company or the general meeting cannot take place due to lack of a quorum, the directors may appoint a liquidator themselves:

Provided further that a liquidator, appointed by the directors, may be removed from office by order of the court on demand by application 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. In such an event, the court shall itself appoint a liquidator.

(4) The remuneration of the liquidator shall be fixed by the company in general meeting or where appropriate in a meeting of the board of directors, subject nevertheless to the right of the liquidator to demand that it be fixed or varied by the court.

(5) 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 claims other than those with preference over a ship in terms of the Act unless with the prior written consent of the relevant creditor.

Notice by liquidator of his appointment.

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

Default in complying with regulations 126, 127 and 152.

128. If default is made in complying with any of the requirements of regulations 126, 127 and 152, every director or liquidator, as the case may be, who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

Powers of directors to cease. Summoning of meetings.

129. (1) When a company has been dissolved, until such time as a liquidator is appointed, the directors shall have the 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 without prejudice to the right of the directors to act in accordance with the provisions of this Sub-Part in so far as authorised by the memorandum and articles.

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

Application of rules on ranking.

130. (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 and the 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 identified 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 Procedure.

Cap. 12.

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

Statement by liquidator in respect of pending winding up.
Amended by: L.N. 31 of 2020.

131. (1) In the event of the winding up continuing for more than twelve months, the liquidator shall unless the previous general meeting has resolved otherwise, summon a general meeting of the company at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a

summary of receipts and expenditure.

(2) If the liquidator fails to comply with the provisions of subregulation (1) he shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Final meetings and scheme of distribution.

132. (1) As soon as the affairs of the company are wound up the liquidator shall make an account of the winding up and of the 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) Unless otherwise provided in the memorandum or articles of association or as otherwise resolved by the members, the liquidator shall cause the account 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 the distribution and the auditors report and giving any explanation thereof:

Provided that the provisions of regulation 85 shall apply to an auditor appointed in terms of this sub-regulation. Such auditor shall not be a person who has held the office of auditor of the company at any time during the last three years immediately preceding the date of dissolution.

(3) Within one week after approval by members, the liquidator shall send to the Registrar for registration a notice of completion of liquidation in terms of the Seventh Schedule.

(4) If the liquidator fails to comply with the requirements of subregulation (3), he shall be liable to a penalty, and for every day for which the default continues, to a further penalty.

Member disagreeing with scheme of distribution.

133. Any member not agreeing to the scheme of distribution may contest the same by application within one month of the approval thereof by the general meeting.

Disposal of books and records of company. *Amended by: L.N. 31 of 2020.*

134. The liquidator shall keep the books and other documents of the company for a period of ten years from the date on which the name of the company was struck off the register.

Date of dissolution in a voluntary winding up.

135. When a company is dissolved in accordance with the provisions of regulation 99(1)(*b*), the date of dissolution shall be the date of the passing of the resolution for the dissolution or the date of the court order for dissolution and consequential winding up or such later date as may be specified in the said resolution or court order:

Provided that where the court has ordered that the company be wound up voluntarily by virtue of the provisions of regulation 99(1)(*b*), the company shall be deemed to have been dissolved at the time of the filing of the winding up application.

Chapter II - Provisions applicable to a members' voluntary winding up

Provisions applicable to a members' voluntary winding up.

136. The provisions contained in the following regulations shall apply in relation to a members' voluntary winding up.

Vacancy in office of liquidator.

137. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company shall by extraordinary resolution fill the vacancy or if such power has been vested in the directors by the directors.

(2) For the purposes of subregulation (1), a general meeting shall be convened by any member, or, if there were more than one liquidator, by the continuing liquidator or liquidators and notice of the meeting shall be given within fourteen days of the occurrence of the vacancy referred to in subregulation (1).

(3) The general meeting shall be held in the manner provided by these regulations or by the memorandum and articles, or in such manner as may, on the application of any member or by the continuing liquidator, be determined by the court.

(4) If for any cause whatsoever a liquidator is not appointed in the manner specified by subregulation (1) or if a vacancy occurs in the office of liquidator appointed by the court, any member or the continuing liquidator or liquidators may, at any time thereafter, apply to the court for the appointment of a liquidator, and the appointment shall be made by the court.

(5) The above shall not apply where the liquidator establishes that there are no assets for distribution due to the sale of the company's ship by judicial sale or the ranking of creditors by a court pursuant thereto. In such a case the liquidator shall notify the members of the facts and file a notice of dissolution and winding up without procedures in terms of the Seventh Schedule and on receipt thereof the Registrar shall proceed with subregulation (3).

Striking off of company. *Amended by: L.N. 31 of 2020.*

138. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) Within seven days after the meeting, the liquidator shall send to the Registrar a copy of the account together with the notice of the holding of the meeting and of its date, failing which the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at the meeting, the liquidator shall in the notice mentioned above state that the meeting was duly summoned and that no quorum was present thereat.

(3) On receiving the account together with the auditor's report, if any, the notice of completion of liquidation and of the holding of

the meeting, the Registrar shall forthwith register them and on the expiration of three months from a notice published in the Gazette or on a website maintained by the Registrar proceed to strike the name of the company off the register:

Provided that the court may, on an application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.

(4) If the liquidator fails to call a general meeting of the company as required by this regulation, he shall be liable to a penalty.

Duty of liquidator in case of insolvency.

139. In the case that the company is insolvent the liquidator may make a request and the court may, if at least 75% of the creditors agree, order that the winding up continues under the control of the creditors and the general direction of the court.

Chapter III - Provisions applicable to a creditors' voluntary winding up

Provisions applicable to creditors' voluntary winding up.

140. (1) The following provisions shall apply in relation to a creditors' voluntary winding up, which shall take place when -

(*a*) it does not reasonably appear to the directors of the company that there exist sufficient assets of the company to pay all its liabilities;

(*b*) the company has assets which may be usefully liquidated and proceeds distributed for the benefit of the creditors; and

(*c*) the majority of creditors appear willing to pursue a creditors' voluntary winding up procedure.

(2) This procedure shall not apply when the sole asset of the company is a ship which has been arrested by creditors or is subject to judicial sale proceedings in relation to debts which appear to the directors to exceed the value of the ship. In such an event the obligation of the directors shall be limited to sending a notice in writing as specified in the Seventh Schedule to the Registrar of the state of affairs relating to the ship for public notice, a copy of which shall be sent to the creditors.

Meeting of creditors.

141. (1) Except in the case stated in regulation 140, the directors of the company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for dissolution and consequential voluntary winding up is to be proposed and shall cause the notice of the said meeting of the creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The directors of the company shall -

(*a*) cause a full statement of the position of the company's

affairs, together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(3) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(4) If the meeting of the company at which the resolution for dissolution and consequential voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at a meeting of the creditors held in pursuance of subregulation (1) shall have effect as if it had been passed immediately after the passing of the resolution for dissolution and consequential winding up.

(5) If default is made by the directors, or the director, as the case may be, in complying with any of the provisions of this regulation, every director who is in default shall be liable to a penalty.

Appointment and removal of liquidator.

142. (1) The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. The nomination by the company of a person to be liquidator shall be made by an extraordinary resolution. If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

(2) Where no person is nominated to act as liquidator by either the creditors or the company, an application to the court for the appointment of a liquidator shall be made by any director of the company within fourteen days from the date for which the meeting of the creditors referred to in regulation 141 was summoned or at which the resolution passed at such meeting shall have come into effect in accordance with subregulation (4) of the said regulation 141, according to the case.

(3) The provisions of regulation 127 shall apply to the appointment of a liquidator under this regulation.

(4) If default is made by the directors in complying with the provisions of subregulation (2), every director who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Liquidation committee.

143. (1) The creditors at the meeting to be held in pursuance of regulation 136, or at any subsequent meeting may, if they think fit, appoint not more than five representatives of the creditors to a liquidation committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought

not to be members of the liquidation committee, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under the provisions of this subregulation the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of subregulation (1) or as may be otherwise prescribed, the regulation on the constitution and proceedings of the liquidation committee other than subregulations (1) to (4) thereof, shall apply with respect to a liquidation committee appointed under this regulation as they apply with respect to a liquidation committee appointed in a winding up by the court.

Remuneration of liquidator.

144. The liquidation committee or, if there is no such committee, the creditors, shall fix the basis of remuneration to be paid to the liquidator or liquidators.

Vacancy in office of liquidator.

145. If a vacancy occurs, by death, resignation or removal in the office of a liquidator who was not appointed by the court, a new liquidator shall be appointed in accordance with the provisions of regulation 137(1):

Provided that if a liquidator is not appointed in accordance with the provisions of the said subregulation, any member or creditor of the company may apply to the court for the appointment of a liquidator and the appointment shall be made by the court.

Liquidator to hold meeting of company and creditors where winding up continues for more than twelve months. *Amended by: L.N. 31 of 2020.*

146. (1) In the event of the winding up continuing for more than twelve months, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a summary of receipts and expenditure.

(2) In the event that the conditions stated in regulation 140(2) intervene, the liquidator shall bring such events to the knowledge of the committees and the committees shall resolve to terminate the liquidation, failing which the liquidator may apply to the court for such an order.

(3) If the liquidator fails to comply with the provisions of subregulation (1), he shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Final meetings.

147. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving

any explanations thereof.

(2) Within seven days after the date of the meetings or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates; and if the copy is not sent or the return is not made in accordance with this paragraph the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return mentioned in this subregulation, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subregulation as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(3) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this regulation, he shall be liable to a penalty.

Striking company's name off the register. *Amended by: L.N. 31 of 2020.*

148. (1) The Registrar shall, on receiving the account and, in respect of each such meeting as is referred to in regulation 147, the return or returns as mentioned in that regulation, forthwith register them, and on the expiration of three months from the publication of a notice in the Gazette, or on a website maintained by the Registrar the Registrar shall strike the name of the company off the register:

Provided that the court may, on an application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.

(2) When an order by the court is made under subregulation (1), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of subregulation (1) in accordance with the order given by the court referred to in that subregulation.

Chapter IV - Provisions applicable to every voluntary winding up. Distribution and Payment of Debts and other Administrative Matters

Distribution of property of company.

149. (1) Subject to the provisions of these regulations and of any other law as to preferential debts or payments, and to the provisions of the Act, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities in accordance with the preferences available to them by law and *pari passu* within the same rank of creditors, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

(2) The liquidator may -

(*a*) in the case of a members' voluntary winding up, with

the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or of the liquidation committee or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by regulation 110(1)(*c*), (*d*) and (*e*) to a liquidator in a winding up by the court;

(*b*) without sanction, exercise any of the other powers given by these regulations to a liquidator in a winding up by the court;

(*c*) exercise the power of the court of making calls; and

(*d*) summon general meetings of the company for the purpose of obtaining the sanction of the company by extraordinary resolution or for any other purpose he may think fit.

(3) The liquidator shall pay the debts of the company.

(4) When several liquidators are appointed, any power given by these regulations may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number being not less than two.

When arrangement is binding on members.

150. (1) Any arrangement entered into between a company in the course of being wound up, and its creditors shall, subject to the right of appeal under this regulation, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by two-thirds in value.

(2) Any creditor may, within fourteen days from the completion of the arrangement, apply to the court contesting the arrangement, and the court may thereupon, as it thinks fit, amend, vary or confirm the arrangement.

Court may determine questions and exercise powers.

151. (1) The liquidator or any member, or creditor may apply to the court to determine any question arising in the course of winding up of a company, or to exercise, as respects the enforcement of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The liquidator may apply to the court to fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

(3) The court, if satisfied that the determination of the question or the required exercise of power referred to in subregulation (1) will be just and beneficial, may, but subject to the limitations under article 37C of the Act, accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it so determines.

(4) A copy of any order made by virtue of this regulation staying the proceedings in the winding up shall forthwith be forwarded by the Registrar of Courts to the Registrar who shall make a minute of the order in the register relating to the company.

SUB-PART III - PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Chapter I - General Provisions

Notice of dissolution and consequential winding up.

152. On the dissolution of a company, and in no case later than fourteen days after dissolution, the company shall deliver to the Registrar for registration and publication a notice of dissolution and consequential winding up in the form specified in the Seventh Schedule:

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.

Chapter II - Effect of appointment of liquidator and convening of meetings

Powers of directors to cease.

153. On the appointment of a liquidator, all the powers of the directors shall cease except as may be otherwise provided in this Part.

Summoning of meetings. *Amended by: L.N. 31 of 2020.*

154. (1) The liquidator shall summon all meetings of creditors by giving not less than fourteen days' notice of the time and place thereof in the Gazette or on a website maintained by the Registrar and in at least one local daily newspaper; and shall, not less than fourteen days before the day appointed for the meeting, send by post to every person appearing in the company's books to be a creditor of the company, notice of the meeting of creditors.

(2) The notice to each creditor shall be sent to the address given in the creditor's proof of his debt, or, if he has not proved his debt, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(3) Where there is no continuing liquidator, any creditor may apply to the court for directions as to the summoning and holding of a meeting.

(4) The provisions of this regulation shall not apply to meetings held under regulation 141 or regulation 147.

Resolutions of creditors.

155. (1) At a meeting of creditors a resolution shall be deemed to be passed when a majority in value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution.

(2) The provisions of these regulations and of the memorandum or articles of the company with respect to proxies at general meetings of the company shall apply to proxies at meetings of creditors, with such modifications and adaptations as may be required.

(3) A copy of every resolution of a meeting of creditors in a winding up by the court shall be certified by the liquidator, and filed in the Registry of the Superior Courts.

(4) Where a resolution is passed at an adjourned meeting of any creditors of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed at any earlier date.

Other proceedings at meetings.

156. (1) A meeting of creditors may not act for any purpose, other than -

(*a*) the election of a chairman where such election is necessary; or

(*b*) the proving of debts; or

(*c*) the adjournment of the meeting:

Provided that where there are present in a creditors' meeting at least three creditors entitled to vote if the number of creditors entitled to vote do not exceed three, the limitations laid down in this subregulation shall not apply.

(2) If within half an hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven and not more than twenty-one days from the day from which the meeting was adjourned, and at such adjourned meeting the number present or represented shall form a quorum and may act for any purpose.

(3) The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

Minutes of proceedings.

157. (1) The chairman shall cause minutes of the proceedings of meetings to be drawn up and properly entered in a book kept for that purpose and the minutes shall be signed by him.

(2) A list of creditors present at every meeting shall be made and kept in such form as the chairman may deem appropriate or as may be prescribed.

Notice of resignation or removal of liquidator.

158. (1) Upon the resignation of a liquidator from his office, he shall deliver to the Registrar for registration a notice of his resignation and the resignation shall only become effective on such registration.

(2) Where a liquidator is removed from office by the court in accordance with the provisions of this Part, the Registrar of Courts shall forthwith deliver a notice of such removal to the Registrar for registration.

(3) Where a liquidator has been removed by an extraordinary resolution of the company in a members' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any member of the company who has duly been authorised by the same resolution or by the company in general meeting.

(4) Where a liquidator has been removed by a resolution of the creditors in terms of regulation 155, in a creditors' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any creditor of the company who has been duly authorised by the same resolution or by the creditors' meeting.

Chapter III - Proof and ranking of claims

Debts of all descriptions may be proved.

159. In every winding up of a company all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or which may be due in damages, shall be admissible as proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

Claims to liquidator.

160. Such claims shall be made in writing to the liquidator within the times set by him and shall be accompanied by all supporting evidence. The acceptance by the liquidator of claims shall be binding on the company.

Striking off of company on filing of notice of judicial sale of ship.

161. In the cases specified in regulation 111, the company shall be struck off upon the filing of a notice to the Registrar notifying him of the sale of the ship and the conclusion of the ranking of creditors procedure and this without the need of any further proceedings. The notice shall be in the form specified in the Seventh Schedule.

Application of rules in ranking.
Amended by: L.N. 31 of 2020.

162. In the winding up of a company, the assets of which are insufficient to meet the liabilities, the rights of secured and unsecured creditors and the priority and ranking of their debts shall be regulated by the provisions of the Act and all claims against a ship shall rank in priority to all other claims against the company. The determination by a liquidator of whether a claim is against a ship or not shall be binding on all the parties subject to the right of a creditor of a ship to apply to the court to review such determination.

Non-applicability of the provisions of the Commercial Code.
Cap. 13.

163. The provisions of the Commercial Code on bankruptcy shall not apply to shipping organisations which are companies.

PART VI

COMPANY RECONSTRUCTIONS, CONVERSIONS, AMALGAMATIONS AND DIVISION OF COMPANIES

Part VI to Part IX of the Companies Act to apply.
Cap. 386.
Cap. 386.
Substituted by: L.N. 31 of 2020.

164. Articles 327 to 329 in Part VI and Part VII to Part IX of the Companies Act shall apply *mutatis mutandis* to these Regulations provided that Article 344 (3) of the Companies Act, shall be construed to require that the draft terms of merger, duly completed, shall be signed by at least two directors unless the Board of directors is composed of one in which case it will be signed by that director.

PART VI A
CONTINUATION OF COMPANIES
SUB-PART I - Continuation in Malta of a Foreign Company

Eligibility to register as being continued in Malta as a shipping organization.

164A. A body corporate formed and incorporated or registered under the laws of an approved country or jurisdiction other than Malta which is similar in nature to a company as known under the Laws of Malta and whose objects must be such that the company will, once registered in Malta, qualify as a shipping organisation pursuant to article 84Z of the Act, hereinafter referred to as a "foreign company" may, provided that there is a provision in the law of that country or jurisdiction authorizing it to do so, and provided it is also authorized to do so by its charter, statutes or memorandum and articles or other instrument constituting or defining the company, hereinafter referred to as "the constitutive document", request the Registrar to be registered as being continued in Malta .

Cap. 234.

Request for registration.

164B. A request by a foreign company for registration as being continued in Malta shall be made to the Registrar in the manner and form prescribed by him and shall be accompanied by:

(*a*) the resolution or equivalent document of the foreign company authorizing it to be registered as being continued in Malta, and if the instrument is not written in the English language, a translation thereof in the English language, certified to be a correct translation in such manner as may be prescribed; the resolution or equivalent document has as far as practicably possible, to be in such manner, by such constituted body and with such majority as would be the equivalent, under the laws of the country or jurisdiction of formation and incorporation or registration, and according to its constitutive document, of an extraordinary resolution under the laws of Malta;

(*b*) a copy of the revised constitutive document including all the requirements necessary for the registration of a company in Malta in accordance with the provisions of these regulations;

(*c*) a certificate of good standing or equivalent document in respect of the foreign company issued by the competent authority in which the foreign company was formed and incorporated or registered or other evidence to the satisfaction of the Registrar that the foreign company is in compliance with the registration requirements of that authority, and, if the instrument is not written in the English language, a translation thereof in the English language, certified to be a correct translation in such manner as may be prescribed;

(*d*) a declaration signed by at least two directors of the foreign company, unless the Board of Directors is composed of one, or, where that foreign company does not have directors,

by at least two persons vested with the administration or the representation of the foreign company to be registered as continued in Malta, confirming:

(i) the name of the foreign company and the name under which it is being continued;

(ii) the jurisdiction under which it is incorporated;

(iii) the date of incorporation;

(iv) the decision to have the foreign company registered as continuing in Malta;

(v) that the foreign company has given formal notice to the relevant authority of the country or jurisdiction where the foreign company was formed, incorporated or registered as continuing in Malta in accordance with the procedure laid down by law; and, together with the declaration, there shall be annexed evidence of such notification;

(vi) that no proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign company, unless such proceedings arise out of an event which on the date of the occurrence thereof did not constitute such a breach; and

(vii) the solvency of the foreign company and that they are not aware of any circumstances which could negatively affect in a material manner, the solvency position of the company within a period of twelve months:

Provided that any director of the foreign company, or the persons vested with the administration or representation of the foreign company, making a declaration of solvency under sub-paragraph (vii) without having reasonable grounds on which to make this declaration shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than fifty thousand euro.

(*e*) a list of directors of the foreign company as well as of the company secretary, if any, or of the persons vested with the administration or the representation of the foreign company, where that foreign company does not have directors or a company secretary;

(*f*) such material as the Registrar may require to

satisfy himself that -

(i) such request is permitted by the laws of the country or jurisdiction in which the foreign company has been formed and incorporated or registered; and

(ii) the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction of formation and incorporation or registration to such request has been obtained;

(*g*) the registration fees set out in the Companies Act (Fees) Regulations, relating to the registration of commercial partnerships, which fees shall apply *mutatis mutandis* to foreign companies requesting to be registered as being continued in Malta. S.L. 386.03.

Registration in Malta.

164C. The documents referred to in regulation 164B shall be delivered for registration to the Registrar who, being satisfied that they comply with the provisions of these regulations shall provisionally register them and certify under his hand that the company is provisionally registered as continuing in Malta as from the date of registration, which date shall be indicated in the Provisional Certificate of Continuation. Upon the issue of such Provisional Certificate of Continuation the company shall be deemed thereafter to be a company provisionally registered.

Effects of registration.

164D. With effect from the date of the Provisional Certificate of Continuation issued by the Registrar in accordance with regulation 164C:

(*a*) the company to which the provisional certificate of continuation relates -

(i) shall continue to be a body corporate incorporated under the regulations under the name designated in the declaration referred to in paragraph (d) of regulation 164B, and shall be deemed as provisionally registered in Malta for all purposes of law; and

(ii) is subject to all the obligations and capable of exercising all the powers of a company registered under these regulations.

(*b*) the constitutive document as revised in accordance with paragraph (b) of regulation 164B is considered as the Memorandum and Articles of Association of the company;

(*c*) the registration of a foreign company under Sub-Part I shall not operate -

(i) to create a new legal entity;

(ii) to prejudice or affect the continuity of the company;

(iii) to affect the property of the company and such company shall retain all its assets, rights, liabilities and obligations;

(iv) to render defective any legal or other proceedings instituted or to be instituted, by or against the company;

(v) to release or impair any conviction, judgment, ruling, order, debt, liability or obligation due or to become due or any cause existing against the company or against any member, director, officer or persons vested with the administration or the representation of the company.

Shares subject to pledge.

164E. (1) Where shares in a foreign company which is to be continued in Malta are subject to a pledge, charge, assignment by way of security or other similar security, hereinafter referred to as "pledge", in the country or jurisdiction where the foreign company was formed and incorporated or registered, such pledge shall continue to be valid and effective under the laws of Malta, and following the registration of the company as continued in Malta shall be fully enforceable as a pledge of shares in terms of regulation 37 subject to the following conditions:

(*a*) that the pledge has been validly created in writing as a right of security and preference over shares under the law of the country or jurisdiction where the foreign company was formed and incorporated or registered;

(*b*) that the pledge is valid and effective as of the date of issue of the provisional certificate of registration in Malta;

(*c*) that a notice of pledge be delivered to the Registrar for registration in terms of sub-regulation (2) of regulation 37 within fourteen days of the date of issue of the provisional certificate of registration in Malta:

Provided that failure to deliver notice of the pledge to the Registrar or the company within the time stated in this paragraph shall not render invalid the pledge entered into between the parties; however the pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice.

(2) A pledge of shares as mentioned in sub-regulation (1):

(*a*) shall continue to be regulated by the law chosen by the parties and such law shall apply to all the rights, including rights of enforcement thereof, and obligations of the parties thereto, except to the extent

the pledge is enforced in Malta in which case the relevant provisions of regulation 37 shall apply;

(*b*) shall continue to be subject to any submission made by the parties to the jurisdiction of any foreign court or arbitration which submission shall be valid and effective and shall remain fully in force.

(3) The party delivering the notice of pledge to the Registrar in Malta in terms of this regulation shall also notify the other party to the pledge agreement by serving him with a true copy of the said notice within fourteen days of notification to the Registrar.

(4) On termination of the pledge, a notice of termination of the pledge shall be delivered to the Registrar for registration in accordance with the provisions of sub-regulation (13) of regulation 37.

Failure to deregister.

164F. Within a period of six months from the date of the issue by the Registrar of the Provisional Certificate of Continuation, the company shall submit documentary evidence to the Registrar that it has ceased to be a company registered in the country or jurisdiction where it had been previously formed and incorporated or registered. Failure by the foreign company to provide such documentary evidence shall grant the Registrar discretion to:

(*a*) either strike the name of the company off the register and inform the relevant authority of the country or jurisdiction concerned that the company is not registered in Malta; or

(*b*) upon reasonable cause being shown allow a further period of three months prior to striking the name of the company off the register.

Certificate of continuation.

164G. Upon presentation to the Registrar of proof of the company having ceased to be a company registered in the country or jurisdiction where it had been previously formed and incorporated or registered and upon the surrender to the Registrar of the Provisional Certificate of Continuation, the Registrar shall issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta.

Non-permissible registrations.

164H. No request for the registration of a foreign company as being continued in Malta may be granted if -

(*a*) the dissolution or winding up of the foreign company has commenced or insolvency proceedings, arrangements, compositions, recovery proceedings or any other analogous proceedings have been commenced by or against the foreign company;

(*b*) a liquidator or special administrator of the foreign company or a receiver of its property has been appointed;

(*c*) there is any scheme or order in relation thereto whereby the rights of creditors are suspended or restricted;

(*d*) any proceedings for breach of laws of the country or jurisdiction of incorporation have been commenced against such foreign company, not being proceedings arising out of an event which on the date of the occurrence thereof did not constitute such a breach.

SUB-PART II - Continuation outside Malta of companies incorporated in Malta

Eligibility to register as being continued outside Malta.

164I. A company registered under these regulations may, where the laws of an approved country or jurisdiction so allow, upon obtaining the consent of the Registrar, apply to the proper authority of such country or jurisdiction selected to have the company registered as continued as if it had been incorporated under the laws of that other country or jurisdiction; and on the date of the instrument of continuation the company shall become a company under the laws of that other country or jurisdiction and shall be subject to such laws as permitted or required by that other country or jurisdiction.

Request for consent of Registrar to continue company outside Malta.

164J. A request by a company for the consent of the Registrar to be continued as a company outside Malta under the laws of an approved country or jurisdiction shall be made to the Registrar in the manner and form prescribed by him and shall be accompanied by a declaration signed by at least two directors of the company, unless the Board of Directors is composed of one, containing:

(*a*) the name of the company and the name, if different, under which registration in the approved country or jurisdiction is being sought;

(*b*) the place of proposed registration of the company and the name and address of the competent authority in that approved country or jurisdiction;

(*c*) the date on which it is proposed to establish domicile in the relevant approved country or jurisdiction.

Requirements for request.

164K. No company may request the Registrar for his consent under regulation 164J unless -

(*a*) an extraordinary resolution of the shareholders of the company was approved in accordance with the memorandum or articles of association of the company authorizing such request. The extraordinary resolution shall be delivered to the Registrar for registration;

(*b*) (i) the company has delivered to the Registrar for registration a declaration signed by at least two directors of the company, unless the Board of Directors is composed of one, confirming the solvency of the company and confirming that the directors are not aware of any circumstances which could negatively affect in a material manner the solvency position of the company within a period of twelve months;

(ii) any director of a company making a

declaration of solvency under sub-paragraph (b) (i) without having any reasonable grounds on which to make this declaration shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than fifty thousand euro (€50,000);

(*c*) payment has been made of all fees and penalties due under these regulations or any other law or regulations which may be applicable; and

(*d*) the prescribed fee has been paid for.

Requirements for consent.

164L. The Registrar shall not give his consent to a company requesting to be continued in another country or jurisdiction unless he is satisfied that -

(*a*) the requirements of regulation 164J have been complied with;

(*b*) no proceedings for the dissolution of the company, insolvency proceedings, arrangements, compositions, recovery proceedings or any other analogous proceedings have been commenced by or against the company in Malta or elsewhere;

(*c*) any pledgee of shares in accordance with the regulations has given his consent in writing to the intended continuation of the company in another country or jurisdiction; and

(*d*) the company at the time of such request is not in breach of any of its duties or obligations under the regulations: Provided that the Registrar may in his discretion give his consent if payment of any penalty due is made.

Right of creditors to oppose continuation.

164M. (1)In addition to the requirements of regulation 164L, the Registrar shall not give his consent for the continuation of the company in another approved country or jurisdiction until the lapse of three months from the date of the publication, in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta, of a notice relating to the extraordinary resolution referred to in paragraph (a) of regulation 164K.

(2) During the aforesaid period of three months any creditor of the company whose debt existed prior to the publication of the notice referred to in sub-regulation (1) may, by sworn application, object to such continuation and, if he shows good cause why it should not take effect, the Court shall either uphold the objection or allow the continuation of the company on sufficient security being given.

Removal from register.

164N. Upon an instrument of continuation continuing the company in another country or jurisdiction being issued by the relevant authority of the said country or jurisdiction, the company shall forthwith deliver to the Registrar a copy of the instrument of

continuation and the company shall be deemed to have ceased to be a company incorporated in Malta from the date when its continuation in that other country or jurisdiction takes effect, and the Registrar shall strike the name of the company off the register:

Provided that nothing in this regulation shall -

(*a*) take away or affect the jurisdiction of any court in Malta to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company registered in Malta;

(*b*) affect the property of the company;

(*c*) render defective any legal or other proceedings instituted or to be instituted, by or against the company; or

(*d*) release or impair any conviction, judgment, ruling, order, debt, liability or obligation due or to become due or any cause existing against the company or any other person.

Register of companies continued outside Malta.

164O. The Registrar shall keep a register of all companies that obtained his consent to register as being continued in another approved country or jurisdiction. The register shall contain a record of the name in which the company is registered as being continued as well as all relevant details.

PART VII

GENERAL

Judicial Service of Acts and Duties of the Registrar. *Amended by: L.N. 31 of 2020.*

165. (1) All judicial proceedings which are to be served on a shipping organisation shall be properly served if sent by registered mail or served by a court marshall at the registered office of the shipping organisation.

(2) It shall be the duty of the Registrar,

(*a*) where under any provision -

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

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

(iii) to cause without delay a statement to be published in the Gazette or on a website maintained by the Registrar showing the date at which the registration, delivery or service was made, or at which the certificate was issued or at which the name of the company was struck off the register, and the general nature of the document or certificate, and giving such particulars as are necessary to distinguish the company to which the statement related:

Provided that the Registrar shall additionally be required to publish without delay in a daily newspaper circulating wholly or mainly in Malta a notice showing substantially the same information contained in the statement published in the Gazette or on the website, consequent to the registration referred to in the following provisions of these regulations:

Sub-regulation (1) of regulation 106;

Regulation 152;

Regulation 164.

In the event of any reduction referred to in regulation 24, the Registrar shall proceed with the publication of a statement in the Gazette or on the website and in a daily newspaper in accordance with the requirements of this regulation.

The publication of the notice referred to in this proviso shall be subject to the following provisions:

(i) The publication of the notice shall be made by the Registrar at the expense of the company concerned;

(ii) A company, liable for the expense of the publication of a notice in accordance with this proviso, shall effect payment without delay, and in the event that such company is or has been dissolved, the Registrar shall, in regard to the said expense, enjoy the same preferential ranking as expenses properly incurred by a liquidator;

(iii) The expense incurred by the Registrar in publishing a notice pursuant to this proviso shall be notified in writing to the company or person liable for the expense in accordance with this proviso. Such notification shall be deemed equivalent to a notice given in terms of sub-regulation (4), and the expense incurred by the Registrar shall, in so far as applicable, be considered equivalent to a penalty referred to in the same sub-regulation. The provision of sub-regulations (4) to (18) shall *mutatis mutandis* apply to such expense;

(*b*) to supply copies, certified copies or verified and certified copies of documents registered pursuant to this regulation against payment of the prescribed fee to any person who requests them, and such copies may also be supplied by electronic means;

(*c*) to deliver to the Director of the Public Registry for registration at the Public Registry Office a notice containing the particulars of any conversion, amalgamation or division which has taken effect in

accordance with Part VI, or the striking off of the name of a company, under the provisions of regulation 98. Such notice shall show substantially the same particulars as the statement published in the Gazette or on the website maintained by the Registrar pursuant to the proviso to this regulation; and it shall be the duty of the Director of the Public Registry to register the notice or a note thereof in like manner as notes of reference, in so far as applicable, as the Director may consider appropriate.

(3) Any document, certificate or other particular required to be delivered, given to or served on the Registrar for registration may be relied on by the company as against third parties only after it has been duly published in accordance with sub-regulation (2), unless the company proves that third parties had knowledge thereof in which case the company may rely on any such document, certificate or other particular notwithstanding that it has not yet been so published. Any transactions taking place before the sixteenth day following the publication of any such document, certificate or other particular, shall not be relied on as against third parties who prove that it was not possible for them to have had knowledge thereof:

Provided that at any time third parties may always rely on any such document, certificate or other particular, even if the publication formalities in relation thereto have not at that time been complied with:

Provided further that where these regulations require that any provision shall not take effect until the lapse of a particular period, the provisions of this sub-regulation shall only come into effect on the lapse of the later period.

(4) Where the Registrar gives notice in writing to any person that such person has become liable to a penalty 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 sub-regulations (5) to (18), be deemed to have incurred a penalty, and the amount indicated as aforesaid as due by way of penalty including any penalty due for each day during which the default continues shall be deemed to be the penalty due in respect of the infringement specified in the notice.

(5) A notice as is referred to in sub-regulation (4) 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 all 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 court objecting to the penalty so fixed.

Cap. 12.

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

(7) 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.

(8) 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.

(9) 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 witnesses he intends to produce stating, in respect of each, the proof which he intends to make.

(10) 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.

(11) 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 fourteen days after the date of the service of the application.

(12) 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 document in support thereof.

(13) On the day fixed for the hearing of the application, the court shall consider only the issues of fact and of law as are ascertainable 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.

(14) 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.

(15) Saving the preceding provisions of this regulation, 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.

(16) Notwithstanding the provisions of sub-article (2) of article 256 of the Code of Organization and Civil Procedure, the executive title referred to in sub-regulation (5) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to. Cap. 12.

(17) The decision of the court upon an application referred to in sub-regulation (6), 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.

(18) An appeal from a decision of the court upon an application referred to in sub-regulation (6), shall be made by means of an application to the Court of Appeal 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.

Penalties. *Substituted by: L.N. 31 of 2020.*

166. (1) Where any provision provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to the Tenth Schedule which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of these regulations.

(2) In the Tenth Schedule, the first column indicates the regulation and sub-regulation which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty, if any. The daily default penalty shall be due for every day during which the default continues and shall accrue from the day on which the Registrar gives notice under sub-regulation (4) of regulation 165 that a penalty is due.

(3) Action by the Registrar for the recovery of a penalty shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) A company shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed.

Registrar may vary thresholds and currency by notice.

167. The Minister responsible for registration of commercial partnerships may vary the thresholds, including the currency in these regulations from time to time by means of a notice.

Fees under S.L.386.03. *Added by: L.N. 31 of 2020.*

167A. The fees prescribed in the Companies Act (Fees) Regulations shall apply *mutatis mutandis* to the companies formed and registered in terms of these regulations.

PART VIII

TRANSITORY PROVISIONS

Transitory provisions. *Amended by: L.N. 31 of 2020.*

168. (1) As from the date of the coming into force of these regulations, a shipping organisation shall not be formed and registered as a private company unless it complies with the provisions of these regulations.

(2) As from the date of the coming into force of these regulations all shipping companies formed and registered as private companies under the Commercial Partnerships Ordinance shall -

Cap. 168.

(i) be deemed to be formed and registered under these regulations and in compliance with the same, shall retain the same legal personality and all their rights and obligations shall not be prejudiced in any manner;

(ii) within a period of five years from such date take such action as is necessary to align the memorandum and articles of association of the company with the requirements of these regulations and for such purpose a resolution of the board of directors or the sole director, as the case may be, shall be sufficient.

(3) The provisions of regulation 37 relating to pledge of securities issued by a shipping company shall apply to all pledges done after the coming into force of these regulations.

(4) A pledge in writing executed in relation to securities issued by shipping companies prior to the entry into force of these regulations shall be valid and effective as a pledge and shall be regulated in accordance with the provisions of the Civil Code and regulation 37:

Cap. 16.

Provided that -

(i) in addition to the above nothing in regulation 37 shall render invalid anything which was valid before the date of these regulations;

(ii) it shall not be deemed necessary for there to exist any authority in the memorandum and articles of the company for the securities to be pledged;

(iii) the obligation to file a notice with the Registrar as required by regulation 37(2) shall be at the option of the pledgee and any notice of pledge given to the company, the securities of which have been pledged, shall be deemed to comply with the requirements of subregulation (2);

(iv) such pledges shall be effective in relation to third parties from the date of the notice of the pledge to the company or from the date of the presentation of the pledge agreement to the Registrar, which ever is the earlier and any notice filed by the pledgee with the Registrar in terms of the preceding paragraph shall refer to the date of service of the notice of pledge on the company or the Registrar as the case may be;

(v) the notice required by regulation 37(13) shall only be filed with the Registrar in case a notice had been previously filed by the pledgee in terms of the preceding sub-paragraph (iii).

Transitory provisions as to winding up of shipping companies. Cap. 168.

169. (1) The dissolution of a shipping company occurring before the date of these regulations shall continue to be administered in accordance with the provisions of the Commercial Partnerships Ordinance and the consequential winding up of such a company shall be regulated accordingly unless the liquidator of the company elects, by notice in writing to the Registrar, that the dissolution and winding up be governed by these regulations.

(2) In relation to a shipping company, bankruptcy proceedings commenced before the date of these regulations shall, after the appointed day, continue to be governed by the provisions of Part III of the Commercial Code relating to bankruptcy.

Cap. 13.

Transitory provisions as to public companies formed under the Commercial Partnerships Ordinance.
Cap. 168.
Cap. 386.

170. A shipping company formed and registered as a public company in terms of the Commercial Partnerships Ordinance shall be governed by the Companies Act from the date on which these regulations come into force and shall comply with the Companies Act within six months from the date of these regulations.

Amended by:
L.N. 31 of 2020.

FIRST SCHEDULE
(REGULATION 16)

PART I - MODEL REGULATIONS FOR THE MANAGEMENT OF A SHIPPING ORGANISATION - PRIVATE COMPANY FOR THE PURPOSES OF THESE REGULATIONS

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 regulation 31 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, (hereinafter referred to as "the 2004 Regulations), 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 change of any shares from one class into another or the variation of the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class which is to be changed or the rights attached to which are to be varied, according to the case) may, whether or not the company is being wound up, be made with the consent in writing of the holders of three-fourths of the issued shares of any other class affected thereby. Such change or variation may also be made with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of that class and of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of any other class affected thereby. To every such separate general meeting the provisions of these model 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 regulation 29 of the 2004 Regulations. 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. If a share certificate be defaced, lost or destroyed, it may be renewed on application of the member 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. A call may be revoked, modified or postponed as the directors may determine. Any member shall be entitled to at least 7 days' notice.

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 eight 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 model 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 model 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 made and duly 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 annual interest at such rate not exceeding eight 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 model 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. 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.

17. 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.

18. 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.

19. 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-à-vis the company, to be the registered holder of the share so held.

Pledging of Securities

22. (*a*) The members may enter into any agreement relating to the pledging of their shares or the creation of any rights in connection with the said shares for any reason they may deem fit and with such third parties as they deem appropriate.

(*b*) The holders of other securities issued by the company may enter into any agreement relating to the pledging of their securities or the creation of any rights in connection with the said securities for any reason they may deem fit and with such third parties as they deem appropriate.

(*c*) Upon the company being notified of such a pledge agreement, the company shall record that fact in its register of members or debenture holders and the company shall recognize all rights thereby granted to any third parties and shall act according to and consistently with the terms of such agreement in all matters.

(*d*) In so far as and to the extent that such pledge vests third parties with rights pertaining to the shares or debentures normally exercisable by the members or debenture holders as the case may be, such rights shall be exercisable by third parties as though they were the members or debenture holders of the company to the exclusion of the registered member or members or registered holders of securities.

Failure to pay upon call

23. Where a member fails to pay up such part of any share after a call has been made to this effect such member shall be liable to the company and the company may sue the member for the collection of a civil debt.

General meetings

24. Subject to the provisions of the 2004 Regulations, the annual general meetings shall be held at such time and place as the directors shall appoint.

25. 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 regulation 44 of the 2004 Regulations.

Notice of general meetings

26. A general meeting of the company shall be called by fourteen days' notice in writing at 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 the 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, by the 2004 Regulations and 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.

27. 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

28. 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 annual accounts 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.

29. 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.

30. 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.

31. 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, or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

32. 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 meeting or of the business to be transacted at such meeting.

33. At any general meeting a resolution put to the vote of the meeting shall be approved by more than 50% of the voting rights in the company unless a higher majority is required by the memorandum and articles.

The demand for a poll may be withdrawn

34. In the case of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.

Votes of members

35. Subject to any rights or restrictions for the time being attached to any class or classes of shares, every member shall have one vote for each share of which he is the holder.

36. 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.

37. 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.

38. 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, as far as possible, be deposited at the registered office of the company or at such other place as is specified for the 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, in order to allow time for the verification of the authenticity of the instrument by the chairman and, in default, saving verifiable proof of the authenticity of the instrument satisfactory to the chairman, the chairman shall be entitled, in his sole discretion, to refuse the proxy.

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

.....(name of the company)

"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 ..... 20 ....., and at any adjournment thereof.

Signed this ..... day of ..... 20.....

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

instructed, the proxy will vote as he thinks fit.".

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*Strike out whichever is not desired.

Directors

40. 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.

41. 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.

Powers and duties of directors

42. The directors shall exercise their powers subject to any of these model regulations, to the provisions of the 2004 Regulations 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.

43. 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 model 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 to delegate all or any of the powers, authorities and discretions vested in him.

44. 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.

45. 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.

Proceedings of directors

46. 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 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.

47. 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.

48. 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.

49. A director may appoint any other person to act as his alternate by means of a written instrument. Such person so appointed shall enjoy all powers of the director. "Written instruments" include for this purpose an appointment by fax, e-mail or letter.

50. 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.

Company Secretary

51. 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

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

53. 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.

54. 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.

55. 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 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.

56. 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.

57. No dividend shall bear interest against the company.

Accounts

58. Subject to the provisions of regulation 76 of the 2004 Regulations, 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 annual accounts and accounting records 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 such account or record or other document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Capitalisation of profits

59. 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 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.

Indemnity

60. Every managing director, director holding any other executive office or other director, and every agent, auditor or company 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 - MODEL REGULATIONS FOR THE MANAGEMENT OF A SINGLE MEMBER COMPANY

1. The regulations contained in Part I of these model regulations shall apply subject to the following modeifications:

2. The company is a single member company and accordingly -

(*a*) any decision required to be taken by the single member in general meeting shall be taken in the form of a written resolution passed by the single member.

(*b*) the single member minutes shall be recorded in the minute book in terms of regulation 63 of the 2004 regulations.

3. Regulations 24 to 39 of these Model Regulations both inclusive shall not

apply.

SECOND SCHEDULE

(Regulation 66)

Deleted by Legal Notice 31 of 2020.

THIRD SCHEDULE

(Regulation 68)

Deleted by Legal Notice 31 of 2020.

FOURTH SCHEDULE

(Regulation 73)

Deleted by Legal Notice 31 of 2020.

FIFTH SCHEDULE

(Regulation 80)

Amended by:
L.N. 411 of 2007;
L.N. 31 of 2020.

Company No: .....

CONTENTS AND FORM OF ANNUAL RETURN

ANNUAL RETURN of .....
..... (name of the company)

Date to which this return is made up: .....

(*being the anniversary of the company's date of registration*)

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1. *Address*

(*Address of the registered office of the company*)

This form must be completed in BOLD TYPE FORM

2. *Summary of Share Capital and Debentures*

All Euro amounts are to be preceded by the symbol €. Symbols used for other currencies are to be indicated (where applicable).

Currency	Symbol
.....	.....
.....	.....
.....	.....
.....	.....

(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 Debenture*

	Number	Class
Number of shares of each class	.....	..... shares
taken up to the date of this return	.....	..... shares
(which number must agree with the	.....	..... shares
total shown on the list as held by	.....	..... shares
existing members).	.....	..... shares

Number of shares of each class issued as partly paid up 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 of each class issued as fully paid up for a consideration other than cash.	.... shares .... shares .... 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	Class
Total number of shares of each class forfeited.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares

Total amount paid, if any, on shares forfeited. ....

3. List of Past and Present Members

List of persons holding shares or stock in the company on the date to which this return is made up, 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 Addresses (in the case of a body corporate, its registered office)	Account of Shares			Remarks
		Number of shares held by existing members at the date of return*§	Particulars of shares transferred or transmitted *causa mortis* since the date of the 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*)	

3. List of Past and Present Members (*cont. sheet*)

* The aggregate number of shares held by each member shall be stated, and the aggregates shall be added up so as to agree with the number of the shares stated in the Summary of Share Capital and Debentures to have been taken up.

§ When the shares are divided into different classes these columns should be sub-divided so that the number of each class held, transferred or transmitted *causa mortis*, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member shall be shown.

** The date of registration of each transfer or transmission *causa mortis* shall be given as well as the number of shares transferred or transmitted *causa mortis* on each date. The particulars shall 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. (The word "transferor" shall mean the deceased and the word "transferee" shall mean the heir or legatee, in the case of transmission *causa mortis*).

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, its registered office)

Signed …… Director/Secretary/Representative

SIXTH SCHEDULE

(Regulation 3)

EXPLANATION OF EXPRESSIONS USED IN PARAGRAPH (1) OF REGULATION 3 OF THESE REGULATIONS AND PROVISIONS SUPPLEMENTARY THERETO

Voting rights in an undertaking

1. (*a*) References to voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(*b*) References to directors shall be taken to include references to persons entrusted with the administration of undertakings not having directors and references to the board of directors shall be taken to include the equivalent body in such undertakings.

2. In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct overall policy of the undertaking or to alter the terms of its constitution.

Rights to appoint or remove a majority of the directors

3. Reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

4. An undertaking shall be treated as having the right to appoint to a directorship if -

(*a*) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(*b*) the directorship is held by the undertaking itself.

5. The right to appoint or remove which is exercisable only with the consent or concurrence of another person shall not be taken into account unless no other person has a right to appoint or, as the case may be, to remove in relation to that directorship.

Right to exercise dominant influence

6. An undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with, whether or not those directions are for the benefit of that other undertaking.

Rights exercisable only in certain circumstances

7. Rights which are exercisable only in certain circumstances shall be taken into account only -

(*a*) when the circumstances have arisen, and for so long as they continue to exist; or

(*b*) when the circumstances are within the control of the person having the

rights.

8. Rights which are normally exercisable but which are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another

9. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

10. Rights held by a person as nominee for another shall be treated as held by the other.

11. Rights shall be regarded as held by a person as nominee for another if they are exercisable on that other's instructions or with his consent or concurrence.

Rights attached to shares held by way of security

12. Rights attached to shares held by way of security shall be treated as held by the person providing the security -

(*a*) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with the instructions of the person providing the security; and

(*b*) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in the interests of the person providing the security.

Rights attributed to parent undertaking

13. Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

Disregard of certain rights

14. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

Amended by:
L.N. 31 of 2020.

SEVENTH SCHEDULE
FORM S

FORM A

Form A

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice that a company has become a Single-Member Company

Pursuant to Regulation 8(2)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 8(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that with effect from ..... it has become a single member company through the acquisition of all its shares by ([b]) ..... as a result of transfer *inter vivos*/transmission *causa mortis**, and that the provisions of regulation 8 have been complied with.

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

(b) State name, residence and identification document number.

* Delete as necessary

Form B

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice that a company has ceased to be a Single-Member Company
Pursuant to Regulation 8(6)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice that it has ceased to be a single member company with effect from the .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary

Form C

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Return of allotments of shares([a])

Pursuant to Regulation 25(7)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

Date/s on which the shares were allotted (complete (a) or (b) as applicable)
a) on ..... or
b) from ..... to .....

A. This section must be completed for allotments made for cash

Description of shares (ordinary/preference/others)			
Number of shares allotted			
Nominal value of each share and Premium (if any) on each share			
Total amount paid on each share on account of nominal value/premium			
Amount due and payable (if any) on account of nominal value /premium			

B. This section must be completed for allotments made other than for cash

Description of shares (ordinary/preference/others)			
Number of shares allotted			
Nominal value of each share and Premium (if any) on each share			
Extent to which each share is to be treated as paid up on account of nominal value/premium			
Consideration for which the shares have been allotted			

C. This section must be completed in all cases

Names and Addresses of the allottees	Number of shares allotted		
	Ordinary	Preference	Others
TOTAL			

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) To be delivered within one month.

* Delete as necessary

Form D

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of disclosure of financial assistance

Pursuant to Regulation 26(b)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I hereby give notice in accordance with with regulation 26(b) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that with effect from ..... the undermentioned financial assistance for the purpose of an acquisition/subscription* of shares was/will be made* as follows:

Signature .....

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

* Delete as necessary

Form E

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of redemption of preference shares

Pursuant to Regulation 31(5)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 31(5) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that ([b]) ..... fully paid preference shares have been redeemed and the price of redemption has been paid in full.

Names and address of holders of redeeemed preference shares

Name	Address	No. of shares redeemed	Class
	TOTAL		

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

(b) State number of shares.

* Delete as necessary.

Form F

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of transfer or transmission of shares

Pursuant to Regulation 36(3)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 36(3) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that ([b]) ..... shares having a nominal value of ..... per share have been transferred/transmitted *causa mortis** as indicated hereunder.

Name and Address of transferor/deceased*	Name and Address of of transferee/person entitled to shares transmitted*	No. of shares transferred/ transmitted*	Type and Class of shares

The above transfer/transmission *causa mortis** of shares has been registered with the company/in the name of the person entitled to be the registered holder * on the .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

(b) State number of shares.

* Delete as necessary.

Form G

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of a pledge of securities

Pursuant to Regulation 37(2)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I hereby give notice in accordance with regulation 37(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that with effect from ..... the undermentioned securities have been pledged as follows:

Pledgor (Name and Address)	Pledgee (Name and Address)	Securities		
		Number	Type	Nominal Value

Signature .....

*Pledgor/Pledgee**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

* Delete as necessary.

Form H

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of termination of a pledge of securities

Pursuant to Regulation 37(13)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I hereby give notice in accordance with regulation 37(13) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that with effect from ..... the pledge of the undermentioned securities has been terminated.

Pledgor (Name and Address)	Pledgee (Name and Address)	Securities		
		Number	Type	Nominal Value

Signature .....

Pledgee

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

Form I

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notification of changes among directors, in the representation or in the secretary of a company

Pursuant to Regulation 60

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 60 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that:

.....
.....
.....

Effective date of change .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary

Form J

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of accounting periods

Pursuant to Regulation 65(2)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with paragraph (2) of regulation 65 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that the accounting periods of the company shall be from ..... to ..... .

Date of resolution of directors .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary.

Form K

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice to the Registrar to exercise his power to appoint an auditor

Pursuant to Regulation 83(5)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 83(5) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that the power of the Registrar of Companies to apply to the court for the appointment of an auditor in terms of regulation 84(5) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations has now become exercisable.

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary

Form L

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of the removal of an auditor

Pursuant to Regulation 89(2)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice in accordance with regulation 90(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that ..... has been removed from auditor of the company with effect from .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary

Form M

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notification by company of the resignation of an auditor

Pursuant to Regulation 91(3)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) ..... hereby gives notice of the resignation of ..... from the post of auditor of the company and is hereby submitting a certified true copy of the notice of resignation in accordance with regulation 91(3) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations.

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary

Form N

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of appointment of liquidator by the court

Pursuant to Regulation 107(4)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I hereby give notice that I have been appointed by the Court as liquidator of ([a]) ..... with effect from .....

Signature .....

Liquidator

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

Form O

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notification of bank account by liquidator

Pursuant to Regulation 113(1)

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I ....., being the liquidator of

([a]) ..... hereby give notice in accordance with regulation 113(1) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that I shall be using Bank

Account Number ([b]) ..... held with

([c]) ..... for the purposes of receiving and making payments on behalf of the said company.

Signature .....

Liquidator

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

(b) State account number.

(c) State name of bank.

Form P

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of appointment of liquidator

Pursuant to Regulation 126

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I/We hereby give notice in accordance with regulation 126 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations that I/we have been appointed liquidator(s) of the above-named company.

Name	Address
.....	.....
.....	.....
.....	.....

Date of appointment .....

Signature .....

.....

Liquidator/s([a])

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) To be signed by each liquidator, if more than one.

Substituted by:
L.N. 31 of 2020.

Form Q

No. of Company ……..……

MERCHANT SHIPPING (Shipping Organisations - Private Companies) REGULATIONS

Notice of completion of liquidation and holding of final meeting

Pursuant to Regulation 132(3) and regulation 138(2)

Name of Company ……..……..

Delivered by ……..……

_____

To the *Registrar of Companies:*

I ……being the liquidator of

(a) ……

hereby give notice that:

(i) the liquidation of the said company has been completed on ……. of ……. of the year ……; and

(ii) *the account of the winding up was laid before a general meeting held on ……. of ……. of the year ……./* the meeting was duly summoned on ……. of the year……. and that no quorum was present thereat.

Signature ……..…… Liquidator

Dated this …… day of ……..…… of the year ……..

_____

This form must be completed in typed form.

(a) State company name.

Form R

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Declaration of seizure of ship

Pursuant to Regulation 140

Name of Company .....

Delivered by .....

To the Registrar of Companies:

I/We ..... being the director/s ([b]) of ([c]) ..... hereby declare that

(a) the company is the owner of the ship ……which is its sole asset;

(b) the ship has been arrested by the company's creditors in the port of .....;

(c) the value of the ship appears to us to be less than the total value of claims against the company.

By this notice we therefore notify that no liquidation proceedings will be pursued in terms of the Regulations and the creditors shall pursue their claims in the court of ……..

Note

The company rights are hereby preserved and further notice will be filed in the Registry when the ship is sold and proceeds distributed which will result in the Company being struck off the Register.

Signature .....

Director/s

Dated this .....day of .....of the year

This form must be completed in typed form.

(a) This declaration is to be delivered together with the notice of dissolution.

(b) In the case of a company having more than two directors, this declaration is to be submitted and signed by the majority of the directors.

(c) State company name.

Form S

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of dissolution and consequential winding up

Pursuant to Regulation 152

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

([a]) .....
hereby gives notice in accordance with regulation 152 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations of dissolution on the ..... and consequential winding up.

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

* Delete as necessary.

Form T

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notification of resignation of liquidator

Pursuant to Regulation 158

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

I ....., being the liquidator of

([a]) ..... hereby give notice that I have resigned from the post of liquidator of the said company with effect

from the ..... of ..... of the year .....

Signature .....

Liquidator

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) State company name.

Form U

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) Regulations

Notice of winding up without procedures

Pursuant to Regulation 161

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

Notice is hereby given in terms of regulation 161 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations that the Company's ship …… has been sold by judicial auction and all proceeds therefrom deposited in the court of ……..……

The procedure for ranking of creditors has been concluded and therefore the company is hereby dissolved and wound up without the need for further procedures in terms of the said regulation 161 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations.

Signed……

Directors

Dated this ……..day of……of the year …….

This form must be completed in typed form.

(a) State company name.

Added by:
L.N. 31 of 2020.

FORM V

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) REGULATIONS

Notification of change in registered office of a company

Pursuant to Regulation 20(2)

Name of Company: .....

Delivered by:.....

_____

To the *Registrar of Companies*:

(a) ……hereby gives notice in accordance with Regulation 20(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004 that the company has changed its registered office to: …….....

Effective Date of Change ……

Name and signature…….....

D*irector/Secretary/Representative**

Dated this …….. day of …….. of the year ….....

_____

This form must be completed in typed form.

(a) State company name.

*Delete as necessary.

EIGHTH SCHEDULE

(Regulation 12(2)(*b*))

CONVERSION RULES APPLICABLE ON A CHANGE IN THE CURRENCY IN WHICH THE SHARE CAPITAL OF A COMPANY IS EXPRESSED AND THE CORRESPONDING REPORTING CURRENCY

Interpretation

1. In this Schedule, unless the context otherwise requires -

"Reporting Currency" shall mean the currency used in presenting the annual accounts in accordance with the provisions of regulation 82 of these Regulations. On a change in the reporting currency consequent to a change in the currency in which the share capital of a company is expressed which is effected in accordance with the provisions of regulation 12 of these Regulations, the term "original reporting currency" shall refer to the reporting currency in operation before the change; and the term "new reporting currency" shall refer to the reporting currency applicable following the change, and in the case of the change taking place in the first accounting period, to the reporting currency which would have been used had such change not taken place.

"Foreign currency" means a currency other than the reporting currency.

"Exchange rate" means the ratio at which the currencies of two countries are exchanged at a particular point in time.

"Spot rate" means the middle exchange rate on a particular day for the exchange of currencies on that day.

"Closing rate" means the spot rate that exists at the balance sheet date which immediately precedes the accounting period to which the change in reporting currency applies.

"Monetary items" are money held and items to be received or paid in money. All other assets and liabilities are "non-monetary items".

"Average annual exchange rate" means an average of the exchange rates that existed during an accounting period. For the purpose of calculating this average it shall be sufficient to take an average of the spot rates applicable on the last working day of each week comprised within the said accounting period.

General rules

2. On a change in the reporting currency, the new reporting currency shall become applicable from the first day of the accounting period to which the change in reporting currency applies, which day is referred to as the "applicable date" in the rest of this Schedule.

3. (1) The balance sheet items existing at the applicable date shall be converted from the original reporting currency to the new reporting currency in accordance with the rules set out in the remaining paragraphs of this Schedule.

(2) Such conversion shall be deemed to take place before any transactions stand to be accounted for within the accounting period to which the change in reporting currency applies.

Conversion rules

4. (1) The paid-up share capital and the balance on the share premium account shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued by the company.

(2) The amount which is still uncalled on any shares issued by the company shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued.

(3) The nominal value per share in the new reporting currency shall be calculated by taking the aggregate of the paid-up share capital converted as set out in sub-paragraph (1) of this paragraph and the uncalled amount, if any, on any shares issued by the company converted in accordance with sub-paragraph (2) of this paragraph, and dividing this aggregate amount (the issued share capital) by the number of shares in issue:

Provided that where there exists -

(*a*) preference shares or different classes of preference shares; or

(*b*) different classes of ordinary shares and where the nominal value per share varies between one class and the other,

the conversion of the nominal value per share to the new reporting currency shall be carried out separately for the ordinary shares and the preference shares, or for each class of ordinary shares in so far as the nominal value per share varies between one class and the other, as the case may be.

(4) The authorised share capital of the company shall be converted by taking the aggregate of -

(*a*) the aggregate amount referred to in sub-paragraph (3) of this paragraph (the converted issued share capital); and

(*b*) the amount of the authorised share capital, which has not yet been issued, converted from the original share capital at the closing date.

5. (1) For the purposes of this paragraph, the terms "reserves created out of profits" and "accumulated losses" shall be calculated for each accounting period by taking the profits or losses for such period to the exclusion of any provisions for exchange variations.

(2) Reserves created out of profits, including retained profits, shall be converted at the average annual exchange rate pertaining to the accounting period during which the profits from which such reserves originated were earned.

(3) For the purposes of determining the amount of profits pertaining to an accounting period from which reserves were created the following rules shall apply -

(*a*) when dividends are paid out of profits and the accounting period to which such profits relate has not been nominated, such dividends shall be deemed to have been paid on a first in first out basis;

(*b*) losses resulting during an accounting period shall not be netted off against profits earned in other accounting periods, but shall be converted at the average annual exchange rate for the accounting period during which such losses were incurred.

(4) Where at the date of conversion there is an amount representing accumulated losses such amount shall be converted at the average annual exchange rate for the accounting period or periods during which such losses were incurred.

(5) For the purposes of sub-paragraph (4) above, any profits earned during any accounting period shall not be netted off against losses incurred in other accounting

periods, but shall be converted at the average annual exchange rate for the accounting period or periods during which such profits were earned.

(6) Reserves which were not created out of profits shall be converted at the exchange rate or rates applicable on the date or dates when such reserves were created.

6. (1) All monetary items shall be converted at the closing rate.

(2) Non-monetary items that are recorded in terms of past events (for example historical cost), shall be converted at the average annual exchange rates for the relevant accounting period.

(3) Non-monetary items that are revalued shall be converted at the exchange rates that existed on the dates of their revaluations.

(4) Provisions for depreciation or for diminution in the value of non-monetary assets shall be converted at the average annual exchange rate applied to convert the cost or revalued amount of the relative assets in accordance with the provisions of sub-paragraph (2) or (3) of this paragraph.

7. (1) Where following conversion to the new reporting currency the total assets exceed the aggregate of total liabilities and the funds attributable to shareholders, such excess shall be shown as a separate item within reserves under the heading "Reporting currency conversion difference".

(2) The reporting currency conversion difference shall not be distributed by way of dividend.

(3) Where following conversion to the new reporting currency the aggregate of total liabilities and the funds attributable to shareholders exceeds total assets, such excess shall be netted off against distributable reserves or added to accumulated losses, as the case may be.

8. (1) In the annual accounts of the accounting period to which the change in reporting currency applies, the amounts of the previous accounting period corresponding to the items included in the balance sheet and, where applicable, in the notes to the accounts, whether individual or consolidated, shall be stated at the new reporting currency after applying the conversion rules set out in the previous provisions of this Schedule.

(2) In the annual accounts of the accounting period to which the change in reporting currency applies, the amounts of the previous accounting period corresponding to the items included in the profit and loss account and, where applicable, in the notes to the accounts, whether individual or consolidated, shall be converted to the new reporting currency at the average annual exchange rate pertaining to the previous accounting period.

Disclosure

9. In the first annual accounts following the conversion, the notes to the accounts, whether individual or consolidated, shall include full details of the method of conversion and the exchange rates used for each category of assets and liabilities as categorised in this Schedule.

NINTH SCHEDULE

(Regulation 1(4)(*a*))

Form relating to Notice by Shipping Company electing to be governed by the Companies Act

No. of Company …….

Name of Company ……..……

Delivered by ……...……..

To the *Registrar of Companies*:

(a) …… hereby gives notice that it elects to be regulated by the Companies Act and that the requirements of the Companies Act will be complied with within ninety days from the filing of this notice.

Signature ……

*Director/Secretary/Representative**

Dated this ..... day of ..... of the year ..... .

This form must be completed in typed form.

(a) State company name.

* Delete as necessary.

Added by:
L.N. 31 of 2020.

TENTH SCHEDULE
(Regulation 166)

PENALTIES

Regulation	Default	Penalty	Daily Penalty
5(3)	Failure to indicate particulars concerning company on business letters, etc.; liquidator failing to include statement on business letters, etc., that company is being wound up or failing to include names of liquidators of company being wound up	500 euro	None
6(3)	Officers of private company offering shares or debentures for sale to the public	2500 euro	None
8(8)	Officers of company failing to deliver notice to Registrar of becoming or ceasing to be a single member company	500 euro	25 euro
20(4)	Failure of officer to deliver a copy of any resolution altering or adding to a company's memorandum or articles to the Registrar or failure to deliver amended memorandum and articles	500 euro	25 euro
25(4)	Failure of officer to file copy of resolution increasing share capital	500 euro	25 euro
31(6)	Failure of officers to provide Registrar with notice of redemption of preference shares	500 euro	25 euro
35(6)	Failure of company to send notice to transferee of refusal to register transfer of shares and debentures	500 euro	25 euro
36(4)	Failure of officers to comply with provisions as to issue of share certificates	500 euro	25 euro

Regulation	Default	Penalty	Daily Penalty
38(4)	Failure of officers of company to comply with provisions as to register of members	500 euro	25 euro
39(4)	Failure of officers of company to keep proper register of debentures	500 euro	25 euro
43(3)	Failure of officers of company to hold annual general meeting	2500 euro	50 euro
48(3)	Failure of officers of company to give notice to members of right to vote by proxy at a meeting of the company	500 euro	None
48(5)	Officer of company contravening further provisions as to votes by proxy at meetings of the company	500 euro	None
59(2)	Director failing to disclose interest in contract	2,500 euro	None
60(2)	Officers of company failing to make return as to change in directors	500 euro	25 euro
63(4)	Officers of company failing to make minutes of general meetings and to keep minute book at registered office	1,200 euro	None
80(3)	Officers of company failing to file annual return	2,500 euro	50 euro
83(6)	Officers of company failing to give notice to Registrar of default in appointment of auditors	500 euro	25 euro
86(3)	Officer and auditors of subsidiary undertaking failing to give information to auditors of parent company	500 euro	None
86(4)	Officers of parent company failing to provide auditors with information concerning oversea subsidiary	500 euro	None
89(2)	Officers of company failing to give notice to Registrar of resolution removing an auditor	500 euro	25 euro
91(3)	Officer of company failing to give notice to Registrar of resignation of auditor	2,500 euro	50 euro

Regulation	Default	Penalty	Daily Penalty
92(5)	Directors failing to take reasonable steps to convene a meeting requisitioned by a resigning auditor	2,500 euro	None
94(1)	Auditor failing to comply with requirement of regulation 93 upon ceasing to hold office	1,200 euro	35 euro
94(3)	Officers of company failing to comply with regulation 93 upon an auditor's ceasing to hold office	1,200 euro	35 euro
128.	Officers of company failing to give to Registrar notice of resolution for dissolution and voluntary winding up	500 euro	25 euro
128.	Directors failing to summon general meeting or failing to apply to the court for appointment of liquidator	2,500 euro	50 euro
128.	Liquidator failing to notify Registrar of appointment	500 euro	25 euro
131(2)	Liquidator failing to comply with periodic reporting requirements	1,200 euro	35 euro
132(4)	Liquidator failing to provide Registrar with notice of completion of liquidation	500 euro	25 euro
138(2)	Liquidator failing to provide Registrar with copy of the winding up account or a return of the general meeting on members' voluntary winding up	500 euro	25 euro
138(4)	Liquidator failing to call final meeting in members' voluntary winding up	500 euro	None
141(5)	Directors failing to comply with requirements as to creditors' meeting following resolution for dissolution and voluntary winding up	2,500 euro	None
142(4)	Failure of directors to apply to the court to appoint liquidator	2,500 euro	50 euro

Regulation	Default	Penalty	Daily Penalty
146(3)	Liquidator failing to convene meetings of company and of creditors where winding up continues for more than twelve months	500 euro	None
147(2)	Liquidator failing to provide Registrar with copy of winding up account or a return of the company and creditors' meetings on a creditors' voluntary winding up	500 euro	25 euro
147(3)	Liquidator failing to call general meeting or creditors' meeting on creditors' voluntary winding up	1,200 euro	None".