VERŻJONI ELETTRONIKA

L.N. 19 of 2017

COMPANIES ACT
(CAP. 386)

Transfer of Registered Office of a European Company (SE) Regulations, 2017

IN exercise of the powers conferred by article 425(5) of the Companies Act, the Minister for Finance has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Transfer of Registered Office of a European Company (SE) Regulations, 2017.

(2) The purpose of these regulations is to implement the relevant provisions of the EC Regulation on the transfer of registered office of an SE, and they shall be interpreted and applied accordingly.

(3) In the event that any of the provisions of these regulations conflict with the provisions of the EC Regulation, the latter shall prevail.

Interpretation.

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

"Act" means the Companies Act; Cap. 386.

"EC Regulation" means Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE);

"SE" means a European Public Limited Liability Company (or *Societas Europaea*) within the meaning of the EC Regulation which, except as provided in these regulations, is to be, or is, registered in Malta.

PART I

Transfer to Malta of an SE

Transfer to Malta.

3. Where it is proposed to transfer to Malta the registered office of an SE whose registered office is situated in another Member State or EEA State there shall be delivered to the Registrar for registration:

(a) a copy of the resolution approving the transfer of the SE's registered office;

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(b) the certificate by the court, notary or other relevant competent authority of the Member State or EEA State in which the SE has its registered office attesting to the completion of the acts and formalities to be accomplished before the transfer; and

(c) the Memorandum and Articles of Association of the SE adopted in accordance with the Act and with the EC Regulation.

Certificate of registration.

4. (1) On the registration of the documents referred to in regulation 3, the Registrar shall issue a certificate of registration indicating therein the transfer of the SE's registered office to Malta and the date of registration in Malta of the SE.

(2) A certificate of registration issued in terms of sub-regulation (1) shall constitute conclusive evidence that the requirements of the Act, these regulations and the EC Regulation in respect of the registration of the SE and of matters incidental thereto have been complied with, and that the SE was duly registered in Malta on the date indicated therein.

Accounting reference period and financial year of transferring SE.

5. Where an SE transfers its registered office to Malta under Article 8 of the EC Regulation:

(a) its first accounting reference period for the purpose of Article 164(3) of the Act shall be the period of twelve months beginning on the date of its last balance sheet before the registration of the transfer of the SE and, for the same purpose, the date on which that period ends shall be its accounting reference date; and

(b) its first financial year for the purpose of Article 164(4) of the Act shall begin on the first day of its first accounting reference period and shall end on the last day of that period, or such other date being not more than seven days before or after the end of that period, as the SE may determine.

PART II

Transfer of an SE outside of Malta

Transfer outside Malta.

6. (1) Where it is proposed to transfer the registered office of an SE from Malta to another Member State or EEA State, the directors of the SE shall draw up a transfer proposal in accordance with Article 8(2) of the EC Regulation and a report in accordance with Article 8(3) of the EC Regulation.

(2) A copy of the transfer proposal shall be delivered to the

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Registrar for registration and, upon registration, a notice thereof shall be published in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta. The latter publication shall be made by the Registrar at the expense of the SE concerned.

(3) The SE shall decide on the transfer proposal by an extraordinary resolution which shall be taken not earlier than two months from the date of the publication referred to in sub-regulation (2).

(4) The SE shall notify in writing its shareholders and its known creditors, at their last known address, of their right to examine the transfer proposal and the report drawn up pursuant to sub-regulation (1) at its registered office and, on request, to obtain copies of those documents free of charge, by not later than one month before the general meeting called upon to decide on the transfer.

(5) Every invoice, order for goods and business letter which, at any time between the date on which the transfer proposal and report become available for inspection at the registered office of the SE and the withdrawal of the transfer proposal by the SE or the deletion of its registration on completion of the transfer, whichever occurs earlier, is issued by or on behalf of the SE shall clearly state that the SE is proposing to transfer, in terms of Article 8 of the EC Regulation, its registered office to another Member State or EEA State, which State shall therein be indicated.

Protection of creditors and holders of other rights.

7. (1) Where an SE proposes to transfer its registered office to another Member State or EEA State in accordance with Article 8 of the EC Regulation, the SE shall, by means of a declaration of solvency made in terms of the prescribed form set out in Section B of the Schedule, satisfy the Registrar that the interests of creditors and holders of other rights in respect of the SE, including those of public bodies, have been adequately protected in respect of any liabilities arising prior to the transfer of its registered office.

Declaration of solvency.

(2) The declaration of solvency required under sub-regulation (1) shall be made by all the directors of the SE.

Extension of protection.

(3) A director who makes a declaration of solvency under this regulation without having reasonable grounds for the opinion expressed in the said declaration shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding three years or to a fine (*multa*) of not more than fifty thousand euro (€50,000), or to both such fine and imprisonment.

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Registration of documents.

8. (1) A copy of the resolution referred to in regulation 6(3), together with the documents prescribed in Form SE1 in the Schedule, shall be delivered to the Registrar for registration who, being satisfied that the requirements of these regulations and the EC Regulation have been complied with, shall register them.

Certificate issued under sub-regulation (1).

(2) On the registration of the documents referred to in sub-regulation (1) the Registrar shall issue a certificate attesting to the completion of the acts and formalities required in terms of these regulations and the EC Regulation.

(3) For the purposes of sub-regulation (2), the Registrar may accept the documents prescribed in Form SE1 in the Schedule as sufficient evidence of compliance.

Right to oppose the transfer.

9. (1) If a transfer of the registered office of an SE from Malta to another Member State or EEA State would result in a change in the law applicable to the SE, the relevant competent authorities may, within the two month period referred to in regulation 6(3), oppose the transfer on grounds of public interest.

(2) The relevant competent authorities referred to in sub-regulation (1) are the Government of Malta and the national regulatory authorities.

Contestation of opposition.

Cap. 12.

10. An SE may contest the opposition by the competent authorities before the Court in the form and manner provided for in article 469A of the Code of Organization and Civil Procedure or in any other law.

Notification of registration and removal from register.

11. When, in accordance with Article 8(11) of the EC Regulation, the registry for the SE's new registration notifies the Registrar that the SE's new registration in that Member State or EEA State has been effected, the Registrar shall cause to be published in the Gazette or on the website maintained by the Registrar, a notice publicising the transfer of registered office of the SE, wherein there shall be specified the date on which the name of the SE was struck off the register and all such particulars as are necessary to identify the SE to which the notice is related.

Transitional regulations.

12. These regulations shall apply to any transfer proposal which is submitted after the coming into force of these regulations.

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SCHEDULE

Form SE 1

No. of Company SE .....

Transfer of Registered Office of a European Company (SE) Regulations

Name of SE .....

Delivered by .....
.....

To the Registrar of Companies:

The following declarations are hereby being delivered for registration pursuant to Regulation 8 of the Transfer of Registered Office of a European Company (SE) Regulations, by [(a)] ....., an SE incorporated or constituted under the laws of Malta and which has its registered office at [(b)] .....:

(i) Declaration of directors (Section A);

(ii) Declaration of solvency (Section B); and

(iii) Declaration by advocate (Section C).

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SECTION A

Directors' Declaration

I/we, ... (c) being directors of ..... (a) hereby declare that:

1. Pursuant to Article 8(2) of Council Regulation (EC) No 2157/2001 (the "Regulation"), a transfer proposal was drawn up by the board of directors of the SE;

2. Pursuant to Article 8(3) of the Regulation, the board of directors drew up a report on (d) ..... explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees;

3. In accordance with regulation 6(4) of the Transfer of Registered Office of a European Company (SE) Regulations, the shareholders and creditors of the SE were notified in writing of their right of examination and right to copies of the transfer proposal referred to in paragraph 1 and the report referred to in paragraph 2 above;

4. Pursuant to Article 8(4) of the Regulation, at least one month before the general meeting called upon to decide on the transfer, the shareholders and creditors of the SE could examine and obtain copies of the transfer proposal referred to in paragraph 1 and the report referred to in paragraph 2 above;

5. Invoices, orders for goods and business letters issued by or on behalf of the SE complied with the requirements of regulation 6(5) of the Transfer of Registered Office of a European Company (SE) Regulations;

6. The general meeting of the SE approved the transfer proposal referred to in paragraph 1 above by an extraordinary resolution on ..... (f); and

7. No proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been instituted against the SE.

Name and signature .....
Director/s

Dated this ..... day of ..... of the year.....

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SECTION B

Declaration of Solvency

Date of Proposed Transfer

1. I/we, ... [(c)] being directors of ..... [(a)] hereby declare that:

1. This statement of solvency is being made pursuant to regulation 7 of the Transfer of Registered Office of a European Company (SE) Regulations, in order to satisfy the relevant competent authority as required by Article 8(7) of Council Regulation (EC) No 2157/2001 (the "Regulation");

2. Having made a full inquiry into the affairs of the above named SE, we have formed the opinion:

a. As regards the above named SE's financial situation immediately following the date (as given above) on which the transfer is proposed to be made, that the SE will be able to pay its debts in full within [(e)] from the date on which the transfer is proposed to be made;

b. As regards the above named SE's prospects for the year immediately following the date (as given above) on which the transfer is proposed to be made, that, having regard to our intentions with respect to the management of the SE's business during that year and to the amount and character of the financial resources which will in our view be available to the SE during that year, the SE will be able to carry on business as a going concern, and will accordingly be able to pay its debts as they fall due throughout that year.

Name and signature .....
Director/s

Dated this ..... day of ..... of the year.....

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SECTION C

Declaration by Advocate

I, ... [f] make this declaration in connection with the proposed transfer from Malta of the registered office of the SE named ..... [a]. I hereby confirm that:

1. I am an advocate warranted to pursue my professional activities in the Republic of Malta; and

2. All of the acts and formalities and conditions required by Article 8 of Council Regulation (EC) No 2157/2001 to be accomplished before the transfer out of Malta of the above-mentioned SE, have been completed in accordance with the requirements set out in Article 8, except that I am not required to confirm:

(i) that the requirements of Article 8(7) have been met; or

(ii) that the certificate pursuant to Article 8(8) has been issued.

Name and signature .....
Advocate

Dated this ..... day of ..... of the year.....

This form must be completed in typed form.

(a) State name of SE

(b) State the registered office of the SE

(c) State name and surname of directors

(d) State date

(e) State period [such period not exceeding twelve months]

(f) State name of advocate

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — *Printed at the Government Printing Press on recycled paper*

Prezz/*Price*
€0.36