

A 1514

I assent.

(L.S.)

GEORGE VELLA
President

26th October, 2021

ACT No. LX of 2021

AN ACT to amend 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 and commencement.

Cap. 386.

1. (1) The short title of this Act is the Companies (Amendment) Act, 2021, and this Act shall be read and construed as one with the Companies Act, hereinafter referred to as "the principal Act".

(2) The provisions of this Act shall come into force on such date as the Minister responsible for the registration of commercial partnerships may, by notice in the Gazette, establish, and different dates may be so established for different provisions of the Act.

Amendment of article 2 of the principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, immediately after the definition "EEA State", there shall be added the following new definition:

" "electronic means" means electronic equipment used for the processing, including digital compression, and the storage of data, and through which information is

initially sent and received at its destination; that information being entirely transmitted, conveyed and received in a manner to be determined by the Registrar;"

(b) sub-article (5) thereof shall be substituted by the following:

"(5) For the purposes of this Act, where a document required to be delivered to the Registrar for registration is required to state the name and residence or service address of a person, it shall be deemed to require further the date of birth in the case of a natural person or, where an officer or shareholder is a body corporate, it shall be deemed to require the company registration number."

3. Sub-article (1) of article 69 of the principal Act shall be amended by the following:

Amendment of article 69 of the principal Act.

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

"(b) the name and residence or service address of each of the subscribers thereto;"

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

"(d) the registered office in Malta and the electronic mail address of the company;"

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

"(g) the number of the directors, the name and residence or service address of the first directors and, where any one of the directors is a body corporate, the name and registered or principal office of the body corporate, the manner in which the representation of the company shall be exercised, and the name of the first person or persons vested with such representation;" and

(d) paragraph (h) thereof shall be substituted by the following:

"(h) the name and residence or service address of the first company secretary or secretaries, or where a company secretary is a body corporate, the name, registration number and registered office of that body

A 1516

corporate;".

Addition of new article to the principal Act.

4. Immediately after article 123 of the principal Act there shall be added the following new article:

"Register of officers' and shareholders' residential addresses.

123A. (1) Every company shall keep a register of the residential addresses of its officers and shareholders and shall enter therein the following particulars:

(a) the names of each of the company's officers and shareholders;

(b) the usual residential address of each of the company's officers and shareholders:

Provided that if an officer's or shareholder's usual residential address is the same as the service address, the register of the residential addresses of the company's officers and shareholders need only contain an entry to that effect:

Provided further that an officer's or shareholder's service address may be stated to be the company's registered or principal office, so however that in such case the foregoing proviso shall not apply;

(c) the electronic mail address of each of the company's officers and shareholders.

(2) It shall be the duty of the directors and of the company secretary to deliver to the Registrar a copy of the register of the residential addresses of the company's officers and shareholders and any changes thereto, within fourteen days after the date on which the change is recorded with the company, accompanied by the relevant statutory form as provided under this Act and the subsidiary legislation made thereunder:

Provided that the Registrar shall store and keep the records as contained in the register of residential addresses of the company's officers and shareholders and which register shall only be used for regulatory purposes and shall not be open for public inspection.

(3) If default is made in complying with the provisions of sub-article (2), every officer of the company who is in default shall, unless such default is remedied within one month from the receipt of notice of such default sent by the Registrar, be liable to a penalty, and for every day during which the default continues, to a further penalty:

Provided that the Registrar shall also refuse to register the change in officers or shareholders if the information required by this article was not submitted or if he is not satisfied that the company has provided accurate and up to date information of its officers and shareholders as required by the provisions of this Act."

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

Amendment of article 139 of the principal Act.

(a) sub-articles (1) and (2) thereof shall be substituted by the following:

"(1) A person shall not be capable of being appointed director of a company unless he has personally signed the memorandum indicating his consent to act as a director or has otherwise signed and delivered to the Registrar for registration a consent in writing to act as such director.

(2) Without prejudice to the provisions of sub-article (1), where a director is by the memorandum or articles of a company required to hold a specified share qualification, he shall either sign the memorandum for a number of shares not less than his qualification or sign and deliver to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares:

Provided that he shall vacate his office if he fails to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the memorandum or articles, or if at any time thereafter he ceases to hold his qualification; and he shall be incapable of being re-appointed director of the company until he has obtained his qualification."; and

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

A 1518

"(5) Upon being appointed director of a company, such person shall be required to declare to the Registrar, in the prescribed form, whether he is aware of any circumstances which could lead to a disqualification from appointment or to hold office as a director of a company under the provisions of this Act or in another Member State."

Amendment of article 140 of the principal Act.

6. Immediately after sub-article (6) of article 140 of the principal Act there shall be added the following new sub-articles:

Cap. 529.

"(7) Where the Registrar becomes aware that an officer of a company is disqualified or does not hold a licence issued under the Company Service Providers Act, where so required or unless otherwise exempt in terms of the said Act or any other regulations made or rules issued thereunder, the Registrar shall inform the company and the company shall proceed to remove the director in accordance with the provisions of this article and shall, within fourteen (14) days from the date of removal, submit to the Registrar for registration the statutory form notifying the removal of such officer.

(8) If the company fails to remove such officer, the Registrar shall file an application in court requesting the removal of such officer from office.

(9) 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. 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. The expenses shall be borne by the company."

Amendment of article 142 of the principal Act.

7. Article 142 of the principal Act shall be amended as follows:

(a) in sub-paragraph (vi) of the proviso to paragraph (d) of sub-article (1) thereof, for the words "would have been awarded." there shall be substituted the words "would have been awarded;", and immediately thereafter there shall be added the

following new paragraph:

Cap. 529. "(e) such person is holding such office as a company service provider in terms of the Company Service Providers Act without having obtained the necessary authorisation by the Malta Financial Services Authority to provide such service."; and

(b) immediately after sub-article (5) thereof there shall be added the following new sub-article:

"(6) Apart from the disqualifications for appointment or to hold office of a director of a company under the provisions of this Act, any disqualification that is in force or information relevant for disqualification in another Member State shall be taken into account and the Registrar may refuse the appointment of a person as a director of a company where, at the time, such person would be disqualified from acting as a director in another Member State."

8. Sub-article (1) of article 146 of the principal Act shall be substituted by the following:

Amendment of article 146 of the principal Act.

"(1) In addition to the requirements stipulated in article 123A, every company shall send to the Registrar for registration a return of any change among its directors, or company secretary or in the representation of the company, specifying the date of the change, together with the name and residence or service address, or name, registered office and registration number, as the case may be, of any new director or company secretary, within fourteen days from the happening thereof:

Provided that the Registrar may, before registering the return, take such steps and require such information as he may deem necessary to ascertain the correctness of the return and to determine whether the provisions of this Act have been complied with."

9. Article 401 of the principal Act shall be amended as follows:

Amendment of article 401 of the principal Act.

(a) in paragraph (i) of sub-article (1) thereof, for the words "as authorised by the said Second Schedule." there shall be substituted the words "as authorised by the said Second Schedule"; and immediately thereafter there shall be added the

following new paragraphs:

"(j) before registering a new company or return, to take such steps and require such information or documentation as it may be deemed necessary to ascertain the individuals' identification and correctness of the information submitted to him;

S.L. 373.01 (k) to provide competent authorities and subject persons, as defined in the Prevention of Money Laundering and Funding of Terrorism Regulations, with full access to the website maintained by the Registrar, including, but not limited to, access by an application programming interface;

(l) to deal with any aspect of online formation of companies, online registration of branches and online filing of documents and information; and

(m) to issue, if he so deems fit, procedures and guidance, after consultation with the Minister, to companies and, or their officers as may be required for the carrying into effect of the provisions of this Act and any subsidiary legislation made thereunder, and which shall be binding on companies and their officers."; and

(b) immediately after sub-article (17) thereof there shall be added the following new sub-article:

"(18) Where the Registrar, in his capacity of a data controller, processes personal data for the purposes of this Act, he shall comply with the principles relating to the processing of personal data pursuant to Article 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and apply appropriate technical and organisational measures to ensure a level of security appropriate to the risk posed, and to integrate the necessary safeguards into the processing, in order to protect the rights and freedoms of data subjects."

(a) for the words:

"1. Address

(Address of the registered office of the company)"

there shall be substituted the words:

"1. Address

(Address of the registered office and electronic mail address of the company)"; and

(b) for the words:

"2. Summary of Share Capital"

there shall be substituted the words:

"2. Principal Area of Trading Activity and Summary of Share Capital".

11. In the Eleventh Schedule to the principal Act immediately after the item:

Amendment of the Eleventh Schedule to the principal Act.

"

123(4)	Failure of officers of company to comply with provisions as to register of members	€465.87	€23.29
--------	--	---------	--------

"

there shall be added the following new item:

"

123A	Failure of company officers to comply with provisions as to register of residential addresses of company officers and shareholders	€465.87	€23.29
------	--	---------	--------

".

VERŻJONI ELETTRONIKA

A 1522

Passed by the House of Representatives at Sitting No. 500 of the
20th October, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives