L.N. 344 of 2002

COMPANIES ACT
(CAP. 386)

Continuation of Companies Regulations, 2002

IN exercise of the powers conferred by subarticle (4) of article 425 of the Companies Act, the Minister of Finance has made the following regulations: -

Title and Commencement.

1. (1) The title of these regulations is the Continuation of Companies Regulations, 2002

(2) These regulations shall be deemed to have come into force on the 26th November, 2002.

Interpretation.

2. (1) Any reference in these regulations to the Act is a reference to the Companies Act and, subject to the provisions of subregulation (2) of this regulation, the provisions of article 2 of the Act shall also apply to these regulations.

(2) In these regulations, unless the context otherwise requires :-

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

"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.

PART I

Continuation in Malta of a Foreign Company

Eligibility to register as being continued in Malta.

3. 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, hereinafter in these Regulations 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 under the Act.

Request for registration.

4. 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:

(i) the resolution or equivalent document of the foreign company authorising 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;

(ii) a copy of the revised constitutive document of the foreign company including all the requirements necessary for the registration of a company in Malta in accordance with the provisions of the Act ;

(iii) 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 .

(iv) 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:

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

(b) the jurisdiction under which it is incorporated;

(c) the date of incorporation;

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

(e) 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 of its decision to be 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;

(f) 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;

(v) (a) 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, confirming 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;

(b) 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 (a) of this paragraph 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 twenty thousand liri;

(vi) a list of directors of the foreign company as well 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;

(vii) such material as the Registrar may require to satisfy himself that -

(a) 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

(b) 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;

(viii) the registration fees set out in the Companies Act (Fees) Regulations, 1997 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. L.N. 44 of 1997.

Companies carrying out a licensable activity and public companies.

5. In addition and without prejudice to the requirements of regulation 4 of these regulations, the following requirements shall also apply to foreign companies carrying out a licensable activity and public companies :-

Licensed Companies

(1) (a) Where the foreign company carries on,-in or from the country or jurisdiction of its formation and incorporation or registration, a business which, if conducted in or from within Malta, would require to be licensed or authorized under any of the Acts set out in the Schedule to these regulations, and the foreign company is licensed or authorised by a competent authority in that country or jurisdiction, evidence of the consent of that competent authority that the foreign company can be registered as being continued in Malta shall be required, 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;

(b) Notwithstanding the license or authorization by the foreign competent authority, all foreign companies intending to carry on a licensable activity in or from Malta shall require a licence or other authorization in terms of law from the competent authority in Malta before commencing operations.

Public Company

(2) Where the foreign company is a public company -

(a) if the foreign company has offered its shares or debentures to the public, the most recent prospectus or equivalent document complying as nearly as may be with the requirements of the Act shall be required; and

(b) if the foreign company is quoted on a recognised stock exchange, evidence to the satisfaction of the Registrar of the consent of the relevant authorities of that exchange to the foreign company being registered as being continued in Malta shall be required, 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; and for the purposes of this paragraph "recognised stock exchange" means a stock exchange recognised by the relevant authorities in the country or jurisdiction in which the foreign company is incorporated ;

(c) such evidence of the current membership of the foreign company, or the method and form of recording such membership , authenticated in such manner as the Registrar may require, as the Registrar accepts as adequate for compliance with the requirements of this regulation in respect of a list of members of that foreign company.

Registration in Malta.

6. The documents referred to in regulations 4 and 5 shall be delivered for registration to the Registrar who, being satisfied that they comply with the provisions of these regulations and the Act 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 under the Act.

Effects of registration.

7. With effect from the date of the Provisional Certificate of Continuation issued by the Registrar in accordance with regulation 6 above:

(i) the company to which the provisional certificate of continuation relates :

(a) shall continue to be a body corporate incorporated under the Act under the name designated in the declaration

referred to in paragraph (iv) of regulation 4 of these regulations, and shall be deemed as provisionally registered in Malta for all purposes of law;

(b) is subject to all the obligations and capable of exercising all the powers of a company registered under the Act ;

(ii) the constitutive document as revised in accordance with paragraph (ii) of regulation 4 of these regulations is considered as the Memorandum and Articles of Association of the company

(iii) the registration of a foreign company under Part I of these regulations shall not operate -

(a) to create a new legal entity;

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

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

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

(e) to release or impair any conviction, judgement, 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;

Failure to deregister.

8. 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 initially formed and incorporated or registered. Failure by the foreign company to provide such documentary evidence shall grant the Registrar the discretion to:

(i) 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;

(ii) or 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.

9. 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 initially 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.

10. 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 the 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;

PART II

Continuation outside Malta of companies incorporated in Malta

Eligibility to register as being continued outside Malta.

11. A company registered under the Act 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.

12. 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:

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

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

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

Requirements for request.

13. No company may request the Registrar for his consent under regulation 12 of these regulations unless -

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

(ii) (a) 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;

(b) Any director of a company making a declaration of solvency under sub-paragraph (a) above of this paragraph 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 twenty thousand liri;

(iii) where the company carries on in or from Malta any licensable activity, the company provides to the Registrar evidence of the consent of the competent authority in Malta to the company continuing in another country or jurisdiction;

(iv) where the company is a public company quoted on a recognized investment exchange, the company provides to the Registrar evidence of the consent of the said exchange and of the listing authority in Malta to the company continuing in another country or jurisdiction;

(v) payment has been made of all fees and penalties due under the Act; and

(vi) the prescribed fee has been paid for.

Requirements for consent.

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

(i) the requirements of regulation 12 have been complied with;

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

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

(iv) the company at the time of such request is not in breach of any of its duties or obligations under the Act.

Right of creditors to oppose continuation.

15. (i) In addition to the requirements of regulation 14 of these regulations, 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 and in a daily newspaper circulating wholly or mainly in Malta, of a notice relating to the extraordinary resolution referred to in paragraph (i) of regulation 13 of these regulations.

(ii) 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-paragraph (i) of this paragraph may, by writ of summons, 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.

16. 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 article 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, judgement, 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.

17. 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.

SCHEDULE

(Regulation 5 of Part I)

- Banking Act, Cap. 371
- Financial Institutions Act, Cap. 376
- Financial Markets Act, Cap. 345
- Insurance Business Act, Cap. 403
- Insurance Brokers and other Intermediaries Act, Cap. 404
- Investment Services Act, Cap. 370
- Malta Financial Services Authority Act, Cap. 330