VERŻJONI ELETTRONIKA

I assent.

(L.S.) **GEORGE VELLA**
President

23rd June, 2020

ACT No. XXXI of 2020

AN ACT to amend the Companies Act, Cap. 386, and to provide for matters ancillary or incidental thereto.

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.

1. The short title of this Act is the Companies (Amendment) Act 2020 and this Act shall be read and construed as one with the Companies Act, hereinafter referred to as the "principal Act".

Cap. 386.

Substitution of article 142 of the principal Act.

2. Article 142 of the principal Act shall be substituted by the following:

"142.(1) A person shall not be qualified for appointment or to hold office as director of a company or company secretary 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;

(c) he is a minor who has not been emancipated for trade; or

(d) he is subject to a disqualification order under article 320:

Provided that a disqualification in terms of paragraph (b) shall remain valid:

(i) in perpetuity, if the punishment for the crime he has been convicted of is of imprisonment for life;

(ii) for a period of fifteen (15) years if the punishment for the crime he has been convicted of is of imprisonment between twenty-five (25) and thirty (30) years;

(iii) for a period of ten (10) years if the punishment for the crime he has been convicted of is of imprisonment between ten (10) and twenty-five (25) years;

(iv) for a period of eight (8) years if the punishment for the crime he has been convicted of is of imprisonment between five (5) and ten (10) years;

(v) for a period of five (5) years if the punishment for the crime he has been convicted of is of imprisonment between four (4) and ten (10) years; and

(vi) for a period of three (3) years if the punishment for the crime he has been convicted of is of imprisonment for less than four (4) years:

Provided further that in any case the disqualification period in terms of this proviso shall not be less than the term of imprisonment that the person would have been awarded.

(2) Notwithstanding the provisions of this Act or of the memorandum and articles of a company relating to the formalities of the appointment of a director or other officer and to his qualification, any irregularity concerning the appointment

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of a director or other officer of a company raised after the completion of the publication of his appointment shall not be relied upon by the company as against third parties unless the company proves that such parties were aware of the irregularity at the relevant time.

(3) Third parties who were not aware of the irregularities referred to in sub-article (2) at the relevant time may rely on that irregularity as against the company.

(4) The Registrar may restrict a person from being appointed as director or company secretary of a proposed commercial partnership or an existing company if he is or has been a director or secretary of an existing Maltese company in relation to which he has breached the provisions of this Act for three (3) times within a period of two (2) years, that shall be reckoned from the first breach, and he is still in default as to one or more of such breaches.

(5) Any person who feels aggrieved by a restriction from being appointed as director or company secretary in terms of sub-article (4) may bring an application before the court against the Registrar for the removal of such restriction.".

Amendment of article 320 of the principal Act.

3. Article 320 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, the words "upon the application of the Attorney General or the Registrar" shall be substituted by the words "upon the application of the Attorney General, the Official Receiver or the Registrar";

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

(i) the words "upon the application of the Attorney General or the Registrar" shall be substituted by the words "upon the application of the Attorney General, the Official Receiver or the Registrar";

(ii) paragraph (a) thereof, shall be substituted by the following:

"(a) that such person, during the time he has been a director of a company, has been in breach of the provisions of this Act for the third time in a period of two (2) years that shall be reckoned from the first breach; or"; and

(iii) paragraph (b) thereof, shall be substituted by

the following:

"(b) that such person is or has been a director of a company which at any time has become insolvent, whether while he was a director or subsequently, and that his conduct as a director of that company, either taken alone or taken together with his conduct as a director of any other company or companies, makes him unfit to be involved in the management of a company.".

Amendment of article 329B of the principal Act.

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

(a) in paragraph (a) of sub-article (1) thereof, the words "imposed by paragraph (c)." shall be substituted by the words "imposed by paragraph (d).";

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

(i) sub-paragraph (iii) of paragraph (a) thereof, shall be substituted by the following:

"(iii) 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 article shall be notified in writing to the company.

The company shall effect payment of expenses paid out pursuant to this article without delay, upon a request by the Official Receiver and in the event that the company has been dissolved, the Official Receiver shall, in regard to the said expense, enjoy the same preferential ranking as a liquidator for his expenses as properly incurred in accordance with this Act.

Without prejudice to the previous paragraph, a copy of the aforementioned request for payment, 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

Cap. 12.

(ii) paragraph (b) thereof, shall be substituted by the following:

"(b) The Court shall 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, regard being given to the nature of the company to be restructured and the special controller's experience and expertise in the management of business enterprises. The Court shall ascertain that there is no conflict of interest in relation to his appointment.".

Amendment of article 425 of the principal Act.

5. Immediately after sub-article (8) of article 425 of the principal Act there shall be added the following new sub-articles:

"(9) The Minister may prescribe regulations for electronic filing and, or electronic signing of notices required by this Act, electronic signatures, the issuing of electronic certificates, letters, and any other documents issued by the Registrar and any other ancillary matters.

(10) The Minister may by regulations on the holding of annual general meetings, extend the term for the holding of the annual general meeting and for the laying and approval of accounts. In addition to that the Minister may by regulations provide for suspension of any periods for the holding of general meetings, whether ordinary or extraordinary, and to the holding of virtual annual general meetings and other meetings.

(11) The Minister may make regulations for the better carrying out of any of the provisions of sub-article (1) of article 218, and may, without prejudice to the generality of the foregoing, by such regulations suspend the right of any of the persons mentioned in the said sub-article to file a winding up application in terms of the said sub-article (1) of article 218 and article 214.

(12) The Minister may make regulations for the better

carrying out of any of the provisions of article 316, and may, without prejudice to the generality of the foregoing, by such regulations suspend even retrospectively the application of the provisions of the said article 316.

(13) The Minister may make regulations for the better carrying out of any of the provisions of article 223, and may, without prejudice to the generality of the foregoing, by such regulations prescribe new rules in relation to the deemed date of dissolution of a company.".

Passed by the House of Representatives at Sitting No. 345 of the 17th June, 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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