

L.N. 32 of 2011

**CIVIL CODE
(CAP.16)**

**Civil Code (Second Schedule) (Existing Organisations)
Regulations, 2011**

BY VIRTUE of the powers conferred by article 24 of the Second Schedule of the Civil Code, the Minister responsible for justice has made the following regulations:-

1. The title of these regulations is the Civil Code (Second Schedule) (Existing Organisations) Regulations, 2011. Citation.

2. In these regulations, unless the context otherwise requires: Interpretation.

"authenticated" means signed by two administrators currently in office;

"existing organisations" means organisations:

(a) which are foundations, associations, hybrid organisations or otherwise;

(b) established and existing under the laws of Malta as on the 1st April, 2008;

(c) established in writing, whether by public deed, private writing, resolution or otherwise,

and which have not been registered in accordance with the Schedule;

"Schedule" means the Second Schedule of the Civil Code; and Cap. 16.

"statute" means the statute or such part of the constitutive instrument which governs the objects, structure and procedures of any existing organisation as the same may have been amended.

3. (1) Notwithstanding the provisions of the Schedule, existing organisations may be registered in accordance with the Schedule on presentation of: Registration of existing organisations.

(a) if the existing organisation was not established by public deed, a notarised copy of the deed of enrolment and its annexes, in accordance with regulation 4;

(b) if the existing organisation was established by public deed:

(i) a notarised copy of the constitutive public deed and a notarised copy of all amending public deeds, if any;

(ii) a sworn declaration made by the administrators or their delegate before a Notary Public listing the constitutive public deed and all amending public deeds, if any, relating to the existing organisation; and

(iii) a notarised copy of the Statement of Compliance made in accordance with regulation 6 so that the existing organisation complies with the requirements of the Schedule in respect of the content of the statute; and

(c) the payment of the applicable fees.

(2) The Registrar shall register the existing organisation on the basis of the aforesaid documents.

Enrolment.

4. (1) When an existing organisation was not established by means of a public deed, the administrators, or their delegate, shall enrol with a Notary Public:

(a) the constitutive instrument and statute executed at the time of the establishment of the existing organisation;

(b) the declaration required to be made in terms of regulation 5; and

(c) the Statement of Compliance in accordance with regulation 6.

The date of establishment of the existing organisation shall be confirmed by the Notary Public and shall be recorded expressly in the deed of enrolment.

(2) In the event that since the date of establishment there have been amendments to the statute, the administrators shall also provide the said Notary Public with either:

(a) the authenticated consolidated amended statute up to such date; or

(b) the authenticated copy of all amending resolutions, deeds or instruments.

(3) In the case of private foundations, the deed of enrolment shall be treated in the same manner as a deed of private foundation and article 31 of the Schedule and any rules relative thereto shall apply *mutatis mutandis*.

(4) A separate deed of enrolment shall be required for each existing organisation.

5. (1) The administrators, or their delegate, who deliver the documents referred to in regulation 4 must declare to the Notary Public, who shall record the declaration in the deed of enrolment, as applicable: Declaration.

(a) in the case referred to in regulation 4(1)(a), that the constitutive instrument executed at the time of the establishment of the existing organisation, including any statute which it may have contained or had annexed to it at the time, is the currently operative document and has not been amended to date; or

(b) in the case referred to in regulation 4(2)(a), that the statute delivered to the Notary Public is the authenticated consolidated amended statute up to such date; or

(c) in the case referred to in regulation 4(2)(b), that the resolutions, deeds or instruments delivered to the Notary Public are an authenticated copy of all amending resolutions, deeds or instruments up to such date.

(2) The Notary Public shall warn the persons making any of the above declarations of the importance of truthfulness of such declarations.

6. (1) The administrators shall confirm observance by the existing organisation to the requirements of the Schedule in a Statement of Compliance. This Statement of Compliance shall refer to the statute of the existing organisation and shall provide the relevant information where this is absent regarding: The contents of the Statement of Compliance.

(a) the registered address in Malta;

(b) the purposes or objects;

(c) the constitutive assets with which it was formed, if applicable;

(d) the method or process by which membership is granted to applicants, if applicable;

(e) the mode of procedure during general meetings, if applicable;

(f) the composition of the board of administration and the names of the current administrators, and to the extent that the number of administrators is below the required minimum, the appointment of a person or persons to fill any vacancy;

(g) the manner in which administrators are elected to and removed from office, if applicable;

(h) the legal representation;

(i) the term for which it is established, if any;

(j) in the case of an organisation the administrators of which are non-residents of Malta, the name and address of a person resident in Malta who has been appointed to act as the local representative of the existing organisation in Malta;

(k) in the case of a private foundation, either the names of beneficiaries, or, in the absence of such indication, a declaration that the existing foundation is constituted for the benefit of beneficiaries, in which case an appropriate beneficiary statement in accordance with article 29(4)(i) of the Schedule must be in the possession of the administrators; and

(l) any other matter which, were it not for this regulation, would not permit the organisation to be registered.

(2) The Statement of Compliance is not required to address non-compliance as to:

(a) the legal form; and

(b) the name of the existing organisation, which matter is regulated by regulation 7.

(3) The Statement of Compliance shall be signed by all the administrators in office or their delegates and for the purpose of this regulation all administrators shall be deemed to have the power to delegate their function.

(4) When the statute of an existing organisation has been drawn up by public deed, any Statement of Compliance made in relation to such statute must also be made by public deed.

7. (1) The Registrar shall register an existing organisation without its name being changed even if this is not in conformity with the requirements of article 29(4)(a) of the Schedule relating to foundations or any other article imposing rules on the names of organisations.

Name.

(2) An existing organisation shall change its name only if those persons who have the power to change the name, in accordance with the statute or applicable law, approve such change in the manner required by the statute or by applicable law.

8. (1) Notwithstanding anything stated in the constitutive instrument or statute of an existing organisation, the board of administrators shall have all the necessary powers and authority to supplement or amend the statute which, were it not for this regulation, could not be registered.

Power of administrators to amend the statute to comply with the Schedule.

(2) The board of administrators shall also have the power to do all related and ancillary acts to bring the statute in line with the requirements of the Schedule.

9. (1) When an existing organisation has been registered in accordance with these regulations, the administrators shall notify, in writing, all interested parties within the existing organisation as to how the statute of such existing organisation has been supplemented or amended to bring the existing organisation in compliance with the Schedule to permit registration and that it has been registered.

Administrators to inform all interested parties.

(2) In case of a private foundation, notwithstanding that there may be other interested parties, only those persons entitled to information about the foundation and its terms according to law shall be so notified.

(3) For the purposes of this regulation, "in writing" shall be satisfied by a notice in two daily newspapers, one in the English language and one in the Maltese language, notifying that the existing organisation has made certain changes to its statute in order to bring it in compliance with the Schedule and informing any interested parties that a Statement of Compliance listing the changes made is available to such persons on demand, on submission to the administrators of satisfactory proof of interest.

10. (1) When an existing organisation has already been registered on the basis of *ad hoc* arrangements, due to the fact that the constitutive deed or statute of such existing organisation did not strictly comply with the requirements of the Schedule, the facility provided by these regulations may be utilised by the administrators of any such organisation, at their discretion, so as to bring the statute of

Existing organisations which are already registered on the coming into force of these regulations.

such organisation fully in compliance with the requirements of the Schedule.

(2) In such cases, only a notarised copy of the Statement of Compliance made in accordance with regulation 6 shall be presented to the Registrar who shall register the same in the register of the relevant organisation.

