VERŻJONI ELETTRONIKA

I assent.

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

23rd December, 2022

ACT No. XXIV of 2022

AN ACT to provide for the partial transposition of Directive (EU) 2019/1023, to strengthen the legislative framework relating to insolvency and to make provision with respect to matters ancillary thereto or connected therewith.

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 scope.

1. (1) The short title of this Act is the Pre-Insolvency Act, 2022.

(2) The scope of this Act is to provide for a modern framework, relating to early warning signs of insolvency, and restructuring procedures directed at avoiding insolvency, and to partially transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

PART I
PRELIMINARY PROVISIONS

Interpretation.

2. In this Act, and in any regulations made thereunder, unless the context otherwise requires:

"affected parties" means creditors, equity holders, or employees including an employees' representative, whose claims or interests are, or may be, directly affected by a restructuring plan;

"best-interest-of-creditors test" means a test that is satisfied if the Court is reasonably satisfied that no dissenting creditor would be worse off, under the specific restructuring plan, than such a creditor would be if the normal ranking of liquidation priorities were applied, or in the event of the next-best-alternative scenario, if the restructuring plan were not confirmed;

"close-out netting provision" shall have the meaning assigned to it in the Set-Off And Netting on Insolvency Act or regulations issued thereunder; Cap. 459.

"competent authority" means the Insolvency and Receivership Service within the Malta Business Registry established by the Malta Business Registry (Establishment as an Agency) Order; S.L. 595.27.

"Court" means the Civil Court (Commercial Section);

"debtor" means any natural person carrying out a trade, business, craft or profession in or from within Malta, or any legal organisation in terms of the Second Schedule to the Civil Code, including, but not being limited to, any commercial partnership formed and registered under the Companies Act, and expressly excludes: Cap. 16. Cap. 386.

(a) insurance undertakings or reinsurance undertakings as defined in points (1) and (4) of Article 13 of Directive 2009/138/EC;

(b) credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013;

(c) investment firms or collective investment undertakings as defined in points (2) and (7) of Article 4(1) of Regulation (EU) No. 575/2013;

(d) central counter parties as defined in point (1) of Article 2 of Regulation (EU) No. 648/2012;

(e) central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) No. 909/2014;

(f) other financial institutions and entities listed in the first sub-paragraph of Article 1(1) of Directive 2014/59/EU;

(g) public bodies under national law; and

(h) natural persons in respect of debts not incurred in the carrying out of a trade, business, craft or profession;

"equity holder" means a person that has an ownership interest in a debtor or a debtor's business, including a shareholder, provided that equity holders having separate claims against the debtor shall, notwithstanding, remain entitled to be treated separately as creditors of the debtor;

"essential executory contract" means a contract between a debtor and one (1) or more creditors thereof, which, at the time a stay of individual enforcement actions is granted or applied, the parties are under an obligation to perform, and the performance of which shall be necessary for the continuation of the debtor's day-to-day business, including contracts for supplies or services that, if suspended, would lead to the debtor's activities being interrupted, or materially and detrimentally affected, or otherwise becoming substantially diminished, but shall exclude contracts of employment as regulated by the Employment and Industrial Relations Act;

Cap. 452.

"insolvency practitioner" means a person authorised to act as an insolvency practitioner in terms of the Insolvency Practitioners Act, 2022;

Act No. XXV of 2022.

"Minister" means the minister responsible for the registration of commercial partnerships;

"official of the debtor" means:

(a) in relation to a debtor being a company formed and registered under Part V of the Companies Act, or a limited liability company formed in terms of the Commercial Partnerships Ordinance, or any director, or other person, by whatever name they may be called, carrying out substantially the same functions in relation to the direction of the company as those carried out by a director;

Cap. 386.

Cap. 168.

(b) in relation to a debtor being a commercial partnership formed and registered under Part III of the Companies Act or the Commercial Partnerships Ordinance where applicable, any partner in whom the administration and representation of the partnership is vested;

Cap. 386.

Cap. 168.

(c) in relation to a debtor being a legal organisation not mentioned in paragraphs (i) or (ii), shall include any person, under whatever designation they may operate, who, whether alone or with others, is designated by the constitutive documents of the legal organisation or any other instrument, decision, order or arrangement binding on the legal organisation, as being vested with the administration and representation thereof, or through whom it is, or may be, exercised:

Provided that where the debtor is a natural person, any reference to the officials of the debtor shall be construed as referring to the debtor himself;

"restructuring" means the implementation of any measures aimed at preserving or restoring the debtor's economic viability, that may include changing the composition, conditions or structure of a debtor's assets and liabilities or any other part of the debtor's financial structure, sales of assets or parts of the business, the sale of the business as a going concern, as well as any necessary operational changes, or any combination of such elements.

PART II
EARLY WARNING TOOLS AND CRISIS PREVENTION

Power of the Minister to make regulations.

3. Debtors shall be entitled to access early warning tools intended to enable debtors to detect circumstances that could give rise to a likelihood of insolvency and to signal, to the debtor, the need to act without delay, such as the Minister may, on the advice of the competent authority, from time to time prescribe by regulations made under this Act.

Availability of information about early warning tools.

4. The competent authority shall be responsible to develop and maintain relevant and up-to-date information about the availability of early warning tools, as well as about the preventive restructuring procedures available in terms of this Act, which information shall be publicly available in such manner as the competent authority shall deem fit and appropriate for the intended purpose.

Duties of officials of the debtor to monitor early warning signs of insolvency.

5. The officials of the debtor shall, by reference to early warning tools and any other information reasonably available to them, continuously monitor developments that may expose the debtor to a likelihood of insolvency and, where such developments are identified, take appropriate countermeasures with a view to preventing insolvency and ensuring business viability:

Provided that this article shall not prejudice the provisions of any other law intended to regulate the conduct of the officials of the debtor including but not limited to instances where they knew, or

should have known, that there were no reasonable prospects of avoiding the insolvency of the debtor.

Duties of the officials when debtor is exposed to likelihood of insolvency.

6. (1) Where the officials of the debtor become aware that the debtor has become exposed to a likelihood of insolvency, either as a result of:

(a) the information and data made available by virtue of the early warning tools; or

(b) any financial review made by the auditors of the debtor; or

(c) any request by a creditor or creditors, or the representative of the debtor's employees, or a debenture or equity holder to consider its financial position; or

(d) prevailing circumstances that otherwise expose the debtor to the likelihood of insolvency,

the officials shall forthwith, and in any event, not later than thirty (30) days from becoming aware thereof, duly convene a meeting of the officials, for the purpose of reviewing the debtor's position and of determining what steps should be taken to deal with the situation, having regard to the interests of the creditors, equity holders, employees, and other stakeholders of the debtor, and including, but not limited to, consideration as to whether the debtor should consult with an insolvency practitioner and, or,#make a preventive restructuring application in terms of article 9.

(2) Without prejudice to sub-article (1), where the debtor is a sole trader, it shall be sufficient for the trader to document its review and determination in terms of sub-article (1), and keep record of such documentation in the manner set out in article 13 of the Commercial Code.

Cap. 13.

(3) The minutes of a meeting in terms of sub-article (1) shall include a detailed review of the financial matters of the debtor and the determination made, and shall be kept at the debtor's office.

(4) Where the meeting is called following a request by any person listed in paragraph (c) of sub-article (1), the debtor shall by not later than fourteen (14) days from the said meeting communicate in writing to such person, and to the competent authority whether a meeting in terms of sub-article (1) has been held.

Equity holders.

7. No equity holder of the debtor may, notwithstanding anything contained within the constitutive instruments of the debtor or any

instruments ancillary thereto, obstruct, directly or indirectly, the officials of the debtor from taking any action lawfully attributable to them in terms of this Act.

PART III
ENTRY INTO PREVENTIVE RESTRUCTURING PROCEDURE

Eligibility for preventive restructuring.

8. Where a debtor has, or the officials of the debtor have, whether by reference to article 6, or otherwise, reasonably determined that the debtor is exposed to a likelihood of insolvency, having regard to the debtor's business circumstances and its actual, contingent, and prospective assets and liabilities, a preventive restructuring application may be made to the Court requesting it to place the debtor under a preventive restructuring procedure, provided that the debtor:

(a) has reasonable prospects of viability, that is to say the debtor's economic viability is likely to be preserved or restored as a result of being placed under a preventive restructuring procedure;

(b) has not become liable for the payment of a debt that has remained unsatisfied, in whole or in part, after twenty-four (24) weeks from the enforcement of an executive title against the debtor by any of the executive acts specified in article 273 of the Code of Organization and Civil Procedure, or has been otherwise declared by a court to be unable to pay its debts; and Cap. 12.

(c) has not previously been admitted to preventive restructuring procedures in the three (3) years preceding the date of the application.

Types of preventive restructuring procedures.

9. (1) A preventive restructuring application, hereinafter in this article also referred to as the "application", shall be made by means of an application to the Court, to be made or endorsed by an insolvency practitioner.

(2) The insolvency practitioner making or endorsing, as the case may be, the application referred to in sub-article (1) shall, by virtue hereof, subject only to the provisions of article 13, be designated as the insolvency practitioner responsible to assist the debtor in the preventive restructuring procedure, and all the obligations of an insolvency practitioner as applicable in terms of this Act shall apply to the said insolvency practitioner for so long as the insolvency practitioner shall remain so appointed.

(3) The application referred to in sub-article (1) shall comprise a request to the Court to place the debtor into a preventive restructuring procedure under one of the following specific types of preventive

restructuring procedures:

(a) a standard preventive restructuring procedure for the formulation of a restructuring plan in accordance with the requirements of the Second Schedule, and to be submitted for adoption by the affected parties in terms of Part VI;

(b) a pre-formulated preventive restructuring procedure, for the submission of a restructuring plan formulated in accordance with the requirements of the Second Schedule, for adoption by the affected parties in terms of Part VI; or

(c) a pre-approved preventive restructuring procedure, for the confirmation of a restructuring plan formulated in accordance with the requirements of the Second Schedule, that has already attained the necessary approval for adoption by the affected parties in terms of article 41 or 42.

Contents of application.

10. The insolvency practitioner making or endorsing, as the case may be, the application referred to in article 9(1) shall annex to the application, the following documents:

(a) a summary of the debtor's business and the manner in which it is operated, and a statement of the full facts, circumstances and the causes which have led the debtor to becoming exposed to a likelihood of insolvency;

(b) a statement as to previous restructuring procedures entered into by the debtor and the outcome of such procedures;

(c) a reasoned statement on the debtor's prospects of economic viability, having regard also to the debtor's actual, contingent, and prospective assets and liabilities, and including consideration as to how preventive restructuring may reasonably eliminate or substantially reduce the debtor's likelihood of insolvency, and enable the debtor's economic viability to be preserved or restored;

(d) audited financial statements, or management accounts if audited financial statements are not available, for the last two (2) full financial years, or, if the debtor has been trading for a shorter period of time, for such shorter period, and made up to not less than thirty (30) days before the date of the application;

(e) a statement of the debtor's assets and liabilities, made up to a date not earlier than two (2) months from the date of the application, including a value attributed to the listed assets and liabilities in the reasoned opinion of the officials of the debtor;

(f) a list of the creditors of the debtor, containing the names, addresses, and electronic mail addresses thereof, together with an indication of the amount due to each of such creditors and the security, if any, enjoyed by the respective creditors;

(g) a preventive restructuring filing declaration made out in the form set out in the First Schedule;

(h) if the debtor is applying for admission to standard preventive restructuring:

(i) a statement as to how the mechanisms made available to the debtor in terms of standard preventive restructuring procedures may enable the financial and economic situation of the debtor to be improved in the interests of its creditors, equity holders, employees, other stakeholders and, if applicable, the debtor himself as a viable going concern; and

(ii) an identification of any essential executory contracts of the debtor;

(i) if the debtor is applying for admission to pre-formulated preventive restructuring:

(i) a restructuring plan, prepared in accordance with the requirements of the Second Schedule, to be submitted for the approval of the affected parties;

(ii) if available, written confirmation of the contingent approval of the restructuring plan submitted for adoption by the affected parties in terms of sub-paragraph (i), by the approving affected parties; and

(iii) an identification of any essential executory contracts of the debtor;

(j) if the debtor is applying for admission to pre-approved preventive restructuring:

(i) a restructuring plan, prepared in accordance with the requirements of the Second Schedule, that has been adopted by the affected parties, so that it may be submitted to the Court for confirmation in terms of article 41;

(ii) written confirmation of the approval of the restructuring plan submitted for adoption by the affected

parties in terms of sub-paragraph (i), by the approving affected parties; and

(iii) appropriate supporting documentation and statements, where applicable, as may be necessary so as to evidence that the restructuring plan has satisfied the criteria for a cross-class cram-down in terms of article 42.

Hearing of application and issue of preventive restructuring order.

11. (1) On the hearing of an application, which shall take place within not more than thirty (30) days from the filing of the application, the Court may, after examining all the circumstances and the options that are available, either dismiss the application or issue a preventive restructuring order, acceding thereto and placing the debtor under the requested preventive restructuring procedure.

(2) The Court shall immediately decide whether to accede to the application, and accordingly place the debtor under the preventive restructuring procedure and issue a preventive restructuring order, only where it is satisfied:

(a) that the application which has been submitted by the insolvency practitioner is complete and contains all the necessary annexes in terms of article 10;

(b) that the type of preventive restructuring being requested is suitable to the circumstances of the debtor and its creditors; and

(c) that the issuing of the preventive restructuring order would, in the event of an application for a standard or pre-formulated preventive restructuring procedure, be likely to facilitate the confirmation of a restructuring plan that satisfies the requirements of article 43(2) and shall enable the debtor to restructure, with a view to preventing insolvency and ensuring its economic viability, having regard to the interests of the creditors, equity holders, employees, and other stakeholders of the debtor.

Notification of the preventive restructuring order.

12. (1) The insolvency practitioner shall notify any creditors listed in the application by virtue of sub-article 10(f), the competent authority, and the Registrar of Courts of the issue of a preventive restructuring order in terms of this Part, without undue delay, at the expense of the debtor.

(2) The insolvency practitioner shall publish notice of the issue of the order on a website maintained by the competent authority for this purpose, not later than fourteen days (14) from the issue of the order.

Appointment of alternative insolvency practitioner.

13. (1) Any creditor of the debtor may, at any time, make an application to the Court for the appointment of an alternative insolvency practitioner, where the creditor:

(a) has reasonable grounds to believe that the insolvency practitioner is subject to a conflict of interest or is otherwise unable to perform the functions thereof impartially; or

(b) is of the opinion that the insolvency practitioner does not have the specific competence, experience, or resources required to adequately participate in the preventive restructuring procedures.

(2) Where an application is made in terms of sub-article (1), the following documents shall be annexed thereto:

(a) the written confirmation of the proposed alternative insolvency practitioner, that he is available and prepared to participate in the preventive restructuring procedures in terms of the preventive restructuring order;

(b) a preventive restructuring filing declaration made out in the form set out in the First Schedule; and

(c) the written confirmation of not less than fifty per cent (50%) of the debtor's creditors as listed in article 10(f), by reference to both the number of individual creditors and the economic value of their claims, that such creditors approve of the appointment of the alternative insolvency practitioner.

(3) Where the Court, after hearing the insolvency practitioner, is satisfied that the requirements of sub-article (1) subsist, the Court shall accede to the application submitted in terms of this article and shall issue an order immediately terminating the appointment of the insolvency practitioner and confirming the appointment of the alternative insolvency practitioner:

Provided that the Court shall cause a copy of the order to be delivered to the Registrar of Courts and the competent authority, and the latter shall be required to determine what action, if any, may be warranted in the circumstances with respect to the insolvency practitioner.

(4) The filing of an application in terms of this article shall not have any suspensive or negatory effect on the debtor's status as being under preventive restructuring procedures, or on the protections granted to the debtor by virtue of being admitted to preventive restructuring procedures, or on any action taken by the insolvency

practitioner prior to the date of issue of the order referred to in sub-article (3).

(5) Where, within the context of a preventive restructuring procedure, the insolvency practitioner is no longer able to execute the responsibilities imposed in terms of this Act, whether as a result of resignation, interdiction, incapacitation, death, or otherwise, the debtor shall, within forty-eight (48) hours of becoming aware of such fact, by application to the court, request the appointment of an alternative insolvency practitioner:

Provided that this application shall, *mutatis mutandis*, comply with the requirements of sub-articles (2)(a) and (2)(b):

Provided further that the debtor shall be prohibited, without the express prior approval of the Court, from taking any action, the performance of which shall require the involvement of the insolvency practitioner in terms of this Act or as the Court may otherwise stipulate in the preventive restructuring order issued in terms of article 11, until a new insolvency practitioner has been confirmed by the Court.

Effect of the preventive restructuring order.

14. (1) For the period commencing upon the filing of an application and until the earlier of the dismissal of the application, or the termination of the preventive restructuring order:

(a) any obligation incumbent on the debtor to make an application for the opening of proceedings that may result in a judgement declaring the bankruptcy of the debtor, or the dissolution or winding up of the debtor in terms of law, shall be suspended;

(b) any act or proceedings that may result in a judgement declaring the bankruptcy of the debtor, or the dissolution or winding up of the debtor in terms of law, shall be stayed; and

(c) no new act or proceedings that may result in a judgement declaring the bankruptcy of the debtor, or the dissolution or winding up of the debtor in terms of law, shall be taken or commenced against the debtor.

(2) The Court shall suspend, stay or disallow any such act or proceeding *ex officio* upon becoming aware that a preventive restructuring order is in force.

PART IV
GENERAL PROVISIONS ON PREVENTIVE RESTRUCTURING PROCEDURE

Normal activities of the debtor and creditor participation.

15. (1) During the course of a preventive restructuring procedure, the debtor shall not, without the prior approval of the insolvency practitioner:

(a) terminate the employment of any employees of the debtor on the basis of redundancy;

(b) sell or in any way dispose of, or encumber by providing as security, any assets or property of the debtor; or

(c) enter into any long-term commitment:

Provided that for the purposes hereof, a long-term commitment shall mean any contractual commitment for a duration of longer than six (6) months:

Provided further that a contractual commitment that is entered into within the six (6) month period after the termination of a previous contractual commitment, shall be considered as a continuation of the previous contractual commitment if the obligations being contracted are substantially the same.

(2) At any time during the course of a preventive restructuring procedure, a creditor or creditors of the debtor, or an employee representative of the debtor's employees, may request that the insolvency practitioner provide them with information regarding the activities being carried on by the debtor in the course of the preventive restructuring procedure, and the extent to which progress has been made on the negotiation of a restructuring plan.

(3) The insolvency practitioner, upon receipt of a request made in terms of sub-article (2), shall provide the requested information without undue delay to the person or persons having made the request, only if, and to the extent that, the provision of such information is, at the discretion of the insolvency practitioner, reasonable in view of the person's interest in the preventive restructuring procedure, and only if the provision thereof would not be prejudicial to the preventive restructuring procedure.

(4) At any time during the course of a preventive restructuring procedure, the debtor, or the insolvency practitioner with the consent of the debtor, or both, may consult with any interested party, including any creditor or creditors or employee representative of the debtor's employees, with respect to any proposed actions to be taken with the

intention of restoring the debtor's economic viability or negotiating a restructuring plan.

Claims that may form part of a restructuring plan.

16. (1) A restructuring plan formulated in terms of a preventive restructuring procedure may propose to restructure claims, whether secured or unsecured, that:

(a) are lawfully enforceable against the debtor at the time of the submission of the restructuring plan; and

(b) arise from:

(i) contractual arrangements, including debts that are contingent upon the occurrence of future circumstances or that have otherwise not yet become due;

(ii) shares, equity or other ownership rights in the debtor, including sums due by way of dividends, profits or otherwise;

(iii) taxes due by the debtor in Malta, excluding taxes levied on consumption such as value added taxes, and excluding taxes due which have been withheld or otherwise collected by the debtor on behalf of any authority or government agency; or

(iv) any other claims that the Court may, upon the application of the interested creditor, order to be included within the restructuring plan:

Provided that the restructuring plan may not, under any circumstances, purport to include, or affect the ranking of, claims arising in connection with:

(a) wages due by the debtor and constituting a privileged claim over the assets of the debtor in terms of article 20 of the Employment and Industrial Relations Act;

Cap. 452.

(b) civil debts due by the debtor exclusively by way of damages in tort; and

(c) any fine (*ammenda* or *multa*) due by the debtor in terms of Maltese law.

(2) Where the restructuring plan includes measures leading to changes in work organisation, employment conditions, or contractual relations with workers, the application of such measures shall be without prejudice to any requirement of the relevant party to discuss,

or notify the measures with, or to, the respective workers, or representatives thereof, as the case may be, as may arise in terms of law or in terms of any collective agreement.

(3) Any agreement extraneous to the restructuring plan, howsoever formulated, that purports to exclude or include a claim within the scope of a restructuring plan in a manner contrary to the provisions of this article, shall be null and void.

(4) Any contractual provision within an executory contract concluded by the debtor, that purports to allow a party to the contract to exercise, to the detriment of the debtor, any right of termination, or any right to accelerate, modify, withhold or suspend the performance of its obligations in favour of the debtor, or any right to repossess any property leased, sold or granted to the debtor, solely by virtue of the debtor's commencement of the preventive restructuring procedure or any procedure in the course thereof, shall be null and void.

Selection of affected parties.

17. (1) The debtor may choose to exclude claims from the restructuring plan where it is evident that:

(a) the claims excluded from the restructuring plan would be reasonably expected to be settled in full, should the restructuring plan not be confirmed; or

(b) the exclusion is justified in the context of the economic realities of the debtor, particularly where the included debt is secured against assets of the debtor.

(2) The criteria used to justify the exclusion of any claims in terms of this article must be explained in sufficient detail within the restructuring plan and the Court must be satisfied that the proposed exclusion is compatible with the object and purpose of this article and would not result in unfair prejudice to any excluded creditor.

(3) All creditors in respect of claims that have not been excluded from the restructuring plan in terms of this article shall be deemed to be affected parties for the purposes of the restructuring plan and otherwise for the purposes of this Act.

Treatment of affected parties in classes.

18. (1) All affected parties shall be organised into classes, as the insolvency practitioner may deem necessary to distinguish between the varying economic interests thereof, and which classes shall, at minimum, distinguish between:

(a) holders of secured claims;

(b) holders of unsecured claims;

(c) holders of claims for the payment of wages not constituting a privileged claim over the assets of the debtor in terms of article 20 of the Employment and Industrial Relations Act;

Cap. 452.

(d) holders of subordinated claims, meaning claims that, in the event of the liquidation of the debtor's assets, would remain unpaid until the full settlement of all non-subordinated debts of the debtor; and

(e) holders of shares, equity or other ownership rights in the debtor.

(2) The insolvency practitioner shall, when formulating classes of affected parties, have particular regard to the protection of vulnerable creditors, such as workers and small suppliers, and shall also organise a vulnerable creditors' class, or classes, if the insolvency practitioner considers this to be necessary for the protection of the vulnerable creditors.

(3) The affected parties shall be further divided into additional classes, as may be necessary in order to distinguish between affected parties within the same class but having claims of different legal priority in the event of the liquidation of the debtor's assets.

(4) In all cases, all classes of affected parties should be clearly distinguished from one another, and the criteria used to distinguish between affected parties must be clearly specified within the restructuring plan.

Equal treatment of affected parties.

19. (1) All affected parties comprising part of a specific class shall be treated equally for the purposes of the restructuring of their claims within the scope of the restructuring plan, except insofar as any detrimental treatment is expressly agreed to by the affected parties to whom such differentiation shall apply.

(2) Where an affected party agrees to be treated differently from other affected parties within the same class in terms of the preceding sub-article, the restructuring plan shall be accompanied by an express statement, in writing, by each of the affected parties to the detriment of whom the differentiation in treatment shall apply.

(3) Any agreement extraneous to the restructuring plan, howsoever formulated, that grants, or purports to grant, an unfair advantage to an affected party, whether pursuant to the terms of a restructuring plan or otherwise in connection with the preventive restructuring procedures, shall be null and void.

Protection of new and interim financing.

20. (1) Any interim financing acquired by the debtor in terms of article 31, or any new financing forming part of a restructuring plan that is duly confirmed in terms of this Act, shall, in the case of any subsequent insolvency proceedings in respect of the debtor:

(a) not be declared void, voidable, or unenforceable;

(b) not constitute a basis for any claim or allegation of wrongful trading or fraudulent preference, in terms of the Companies Act, that may be brought against the debtor; and Cap. 386.

(c) the grantors of such new or interim financing shall not, notwithstanding anything to the contrary contained in any other law, incur liability on the grounds that such financing is detrimental to the creditors of the debtor:

Provided that the provisions of this sub-article shall not, in any way, limit the entitlement of a creditor to bring an action on the basis of article 1144 of the Civil Code. Cap. 16.

(2) Any agreement, howsoever formulated, that purports to exclude or limit the provisions of this article, shall be null and void.

Protection of restructuring related transactions.

21. (1) Any transactions reasonably entered into by the debtor, as the debtor may prove to be directly necessary for the negotiation of a restructuring plan in the course of preventive restructuring procedures, or for the implementation of a restructuring plan that has been confirmed in terms of this Act, including, without limitation, fees and costs incurred for:

(a) the negotiation, adoption, or confirmation of a restructuring plan;

(b) the provision of professional advice closely connected with the restructuring;

(c) the payment of workers' wages for work already carried out; and

(d) any other payments or disbursements made in the ordinary course of the debtor's business,

shall, in the case of any subsequent insolvency proceedings in respect of the debtor, not be declared void, voidable, or unenforceable, or constitute a basis for any claim or allegation of wrongful trading, or fraudulent preference in terms of the Companies Act, that may be brought against the debtor: Cap. 386.

Provided that the provisions of this sub-article shall not, in any way, limit the entitlement of a creditor to bring an action on the basis of article 1144 of the Civil Code.

Cap. 16.

(2) Without prejudice to the protections stipulated in sub-article (1)(a), the remuneration of an insolvency practitioner, as well as any expenses incurred or disbursements made by the insolvency practitioner in the exercise of its functions, shall represent a privileged claim over the assets of the debtor, which, notwithstanding anything contained in any other law, shall be paid with priority to all other secured or unsecured debts of the debtor.

Act No. XXV of 2022.

(3) The Minister may, in consultation with the competent authority mentioned in the Insolvency Practitioners Act, 2022, make regulations for the payment of expenses and remuneration of the insolvency practitioner.

(4) The Court shall have the power to order that the payment of the expenses and remuneration of the insolvency practitioner are paid in terms of regulations made in terms of sub-article (3).

(5) Any agreement, howsoever formulated, that purports to exclude or limit the provisions of this article, shall be null and void.

Holding of meetings.

22. (1) Notwithstanding anything contained within the constitutive instruments of the debtor or any instruments ancillary thereto, any meeting convened or held in terms of this Act may be validly held remotely in accordance with this article:

Provided that where a meeting is not held remotely, any person entitled to be present at the meeting may still attend such meeting remotely, and all of the requirements applicable to the holding of a remote meeting in terms of this article shall apply in the interest of those persons attending remotely.

(2) It shall be the responsibility of the insolvency practitioner to ensure that sufficient technological means are available, at the place of the meeting, to enable any persons attending the meeting remotely to effectively follow and participate in the discussion.

(3) Any person entitled to be present at a meeting shall, notwithstanding any provision or agreement to the contrary, be entitled to appoint another person as their proxy to attend the meeting and, if necessary, take any decision relevant to their interests, and vote for and on their behalf.

(4) The appointment of a proxy shall be in writing and may be recorded electronically, and proof of such appointment shall be

provided to the insolvency practitioner prior to the meeting.

(5) Every notice calling a meeting in terms of this Act shall be in writing and may be transmitted by means of electronic mail, by not later than seven (7) days from the meeting and shall include, with reasonable prominence:

(a) a statement that persons may attend the meeting remotely;

(b) a statement that persons shall be entitled to appoint a proxy that, for the avoidance of doubt, may also attend the meeting remotely;

(c) details regarding the means to be used to attend the meeting remotely; and

(d) the procedure regulating how any person entitled to attend may participate in the discussion.

Appointment of a mediator.

23. (1) At any point during the course of a preventive restructuring procedure, the insolvency practitioner may, with the sanction of the debtor and a majority in value of all the affected parties, seek the appointment of a mediator in terms of the Mediation Act, to facilitate negotiations between the debtor and the affected parties towards the formulation of a restructuring plan.

Cap. 474.

Cap. 474.

(2) Notwithstanding anything contained in the Mediation Act, the appointment of a mediator in terms of this article shall not affect the application of the other provisions of this Act and in the event of any inconsistency between this Act and the Mediation Act, the provisions of this Act shall prevail.

Connection of proceedings.

24. If two or more applications for preventive restructuring are brought before the Court, that are connected in respect of the subject-matter thereof, or if the decision on one might affect the decision on the other, the Court may order that the several proceedings be heard and deliberated upon simultaneously.

PART V
PREVENTIVE RESTRUCTURING PROCEDURE

TITLE I: STANDARD PREVENTIVE RESTRUCTURING PROCEDURE

Stay of individual enforcement actions.

25. (1) Upon the filing of an application requesting that the Court place the debtor under standard preventive restructuring procedure and unless it is dismissed, and, in the event that the Court

accedes to the request and issues an order to place the debtor under standard preventive restructuring procedure, for a period of four (4) months following the date of the application:

(a) the execution of claims of a monetary nature against the debtor, with the exclusion only of workers' claims, and any interest that may otherwise accrue thereon, shall be stayed;

(b) in respect of essential executory contracts entered into prior to the order to place the debtor under preventive restructuring procedure, no party may exercise, to the detriment of the debtor, any right of termination, or any right to accelerate, modify, withhold or suspend the performance of its obligations in favour of the debtor, or any right to repossess any property leased, sold or granted to the debtor, solely by virtue of the fact that they were not paid by the debtor, or by virtue of the debtor's entry into preventive restructuring procedure;

Cap. 12.

(c) no precautionary or executive act or warrant mentioned in the Code of Organization and Civil Procedure shall be made or continued against the debtor or any property of the debtor, including any warrant in terms of article 312 of the Code of Organization and Civil Procedure;

(d) no arbitration proceeding shall be made or continued against the debtor or any property of the debtor; and

(e) notwithstanding anything contained in this sub-article, no judicial proceedings shall be commenced or continued against the debtor or its property, and any relevant court shall refuse any new judicial action against the debtor or shall *ex officio* order that ongoing judicial proceedings against the debtor are stayed.

(2) The Court shall suspend, stay or disallow any act or proceeding in terms of paragraph (d) or (e) of sub-article (1), or the execution of claims in terms of paragraph (a) of sub-article (1), as the case may be, *ex officio* upon becoming aware that a preventive restructuring application has been made and has not been dismissed, or a preventive restructuring order is in force.

(3) The Court may, pursuant to an application received in terms of sub-article (4), at any time issue an order to lift all or any of the protections granted to the debtor in terms of sub-article (1), in whole or in part, and subject to such terms as the Court deems fit to impose.

(4) An application in terms of sub-article (2) may be made to the Court by:

(a) the debtor, following, where applicable, a decision of the officials of the debtor;

(b) the insolvency practitioner; or

(c) any creditor or creditors, provided that it is proven to the satisfaction of the Court:

(i) that the protections granted no longer fulfil the objective of supporting negotiations on a restructuring plan;

(ii) that the protections granted shall cause substantial harm or financial distress to the creditor;

(iii) that the protections granted shall cause the creditor or class of creditors to be unfairly prejudiced in respect to any other creditor or class of creditors; or

(iv) that, where the creditor is asking the Court to lift the protection granted in terms of sub-article (1)(b), that a contract entered into between the debtor and the creditor is not an essential executory contract.

Exclusions from stay of individual enforcement actions.

(5) The provisions of sub-article (1), without prejudice to the generality thereof, shall not apply insofar as these may be inconsistent with, or insofar as these may be construed as limiting or restricting:

(a) any action *in rem* against a ship or sea vessel;

(b) any action *in rem* against an aircraft or aircraft engine;

(c) any proceedings that may be instituted by the holder of a registered mortgage or a privileged creditor over a ship or sea vessel, or any other actions or proceedings to which a ship or sea vessel may be subject in terms of the Merchant Shipping Act; Cap. 234.

(d) any proceedings that may be instituted by the holder of a registered mortgage or a privileged creditor over an aircraft or aircraft engine, or any other actions or proceedings to which an aircraft or aircraft engine may be subject in terms of the Aircraft Registration Act; Cap. 503.

(e) any warrant of arrest, whether *in personam* or *in rem*, of a sea-going vessel;

(f) any warrant of arrest, whether *in personam* or *in rem*, of an aircraft or aircraft engine;

(g) any warrant of seizure of a commercial going concern in terms of article 848A of the Code of Organization and Civil Procedure; Cap. 12.

(h) any action to be brought in respect of a right stated in any of the foregoing warrants, in terms of article 843 of the Code of Organization and Civil Procedure; and Cap. 12.

(i) any rights of a securitisation creditor as defined in the Securitisation Act. Cap. 484.

Ranking of claims and formation of classes.

26. (1) The insolvency practitioner shall, as soon as possible following appointment, examine the assets, liabilities, and affairs of the debtor and rank all claims against the debtor, present or future, certain or contingent, ascertained or which may be due in damages, by reference to the priority and ranking of their debts in accordance with the law being in force at the time.

(2) Upon preparing a ranking of the claims against the debtor in terms of sub-article (1), the insolvency practitioner shall convene a meeting of the officials of the debtor, for the purpose of:

(a) laying before them for their information, review and confirmation, a comprehensive ranking of the claims against the debtor;

(b) discussing which claims are to be selected for inclusion within the scope of a restructuring plan, having regard to the provisions of article 17; and

(c) organising the said creditors, into classes formed, having regard to the provisions of article 18.

Review of ranking of claims and formation of classes by creditors.

27. (1) Within thirty (30) days#from his appointment, the insolvency practitioner shall convene a meeting of the creditors of the debtor, for the purpose of:

(a) laying before them for their information and review, a comprehensive ranking of the claims against the debtor;

(b) laying before them for their information and review, a list of the affected parties and the classes into which the affected parties have been organised; and

(c) allowing the creditors to request further information as to the financial situation of the debtor and the expectations of the debtor with respect to the outcome of preventive restructuring.

(2) No less than seven (7) days' notice shall be given of the holding of the meeting of the creditors of the debtor, and the insolvency practitioner may also send a copy of the notice convening the meeting to any officials of the debtor or other persons as may be relevant to the content of the meeting.

(3) The insolvency practitioner shall publish notice of the meeting of the creditors in two (2) daily newspapers circulating wholly or mainly in Malta, one published in Maltese and the other in English, at the expense of the debtor, not later than seven (7) days before the holding of the meeting:

Provided that the notice to be published in a newspaper may, subject to the alignment of the applicable time-periods, be comprised within the notice to be published in terms of article 12(2).

(4) The insolvency practitioner shall undertake to ensure that any notice convening the meeting of creditors in terms of this article shall also be given to known creditors residing or based abroad.

Objection to ranking of claims and formation of classes.

28. (1) Any affected party may object to the proposed ranking of claims and the formation of classes, in writing, to the insolvency practitioner within twenty (20) days of the meeting held in terms of article 27:

Provided that a failure to object to the proposed ranking of claims shall not constitute the acceptance, by the affected party, of the ranking of claims for purposes external to the preventive restructuring proceedings, including but not limited to subsequent insolvency proceedings.

(2) The insolvency practitioner shall investigate any objections received to the proposed ranking of claims and the formation of classes, and shall revise the ranking of claims and the formation of classes as it may deem necessary in discussion with the officials of the debtor, and shall notify any revisions to the affected parties.

(3) The insolvency practitioner's ranking of claims and the formation of classes in terms of sub-article (2) may only be challenged before the Court during the procedure for the confirmation of a restructuring plan by the Court, as contemplated in article 43(1).

Power to re-convene creditors meeting.

29. The insolvency practitioner may, if he deems appropriate, having regard to any objections received and to the economic impact of any required revisions on the affected parties, convene another meeting of the creditors of the debtor in terms of, and in accordance with the requirements of article 27.

Termination or re-negotiation of contracts.

30. (1) The officials of the debtor shall, in consultation with the insolvency practitioner, review any executory contracts that have been entered into by and between the debtor and any counterparty, and the performance of which has not been concluded, and shall evaluate the termination or re-negotiation of any such executory contracts as shall be conducive to the economic viability of the debtor:

Provided that, where the debtor is a natural person, only executory contracts entered into for the furtherance of the debtor's trade, business, craft or profession may be considered for the purposes of this article:

Provided further that the re-negotiation and termination of contracts of employment shall, notwithstanding anything contained in this Act, continue to be regulated by the rules set out within the Cap. 452. Employment and Industrial Relations Act or other pertinent legislation.

(2) Where it is identified that the re-negotiation or termination of an executory contract would benefit the debtor's prospects of economic viability, the insolvency practitioner may invite the counterparty or counterparties to engage in *bona fide* negotiations with the debtor, for the purpose of reaching a mutual agreement as to the re-negotiation or termination of the executory contract.

(3) If the parties are unable to come to a mutual agreement as to the re-negotiation or termination of the respective executory contract, the debtor may propose to unilaterally terminate the executory contract as part of the restructuring plan submitted for confirmation in terms of Part VI.

(4) The unilateral termination of an executory contract shall render the debtor liable only to compensate the counterparty for losses incurred, if any, as a result of the unilateral termination, or as may otherwise be determined in accordance with regulations to be made by the Minister, and a claim for such losses may be immediately included within the restructuring plan:

Provided that the insolvency practitioner shall notify any consequential revisions to the ranking of claims or the formation of classes to the officials of the debtor and to the affected parties, in writing and without undue delay.

(5) Upon the confirmation of the restructuring plan, any unilateral termination of any executory contract as contemplated therein, shall, except where a longer period is stipulated within the restructuring plan, take effect automatically upon the earlier of:

(a) the lapse of three (3) months from the date of the confirmation of the restructuring plan, notwithstanding any appeal that may be filed against the confirmation of the restructuring plan; or

(b) where the executory contract provides for a notice period shorter than three (3) months, the said shorter period.

(6) The provisions of this article shall not allow a debtor to propose the unilateral termination of an executory contract where the termination would result in the non-enforcement of any close-out netting provision or any other provision in any contract providing for or relating to the set-off or netting of sums due from each party to the other in respect of mutual credits, mutual debts or other mutual dealings.

Acquisition of interim financing.

31. (1) The officials of the debtor shall, in consultation with the insolvency practitioner, review whether the procurement of interim financing shall be necessary in order to preserve the economic viability of the debtor until the confirmation of a restructuring plan.

(2) If interim financing is deemed to be necessary, the officials of the debtor may solicit proposals from third parties willing to provide the debtor with interim financing, and shall forward any proposals they are desirous of accepting to the insolvency practitioner, including any terms pursuant to which the interim financing is proposed.

(3) Where the insolvency practitioner is satisfied that the procurement of interim financing is necessary in order to preserve the economic viability of the debtor until the confirmation of a restructuring plan and that the acceptance of the proposed terms would not infringe any provisions of this Act, the insolvency practitioner shall:

(a) if the proposed interim financing is unsecured, approve the acquisition of the interim financing; or

(b) if the proposed interim financing is secured, convene a meeting of the affected parties, or classes thereof, that would be adversely impacted by the acquisition of the proposed secured interim financing, for the purpose of laying before them, and holding a vote on, the proposed terms for the acquisition of secured interim financing.

(4) Where a meeting is convened in terms of sub-article (3)(b), no less than seven (7) days' notice shall be given for the holding of the meeting, and the insolvency practitioner shall also send a copy of the notice convening the meeting to any officials of the debtor.

(5) The acquisition of secured interim financing shall be approved subject to the agreement of not less than fifty per cent (50%) of the affected parties in each class, by reference to the value of the claims represented thereby.

(6) Any interim financing approved in terms of this article shall be acquired by the debtor and the claim for repayment thereof may be immediately included within the restructuring plan, provided that the repayment of interim financing shall, in all cases, not be subject to any reduction within the scope of a restructuring plan.

(7) The insolvency practitioner shall notify any revisions that arise consequent to this article, to the ranking of claims or the formation of classes to the officials of the debtor and to the affected parties, in writing and without undue delay.

Formulation of the restructuring plan.

32. (1) The officials of the debtor shall, in consultation with the insolvency practitioner, formulate a restructuring plan prepared in accordance with the requirements of the Second Schedule, to be submitted for adoption by the affected parties:

Provided that any creditor of the debtor may also prepare a restructuring plan, or proposals for inclusion within a restructuring plan, and submit these to the insolvency practitioner for the consideration of the debtor.

(2) As may be conducive to the formulation of a restructuring plan, the insolvency practitioner may, at the request of the debtor, invite an affected party, or class of affected parties, to engage in *bona fide* discussions with the debtor in connection with any restructuring proposals that the insolvency practitioner, upon consultation with the debtor, may consider to be appropriate for inclusion within the restructuring plan, for the purpose of hearing the views of the affected parties.

(3) A restructuring plan prepared in terms of this article may, subject to the agreement of the debtor, be submitted by the insolvency practitioner for adoption by the affected parties in terms of Part VI of this Act, provided that it is reasonably apparent that:

(a) affected parties with a sufficient commonality of interest in the same class are treated equally, and in a manner proportionate to their claim; and

(b) any new financing proposed in the restructuring plan is necessary to implement the restructuring plan and does not unfairly prejudice the interests of the affected parties.

Duration of standard preventive restructuring.

33. (1) The preventive restructuring order placing the debtor under standard preventive restructuring shall automatically terminate upon the lapse of four (4) months from the date of the application filed in terms of article 9, provided that the duration of standard preventive restructuring may be extended in terms of this article until a maximum of twelve (12) months from the date of the application.

(2) The insolvency practitioner may by no later than fourteen (14) days before the termination of the previous order, file an application to the Court to extend the order for a further period of four (4) months following the termination thereof, subject to the agreement of the debtor:

Provided that the application may also request that the stay of individual enforcement actions in terms of article 25 be extended, in whole or in part, for a further period of four (4) months following the termination of the order, or until the termination of the preventive restructuring order in terms of article 34, whichever is earlier.

(3) The application shall, as far as possible, give the full facts, circumstances and reasons giving rise to the requirement for an extension and, where applicable, the requirement for an extended stay of individual enforcement actions, as well as the reasons for which an extension would be reasonably justified in the context of the financial and economic situation of the debtor and the interests of his stakeholders.

(4) The Court shall, prior to the date of the automatic termination of the order, issue a decision on whether to extend the preventive restructuring procedure and, where applicable, whether to also extend the stay of individual enforcement actions:

Provided that the Court shall only renew the stay of individual enforcement actions if it is satisfied that the renewal would be reasonable, having regard to the debtor's prospects of economic viability, the interests of the affected parties, and the likelihood that a renewal would facilitate the successful negotiation and confirmation of a restructuring plan, and would generally not be unduly prejudicial to the interests of the affected creditors.

(5) The insolvency practitioner shall notify the extension of preventive restructuring procedure to the affected parties, the competent authority and the Registrar of Courts, at the expense of the debtor, without undue delay.

A 640

Pre-emptive termination of standard preventive restructuring.

34. (1) If, at any time during which a standard preventive restructuring order is in force, it results to the insolvency practitioner:

(a) that, after consulting with the officials of the debtor, the affairs of the debtor have improved to the extent that the debtor is no longer exposed to a likelihood of insolvency;

(b) that, after consulting with the officials of the debtor, the affairs of the debtor have deteriorated to the extent that the debtor does not have reasonable prospects of economic viability; or

(c) that, after consulting with the officials of the debtor and any creditors of the debtor as the insolvency practitioner may deem reasonably appropriate, the insolvency practitioner has established that a significant proportion of the debtor's creditors do not support the continuation of negotiations and shall prevent the debtor from obtaining the approvals necessary for the confirmation of a restructuring plan,

the insolvency practitioner shall forthwith make a request by application to the Court for the termination of the preventive restructuring procedure, containing detailed and comprehensive reasons therefor.

(2) At any time during which a standard preventive restructuring order is in force, the officials of the debtor, if they are satisfied that the affairs of the debtor have improved to the extent that the debtor is no longer exposed to a likelihood of insolvency or convinced that the affairs of the debtor have deteriorated to the extent that the debtor does not have reasonable prospects of economic viability, may submit a request by application to the Court confirming that they are so satisfied or convinced, and requesting that the Court issue an order for the termination of the preventive restructuring procedures, provided that the Court shall not without just cause proceed to make an order acceding to or declining the application without having first heard the insolvency practitioner, insofar as reasonably possible.

(3) At any time during which a standard preventive restructuring order is in force, any creditor or creditors of the debtor, if they believe that there would be no purpose to the continuation of standard preventive restructuring procedures on the basis:

(a) that the debtor is no longer exposed to a likelihood of insolvency or no longer has reasonable prospects of economic viability; or

(b) that a significant proportion of the debtor's creditors

do not support the continuation of negotiations and shall not provide the approvals necessary for the confirmation of a restructuring plan,

may, after informing the insolvency practitioner, submit an application to the Court requesting it to issue an order for the termination of the preventive restructuring procedures, provided that the Court shall not proceed to make an order acceding to or declining the application without having first heard the insolvency practitioner, insofar as reasonably possible.

(4) In the event that the Court accedes to an application for the pre-emptive termination of a standard preventive restructuring order in terms of this article, it shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.

TITLE II: PRE-FORMULATED PREVENTIVE RESTRUCTURING PROCEDURE

Common applicability of provisions.

35. The provisions of articles 25, 30 and article 34, as applicable to a standard preventive restructuring procedure shall, *mutatis mutandis*, apply to a pre-formulated preventive restructuring procedure.

Approval of terms of pre-formulated restructuring plan.

36. (1) As may be conducive to the approval of the terms of a pre-formulated restructuring plan, the insolvency practitioner may, at the request of the debtor, invite an affected party, or class of affected parties, to engage in *bona fide* discussions with the debtor in connection with the pre-formulated restructuring proposal, for the purpose of hearing the views of the affected parties.

(2) A pre-formulated restructuring plan may, subject to the agreement of the debtor, be submitted by the insolvency practitioner for adoption by the affected parties in terms of Part VI of this Act, provided that it is reasonably apparent that:

(a) affected parties with a sufficient commonality of interest in the same class are treated equally, and in a manner proportionate to their claim; and

(b) any new financing proposed in the restructuring plan is necessary to implement the restructuring plan and does not unfairly prejudice the interests of the affected parties.

Duration of pre-formulated preventive restructuring.

37. The preventive restructuring order placing the debtor under pre-formulated preventive restructuring shall automatically terminate upon the lapse of four (4) months from the date of the application filed in terms of article 9.

Conversion of pre-formulated preventive restructuring procedure into standard preventive restructuring procedure.

38. (1) The insolvency practitioner may, at any time during which a pre-formulated preventive restructuring order is in force, file an application to the Court to convert the pre-formulated preventive restructuring procedure into standard preventive restructuring, if it results to the insolvency practitioner that:

(a) after consulting with the officials of the debtor, the economic viability of the debtor is more likely to be preserved or restored if it is placed under standard preventive restructuring procedure; or

(b) after consulting with the creditors of the debtor, a significant proportion are not in favour of the pre-formulated restructuring plan, such as is likely to prevent the debtor from obtaining the approvals necessary for the confirmation thereof, and the insolvency practitioner is of the view that standard preventive restructuring is more likely to result in the successful negotiation and confirmation of a restructuring plan.

(2) The insolvency practitioner shall annex to an application made in terms of sub-article (1):

(a) any information or documentation previously submitted, in terms of articles 10(a) to 10(g), and article 10(i)(iii), that, following the initial submission thereof, requires update or revision; and

(b) a statement in terms of article 10(h)(i), which should also include details as to how the conversion of the pre-formulated preventive restructuring procedure into standard preventive restructuring procedure shall improve the debtor's likelihood of preserving or restoring its economic viability.

(3) In the event that the Court accedes to the request and issues an order to convert the pre-formulated preventive restructuring procedure into a standard preventive restructuring procedure, for the purpose of determining the maximum duration of any stay of individual enforcement actions in terms of article 25(1), and the duration of the order placing the debtor under standard preventive restructuring in terms of article 33(1), the period shall be deemed to have started to run on the day on which the aforementioned stay and order commenced during the pre-formulated preventive restructuring procedure.

PART VI
CONFIRMATION OF RESTRUCTURING PLAN

Affected parties to vote on adoption of restructuring plan.

39. (1) A restructuring plan formulated in terms of this Act, other than a pre-approved restructuring plan that has already attained the written approval of the affected parties as necessary for the purposes of confirmation in terms of article 41 or 42, shall be submitted for adoption at a meeting of the affected parties to be convened by the insolvency practitioner.

(2) Not less than seven (7) days notice shall be given to the affected parties of the holding of the meeting, and the insolvency practitioner shall also send a copy of the notice to any officials of the debtor:

Provided that, in the event of a pre-approved restructuring proceeding, it shall be sufficient for the insolvency practitioner to provide notice to the affected parties that a pre-approved plan has attained the written approval of the affected parties as necessary for the purposes of approval in terms of articles 41 or 42, which notice shall be given not less than seven (7) days prior to the filing of an application to the Court for the confirmation of the restructuring plan in terms of article 41(2) or 42(2), as the case may be, such that any dissenting creditor may, if desirous, communicate the grounds pursuant to which they are in opposition to the adoption of the restructuring plan.

(3) The notice shall include a copy of the restructuring plan to be submitted for adoption at the meeting, for the consideration of the affected parties, or, in the event of pre-approved restructuring proceedings, a copy of the pre-approved restructuring plan.

Procedure of meeting.

40. (1) At the meeting for the adoption of the restructuring plan, the affected parties shall have the opportunity to discuss the restructuring plan and request clarification on the contents thereof from the insolvency practitioner.

(2) The affected parties shall then vote on the adoption of the restructuring plan, by show of hands, and the insolvency practitioner shall record the result of the votes taken.

(3) Any affected party may delay the submission of their vote, for a maximum period of seven (7) days to be reckoned from the day following the meeting, in which case their vote shall be submitted, in writing, to the insolvency practitioner before the expiration of the said seven (7) day period.

(4) The written communication of a vote transmitted by the affected party to the insolvency practitioner in terms of sub-article (3),

must, on pain of nullity, expressly and unequivocally state whether the affected party wishes to adopt or reject the restructuring plan, and such vote may be validly submitted to the insolvency practitioner electronically.

(5) Notwithstanding any agreement to the contrary, any affected party that does not vote in the manner aforesaid shall not be considered for the purpose of assessing whether the restructuring plan has received the approval necessary for adoption by the affected parties in terms of article 41 or for the restructuring plan to be crammed down in terms of article 42.

Adoption of restructuring plan.

41. (1) The restructuring plan shall be adopted by the affected parties if it is approved by not less than two-thirds (2/3) of the affected parties in each class, by reference to the value of the claims represented thereby.

(2) Where a restructuring plan is adopted in terms of this article, the insolvency practitioner shall, without delay, file an application to the Court for the confirmation of the restructuring plan so that it may be made effective and binding on all affected parties for all purposes of law, to which the insolvency practitioner shall annex a copy of the adopted restructuring plan and proof of the adoption thereof by the affected parties, as well as the grounds, where these are expressly stated, pursuant to which any dissenting creditors have voted against the adoption of the restructuring plan.

Cross-class cram-down.

42. (1) If the restructuring plan is not adopted by the affected parties in terms of the thresholds prescribed in article 41, the restructuring plan shall notwithstanding be deemed to be adopted if, in the view of the insolvency practitioner, the restructuring plan satisfies at least the following conditions:

(a) the restructuring plan satisfies the best-interest-of-creditors test;

(b) the restructuring plan will not result in any class of affected parties receiving economic value in excess of the full amount of its claims;

(c) the restructuring plan ensures that any dissenting class of affected parties is treated at least as favourably as any other class of affected parties whose claims would, if the normal ranking of liquidation priorities were to be applied, rank *pari passu* with the claims of the dissenting class, and more favourably than any other class of affected parties whose claims would, if the normal ranking of liquidation priorities were to be applied, rank below the claims of the dissenting class; and

(d) the restructuring plan has been approved for adoption by at least one (1) class of affected parties who would, if the normal ranking of liquidation priorities were to be applied, receive payment of their claims in whole or in part.

(2) Where a restructuring plan is adopted in terms of this article, the insolvency practitioner shall, subject to the agreement of the debtor and without undue delay, make an application to the Court for the confirmation of the restructuring plan so that it may be made effective and binding on all affected parties for all purposes of law, to which the insolvency practitioner shall annex a copy of the adopted restructuring plan and appropriate supporting documentation and statements as may be necessary so as to evidence that the restructuring plan has satisfied the criteria for adoption in terms of sub-article (1), as well as an identification of the dissenting creditors and the grounds, where these are expressly stated, pursuant to which any such dissenting creditors have voted against the adoption of the restructuring plan.

Confirmation of restructuring plan by the Court.

43. (1) The Court shall, within thirty (30) days from the date of receipt thereof, decide on whether to approve or reject the restructuring plan:

Provided that, insofar as possible, the Court shall, before so doing, hear from the officials of the debtor and of any affected parties, as it may deem appropriate, by serving them with a notice of the proceedings.

(2) The Court shall only approve and confirm a restructuring plan if it is satisfied that:

(a) the restructuring plan has reasonable prospects of ensuring that the debtor's economic viability is preserved or restored;

(b) the restructuring plan has been approved for adoption by the affected parties in accordance with the terms of this Act;

(c) the formation of voting classes, and the attribution of voting rights thereto, has been performed in accordance with the terms of this Act;

(d) the restructuring plan ensures that affected parties with a sufficient commonality of interest in the same class are treated equally, and in a manner proportionate to their claim;

(e) any new financing proposed in the restructuring plan is necessary to implement the restructuring plan and does not unfairly prejudice the interests of the affected parties; and

(f) notification of the restructuring plan has been given to all affected parties in terms of article 39.

(3) Following receipt of an application for the confirmation of a restructuring plan, the Court may request any explanations or clarifications as it may consider appropriate for the formulation of its decision, which shall be provided to it, either verbally or in writing, as the Court may direct.

(4) If a dissenting creditor has opposed the approval of the restructuring plan, on the grounds of, either:

(a) the failure of the restructuring plan to satisfy the best-interest-of-creditors test; or

(b) a breach of the conditions for a cross-class cram-down in terms of article 42(1),

the Court shall appoint an expert, who shall be an insolvency practitioner, to, within thirty (30) days from the date of his appointment, carry out, or cause the carrying out, of such valuations and other procedures as may be necessary or required so as to enable the expert to submit to the Court his report in writing regarding the subsistence, or otherwise, of the relevant grounds for opposition, and motivating the basis on which his conclusions are founded:

Provided that the insolvency practitioner who is so appointed may, with the approval of the Court, appoint any such experts as may be deemed necessary to assist in carrying out valuations and other procedures, and any costs incurred for this process, shall, if the opposition is unfounded, be borne by the dissenting creditor, or, if the grounds for opposition are found to subsist, by the debtor.

(5) Without prejudice to sub-article (1), where a restructuring plan is opposed on the grounds referred to in sub-article (4)(a) or (4)(b), the Court shall, within thirty (30) days from the date of receipt of a final report from the expert appointed in terms of sub-article (4), make a determination regarding the subsistence or otherwise of the said grounds, and the Court shall reject the restructuring plan if either of the said grounds are determined to subsist.

(6) Upon the Court's approval of the restructuring plan, it shall become effective and binding on all affected parties for all purposes of law.

Renegotiation of rejected restructuring plan.

44. (1) Where the Court rejects a restructuring plan, it may propose amendments to the restructuring plan to the officials of the debtor and the affected parties, indicating the Court's readiness to

confirm the plan should those amendments be approved by a separate vote of the affected parties held in accordance with articles 41 or 42.

(2) Upon rejection of a restructuring plan, the officials of the debtor may, in consultation with the insolvency practitioner and otherwise in terms of this Act, formulate a new, or revised, restructuring plan prepared in accordance with the requirements of the Second Schedule, to be submitted for adoption by the affected parties.

(3) Any preventive restructuring order issued by the Court shall continue to apply until the automatic or pre-emptive termination thereof in terms of this Act, and any right to request an extension of the preventive restructuring order may be duly exercised by the competent party.

PART VII
APPEALS

Appeals against decision of the Court.

45. (1) Any decision of the Court within the context of a preventive restructuring procedure, including to approve or reject a restructuring plan, shall be subject to appeal to the Court of Appeal, constituted in terms of article 41(6) of the Code of Organisation and Civil Procedure, hereinafter referred to in this article as the "Court of Appeal":

Cap.12.

Provided that the Court of Appeal may, notwithstanding that it has accepted an appeal made against the confirmation of a restructuring plan, uphold the decision of the Court to confirm a restructuring plan, and provide such remedy as necessary to ensure that the appellant is protected from the effects of the restructuring plan, or duly compensated, such that the appellant:

(a) shall be entitled to receive an amount at least equivalent to that which the appellant would have been entitled to if the normal ranking of liquidation priorities were applied, or in the event of the next-best-alternative scenario, if the restructuring plan had not been confirmed; and

(b) shall be treated at least as favourably as any other creditor within any class of affected parties whose claims would, if the normal ranking of liquidation priorities were to be applied, rank *pari passu* with the claims of the appellant, and more favourably than any other creditor within any class of affected parties whose claims would, if the normal ranking of liquidation priorities were to be applied, rank below the claims of the appellant.

(2) An appeal made in terms of sub-article (1), may be made by

the debtor by means of an application submitted to the Court of Appeal within twenty (20) days of the Court's decision.

(3) An appeal made in terms of sub-article (1), may also be made by any interested party, by means of an application submitted to the Court of Appeal within twenty (20) days of the Court's decision:

Provided that the Court of Appeal shall, before hearing such an appeal, ascertain the interest of the appellant in the decision against which the appeal has been filed.

(4) Any appeal made in terms of this article shall have no suspensive effects on the execution of that decision, or on the execution of any restructuring plan approved within the preventive restructuring procedure in which that decision was made.

Appointment of curator to give his consent on behalf of a creditor.

46. (1) Upon the confirmation of a restructuring plan by the Court, and if the restructuring plan identifies the need to obtain the consent of a creditor prior to the transfer of any asset or assets, and, or, where the creditor is required to appear on any pertinent public deed so as to give consent to the cancellation of, or a reduction in, any cause of preference and the registration of the same, enjoyed by the creditor over the said asset or assets, the debtor may, if he is, or if the officials of the debtor are, of the opinion that the consent of the said creditor is, or may be withheld, make an application to the Court for the appointment of a curator.

(2) A curator appointed in terms of this article may under the authority of the Court, give his consent to the transfer of assets and, or, appear on any pertinent public deed to consent, for and on behalf of the creditor referred to in sub-article (1), to the cancellation of, or reduction in, any cause of preference, and the registration of the same, enjoyed by the said creditor, on condition that the curator receives that portion of the proceeds of the sale of assets which, in terms of law and subject to the restructuring plan, pertains to the said creditor, and which shall be applied in his favour in terms of sub-article (3).

(3) The curator shall receive, for and on behalf of the creditor referred to in sub-article (1), that portion of the proceeds of the sale of assets referred to in sub-article (2) which, in terms of law and subject to the restructuring plan, pertains to the said creditor, and shall ensure that such funds are either distributed to the said creditor or, if this is not reasonably practicable, deposited in Court for the benefit of the said creditor.

PART VIII
MISCELLANEOUS

Fraud.

47. If at any time it appears that any actions of the debtor during a preventive restructuring order or otherwise in connection with the process of preventive restructuring, has been carried on with intent to defraud any creditor of the debtor, the Court, on the application of the insolvency practitioner or of any creditor of the debtor, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the debtor as the Court may direct.

Filing of documents to the Registrar for registration.

48. (1) Upon the filing of a preventive restructuring application, the issue of a preventive restructuring order, the appointment and termination of the appointment of an insolvency practitioner and the appointment of a replacement thereof, the filing of an application for the termination of a preventive restructuring order, or the order of the Court terminating the preventive restructuring procedure for any reason, the Registrar of Courts shall forthwith submit a copy of any such application, Court order or other relevant document to the competent authority.

(2) Notwithstanding the provisions of sub-article (1), a copy of the restructuring plan, as may be attached to an application or order, shall not be delivered to the Registrar together with such application or order.

Relationship with other laws.

49. (1) The provisions of this Act shall not apply insofar as these may be inconsistent with, or insofar as these may be construed as limiting or restricting, the application of the following laws or instruments, or any transposing legislation, as may be amended from time to time:

(a) the Convention on International Interests in Mobile Equipment and its Protocols on Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on 16 November 2001, as transposed or as enforceable in terms of Maltese law;

(b) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as transposed in Maltese law;

(c) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as transposed in Maltese law;

(d) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(e) the safeguarding requirements of funds for:

(i) payment institutions laid down under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, as transposed in terms of Maltese law; and

(ii) electronic money institutions laid down under Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as transposed in terms of Maltese law;

S.L. 459.01. (f) the Financial Collateral Arrangements Regulations and any financial collateral arrangement in terms thereof;

Cap. 459. (g) the Set-Off and Netting on Insolvency Act;

Cap. 234. (h) the Merchant Shipping Act; and

Cap. 503. (i) the Aircraft Registration Act.

(2) The provisions of this Act shall:

(a) not apply where any applicable law creates a separate patrimony in the hands of a person or where a person is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations;

(b) have no impact on any accrued occupational pension entitlements.

Powers to make regulations.

50. (1) In addition to the matters on which the Minister is empowered to prescribe regulations under the provisions of this Act, the Minister shall additionally have the power to make such regulations for the better carrying out of any of the provisions of this Act as the Minister may also, on consultation with the competent authority, deem necessary, required or appropriate to give effect to the object and purpose of the Act.

(2) Without prejudice to the generality of sub-article (1), the Minister shall make regulations for the use of electronic means of communication in the course of the procedures established in accordance with this Act, including regarding:

(a) the presentation of requests and applications;

(b) the submission of a proposed restructuring plan, in accordance with this Act or the submission of the proposed terms of a debt agreement or bankruptcy order in accordance with the Commercial Code; Cap. 13.

(c) notifications to the creditors;

(d) holding of hearings and meetings;

(e) voting at all hearings or meetings; and

(f) the submission of contestations, objections and appeals.

51. (1) In case of conflict between the Maltese text and English text of this Act, the English text shall prevail. Conflict between texts and languages.

(2) Any rules or regulations made pursuant to any provision of this Act shall be made in the Maltese language and in the English language; however where in exceptional cases the use of the Maltese language would be difficult due to technical terminology, such rules or regulations may be made in the English language only.

FIRST SCHEDULE – PREVENTIVE RESTRUCTURING FILING DECLARATION

Preventive restructuring filing declaration

A preventive restructuring filing declaration to be formulated in terms of this Act shall contain:

(a) an estimation of the insolvency practitioner's costs by way of remuneration in respect to services rendered in relation to preventive restructuring proceedings entered into in terms of this Act, including the basis upon which the estimation has been formulated;

(b) a statement of the insolvency practitioner, or, in the case of an insolvency practitioner being a legal person, a

statement by the principal responsible for directing the fulfilment of the engagement by the legal person, confirming that the insolvency practitioner is not subject to any conflict of interest with respect to the debtor or the debtors' creditors or, in the event of a potential conflict of interest, the proposed measures that the insolvency practitioner intends to apply in order to prevent any risk of the conflict of interest having any bearing, on either the fulfilment of the insolvency practitioner's responsibilities, or on the preventive restructuring;

Act No. XXV of 2022.

(c) a confirmation that the insolvency practitioner is lawfully authorised to act as such in terms of the Insolvency Practitioners Act, 2022 and that the insolvency practitioner possesses the adequate resources so as to appropriately carry out its functions in terms of this Act, having regard to the circumstances of the debtor and its creditors.

SECOND SCHEDULE – CONTENTS OF RESTRUCTURING PLAN

1. Contents of the restructuring plan:

A restructuring plan formulated in terms of this Act shall contain, at minimum, the following information:

(a) The name, identification number, business address, and contact information, including at least an electronic mail address, of the debtor;

(b) a statement of the debtor's assets and liabilities at the time of the filing of the restructuring plan, correct up to at least one (1) month of the submission of the restructuring plan for adoption, including a value attributed to the listed assets and liabilities in the reasoned opinion of the officials of the debtor;

(c) a description of the economic situation of the debtor including, in particular, whether it has any employees and the circumstances of such employment, and the full facts, circumstances and reasons giving rise to the requirement for an extension and, where applicable, the requirement for an extended stay of individual enforcement actions, as well as the reasons for which an extension would be reasonably justified in the context of the financial and economic situation of the debtor and the interests of its stakeholders;

(d) a reasoned statement on how the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the economic viability of the business, including the necessary pre-conditions for the success of the restructuring plan;

(e) a list of the affected parties, whether named individually or by reference to the classes thereof, as well as the claims or interests covered by the restructuring plan, and including, where available, the geographical address and electronic mail address for each affected party;

(f) the classes into which the affected parties have been grouped, for the purpose of adopting the restructuring plan, and the respective values of claims and interests in each class;

(g) where applicable, the creditors and claims thereof, whether named individually or described by categories of debt, which have been excluded from the restructuring plan, together with a description of the reasons why such claims have been excluded, and including, where available, the geographical address and electronic mail address for every such creditor;

(h) the name, identification number, business address, and contact information, including at least an electronic mail address, of the insolvency practitioner;

(i) the manner in which the restructuring plan proposes to restructure the debtor’s business, including, in particular:

(i) the measures aimed at restructuring the debtor's business that include changing the composition, conditions or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, such as sales of assets or parts of the business, the sale of the business as a going concern, as well as any necessary operational changes, or a combination of those elements;

(ii) where applicable, the proposed duration of any proposed restructuring measures;

(iii) the arrangements with regard to informing and consulting the employees’ representatives in accordance with applicable law;

(iv) where applicable, the expected overall consequences of any proposed restructuring measures as

regards employment, such as dismissals, short-time working arrangements, or similar arrangements;

(v) a projection of how the confirmation of the restructuring plan would impact the debtor's financial position, including projections covering the debtor's expected financial position should the restructuring plan not be confirmed;

(vi) any new financing anticipated as part of the restructuring plan, and the reasons why the new financing is necessary to implement the restructuring plan;

(vii) the proposed management team of the debtor during and following the implementation of the restructuring plan, if confirmed; and

(viii) the information which will be made available by the debtor to the affected parties following the approval of the restructuring plan, including the duration and periodicity for disclosure.

2. Annexes

The following documents shall be annexed to the restructuring plan:

(a) where the affected parties are to take over shares or membership rights or holdings in a legal person, the plan shall be accompanied by a waiver of pre-emption rights or any other documents as may be necessary for the transfer of shares to be permitted;

(b) where a third party has assumed obligations vis-à-vis the affected parties in the event of approval of the plan, the plan shall be accompanied by the third party's statement of consent; and

(c) where the restructuring plan provides for the restructuring of the rights of the affected party with regard to the priority of secured rights over the assets of the debtor, the plan shall be accompanied by a statement of consent of any parties that may be ceding priority.

3. Checklist for restructuring plans

The competent authority shall be responsible to develop and maintain a comprehensive checklist for restructuring plans, adapted to the needs of small and medium-sized enterprises, which checklist shall

be publicly available on a website maintained by the competent authority.

CONSEQUENTIAL AMENDMENT

Amendment to the Malta Business Registry (Establishment as an Agency) Order. S.L. 595.27.

52. Immediately after article 9 of the Malta Business Registry (Establishment as an Agency) Order, there shall be added the following new article:

"Establishment of the Insolvency and Receivership Service.

9A. (1) The Agency shall establish and organise its units and sections as appropriate in order to exercise its functions, and shall establish *inter alia*, a section to be known as the Insolvency and Receivership Service.

(2) The section to be known as the Insolvency and Receivership Service shall have those functions, duties and powers assigned to it and to the official receiver by the Act, the Pre-Insolvency Act, 2022, the Insolvency Practitioners Act, 2022 and any applicable laws and regulations.".

Act No. XXIV of 2022.
Act No. XXV of 2022.

Passed by the House of Representatives at Sitting No. 70 of the 14th December, 2022.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€3.96