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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,403, 12 ta' Mejju, 2020
Taqsima B

L.N. 192 of 2020

COMPANIES ACT
(CAP. 386)

Companies Act (Company Reconstructions Fund) Regulations, 2020

IN EXERCISE of the powers conferred by article 329B of the Companies Act, the Minister for the Economy, Investment and Small Businesses, has made the following regulations:-

1. (1) The title of these regulations is the Companies Act (Company Reconstructions Fund) Regulations, 2020. Citation and scope.

(2) The scope of these regulations is to create and regulate the administration of a fund intended to facilitate company recovery procedures instituted in accordance with article 329B of the Companies Act.

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

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

"Agency" means the Malta Business Registry established by article 3 of the Malta Business Registry (Establishment as an Agency) Order; S.L. 595. 27.

"Fund" means the fund established in accordance with regulation 3;

"Official Receiver" means the person appointed by the Minister pursuant to article 225 of the Act;

"recovery procedure" shall be construed in accordance with article 329B of the Act;

"Special Controller" means a person appointed by the Court in accordance with article 329B of the Act from the list held by the Official Receiver in accordance with these regulations.

3. There shall be a fund to be known as the Company Recovery Fund out of which payments shall be made to Special Controllers appointed in accordance with article 329B of the Act as may be paid out of the Fund in accordance with these regulations. Functions.

4. The Fund shall receive from the Agency the amount of five Financing.

hundred thousand euro (€500, 000) annually, or such lesser amount in terms of the proviso to this regulation, to cover the expenses related to its purpose under these regulations:

Provided that the Fund shall not at any time have at its disposal sums exceeding the aforementioned amount.

Functions of the Official Receiver.

5. The Official Receiver shall, without prejudice to any other power or function conferred on him by these regulations or by any other law, act in accordance with any procedures established by the Agency, to:

(a) establish and maintain, in consultations with the Agency, arrangements for the making of payments to Special Controllers in accordance with these regulations;

(b) certify claims for compensation by Special Controllers admitted in accordance with these regulations.

Maintenance of list of Special Controllers.

6. (1) The Official Receiver shall keep an updated list of persons admitted in accordance with regulation 7 to act as Special Controllers, which shall be made available to the Registrar of Courts.

Application to be admitted to the list Special Controllers.

7. Any person having the requisites to act as a Special Controller in accordance with article 329B of the Act shall apply to the Official Receiver in the prescribed form, or in such form as the Official Receiver accepts, submitting a *curriculum vitae* and all documentation required by the Official Receiver in order to be admitted to the list held for the purposes of article 329B.

Disqualification.

8. A person shall not be qualified for appointment as Special Controller in accordance with these regulations if:

(a) he is interdicted or incapacitated or is an undischarged bankrupt;

(b) he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud, provided that the period for disqualification shall be in terms of the limits mentioned in sub-article (1) of article 142 of the Act;

(c) he is subject to a disqualification order under article 320 of the Act;

(d) during the time he has been a director or a secretary of a company, he has breached the provisions of this Act for the third consecutive time in a period of two (2) years to be reckoned

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from the first breach;

(e) he has been convicted of any of the offences under the Prevention of Money Laundering Act; Cap. 373.

(f) he does not possess a minimum of five (5) years proven experience in the administration of companies; or

(g) he does not possess a minimum of two (2) years proven experience in the administration of companies and a bachelor's degree or equivalent from a recognised university.

9. (1) The remuneration and expenses of a Special Controller in accordance with these regulations shall be paid from the Fund in respect of the period of appointment established in accordance with article 329B(1)(d) up to a maximum of: Remuneration and expenses recoverable from the Fund.

(a) two thousand five hundred euro (€2,500) as remuneration for the original period;

(b) one thousand five hundred euro (€1,500) as remuneration for the first extension; and

(c) one thousand euro (€1,000) as remuneration for the second extension.

(2) expenses which are deemed necessary for the continuation of the Company Recovery Procedure, considering the particular circumstances of each case, up to a maximum of five thousand euro (€5,000) may be paid from the Fund.

(3) The maximum cumulative amount claimed from the fund in accordance with paragraphs 1 and 2 in respect of each recovery procedure shall not exceed ten thousand euro (€10,000).

(4) The amounts referred to in this regulation are inclusive of value added tax.

(5) The limits mentioned in this paragraph may be increased by the Official Receiver acting upon a recommendation of the Court, in complex cases, or cases involving cross-border elements.

10. (1) A claim to be paid in accordance with regulation 9 shall be submitted to the Official Receiver together with all supporting documentation as may be required by the Official Receiver. Procedure with regards to claim.

(2) The Special Controller may submit a claim in accordance with sub-regulation (1) at any time during the recovery procedure or within twelve (12) months from the order of the court terminating the

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recovery procedure.

(3) The Official Receiver may require additional documentation or information in relation to any claim.

(4) The Official Receiver shall pay claims from the Fund in accordance with these regulations, as he deems appropriate and in terms of any directions given by the Agency, regard being had to the circumstances of the case and nature of the claim.

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