Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,351, 21 ta' Frar, 2020

Taqsima B

L.N. 31 of 2020

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Shipping Organisations - Private Companies) (Amendment) Regulations, 2020

IN EXERCISE of the powers conferred by article 84Z of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:-

Citation.

1. The title of these regulations is the Merchant Shipping (Shipping Organisations - Private Companies) (Amendment) Regulations, 2020, and they shall be read and construed as one with the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, hereinafter referred to as "the principal regulations".

S.L. 234.42

Amends the Arrangement of Regulations of the principal regulations.

2. The Arrangement of Regulations in the principal regulations shall be amended as follows:

(a) immediately after the words,

"Part VI	Company Reconstructions, Conversions, Amalgamations and Division of Companies	164",

there shall be added the following:

"Part VIA	Continuation of Companies	164A - 164O
Sub-Part I	Continuation in Malta of a Foreign Company	164A - 164H
Sub-Part II	Continuation outside Malta of companies incorporated in Malta	164I - 164O";

(b) immediately after the words,

"Ninth Schedule	Form relating to Notice to be governed by the Companies Act",

there shall be added the following:

Tenth Schedule	Penalties".

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Amends regulation 1 of the principal regulations.

3. Regulation 1 of the principal regulations shall be amended as follows:

(a) in sub-regulation (3) thereof:

(i) for the words "The regulations", there shall be substituted "These regulations";

(ii) immediately after the words "These regulations shall apply", there shall be added the words ", with effect from the 1st August 2004,";

(iii) for the words "with effect from the 1st August 2004," there shall be substituted the words", with the exception of regulation 37, which shall apply with effect from the 1st May 2004"; and

(b) immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulation:

"(5) For the purposes of sub-regulations (3) and (4) and of Part VIII, "shipping company" means a company whose objects are limited to the sole purpose of owning, managing, administering or operating ships and to transactions ancillary thereto formed and registered under the Commercial Partnerships Ordinance.".

Cap. 168.

Amends regulation 3 of the principal regulations.

4. Regulation 3 of the principal regulations shall be amended as follows:

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

(i) the words " "annual accounts" means the individual accounts required by regulation 66;" shall be deleted;

(ii) immediately after the definition "appointed day", there shall be added the following definition:

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

(iii) immediately after the definition "certificate of registration", there shall be added the following definition:

" "Companies Act" means Chapter 386 of the Laws of Malta;" and

(iv) immediately after the definition "extraordinary resolution" there shall be added the following definition:

" "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;"; and

(b) in sub-regulation (3) thereof immediately after the words "the provisions of the Companies Act on such matter.", there shall be added the words "including any relevant regulations issued under the Companies Act.". Cap. 386. Cap. 386.

5. In sub-regulation (1) of regulation 24, sub-regulations (2),(3) and (4) of regulation 98, sub-regulation (1) of regulation 148, sub-regulation (1) of regulation 154 and sub-regulation (3) of regulation 168 of the principal regulations, immediately after the words "Gazette" there shall be added the words "or on a website maintained by the Registrar". Amends regulations 24, 98, 148, 154 and 168 of the principal regulations.

6. Sub-regulation (1) of regulation 12 of the principal regulations shall be amended as follows: Amends regulation 12 of the principal regulations.

(a) in paragraph (a) thereof, for the word "company" there shall be substituted the word "organisation"; and

(b) for paragraph (f) thereof, there shall be substituted the following:

"(f) the objects of the company which shall be limited to one or more of the activities referred to in sub-article (1) of article 84Z of the Act.". Cap. 234.

7. In the second proviso to sub-regulation (2) of regulation 13 of the principal regulations, the words ",in the case of a private company," shall be deleted. Amends regulation 13 of the principal regulations.

8. For regulation 14 of the principal regulations there shall be substituted the following: Substitutes regulation 14 of the principal regulations.

"14. The objects of a company registered shall be limited to one or more of the activities referred to in sub-article (1) of article 84Z of the Act and to transactions ancillary thereto.". Cap. 234.

9. Sub-regulation (2) of regulation 16 of the principal regulations shall be amended as follows: Amends regulation 16 of the principal regulations.

(a) for the words "duly registered articles.", there shall be

substituted "duly registered articles:"; and

(b) immediately after, there shall be inserted the following proviso:

"Provided that this provision shall not apply in relation to model regulation 22 of the First Schedule, unless that provision is expressly reproduced in the memorandum or articles of the company."**.**

Amends regulation 37 of the principal regulations.

10. Regulation 37 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "unless otherwise provided" there shall be substituted the words "provided it is expressly permitted";

(b) for the proviso to sub-regulation (1) thereof there shall be substituted the following:

"Provided that in relation to transfers of shares, any restriction resulting from the Memorandum or Articles of the company shall, subject to the provisions of paragraph (10) of this regulation, be deemed not to apply to transfers by the pledgee in terms of paragraph (6) of this regulation or resulting from any judicial sale.";

(c) for sub-regulation (3) thereof there shall be substituted the following:

"(3) Failure to deliver notice of the pledge to the Registrar or the company within the time stated in the preceding sub-regulation shall not render invalid the pledge entered into between the parties; however the pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice."; and

(d) in sub-regulation (10) thereof for the words " "failing such preemption rights" there shall be substituted the words "in the absence of such preemptive rights".

Amends regulation 52 of the principal regulations.

11. In sub-regulation (1) of regulation 52 of the principal regulations, the word "private", wherever it appears, shall be deleted.

Amends regulation 60 of the principal regulations.

12. Regulation 60 shall be amended as follows:

(a) in sub-regulation (1) thereof, for the word "representative" there shall be substituted the words "the person

who is vested with the representation of the company".

(b) immediately after sub-regulation (1) thereof, there shall be added the following new sub-regulation:

"(2) Where the company has appointed a company secretary the directors shall send the return referred to in sub-regulation (1). The return shall also be submitted in the case of any change in the company secretary.

(c) sub-regulation (2) thereof shall be re-numbered as sub-regulation (3).

13. Regulation 64 shall be substituted by the following new regulation: Substitutes regulation 64 of the principal regulations.

"(1) The provisions of articles 163, 167, 170 to 183 and articles 185 to 187 of Part V, Title I, Chapter X and the Third and Sixth Schedule of the Companies Act shall apply *mutatis mutandis* to companies formed and registered under these regulations, provided that the balance sheet total and turnover mentioned in sub-article (1) of article 185 of the Companies Act shall be read as follows: Cap. 386. Cap. 386.

- balance sheet total: six million euro (6,000,000);

- turnover: twelve million euro (12,000,000);

- and provided further that the aggregate balance sheet total and aggregate turnover mentioned in sub-article (5) of article 185 of the Companies Act shall be read as follows: Cap. 386.

- aggregate balance sheet total: six million euro (6,000,000) net or seven million and two hundred thousand euro (7,200,000) gross;

- aggregate turnover: twelve million euro (12,000,000) net or fourteen million and four hundred thousand euro (14,400,000) gross:

Provided further that companies which qualify as small companies shall also be entitled to the exemptions mentioned in sub-article (2) of article 185 of the Companies Act and in the provisos to sub-article (2) of article 183 of the Companies Act. Cap. 386.

(2) The penalties in the Eleventh Schedule of the Companies Act which would be applicable to any default in terms of the articles mentioned in sub-regulation (1) shall apply.

Cap. 386.

(3) The marginal note to regulation 64 shall be substituted by the following new marginal note "Annual Accounts".

Amends regulation 65 of the principal regulations.

14. The word "note" in sub-regulation (3) of regulation 65 shall be substituted by the word "notice".

Deletes regulations 66 to 79, and regulations 81 and 82 of the principal regulations.

15. Regulations 66 to 79, regulations 81 and 82 and the Second, Third and Fourth Schedules shall be deleted.

Amends regulation 80 of the principal regulations.

16. In paragraph (a) in the proviso to sub-regulation (1) of regulation 80 of the principal regulations, for the words "was, immediately before the 1st January 2004," there shall be substituted the words "was, immediately before the coming into force of these regulations".

Amends regulation 85 of the principal regulations.

17. Regulation 85 of the principal regulations shall be amended as follows:

(a) regulation 85 shall be renumbered as sub-regulation "(1)"; and

(b) immediately after the new sub-regulation (1) thereof, there shall be added the following new sub-regulation:

"(2) An auditor must at all times adhere to the rules on independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued from time to time in terms of the Accountancy Profession Act.".

Cap. 281.

Amends regulation 92 of the principal regulations.

18. In sub-regulation (7) of regulation 92 of the principal regulations, for the words "has not resigned" there shall be substituted the words "has resigned".

Amends regulation 122 of the principal regulations.

19. Sub-regulation (2) of regulation 122 of the principal regulations shall be amended as follows:

(a) in paragraph (b) thereof, immediately after the words, "provided by a" there shall be inserted the words "provisional administrator,"; and

(b) in paragraph (d) thereof, immediately after the words "remuneration of the" there shall be inserted the words "provisional administrator or the".

20. In sub-regulation (1) of regulation 123 of the principal regulations, for the words "a winding up order" there shall be substituted "any order under Part V". Amends regulation 123 of the principal regulations.

21. In regulation 126 of the principal regulations, sub-regulations (1), (2) and (3) shall be renumbered as sub-regulations (3), (4) and (5) respectively and the following new sub-regulations (1) and (2) shall be inserted: Amends regulation 126 of the principal regulations.

"(1) A person shall not be qualified to act as liquidator unless he is an advocate or is an individual who is a certified public accountant or certified public accountant and auditor or is registered with the Registrar as fit and proper to exercise the function of liquidator.

(2) A person who is qualified to act as liquidator in virtue of sub-regulation (1), may not act as liquidator if he has held the office of director or has held any other appointment with or in connection with that company, at any time during the four years prior to the date of dissolution of the company as determined in accordance with the provisions of these regulations:

Provided for the purposes of this sub-regulation, director includes a person in accordance with whose directions or instructions the directors of the company are or have been accustomed to act.".

22. Sub-regulation (2) of regulation 132 of the principal regulations shall be amended as follows: Amends regulation 132 of the principal regulations.

(a) for the word "amount", there shall be substituted the word "account"; and

(b) for the word "thereof.", there shall be substituted the word "thereof:" and immediately thereafter the following proviso shall be inserted:

Provided that the provisions of regulation 85 shall apply to an auditor appointed in terms of this sub-regulation. Such auditor shall not be a person who has held the office of auditor of the company at any time during the last three years immediately preceding the date of dissolution.".

Substitutes regulation 134 of the principal regulations.

23. For regulation 134 of the principal regulations there shall be substituted the following:

"134. The liquidator shall keep the books and other documents of the company for a period of ten years from the date on which the name of the company was struck off the register.".

Amends regulation 138 of the principal regulations.

24. Regulation 138 of the principal regulations shall be amended as follows:

(a) for sub-regulation (2) thereof there shall be substituted the following:

"(2) Within seven days after the meeting, the liquidator shall send to the Registrar a copy of the account together with the notice of the holding of the meeting and of its date, failing which the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at the meeting, the liquidator shall in the notice mentioned above state that the meeting was duly summoned and that no quorum was present thereat."; and

(b) for sub-regulation (3) thereof there shall be substituted the following:

"(3) On receiving the account together with the auditor's report, if any, the notice of completion of liquidation and of the holding of the meeting, the Registrar shall forthwith register them and on the expiration of three months from a notice published in the Gazette or on a website maintained by the Registrar proceed to strike the name of the company off the register:

Provided that the court may, on an application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.".

Amends regulation 162 of the principal regulations.

25. Regulation 162 of the principal regulations shall be amended as follows:

(a) for the words "a company the assets", there shall be

substituted the words "a company, the assets"; and

(b) for the words "their debts the provisions of the Act shall apply" there shall be substituted the words "their debts shall be regulated by the provisions of the Act".

26. For regulations 8(8), 83(6), 89(2), 91(3), 94(1), 94(3), 131(2), and 146(3) of the principal regulations there shall be added the following wording at the end of each regulation, "and, for every day during which the default continues, to a further penalty.".

27. For regulation 164 of the principal regulations there shall be substituted the following:

Substitutes regulation 164 of the principal regulations.

"Articles 327 to 329 in Part VI and Part VII to Part IX of the Companies Act shall apply *mutatis mutandis* to these Regulations provided that Article 344 (3) of the Companies Act, shall be construed to require that the draft terms of merger, duly completed, shall be signed by at least two directors unless the Board of directors is composed of one in which case it will be signed by that director.".

Cap. 386.

Cap. 386.

28. Immediately after Part VI of the principal regulations there shall be added the following new Part VI A:

Adds a new Part VIA in the principal regulations.

"PART VI A
CONTINUATION OF COMPANIES

SUB-PART I - Continuation in Malta of a Foreign Company

Eligibility to register as being continued in Malta as a shipping organization.

164A. 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 and whose objects must be such that the company will, once registered in Malta, qualify as a shipping organisation pursuant to article 84Z of the Act, hereinafter 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 .

Cap. 234.

Request for registration.

164B. 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:

(a) the resolution or equivalent document of the foreign company authorizing 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;

(b) a copy of the revised constitutive document including all the requirements necessary for the registration of a company in Malta in accordance with the provisions of these regulations;

(c) 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;

(d) 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:

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

(ii) the jurisdiction under which it is incorporated;

(iii) the date of incorporation;

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

(v) 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 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;

(vi) 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; and

(vii) 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:

Provided that 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 (vii) 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 fifty thousand euro.

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

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

(i) 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

(ii) 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;

S.L. 386.03.

(g) the registration fees set out in the Companies Act (Fees) Regulations, 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.

Registration in Malta.

164C. The documents referred to in regulation 164B shall be delivered for registration to the Registrar who, being satisfied that they comply with the provisions of these regulations 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.

Effects of registration.

164D. With effect from the date of the Provisional Certificate of Continuation issued by the Registrar in accordance with regulation 164C:

(a) the company to which the provisional certificate of continuation relates -

(i) shall continue to be a body corporate incorporated under the regulations under the name designated in the declaration referred to in paragraph (d) of regulation 164B, and shall be deemed as provisionally registered in Malta for all purposes of law; and

(ii) is subject to all the obligations and capable of exercising all the powers of a company registered under these regulations.

(b) the constitutive document as revised in accordance with paragraph (b) of regulation 164B is considered as the Memorandum and Articles of Association of the company;

(c) the registration of a foreign company under Sub-Part I shall not operate -

(i) to create a new legal entity;

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

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

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

(v) to release or impair any conviction, judgment, 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.

Shares subject to pledge.

164E. (1) Where shares in a foreign company which is to be continued in Malta are subject to a pledge, charge, assignment by way of security or other similar security, hereinafter referred to as "pledge", in the country or jurisdiction where the foreign company was formed and incorporated or registered, such pledge shall continue to be valid and effective under the laws of Malta, and following the registration of the company as continued in Malta shall be fully enforceable as a pledge of shares in terms of regulation 37 subject to the following conditions:

(a) that the pledge has been validly created in writing as a right of security and preference over shares under the law of the country or jurisdiction where the foreign company was formed and incorporated or registered;

(b) that the pledge is valid and effective as of the date of issue of the provisional certificate of registration in Malta;

(c) that a notice of pledge be delivered to the Registrar for registration in terms of sub-regulation (2) of regulation 37 within fourteen days of the date of issue of the provisional certificate of registration in Malta:

Provided that failure to deliver notice of the pledge to the Registrar or the company within the time stated in this paragraph shall not render invalid the pledge entered into between the parties; however the pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice.

(2) A pledge of shares as mentioned in sub-regulation (1):

(a) shall continue to be regulated by the law chosen by the parties and such law shall apply to all the rights, including rights of enforcement thereof, and obligations of the parties thereto, except to the extent the pledge is enforced in Malta in which case the relevant provisions of regulation 37 shall apply;

(b) shall continue to be subject to any submission made by the parties to the jurisdiction of any foreign court or arbitration which submission shall be valid and effective and shall remain fully in force.

(3) The party delivering the notice of pledge to the Registrar in Malta in terms of this regulation shall also notify the other party to the pledge agreement by serving him with a true copy of the said notice within fourteen days of notification to the Registrar.

(4) On termination of the pledge, a notice of termination of the pledge shall be delivered to the Registrar for registration in accordance with the provisions of sub-regulation (13) of regulation 37.

Failure to deregister.

164F. 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 previously formed and incorporated or registered. Failure by the foreign company to provide such documentary evidence shall grant the Registrar discretion to:

(a) 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; or

(b) 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.

164G. 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 previously 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.

164H. 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 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.

SUB-PART II - Continuation outside Malta of companies incorporated in Malta

Eligibility to register as being continued outside Malta.

164I. A company registered under these regulations 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.

164J. 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:

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

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

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

Requirements for request.

164K. No company may request the Registrar for his consent under regulation 164J unless -

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

(b) (i) 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;

(ii) any director of a company making a declaration of solvency under sub-paragraph (b) (i) without having any 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 fifty thousand euro (€50,000);

(c) payment has been made of all fees and penalties due under these regulations or any other law or regulations which may be applicable; and

(d) the prescribed fee has been paid for.

Requirements for consent.

164L. The Registrar shall not give his consent to a company requesting to be continued in another country or jurisdiction unless he is satisfied that -

(a) the requirements of regulation 164J have been complied with;

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

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

(d) the company at the time of such request is not in breach of any of its duties or obligations under the regulations: Provided that the Registrar may in his discretion give his consent if payment of any penalty due is made.

Right of creditors to oppose continuation.

164M. (1) In addition to the requirements of regulation 164L, 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 or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta, of a notice relating to the extraordinary resolution referred to in paragraph (a) of regulation 164K.

(2) 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-regulation (1) may, by sworn application, 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.

164N. 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 regulation 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, judgment, 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.

164O. 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.".

Amends regulation 165 of the principal regulations.

29. (1) Regulation 165 of the principal regulations shall be amended as follows:

(a) regulation 165 of the principal regulations shall be renumbered as sub-regulation (1) thereof, and for the marginal note there shall be substituted the following: "Judicial Service of Acts and Duties of the Registrar". Cap. 12.

(b) immediately after sub-regulation (1) of regulation 165 as renumbered, there shall be added the following new sub-regulations:

"(2) It shall be the duty of the Registrar,

(a) where under any provision -

(i) any document is required to be delivered or given to or served on him for registration; or

(ii) any certificate is issued by him on the registration or change of name or conversion or amalgamation or division of a company, or the name of a company is struck off the register,

(iii) to cause without delay a statement to be published in the Gazette or on a website maintained by the Registrar showing the date at which the registration, delivery or service was made, or at which the certificate was issued or at which the name of the company was struck off the register, and the general nature of the document or certificate, and giving such particulars as are necessary to distinguish the

company to which the statement related:

Provided that the Registrar shall additionally be required to publish without delay in a daily newspaper circulating wholly or mainly in Malta a notice showing substantially the same information contained in the statement published in the Gazette or on the website, consequent to the registration referred to in the following provisions of these regulations:

Sub-regulation (1) of regulation 106;

Regulation 152;

Regulation 164.

In the event of any reduction referred to in regulation 24, the Registrar shall proceed with the publication of a statement in the Gazette or on the website and in a daily newspaper in accordance with the requirements of this regulation.

The publication of the notice referred to in this proviso shall be subject to the following provisions:

(i) The publication of the notice shall be made by the Registrar at the expense of the company concerned;

(ii) A company, liable for the expense of the publication of a notice in accordance with this proviso, shall effect payment without delay, and in the event that such company is or has been dissolved, the Registrar shall, in regard to the said expense, enjoy the same preferential ranking as expenses properly incurred by a liquidator;

(iii) The expense incurred by the Registrar in publishing a notice pursuant to this proviso shall be notified in writing to the company or person liable for the expense in accordance with this proviso.

Such notification shall be deemed equivalent to a notice given in terms of sub-regulation (4), and the expense incurred by the Registrar shall, in so far as applicable, be considered equivalent to a penalty referred to in the same sub-regulation. The provision of sub-regulations (4) to (18) shall *mutatis mutandis* apply to such expense;

(b) to supply copies, certified copies or verified and certified copies of documents registered pursuant to this regulation against payment of the prescribed fee to any person who requests them, and such copies may also be supplied by electronic means;

(c) to deliver to the Director of the Public Registry for registration at the Public Registry Office a notice containing the particulars of any conversion, amalgamation or division which has taken effect in accordance with Part VI, or the striking off of the name of a company, under the provisions of regulation 98. Such notice shall show substantially the same particulars as the statement published in the Gazette or on the website maintained by the Registrar pursuant to the proviso to this regulation; and it shall be the duty of the Director of the Public Registry to register the notice or a note thereof in like manner as notes of reference, in so far as applicable, as the Director may consider appropriate.

(3) Any document, certificate or other particular required to be delivered, given to or served on the Registrar for registration may be relied on by the company as against third parties only after it has been duly published in accordance with sub-regulation (2), unless the company proves that third parties had knowledge thereof in which case the company may rely on any such document, certificate or other particular notwithstanding that it has not yet been so published. Any transactions taking place before the sixteenth day following the publication of any such document, certificate or other particular, shall not be relied on as against third parties who prove that it was not possible for them to have had knowledge thereof:

Provided that at any time third parties may

always rely on any such document, certificate or other particular, even if the publication formalities in relation thereto have not at that time been complied with:

Provided further that where these regulations require that any provision shall not take effect until the lapse of a particular period, the provisions of this sub-regulation shall only come into effect on the lapse of the later period.

(4) Where the Registrar gives notice in writing to any person that such person has become liable to a penalty specifying the nature of the infringement, and indicating an amount as due by way of penalty in respect of such infringement, the person to whom the notice is given shall, without prejudice to the provisions of sub-regulations (5) to (18), be deemed to have incurred a penalty, and the amount indicated as aforesaid as due by way of penalty including any penalty due for each day during which the default continues shall be deemed to be the penalty due in respect of the infringement specified in the notice.

(5) A notice as is referred to in sub-regulation (4) shall, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, 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 unless such person shall within thirty days from the date of such service institute proceedings before the court objecting to the penalty so fixed.

Cap. 12.

(6) Where any person desires to institute proceedings objecting to a penalty referred to in sub-regulation (4), such proceedings shall be instituted by application against the Registrar.

(7) The application shall, under pain of nullity, state clearly and concisely the nature of the complaint, the facts out of which the complaint arises, the reasons why such complaint should be upheld, and the claim that the penalty is not due at law or is due at law only in a smaller amount.

(8) The court shall not annul or reduce a penalty as aforesaid unless such penalty cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount fixed by the Registrar.

(9) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce, and shall indicate in his application the names of all witnesses he intends to produce stating, in respect of each, the proof which he intends to make.

(10) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(11) The application, and the notice of the date fixed for hearing, shall be served on the Registrar without delay, and the said Registrar shall file his reply thereto within fourteen days after the date of the service of the application.

(12) The Registrar shall, in his reply, state clearly and concisely whether he agrees to the facts set out in the application, and the reasons why he objects to the claim; he shall moreover state in his reply the names of the witnesses in support of his reasons and shall attach thereto all the document in support thereof.

(13) On the day fixed for the hearing of the application, the court shall consider only the issues of fact and of law as are ascertainable from the application, reply or documents filed, by either of the parties, or from the evidence indicated by either of the parties in the application or reply as the case may be, or from the oral pleading of either of the parties.

(14) The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties, or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

(15) Saving the preceding provisions of this regulation, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the First Hall of the Civil Court shall apply in relation to any such application. Cap. 12.

(16) Notwithstanding the provisions of sub-article (2) of article 256 of the Code of Organization and Civil Cap. 12.

Procedure, the executive title referred to in sub-regulation (5) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to.

(17) The decision of the court upon an application referred to in sub-regulation (6), confirming the imposition of a penalty fixed by the Registrar or reducing any such penalty, shall upon becoming *res judicata* be deemed to be a judgment of the court ordering the payment by the applicant of the penalty as confirmed or reduced.

(18) An appeal from a decision of the court upon an application referred to in sub-regulation (6), shall be made by means of an application to the Court of Appeal to be filed within six working days of the date of the decision; the person against whom the appeal is entered shall within six working days from the service upon him of the application file a reply to the appeal.".

Substitutes regulation 166 of the principal regulations.

30. For regulation 166 of the principal regulations there shall be substituted the following:

"Penalties.

166. (1) Where any provision provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to the Tenth Schedule which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of these regulations.

(2) In the Tenth Schedule, the first column indicates the regulation and sub-regulation which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty, if any. The daily default penalty shall be due for every day during which the default continues and shall accrue from the day on which the Registrar gives notice under sub-regulation (4) of regulation 165 that a penalty is due.

(3) Action by the Registrar for the recovery of a penalty shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) A company shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed.".

31. Immediately after regulation 167 of the principal regulations there shall be inserted the following new regulation: Adds a new regulation 167A to the principal regulations.

"Fees under S.L.386.03.

167A. The fees prescribed in the Companies Act (Fees) Regulations shall apply *mutatis mutandis* to the companies formed and registered in terms of these regulations.".

32. Regulation 168 (3) of the principal regulations shall be deleted and sub-regulations (4) and (5) thereof shall be renumbered as (3) and (4) respectively. Amends regulation 168 of the principal regulations.

33. Part I of the First Schedule to the principal regulations shall be amended as follows: Amends the First Schedule to the principal regulations.

(a) in the title, for the words "SHIPPING COMPANY" there shall be substituted the words "SHIPPING ORGANISATION - PRIVATE COMPANY FOR THE PURPOSES OF THESE REGULATIONS";

(b) in model regulation 8, for the words "two per cent", there shall be substituted the words "eight per cent per annum";

(c) in model regulation 11, following the words "per cent", there shall be inserted the words "per annum"; and

(d) in paragraph (b) of model regulation 22, for the word "shares" there shall be substituted the word "securities".

34. Immediately at the end of the Fifth Schedule to the principal regulations, the following words shall be inserted: Amends the Fifth Schedule to the principal regulations.

"Signed …… Director/Secretary/ Representative".

35. The Seventh Schedule to the principal regulations shall be amended as follows: Amends the Seventh Schedule to the principal regulations.

(a) in Form D:

(i) for the words "Pursuant to Regulation 26(1)(b)" in the title, there shall be substituted the words "Pursuant to Regulation 26(b)";

(ii) for the words "with regulation 26(1)(b)", there shall be substituted the words "with regulation 26(b)";

(iii) for the words "was made", there shall be substituted the words "was/will be made*";

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(b) in Form I for the words "Notification of changes among directors or in the representation of a company", there shall be substituted the words "Notification of changes among directors, in the representation or in the secretary of a company"

(c) for Form Q, there shall be substituted the following:

"Form Q

No. of Company …….....……

MERCHANT SHIPPING (Shipping Organisations - Private Companies) REGULATIONS

Notice of completion of liquidation and holding of final meeting

Pursuant to Regulation 132(3) and regulation 138(2)

Name of Company ……....…….....

Delivered by ……....……

_____

To the *Registrar of Companies:*

I ……being the liquidator of

(a) …….

hereby give notice that:

(i) the liquidation of the said company has been completed on …… of ……. of the year ……; and

(ii) *the account of the winding up was laid before a general meeting held on ……. of ……. of the year ……./* the meeting was duly summoned on …… of the year…… and that no quorum was present thereat.

Signature ……....…… Liquidator

Dated this ……....…….. day of …….....……

of the year …….....

This form must be completed in typed form.

(a) State company name."

(d) Immediately after Form U, there shall be added the following new Form V:

"Form V

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations - Private Companies) REGULATIONS

Notification of change in registered office of a company

Pursuant to Regulation 20(2)

Name of Company: .....

Delivered by:.....

To the *Registrar of Companies*:

(a) ……hereby gives notice in accordance with Regulation 20(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004 that the company has changed its registered office to: …….....

Effective Date of Change ……

Name and signature…….....

D*irector/Secretary/Representative**

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

This form must be completed in typed form.

(a) State company name.

*Delete as necessary."

Adds a new Tenth Schedule to the principal regulations.

36. Following the Ninth Schedule of the principal regulations, there shall be added the following new Tenth Schedule:

"TENTH SCHEDULE
(Regulation 166)

PENALTIES

Regulation	Default	Penalty	Daily Penalty
5(3)	Failure to indicate particulars concerning company on business letters, etc.; liquidator failing to include statement on business letters, etc., that company is being wound up or failing to include names of liquidators of company being wound up	500 euro	None
6(3)	Officers of private company offering shares or debentures for sale to the public	2500 euro	None
8(8)	Officers of company failing to deliver notice to Registrar of becoming or ceasing to be a single member company	500 euro	25 euro
20(4)	Failure of officer to deliver a copy of any resolution altering or adding to a company's memorandum or articles to the Registrar or failure to deliver amended memorandum and articles	500 euro	25 euro
25(4)	Failure of officer to file copy of resolution increasing share capital	500 euro	25 euro
31(6)	Failure of officers to provide Registrar with notice of redemption of preference shares	500 euro	25 euro

Regulation	Default	Penalty	Daily Penalty
35(6)	Failure of company to send notice to transferee of refusal to register transfer of shares and debentures	500 euro	25 euro
36(4)	Failure of officers to comply with provisions as to issue of share certificates	500 euro	25 euro
38(4)	Failure of officers of company to comply with provisions as to register of members	500 euro	25 euro
39(4)	Failure of officers of company to keep proper register of debentures	500 euro	25 euro
43(3)	Failure of officers of company to hold annual general meeting	2500 euro	50 euro
48(3)	Failure of officers of company to give notice to members of right to vote by proxy at a meeting of the company	500 euro	None
48(5)	Officer of company contravening further provisions as to votes by proxy at meetings of the company	500 euro	None
59(2)	Director failing to disclose interest in contract	2,500 euro	None
60(2)	Officers of company failing to make return as to change in directors	500 euro	25 euro
63(4)	Officers of company failing to make minutes of general meetings and to keep minute book at registered office	1,200 euro	None
80(3)	Officers of company failing to file annual return	2,500 euro	50 euro
83(6)	Officers of company failing to give notice to Registrar of default in appointment of auditors	500 euro	25 euro

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Regulation	Default	Penalty	Daily Penalty
86(3)	Officer and auditors of subsidiary undertaking failing to give information to auditors of parent company	500 euro	None
86(4)	Officers of parent company failing to provide auditors with information concerning oversea subsidiary	500 euro	None
89(2)	Officers of company failing to give notice to Registrar of resolution removing an auditor	500 euro	25 euro
91(3)	Officer of company failing to give notice to Registrar of resignation of auditor	2,500 euro	50 euro
92(5)	Directors failing to take reasonable steps to convene a meeting requisitioned by a resigning auditor	2,500 euro	None
94(1)	Auditor failing to comply with requirement of regulation 93 upon ceasing to hold office	1,200 euro	35 euro
94(3)	Officers of company failing to comply with regulation 93 upon an auditor's ceasing to hold office	1,200 euro	35 euro
128.	Officers of company failing to give to Registrar notice of resolution for dissolution and voluntary winding up	500 euro	25 euro
128.	Directors failing to summon general meeting or failing to apply to the court for appointment of liquidator	2,500 euro	50 euro
128.	Liquidator failing to notify Registrar of appointment	500 euro	25 euro
131(2)	Liquidator failing to comply with periodic reporting requirements	1,200 euro	35 euro

Regulation	Default	Penalty	Daily Penalty
132(4)	Liquidator failing to provide Registrar with notice of completion of liquidation	500 euro	25 euro
138(2)	Liquidator failing to provide Registrar with copy of the winding up account or a return of the general meeting on members' voluntary winding up	500 euro	25 euro
138(4)	Liquidator failing to call final meeting in members' voluntary winding up	500 euro	None
141(5)	Directors failing to comply with requirements as to creditors' meeting following resolution for dissolution and voluntary winding up	2,500 euro	None
142(4)	Failure of directors to apply to the court to appoint liquidator	2,500 euro	50 euro
146(3)	Liquidator failing to convene meetings of company and of creditors where winding up continues for more than twelve months	500 euro	None
147(2)	Liquidator failing to provide Registrar with copy of winding up account or a return of the company and creditors' meetings on a creditors' voluntary winding up	500 euro	25 euro
147(3)	Liquidator failing to call general meeting or creditors' meeting on creditors' voluntary winding up	1,200 euro	None".

VERŻJONI ELETTRONIKA

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