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I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

21st March, 2017

ACT No. XI of 2017

AN ACT to amend to the Companies Act, Cap. 386.

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

Short title.
Cap. 386.

1. The short title of this Act is the Companies (Amendment) Act, 2017, and this Act shall be read and construed as one with the Companies Act, hereinafter referred to as "the principal Act".

Amendment of
article 2 of the
principal Act.

2. In the definition "shareholder" in sub-article (1) of article 2 of the principal Act, the words "or the *bona fide* holder of a share warrant referred to in article 121" shall be deleted.

Amendment of
article 72 of the
principal Act.

3. Article 72 of the principal Act shall be amended as follows:

(a) sub-article (4) thereof shall be deleted; and

(b) sub-articles (5) and (6) thereof shall be renumbered as sub-articles (4) and (5) respectively.

Amendment of
article 88 of the
principal Act.

4. In the proviso to sub-article (3) of article 88 of the principal Act, the words "where the public company has not issued share warrants," shall be deleted.

5. In sub-article (3) of article 118 of the principal Act, for the words "shares or debentures of a public company", there shall be substituted the words "shares or debentures of a company".

Amendment of article 118 of the principal Act.

6. Article 121 of the principal Act shall be substituted by the following:

Substitution of article 121 of the principal Act.

"Prohibition of share warrants.

121. No company may issue a share warrant to bearer notwithstanding anything contained in its memorandum and articles of association."

7. Immediately after article 121 of the principal Act there shall be added the following new article 121A:

Addition of new article 121A to the principal Act.

"Transitory provisions relating to amendments to the Companies Act made by the Companies (Amendment) Act 2017.

121A. (1) A holder of a share warrant shall, before the expiry of nine months from the coming into force of the Companies (Amendment) Act, 2017 surrender the share warrant to the company which had issued such warrant.

(2) Upon the surrender of a share warrant the company shall:

(a) cancel any share warrant issued by it;

(b) enter in its register of members the name of the persons requesting that their names and addresses be entered in the register of members in lieu of share warrants surrendered, and in this regard the provisions of article 123(1)(a), (1)(b) and (2) shall apply; and

(c) notify the Registrar of any changes in the register of members made consequently to that provided in sub-article (1) and paragraphs (a) and (b).

(3) Any share warrant which is not surrendered to the issuing company as aforesaid by the end of the period mentioned in sub-article (1) shall, after the end of the said period, no longer be recognised by the company and such share warrants shall be deemed to have been cancelled."

8. Article 122 of the principal Act shall be amended as follows:

Amendment of article 122 of the principal Act.

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

(i) the first proviso thereof shall be deleted; and

(ii) in the second proviso thereof, for the words "Provided further that" there shall be substituted the words "Provided that"; and

(b) in sub-article (16) thereof -

(i) for the words "of the pledge of a share warrant or", there shall be substituted the words "of the pledge";

(ii) for the words "The pledge of a share warrant or of a debenture warrant", there shall be substituted the words "The pledge of a debenture warrant"; and

(iii) for the words "of the share warrant or debenture warrant", there shall be substituted the words "of the debenture warrant".

Amendment of
article 126A of
the principal
Act.

9. In sub-article (1) of article 126A of the principal Act for the words "debentures of a public company", there shall be substituted the words "debentures of a company".

Amendment of
article 139 of
the principal
Act.

10. Article 139 of the principal Act shall be amended as follows:

(a) sub-article (3) thereof shall be deleted; and

(b) sub-articles (4) and (5) thereof shall be renumbered as sub-articles (3) and (4) respectively.

Amendment of
article 209 of
the principal
Act.

11. Sub-article (2) of article 209 of the principal Act shall be amended as follows:

(a) in paragraph (b) thereof, for the words "offers made to the public", there shall be substituted the words "offers of securities made to the public"; and

(b) in paragraph (c) thereof, for the words "any of its securities to be admitted to listing", there shall be substituted the words "any of its equity securities to be admitted to listing".

Amendment of
article 258 of
the principal
Act.

12. Sub-article (2) of article 258 of the principal Act shall be amended as follows:

(a) paragraphs (d), (e), (f), (g), (h), (i) and (j) thereof shall be renumbered as paragraphs (f), (g), (h), (i), (j), (k) and (l)

respectively;

(b) immediately after paragraph (c) thereof there shall be added the following new paragraphs:

"(d) any necessary disbursements by the special controller in the course of his office in terms of articles 329A and 329B;

(e) the remuneration of the special controller;" and

(c) immediately after paragraph (l) thereof, as re-numbered, there shall be added the following new paragraph:

"(m) any new financing granted to the company for the purpose of a recovery procedure in terms of articles 329A and 329B.".

13. Article 327 of the principal Act shall be amended as follows:

Amendment of
article 327 of
the principal
Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them:

(a) the court may, on the application of the company or any creditor or member of it or, in the case of a company being wound up, the liquidator, order a meeting of the creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs; or

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(b) the company or any creditor, with the sanction of not less than two-thirds of the creditors or class of creditors, may seek the appointment of a mediator in terms of article 20 of the Mediation Act, and such mediation shall organise a meeting of the creditors, or class of creditors, as the case may be, in order for such creditors and the company to reach a compromise or arrangement. The principles under the Mediation Act shall apply.";

(b) sub-article (2) thereof shall be amended as follows:

(i) the current sub-article shall be re-numbered as paragraph (a) thereof;

(ii) for the words "representing three-fourths", there shall be substituted the words "representing two-thirds";

(iii) immediately after the words "or by proxy at the meeting", there shall be added the words "called in terms of sub-article (1)(a)";

(iv) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(b) If all the creditors, as a result of the mediation process, execute a written agreement containing a compromise or arrangement in terms of sub-article (1)(b), such arrangement shall be binding on all creditors, and also on the company or, in the case of a company in the course of being wound up, on the liquidator."; and

(c) sub-article (3) thereof shall be substituted by the following:

"(3) The court's order, compromise or agreement reached during mediation in terms of sub-article (2) shall have no effect until a copy of every such order, compromise or arrangement has been delivered to the Registrar for registration in accordance with article 329(5); and a copy of every such order, compromise or arrangement shall be annexed to every copy of the company's memorandum issued after order, compromise or arrangement has been made.".

14. In sub-article (1) of article 328 of the principal Act, for the words "under article 327" there shall be substituted the words "or where a mediator is appointed in terms of article 327".

Amendment of article 328 of the principal Act.

15. Article 329B of the principal Act shall be amended as follows:

Amendment of article 329B of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (b)(ii) thereof, immediately after the words "board of directors" there shall be added the words "whenever, following a notice to convene a general meeting in terms of article 329A, the general meeting does not convene, or a quorum is not present at the said meeting, or a resolution with regard to the filing of a recovery application is not passed due to an unresolved tie following a vote";

(ii) in paragraph (b)(iii) thereof, for the word "creditors." there shall be substituted the words "creditors; or"; and

(iii) immediately after paragraph (b)(iii) thereof there shall be added the following new sub-paragraph:

"(iv) by creditors forming part of a class of creditors if such creditors represent more than half in value of the company's creditors in that class.";

(iv) paragraph (c) thereof shall be substituted by the following:

"(c) (i) Creditors with different interests should be treated in separate classes which reflect those interests.

(ii) Where both secured and unsecured

creditors exist, they shall be treated as separate classes.";

(v) paragraphs (d) and (e) thereof shall be renumbered as paragraphs (e) and (f) respectively; and

(vi) immediately after paragraph (c) thereof there shall be added the following new paragraph:

"(d) The appointment of a special controller shall be made for a period not exceeding four months; provided that, at any time during which the company recovery procedure is in force, the court may, upon good cause being shown, extend the period by further periods of four months, provided that the aggregate additional periods do not exceed a further eight months.";

(b) in paragraph (b)(ii) of sub-article (2) thereof, for the words "and addresses" there shall be substituted the words "and addresses, including electronic mail addresses,";

(c) sub-article (3) thereof shall be amended as follows:

(i) in paragraph (c)(i) thereof, for the words "creditors, shareholders" there shall be substituted the words "creditors, regard being had to the different classes of creditors, of the shareholders"; and

(ii) in paragraph (e) thereof, for the words "twenty working days" there shall be substituted the words "forty working days";

(d) sub-article (4) thereof shall be amended as follows:

(i) the current sub-article shall be re-numbered as paragraph (ii) thereof, and immediately before the said paragraph there shall be added the following new paragraph:

"(i) The provisions of this article shall not apply with respect to any new financing given to the company for the purpose of implementing a recovery plan:

Provided that new financing under this Act shall exclude financing, debts or obligations which already existed at the time of the recovery order,

even if such financing, debts, or obligations are restructured in any manner in order to be included with any financing obtained or to be obtained after the recovery order.";

(ii) in paragraph (f) thereof, for the words "shall be made against the company or any property of the company" there shall be substituted the words "shall be made or continued against the company or any property of the company, including any warrant in terms of article 312 of the Code of Organization and Civil Procedure";

(iii) paragraph (g) thereof shall be renumbered as paragraph (h); and

(iv) immediately after paragraph (f) thereof there shall be added the following new paragraph:

"(g) no arbitration proceeding shall be made or continued against the company or any property of the company; and"; and

(v) in paragraph (h) thereof, as re-numbered, for the words "no judicial proceedings" there shall be substituted the words "notwithstanding anything contained in this sub-article, no judicial proceedings";

(e) sub-article (5) thereof shall be amended as follows:

(i) in paragraph (a)(i) thereof, for the words "and to carry" there shall be substituted the words "for a period as specified in sub-article (1)(c). The special controller shall carry";

(ii) in paragraph (a)(ii) thereof, for the words "and assets" there shall be substituted the words "and assets, and in terms of any applicable regulations made by the Minister";

(iii) in paragraph (a)(iii) thereof, for the words "to his appointment." there shall be substituted the words "to his appointment:", and immediately thereafter there shall be added the following proviso:

"Provided that the court may order that the remuneration and the disbursements of the special controller are initially paid out of a fund established by regulations in terms of sub-article

(15), which expense shall be recoverable from the company in accordance with this article. On the making of such order, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Official Receiver.

The expense paid out pursuant to this proviso shall be notified in writing to the company.

The company shall effect payment without delay, and in the event that the company is or has been dissolved, the Official Receiver shall, in regard to the said expense, enjoy the same preferential ranking as expenses properly incurred by a liquidator in accordance with this Act.

A copy of the aforementioned notice served by means of a judicial act on the company or its officers, shall 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."; and

(iv) in paragraph (b) thereof, immediately after the words "to his appointment." there shall be added the words "The court may appoint as the special controller an individual from the list of individuals eligible to occupy the office of special controller held by the Official Receiver.";

(f) in paragraph (c) of sub-article (6) thereof, for the words "of the company" there shall be substituted the words "of the company, and any proposals made by the applicant in terms of sub-article (2)(a) as to how the financial and economic situation of the company can be improved,";

(g) sub-article (7) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "and members," there shall be substituted the words "and members, or classes thereof,";

(ii) immediately after paragraph (a)(ii) thereof, there shall be added the following new sub-paragraph:

"(iii) discussing the proposals for the future prospects and management of the company, to be

presented to the court.";

(iii) in paragraph (b) thereof, for the words "fourteen days notice shall be given of the holding of any such meeting or meetings" there shall be substituted the words "seven days notice shall be given of the holding of the first meeting of creditors and members, or classes thereof";

(iv) in paragraph (c) thereof, for the words "meetings of creditors and members in a daily newspaper circulating wholly or mainly in Malta, not later than fourteen" there shall be substituted the words "first meeting of creditors and members, or classes thereof, in a daily newspaper circulating wholly or mainly in Malta, not later than seven"; and

(v) immediately after paragraph (d) thereof, there shall be added the following paragraph:

"(e) The special controller shall ensure that any notice convening the first meeting of creditors or members, or classes thereof, shall also be given to known creditors residing or based abroad, and such foreign creditors shall also be given the opportunity to participate in any such meeting, and any voting rights may be exercised by means of electronic communication."

(g) sub-article (11) thereof shall be amended as follows:

(i) paragraph (a) thereof shall be re-numbered as paragraph (a)(i);

(ii) in paragraph (a)(i) thereof, as re-numbered, for the words "every period of four months commencing from the date of the making of the order until the termination of his appointment" there shall be substituted the words "the original period of appointment or at the end of each extension";

(iii) immediately after paragraph (a)(i) thereof, as re-numbered, there shall be added the following new sub-paragraph:

"(ii) The special controller may, if he deems it is reasonably necessary, together with the said

report, present an application to the court for a one time extension of his appointment for a further period of four months up to a maximum period of appointment not exceeding twelve months."; and

(iv) immediately after paragraph (b) thereof, there shall be added the following new paragraphs:

"(c) The court shall within a period not exceeding twenty working days from the termination of the period of appointment of the special controller, including any extension thereof, declare the termination of the company recovery procedure, and that the company has recovered, or that it shall be dissolved and wound up, irrespective whether it has received the said report from the special controller. The court shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.

(d) Any creditor or member or the Registrar or the Official Receiver may at any time after the lapse of the twenty working days mentioned in paragraph (c) apply to the court for a declaration of the termination of the recovery procedure.";

(h) sub-article (12) thereof shall be amended as follows:

(i) in paragraph (e) thereof, immediately after the words "in whole or in part," there shall be added the words "regard being had to the interests of the creditors, the company and its members, and the particular classes of members and creditors,"; immediately after the words "to financial resources," there shall be added the words "including new financing"; and for the words "by all the creditors." there shall be substituted the words "by all the creditors, and shall include the position of the creditors with regard to the said proposals."; and

(ii) immediately after paragraph (g) thereof, there shall be added the following new paragraphs:

"(h) Where the court accepts the proposed recovery plan, with or without amendments, the dissenting creditors may apply to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and

Civil Procedure, if they consider that their rights are likely to be reduced to a level which is lower than what they would be granted had the company been dissolved and wound up at the time of the recovery application in terms of sub-article (1)(b). In the interest of the creditors supporting the plan, such appeal shall not automatically suspend the implementation of the recovery plan and procedures, and remedies shall be limited to compensation for the loss suffered by the applicant as a result of the recovery procedure.

(i) Where the proposed recovery plan seeks new financing, the providers thereof shall, in the absence of any fraudulent actions, be exempt from civil and criminal liability relating to the recovery procedure."

16. Paragraph (h) of article 425 of the principal Act shall be deleted.

Amendment of article 425 of the principal Act.

17. Article 2 of Part II of the First Schedule to the principal Act shall be amended as follows:

Amendment of the First Schedule to the principal Act.

(a) in paragraph (b) thereof, for the words "to fifty;", there shall be substituted the words "to fifty; and";

(b) in paragraph (c) thereof, for the words "of the company is prohibited; and", there shall be substituted the words "of the company is prohibited."; and

(c) paragraph (d) thereof shall be deleted.

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Passed by the House of Representatives at Sitting No. 495 of the
15 th March, 2017.

ANĠLU FARRUGIA

Speaker

RAYMOND SCICLUNA

*Clerk of the House of
Representatives*

