

MALTA

ATT Nru. XV ta' l-2007

ACT No. XV of 2007

ATT mahrug b'ligi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT ta' l-2007 li jemenda l-Att dwar il-Kumpanniji, Kap. 386.

ACT of 2007 to amend the Companies Act, Cap. 386.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

24th July, 2007

ACT No. XV of 2007

AN ACT of 2007 to amend the Companies Act (Cap. 386)

BE IT ENACTED by the President, by and with the advice of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

Short title and
coming into force.
Cap. 386.

1. (1) The short title of this Act is the Companies (Amendment) Act, 2007, and it shall be read and construed as one with the Companies Act, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date or dates as the Minister responsible for finance may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and for different purposes of this Act.

Amendment of
article 2 of the
principal Act.

2. In subparagraph (iii) of paragraph (b) of sub-article (3) of article 2 of the principal Act, for the word “shares”, there shall be substituted the word “securities”.

Amendment of
article 6 of the
principal Act.

3. Article 6 of the principal Act shall be amended as follows:

(a) for the marginal note thereto there shall be substituted the following marginal note:

“Indication of particulars in business letters, order forms, websites etc.”;

(b) for sub-article (1) thereof, there shall be substituted the following:

“(1) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a commercial partnership shall mention in legible characters its name, kind of commercial partnership, registered office and registration number.”;

(c) for sub-article (2) thereof, there shall be substituted the following:

“(2) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, in respect of the branch or place of business in Malta, a body corporate registered under Part XI of this Act shall mention in legible characters its name, the country of its constitution or incorporation, its registration number and registered office in its country of constitution or incorporation, kind of commercial partnership, the address of the branch or place of business in Malta, its registration number under Part XI of this Act and, where applicable, the fact that the oversea company is being wound up.”;

(d) for sub-article (3) thereof, there shall be substituted the following:

“(3) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a partnership *en nom collectif* shall also state in legible characters the names of its partners in addition to the requirements of sub-article (1).”;

(e) for sub-article (4) thereof, there shall be substituted the following:

“(4) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a partnership *en commandite* or limited partnership shall also state in legible

characters the names of the partners having unlimited liability in addition to the requirements of sub-article (1).”;

(f) the present sub-articles (8) and (9) thereof shall be renumbered as sub-articles (9) and (10) respectively;

(g) immediately after sub-article (7) thereof, there shall be added the following new sub-article (8):

“(8) Where a reference is made to the capital of a company in the documents or internet websites referred to in the preceding sub-articles, that reference shall include a reference to both the issued and the paid up capital.”; and

(h) in sub-article (9), as renumbered, immediately after the words “the provisions of sub-articles (1) to (6)”, there shall be inserted the words “and of sub-article (8)”.

Amendment of
article 49 of the
principal Act.

4. Article 49 of the principal Act shall be amended as follows:

(a) for sub-article (1) thereof, there shall be substituted the following:

“(1) On the approval of the accounts, the liquidator shall deliver to the Registrar for registration a notice of such approval and the Registrar shall thereupon register it. Subject to the provisions of Article 21 in relation to the period established in sub-article (1) thereof and to the rights of creditors under sub-article (2) thereof, the Registrar shall strike the name of the partnership off the register and shall forthwith publish a notice of completion of the winding up and of such striking off.”; and

(b) for sub-article (2) thereof, there shall be substituted the following:

“(2) Where the manner in which the partnership is to be wound up is provided for in the deed of partnership or is determined by agreement between the partners, it shall be the duty of the partners to deliver to the Registrar for registration a notice, signed by all of them, that the winding up has been completed and the Registrar shall thereupon register it. Subject to the provisions of Article 21 in relation to the period established in sub-article (1) thereof and to the rights of creditors under sub-article (2) thereof, the Registrar shall strike the name of the partnership off the register and shall forthwith

publish a notice of the completion of the winding up and of such striking off.”.

5. Article 66A of the principal Act shall be amended as follows: Amendment of article 66A of the principal Act.

(a) in sub-article (1) thereof:

(i) for the words “a partnership *en commandite* or limited partnership which in the deed of partnership”, there shall be substituted the words “a partnership *en commandite* or limited partnership the capital of which is divided into shares which in the deed of partnership”; and

(ii) for the words “and which qualifies as a collective investment scheme and is duly licensed in terms of the Investment Services Act,”, there shall be substituted the words “and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act”;

(b) in sub-article (2) thereof:

(i) for the words “by the provisions of Part IV of this Act”, there shall be substituted the words “by the provisions of this Part of this Act”; and

(ii) in the proviso, for the words “or Part IV of this Act,”, there shall be substituted the words “or this Part of this Act,”;

(c) in sub-article (3) thereof, for the words “and of Part IV of this Act”, there shall be substituted the words “and of this Part of this Act”.

6. In article 72 of the principal Act, immediately after sub-article (5), there shall be added the following new sub-article: Amendment of article 72 of the principal Act.

“(6) Only preference shares which are to be redeemed or are liable to be redeemed by the terms of their issue shall be redeemable, and other shares in a company may not be converted into redeemable shares.”.

7. For sub-article (2) of article 82 of the principal Act, there shall be substituted the following: Amendment of article 82 of the principal Act.

“(2) All documents supplied to the Registrar shall be authenticated in accordance with this article:

Provided that where documents are supplied to the Registrar by electronic means, such documents may, in addition to the manner of authentication laid down in sub-article (1), be authenticated by an individual specifically authorised for such purpose by the memorandum, or by a resolution of the board of directors, or by an extraordinary resolution of the company. Authentication of documents supplied to the Registrar by electronic means shall be made by an electronic signature duly recognised by the Registrar.”.

Addition of new articles 114A to 114D to the principal Act.

8. Immediately after article 114 of the principal Act, there shall be inserted the following new articles:

“Group reconstruction relief.

114A. (1) Where a company issues shares (the “issuing company”) and the issuing company:

(a) is a qualifying subsidiary of another company (“the holding company”); and

(b) allots shares:

(i) to the holding company; or

(ii) to another qualifying subsidiary of the holding company,

in consideration for the transfer to the issuing company of non-cash assets of a company that is a member of the group of companies that comprises the holding company and all its qualifying subsidiaries (the “transferor company”),

the issuing company shall not be required in terms of article 114 to transfer any amount in excess of the minimum premium value to the share premium account.

(2) For the purposes of this article the “minimum premium value” means the amount, if any, by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.

(3) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of

the transferor company assumed by the issuing company as part of the consideration for the assets so transferred.

(4) For the purposes of this article:

(a) The base value of assets transferred is taken as:

(i) the cost of those assets to the transferor company; or

(ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer; or

(iii) the fair market value of the assets,

whichever is less.

(b) The base value of the liabilities assumed is taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(5) For the purposes of this article the term "qualifying subsidiary" shall mean a company in which the holding company holds at least an eighty per cent equity holding. The term "eighty per cent equity holding" shall have the meaning assigned to it in article 114B(5).

Takeover
relief.

114B. (1) The provisions of article 114 shall not apply when the company issuing shares ("the issuing company") has secured at least an eighty per cent equity holding in another company in pursuance of an arrangement providing for the allotment of equity securities in the issuing company on terms that the consideration for the shares allotted is to be provided:

(a) by the issue or transfer to the issuing company of equity securities in the other company; or

(b) by the cancellation of any such shares not held by the issuing company.

(2) The provisions of article 114 shall not apply when the equity securities in the issuing company allotted in

pursuance of the arrangement in consideration for the acquisition or cancellation of equity securities in the other company are issued at a premium.

(3) The provisions of article 114 shall not apply where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided:

(a) by the issue or transfer to the issuing company of non-equity securities in the other company; or

(b) by the cancellation of any such shares in that company not held by the issuing company.

(4) The provisions of this article shall not apply in cases falling under article 114A.

(5) For the purposes of this article an “eighty per cent equity holding” means a holding of eighty per cent of the nominal value of the company’s issued equity securities:

Provided that in determining the existence of “eighty per cent equity holding” it shall be immaterial whether any of those securities were acquired in pursuance of the arrangement:

Provided further that shares held by the other company in itself shall be excluded in determining the nominal value of the company’s issued equity securities.

(6) Where the issued share capital of the issuing company is divided into various classes of shares the requirement in sub-article (5) must subsist in relation to each of those classes of shares.

(7) For the purpose of this article, shares held by a group company of the issuing company or their nominees shall be treated as if they were held by the issuing company itself.

Relief may be reflected in company’s balance sheet.

114C. An amount corresponding to the amount representing the premiums, or part of the premiums, on shares issued by a company that by virtue of any relief under 114A or 114B is not included in the company’s share premium account may also be disregarded in determining the amount

at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

Power to
make further
provisions by
regulations.

114D. (1) The Minister may, by regulations published in the Gazette, make such provision as appears to him to be appropriate-

(a) for relieving companies from the requirements of article 114 in relation to premiums other than cash premiums;

(b) for restricting or otherwise modifying any relief from those requirements provided for in this Chapter.

(2) The regulations referred to in sub-article (1) hereof may make different provision for different cases or classes of cases and may contain such incidental and supplementary provisions as the Minister may think fit.”.

9. In sub-article (3) of article 159 of the principal Act, for the words “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.”, there shall be substituted the words “The company shall within fourteen days of the deposit of a notice of resignation give notice thereof to the Registrar for registration.”.

Amendment of
article 159 of the
principal Act.

10. For sub-article (3) of article 182 of the principal Act, there shall be substituted the following:

Amendment to
article 182 of the
principal Act.

“(3) If a company carries on business or has business interests to the extent of more than ninety percent outside Malta and in respect of an accounting period, the directors, before the end of the period allowed by sub-article (2), give to the Registrar for registration notice in the prescribed form:

(a) stating that the company so carries on business or has such interests; and

(b) claiming an extension of the period so allowed;

the period allowed in relation to that accounting period shall be eighteen months:

Provided that for the purpose of this sub-article, interests or holdings held in companies formed and registered in Malta or in

companies referred to in article 384, and income derived therefrom, shall be ignored for the purpose of determining whether a company carries on business or has business interest outside Malta as aforesaid:

Provided further that for the purpose of article 387 the provisions of this sub-article shall apply only by reference to the overseas company's operations in Malta as if such operations had been conducted by a separate company formed and registered in Malta under this Act.”.

Amendment of
article 184 of the
principal Act.

11. In sub-article (2) of article 184 of the principal Act, immediately at the end thereof, there shall be added the words:

“Where the annual return is forwarded to the Registrar by electronic means, in addition to the manner of signing laid down in this sub-article, such annual return may be signed by an individual specifically authorised for such purpose by the memorandum, or by a resolution of the board of directors, or by an extraordinary resolution of the company. The signature of such annual return shall be by means of an electronic signature duly recognised by the Registrar.”.

Amendment to
article 387 of the
principal Act.

12. In sub-article (1) of article 387 of the principal Act, for the words “in every calendar year” there shall be substituted the words “within forty two days from the end of the period referred to in sub-articles (2) and (3) of article 182”.

Amendment of
article 401 of the
principal Act.

13. Article 401 of the principal Act shall be amended as follows:

(a) in paragraph (e) of sub-article (1) thereof, for the words “or of any deduction referred to in article 83”, there shall be substituted the words “or of any reduction referred to in article 83”;

(b) for paragraph (f) of sub-article (1) thereof, there shall be substituted the following:

“(f) to supply copies or certified copies of documents registered pursuant to this article against payment of the prescribed fee to any person who requests them and such copies may also be supplied by electronic means;”.

Amendment of
article 425 of the
principal Act.

14. In paragraph (d) of sub-article (1) of article 425 of the principal Act, for the words “other than the Ninth, Tenth, Eleventh and

Twelfth Schedule”, there shall be substituted the words “other than the Ninth, Eleventh and Twelfth Schedule”.

15. In indent (b) of sub-paragraph (4) of paragraph 4 of the Eighth Schedule to the principal Act, for the words “closing date”, there shall be substituted the words “closing rate”.

Amendment of the
Eight Schedule to
the principal Act.

16. Article 47 of the Duty on Documents and Transfers Act shall be amended as follows:

Consequential
amendment of the
Duty on Documents
and Transfers Act.
Cap. 364.

(a) in sub-article (3) thereof, there shall be added the following new paragraph:

“(e) a company which proves to the satisfaction of the Commissioner that it carries on, or intends to carry on, business or has, or intends to have, business interests to the extent of more than ninety percent outside Malta by demonstrating that it satisfies such conditions as to the Commissioner may appear appropriate.”;

(b) sub-article (9) thereof shall be substituted by the following:

“(9) The provisions of this article shall only be applicable where the Commissioner has so determined and such determination and any determination made pursuant to sub-article (7) or sub-article (8) shall continue to be applicable as long as the relevant conditions and provisions are satisfied.”; and

(c) immediately after sub-article (9) thereof there shall be added the following new sub-article:

“(10) The provisions of this article shall not apply:

(a) where the marketable securities in question are held in a company the assets of which consist wholly or principally of immovable property situated in Malta; or

(b) where the said exemption arises by virtue of sub-article 3(d), the said marketable securities are

acquired by an individual who is ordinarily resident and domiciled in Malta or by any other person (other than any person referred to in sub-article (3)) who is owned or controlled, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.”.

Passed by the House of Representatives at Sitting No. 553 of 18th July, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives