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L.N. 27 of 2023

COMPANIES ACT
(CAP. 386)

Cross-border Conversions of Limited Liability Companies Regulations, 2023

IN EXERCISE of the powers conferred upon him by article 425 (1)(p) of the Companies Act, the Minister responsible for the registration of commercial partnerships has made the following regulations:-

Short title and commencement.

1. (1) The title of these regulations is the Cross-border Conversions of Limited Liability Companies Regulations, 2023.

(2) These regulations shall be deemed to have come into force on 31st January 2023.

Scope.

2. The scope of these regulations is to transpose and Directive 2019/2121/EU of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

Interpretation.

3. In these regulations, unless the context otherwise requires:

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"Act" means the Companies Act;

"company" means a limited liability company formed in accordance with the Act, any other limited liability company listed in Annex II of Directive 2017/1132/EU and any other body corporate formed and incorporated or registered under the laws of any other approved country or jurisdiction which is similar in nature to a company under Maltese legislation that carries out a cross-border conversion;

"converted company" means a company formed in a destination jurisdiction as a result of a cross-border conversion;

"cross-border conversion" means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure jurisdiction into a legal form of the destination jurisdiction, as listed in Annex II of Directive 2017/1132/EU, and transfers at least its registered office to the destination jurisdiction, while retaining its legal personality;

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"departure jurisdiction" means a a country or jurisdiction in which a company is registered prior to a cross-border conversion;

"destination jurisdiction" means a country or jurisdiction in which a converted company is registered as a result of a cross-border conversion;

"Directive 2002/14/EC" means Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;

"Directive 2009/38/EC" means Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

"Directive 2014/59/EU" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;

"Directive 2017/1132/EU" means Directive 2017/1132/EU of the European Parliament and of the Council relating to certain aspects of company law;

"Directive 2019/2121/EU" means Directive 2019/2121/EU of the European Parliament and of the Council of 27 November 2019 amending Directive 2017/1132/EU as regards cross-border conversions, mergers and divisions;

"foreign converting company" means a company registered outside Malta that carries out a cross-border conversion;

"Maltese converting company" means a company registered in Malta that carries out a cross-border conversion.

Applicability.

4. (1) These regulations shall apply to conversions of limited liability companies formed in accordance with the law of a Member State or EEA State and having their registered office, central

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administration or principal place of business within the Community, into limited liability companies governed by the law of another jurisdiction.

(2) These regulations shall also apply to conversions of limited liability companies formed in accordance with the law of any other approved country or jurisdiction:

Provided that for the purpose of conversions regulated by these regulations, Malta must either be a departure jurisdiction or a destination jurisdiction.

(3) These regulations shall apply to companies which are:

(a) subject to preventive restructuring frameworks; or

(b) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.

(4) These regulations shall not apply:

(a) to continuations into or out of Malta in terms of the Continuation of Companies Regulations; S.L. 386.05.

(b) to cross-border conversions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption;

(c) to a company which is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU;

(d) to a company which is the subject of insolvency proceedings; or

(e) to a company which is the subject of liquidation proceedings.

5. (1) Where Malta is the departure jurisdiction, these regulations shall govern those parts of the procedures and formalities to be complied with in connection with the cross-border conversion in order to obtain the pre-conversion certificate. Procedures and formalities.

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(2) Where Malta is the destination jurisdiction, these regulations shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate.

PART I: Procedure and formalities to be applied when Malta is the departure jurisdiction

Duty to draw up draft terms of cross-border conversion.

6. (1) The board of directors of the Maltese registered converting company shall draw up the draft terms of a cross-border conversion. The said draft terms shall include at least the following particulars:

(a) the legal form and name of the company and the location of its registered office in Malta;

(b) the legal form and name proposed for the converted company in the destination jurisdiction and the proposed location of its registered office in the said jurisdiction;

(c) the instrument of constitution of the company in the destination jurisdiction, where applicable, and the statutes if they are contained in a separate instrument;

(d) the proposed indicative timetable for the cross-border conversion;

(e) the rights conferred by the converted company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the proposed measures concerning them;

(f) any safeguards offered to creditors, such as guarantees or pledges;

(g) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the company;

(h) whether any incentives or subsidies were received by the company in Malta, as the departure jurisdiction, in the preceding five (5) years;

(i) details of the offer of cash compensation for members in accordance with regulation 12;

(j) the electronic address to be used by members for the purposes of exercising their right in accordance with regulation 12(2);

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(k) the likely repercussions of the cross-border conversion on employment;

(l) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined.

(2) Where the destination jurisdiction is not a Member State or EEA State, a reasoned opinion of one or more practising advocates confirming that the proposed cross-border conversion is permitted by the laws of the destination jurisdiction must be attached to the draft terms of a cross-border conversion.

(3) The draft terms of a cross-border conversion shall be signed by one (1) director if the company has a sole (1) director or by two (2) directors if the company has two or more directors. Furthermore, the draft terms of a cross-border conversion may be signed in counterparts and said counterparts together shall constitute one and the same document.

Directors' report.

7. (1) The board of directors of the Maltese registered converting company shall draw up a report for members and employees, explaining and justifying the legal and economic aspects of the cross-border conversion, as well as explaining the implications of the cross-border conversion for employees. It shall, in particular, explain the implications of the cross-border conversion for the future business of the company.

(2) The report shall also include a section for members and a section for employees. The company may decide either to draw up one (1) report containing those two sections or to draw up separate reports for members and employees respectively, containing the relevant section.

(3) The section of the report for members shall, in particular, explain the following:

(a) the cash compensation and the method used to determine the cash compensation;

(b) the implications of the cross-border conversion for members;

(c) the rights and remedies available to members in accordance with regulation 12.

(4) The section of the report for members shall not be required

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where all the members of the company have agreed to waive that requirement in writing or where the company being converted is a single-member company;

(5) The section of the report for employees shall, in particular, explain the following:

(a) the implications of the cross-border conversion for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;

(b) any material changes to the applicable conditions of employment or to the location of the company's places of business;

(c) how the factors set out in paragraphs (a) and (b) affect any subsidiaries of the company.

(6) The reports shall be made available in any case electronically, together with the draft terms of the cross-border conversion, if available, to the members and representatives of the employees or, where there are no such representatives, to the employees themselves, not less than six (6) weeks before the date of the general meeting referred to in regulation 11.

(7) Where the board of directors of the company receives an opinion on the information referred to in sub-regulations (1) and (5) in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, the members shall be informed thereof and that opinion shall be appended to the report.

(8) The section of the report for employees shall not be required where a company and its subsidiaries, if any, have no employees other than those who form part of the board or other management bodies of the company.

(9) Where the section of the report for members referred to in sub-regulation (3) is waived or not required in accordance with sub-regulation (4) and the section for employees referred to in sub-regulation (5) is not required under sub-regulation 8, the report shall not be required.

(10) Sub-regulations (1) to (9) shall be without prejudice to the provisions of any other law applicable in Malta regarding the applicable information and consultation rights and procedures pursuant to Directives 2002/14/EC and 2009/38/EC.

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(11) A report drawn-up in accordance with this regulation shall be signed by one (1) director if the company has a sole (1) director or by two (2) directors if the company has two (2) or more directors. Furthermore, the directors' report may be signed in counterparts and such counterparts together shall constitute one (1) and the same document.

Declaration of solvency.

8. (1) The directors of the Maltese registered converting company, or in the case of a company having more than two (2) directors, the majority of the directors, shall make a written declaration of solvency to the effect that, on the basis of the information available to the Board of Directors at the date of the declaration, and after having made reasonable enquiries, the Board of Directors is unaware of any reason why the company may, after the cross-border conversion takes effect, not be in a position to meet its liabilities when those liabilities fall due:Provided that no declaration of solvency shall be required where the Maltese registered converting company is a company which is undergoing any one of the procedures referred to in regulation 4(3).

(2) A declaration made in accordance with sub-regulation (1) shall have no effect for the purposes of these regulations unless:

(a) it is made within the month immediately preceding the disclosure referred to in regulation 10; and

(b) it contains a statement of the Maltese registered converting company's assets and liabilities made up to a date not earlier than one (1) month prior to the disclosure referred to in regulation 10.

(3) Without prejudice to regulation 26 a director who makes a declaration of solvency under this regulation without having reasonable grounds for the opinion expressed in the said declaration shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding three years or to a fine (*multa*) of not more than fifty thousand euro (€50,000), or to both such fine and imprisonment.

Independent expert's report.

9. (1) An expert acting on behalf of the Maltese registered converting company but independent of it and approved by the Registrar, shall examine the draft terms of a cross-border conversion and draw up a written report for the company's members. The report shall be made available to the members not less than one (1) month before the date of the general meeting referred to in regulation 11.

(2) The report shall include the expert's opinion as to whether the cash compensation is adequate. When assessing the cash

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compensation, the expert shall consider any market price of the shares in the company prior to the announcement of the conversion proposal or the value of the company excluding the effect of the proposed conversion, as determined in accordance with generally accepted valuation methods.

(3) The report shall at least:

(a) indicate the methods used to determine the cash compensation proposed;

(b) state whether the methods used are adequate for the assessment of the cash compensation, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on; and

(c) describe any special valuation difficulties which have arisen.

(4) The expert shall be entitled to obtain from the company all information necessary for the discharge of his duties.

(5) Neither an examination of the draft terms of a cross-border conversion by an independent expert nor an independent expert report shall be required if all the members of the company have so agreed or if the company being converted is a single-member company.

Registration and publication of draft terms of a cross-border conversion.

10. (1) Without prejudice to sub-regulation (3), the Maltese registered converting company shall file with the Registrar for registration:

(a) the draft terms of the cross-border conversion;

(b) the declaration of solvency referred to in regulation 8, if required in terms of these regulations; and

(c) a notice informing the members, creditors and representatives of the employees of the company or, where there are no such representatives, the employees themselves, that they may submit to the company, at the latest five (5) working days before the date of the general meeting, comments concerning the draft terms of the cross-border conversion.

(2) On being satisfied that the requirements of regulations 6 and 10(1) have been complied with, the Registrar shall register the draft terms of the cross-border conversion, the declaration of solvency and the notice referred to in sub-regulation (1)(c) and shall cause

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without delay a statement to be published in the Gazette or on the website maintained by the Registrar specifying:

(a) the date on which registration was made, together with an indication that the documents registered relate to the draft terms of the cross-border conversion;

(b) the type, name, registration number and registered office of the Maltese registered converting company;

(c) the legal form and name proposed for the converted company in the destination jurisdiction and the proposed location of its registered office in the said jurisdiction; and

(d) the information provided by the Maltese registered converting company in terms of sub-regulation (1) (c).

(3) The requirements of sub-regulation (1) shall not apply where, for a continuous period beginning at least one (1) month before the date fixed for the general meeting referred to in regulation 11 and not earlier than the conclusion of the said meeting, the Maltese registered converting company makes the documents referred to in sub-regulation (1) available on its website free of charge.

(4) Where the Maltese registered converting company makes the draft terms of the cross-border conversion and, where applicable, the declaration of solvency, available in accordance with sub-regulation (3), the company shall submit to the Registrar for registration, the following information:

(a) the legal form, registration number and name of the company and the location of its registered office in Malta;

(b) the legal form and name proposed for the converted company in the destination jurisdiction and the proposed location of its registered office in the said jurisdiction;

(c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members; and

(d) details of the website from which the draft terms of the cross-border conversion, the declaration of solvency, the notice referred to in sub-regulation 1(c), the reasoned opinion referred to in regulation 6(2) and complete information on the arrangements referred to in paragraph (c) may be obtained online and free of charge.

(5) On being satisfied that the requirements of regulation 6 and

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sub-regulation (4) have been complied with, the Registrar shall register the information referred to in sub-regulation (4) and shall cause without delay a statement to be published in the Gazette or on the website maintained by the Registrar specifying:

(a) the date on which registration was made, together with an indication that the information relates to the draft terms of the cross-border conversion; and

(b) the information provided by the Maltese registered converting company in terms of sub-regulation (4).

(6) In addition to the publications referred to in sub-regulations (2) and (5), the Registrar shall be required to publish, without delay, in a daily newspaper circulating wholly or mainly in Malta, a notice consequent to the registration referred in sub-regulations (2) and (5), as may be applicable. Such publication shall be made by the Registrar at the expense of the Maltese registered converting company and the provisions of article 401(1)(e) of the Act shall apply.

Approval by general meeting.

11. (1) After taking note of the reports referred to in regulations 7 and 9, where applicable, the employees' opinions submitted in accordance with regulation 7 (7) and comments submitted in accordance with regulation 10, the general meeting of the company shall decide, by means of an extraordinary resolution, if to approve the draft terms of the cross-border conversion and whether to adopt the instrument of constitution, and the statutes if they are contained in a separate instrument.

(2) The approval by the general meeting referred to in sub-regulation (1) shall not be valid unless the extraordinary resolution is approved by the company's shareholders holding at least sixty-seven (67) per cent of the nominal value of the shares conferring the right to vote and is adopted at least one (1) month after registration of the documents or the information referred to in regulation 10(1) and (3), as may be applicable.

(3) The general meeting of the company may reserve the right to make implementation of the cross-border conversion conditional on express ratification by the general meeting of the arrangements decided on with respect to employee participation in the company upon completion of the cross-border conversion.

Protection of shareholders.

12. (1) When a Maltese registered converting company approves the draft terms of conversion by extraordinary resolution in accordance with regulation 11, it shall be required to redeem the shares held by any dissenting shareholders who so request, for the cash compensation as specified in regulation 6(1)(i) in accordance with the

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conditions laid down in this regulation.

(2) Any dissenting shareholders wishing to exercise the right referred to in sub-regulation (1) must declare to the company their decision to exercise their right to have their shares redeemed. The declaration must be made in writing and must be received by the company not later than one (1) month after the general meeting referred to in regulation 11.

(3) Without prejudice to sub-regulation (4), upon receipt of any declarations in accordance with sub-regulation (2), the company shall redeem the shares held by the dissenting shareholders and pay the cash compensation specified in the draft terms of the cross-border conversion by no later than two (2) months after the cross-border conversion becomes effective.

(4) Any dissenting shareholders who have declared their decision to exercise the right to have their shares redeemed but who consider that the cash compensation offered by the company has not been adequately set may, by means of an application filed in Court not later than one (1) month after the general meeting referred to in regulation 11, request the company to pay additional cash compensation. The court shall decide the application on its merits within not more than thirty (30) days from the date of service of the application on the Maltese registered converting company.

(5) The substantive merits of any disputes relating to the shareholders' rights arising under this regulation 12 shall be decided in accordance with Maltese legislation and, without prejudice to any valid and binding arbitration agreement recognised by Maltese legislation, any such disputes shall be subject to the exclusive jurisdiction of the Courts in Malta.

Protection of holders of securities.

13. The holders of securities, other than shares, in a Maltese registered converting company, to which special rights are attached, shall be given rights against the Maltese registered converting company in accordance with the draft terms of the cross-border conversion at least equivalent to those they possess prior to the conversion. Provided that any dissenting holders of those securities shall be entitled to have their securities redeemed by the said Maltese registered converting company in accordance with regulation 12.

Registration of extraordinary resolution.

14. (1) The extraordinary resolution approving the cross-border conversion shall be delivered for registration to the Registrar within fourteen (14) days from approval, and the Registrar, being satisfied that the requirements of regulation 11 have been complied with, shall register the resolution and shall cause without delay a

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statement to be published in the Gazette or on a website maintained by the Registrar.

(2) The statement referred to in sub-regulation (1) shall include the following particulars:

(a) the date on which the registration of the extraordinary resolution was made, together with a reference that it was passed for the purposes of approving the cross-border conversion;

(b) the type, name, registration number and registered office of the Maltese registered converting company; and

(c) the legal form and name proposed for the converted company in the destination jurisdiction and the proposed location of its registered office in that jurisdiction.

Contestation of registration.

15. (1) A registration made by the Registrar by virtue of either regulation 10 or regulation 14 may be contested before the Court by any interested party in accordance with the following conditions:

(a) the contestation shall be made by application against the Registrar within one (1) month from the publication following the registration referred to in regulation 10 on the grounds that the draft terms of the cross-border conversion were not drawn up in accordance with the provisions of regulation 6, or within one (1) month from the last publication following the registration referred to in regulation 14 on the grounds that the resolution of the extraordinary general meeting was void or voidable:

Provided that in the latter case, the resolution of the extraordinary general meeting cannot be challenged solely on the following grounds:

(i) that the cash compensation referred to in regulation 6 paragraph (i) has been inadequately set; or

(ii) the information given with regard to the cash compensation referred to in regulation 6(1) (i) did not comply with the legal requirements.

(b) Notice of the application referred to in regulation 15(1) shall be published by the Registrar in the Gazette or on a website maintained by the Registrar;

(c) where it is possible to remedy a defect liable to render the cross-border conversion void or voidable, the Court shall

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grant the Maltese registered converting company a period within which to rectify the situation;

(d) the Court shall decide whether to dismiss or uphold the application within not more than thirty (30) days from the filing of the application.

(e) a notice that the judgment of the Court has been delivered shall be published by the Registrar in the Gazette or on a website maintained by him, which notice shall specify whether the application has been allowed or dismissed.

(2) Without prejudice to sub-regulation (1), any creditor of the Maltese registered converting company whose debt existed prior to the publication made pursuant to regulation 10 may, within the period of three (3) months from the said publication, by application, request adequate safeguards to protect his claims on the ground that the safeguards offered in the draft terms of the cross-border conversion, as provided for in regulation 6(f) are inadequate. If the creditor credibly demonstrates that, due to the cross-border conversion, the satisfaction of his claims are at stake and that he has not obtained adequate safeguards from the Maltese registered converting company, the Court shall uphold the creditor's request and order the Maltese registered converting company to provide additional safeguards subject to the cross-border conversion becoming effective. The Court shall decide whether to dismiss or uphold the application within not more than thirty (30) days from the date of notification of the application on the Registrar and the Maltese registered converting company.

(3) Without prejudice to sub-regulations (1) and (2) and any jurisdiction rules arising from Community or national law or from contractual agreement, any creditor of the Maltese registered converting company whose debt existed prior to the publication made pursuant to regulation 10 may institute proceedings against the Maltese registered converting company before the Courts in Malta at any time within two (2) years from the date the conversion takes effect on grounds other than those set out in sub-regulation (2). The institution of such proceedings shall be in addition to other rules on the choice of jurisdiction that are applicable pursuant to Community law.

Right to appeal.

16. (1) Any party who feels aggrieved by the Court's judgement relating to an application in terms of regulation 12(4), regulation 15(1) or regulation 15(2) may appeal to the Court of Appeal as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within thirty (30) days from the date of that judgement and the Court of Appeal shall set down the cause for

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hearing at an early date, in no case later than one (1) month from the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties to the suit who, on their part, shall assume the responsibility to verify with the court registry the latest information regarding the appointment for the hearing of the case.

(2) In the case of an appeal from the Court's judgement relating to regulation 15(1), notice of the appeal application shall be published by the Registrar in the Gazette or on a website maintained by the Registrar.

(3) After appointing the application for hearing, and after listening to the oral submissions made by the parties, the Court of Appeal shall decide to uphold or reject the appeal, within the shortest time possible but not later than three (3) months from the day when the appeal had been filed and the parties and the Registrar have been duly notified.

(4) In the case of an appeal from the Court's judgement relating to regulation 15(1), a notice that the judgment of the Court of Appeal has been delivered shall be published by the Registrar in the Gazette or on a website maintained by him, which notice shall specify whether the application has been allowed or dismissed.

(5) If, during the hearing of the appeal, the Court of Appeal finds that the application is frivolous and vexatious, the Court of Appeal may impose on the defaulting party an administrative penalty, to be paid to the counterparty, either between ten thousand (€10,000) and two hundred and fifty thousand euro (€250,000), or ten (10) per centum (%) of the Maltese registered converting company's annual turnover for the preceding financial year.

Request for issue of pre-conversion certificate.

17. (1) Upon the lapse of one (1) month from the last publication following the registration referred to in regulation 14, the Maltese registered converting company shall submit to the Registrar a written application in the prescribed form to obtain a pre-conversion certificate.

(2) The application referred to in sub-regulation (1) shall be signed by at least two (2) directors of the Maltese registered converting company, unless the Board of Directors is composed of one(1) director, and shall be accompanied by the following documents:

(a) the draft terms of the cross-border conversion;

(b) the declaration of solvency referred to in regulation 8, if required in terms of these regulations;

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(c) the directors' report and the appended opinion, if any, referred to in regulation 7, where available;

(d) the independent expert's report, where required in terms of these regulations;

(e) any comments submitted in accordance with regulation 10(1);

(f) a copy of the extraordinary resolution referred to in regulation 11;

(g) where the Maltese registered converting company carries on in or from Malta any licensable activity, evidence of the consent of the competent authority in Malta to the cross-border conversion;

(h) where the Maltese converting company is a public company quoted on a recognized investment exchange, evidence that the said exchange has been notified of the cross-border conversion and evidence of the consent of the listing authority in Malta to the cross-border conversion;

(i) where any shares of the Maltese registered converting company are pledged, the written consent of the pledgee.

(3) The application referred to in sub-regulation (2) may be signed in counterparts and such counterparts together shall constitute one (1) and the same document.

Review by Registrar and issuance of pre-conversion certificate.

18. (1) Upon receipt of the application referred to in regulation 17 the Registrar shall:

(a) examine all documents and information submitted to the Registrar in accordance with regulation 17 in order to confirm the validity of the cross-border conversion as set out in this part of the regulations; and

(b) in respect of compliance with the rules concerning employee participation, verify that the draft terms of the cross-border conversion include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

(2) The review referred to in this regulation 18 shall be carried out within three (3) months from the date of receipt by the Registrar of the documents and information referred to in regulation 17.

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(3) Upon completion of the Registrar's review:

(a) where it is determined that the cross-border conversion complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the Registrar shall issue the pre-conversion certificate:

Provided that no pre-conversion certificate shall be issued prior to the lapse of three (3) months from the publication referred to in regulation 10:

Provided further:

(i) where an application has been made under regulation 15(1), the Registrar shall only issue such certificate after the date of the final judgment rejecting the application;

(ii) where an application has been made under regulations 12(4) or 15(2), the Registrar shall only issue such certificate after the date of the final judgment rejecting or upholding the application.

(b) where it is determined that the cross-border conversion does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the Registrar shall not issue the pre-conversion certificate and shall inform the Maltese registered converting company of the reasons for such decision by not later than seven (7) days from the lapse of the period referred to in regulation 17(2). In that case, the Registrar may give the Maltese registered converting company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

(4) The Registrar shall not issue the pre-conversion certificate where it is determined that the cross-border conversion is set up for abusive or fraudulent purposes leading to, or aimed at the evasion or circumvention of Community or national law, or for criminal purposes.

(5) Where the Registrar, during the review referred to in sub-regulation (1), has serious doubts indicating that a cross-border conversion is set up for abusive or fraudulent purposes leading to, or aimed at the evasion or circumvention of Community or national law, or for criminal purposes, the Registrar shall take into consideration relevant facts and circumstances, of which the Registrar has become aware, in the course of the review referred to in sub-regulation (1),

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including through consultation of relevant authorities.

(6) Where it is necessary for the purposes of the Registrar's assessment under sub-regulations (4) and (5) to take into account additional information or to perform additional investigative activities, the period of three (3) months provided for in sub-regulation (2) may be further extended by a maximum of three (3) months.

(7) Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in sub-regulations (2) and (6), the Registrar shall notify the Maltese registered converting company of the reasons for any delay before the expiry of those deadlines.

(8) In carrying out the review in terms of regulation 17, the Registrar may:

(a) consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those of the destination jurisdiction;

(b) obtain from those authorities and from the Maltese converting registered company information and documents necessary to assess the legality of the cross-border conversion in terms of these regulations;

(c) appoint an independent expert to assist with the Registrar's assessment:

Provided that any independent expert appointed by the Registrar for such purpose must be independent from the Maltese registered converting company applying for the pre-conversion certificate and must have no past or current link with the said Maltese converting company which might affect the expert's independence.

Effect of pre-conversion certificate.

19. A pre-conversion certificate issued by the Registrar following the Registrar's review in accordance with regulation 17, shall attest to compliance by the Maltese registered converting company with all relevant conditions and to the proper completion of all procedures and formalities in terms of these regulations.

Striking off.

20. When the Registrar is notified by the registry of the destination jurisdiction to whose jurisdiction the Maltese registered converting company is subject, of the effective date of the cross-border conversion, the Registrar shall cause without delay a notice to be published in the Gazette or on a website maintained by the Registrar, indicating that the cross-border conversion has been completed and the

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Registrar shall strike the name of the Maltese registered converting company off the register and the provisions of article 401(1)(e) of the Act shall apply. The Registrar shall also include in his register a reference to the fact that the striking off of the Maltese registered converting company is the result of a cross-border conversion as well as the date of striking off of the company from the register and the registration number, name and legal form of the Maltese converting company.

Provided that nothing in this regulation shall:

(a) remove or affect the jurisdiction of any court in Malta to hear and determine any proceedings commenced therein by or against the Maltese converting company before it ceased to be a company registered in Malta;

(b) affect the property of the Maltese converting company;

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

(d) release or impair any conviction, judgement, ruling, order, debt, liability or obligation due or to become due or any cause existing against the Maltese converting company or any other person.

PART II: Procedure and formalities to be applied when Malta is the destination jurisdiction

Review of cross-border conversion when Malta is the destination jurisdiction.

21. (1) When a company carrying out a cross-border conversion indicates Malta as the destination jurisdiction, the Registrar shall review the legality of the cross-border conversion as regards that part of the procedure which concerns the completion and approval of the cross-border conversion. In particular, the Registrar shall ensure that the foreign converting company complies with the provisions of the Act on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined.

(2) For the purposes of sub-regulation (1), the foreign converting company shall submit to the Registrar:

(a) the draft terms of the cross-border conversion approved by the company's general meeting;

(b) the pre-conversion certificate issued by the departure

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jurisdiction;

(c) the memorandum and articles of association of the foreign converting company drawn up in accordance with the requirements of the Act;

(d) in those cases where the departure jurisdiction is not a Member State or EEA State, a reasoned opinion **by** one or more practising advocates confirming that the proposed cross-border conversion is permitted by the laws of the departure jurisdiction; and

(e) any other documents and information required for the purposes of registering the converting company as a Maltese company.

(3) The Registrar shall accept the pre-conversion certificate referred to in sub-regulation (2)(b) hereof as conclusively attesting to the proper completion of the applicable pre-conversion procedures and formalities in the departure jurisdiction, without which the cross-border conversion cannot be approved.

Additional requirements when the foreign converting company is a licensed or public company.

22. In addition and without prejudice to the requirements of regulation 21(2), the following requirements shall also apply to foreign converting companies carrying out a licensable activity and foreign converting companies which are public companies:

Licensed companies.

(1) Where the foreign converting company carries on, in or from the departure jurisdiction, a business which, if conducted in or from within Malta, would require to be licensed or authorized in terms of any law in Malta, and the foreign converting company is licensed or authorised by a competent authority in the departure jurisdiction, evidence that the foreign converting company has notified that competent authority of its intention to be registered in Malta in terms of these regulations shall be required and, if the said notification is not written in the English language, a translation thereof in the English language, certified to be a correct translation shall be required;

(2) Notwithstanding the license or authorization by the competent authority in the departure jurisdiction, all foreign converting companies intending to carry on a licensable activity in or from Malta shall require a licence or other authorization in terms of law from the competent authority in Malta before commencing operations.

Public Companies

(3) Where the foreign converting company is a public company:

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(a) if the foreign converting company has offered its shares or debentures to the public, the most recent prospectus or equivalent document complying with the requirements of the Act shall be required; and

(b) if the foreign converting company is quoted on a recognised stock exchange, evidence to the satisfaction of the Registrar that the foreign converting company has notified the relevant authorities of that exchange of its intention to be registered in terms of these regulations shall be required and, if the notification is not written in the English language, a translation thereof in the English language, certified to be a correct translation shall be required; and for the purposes of this paragraph "recognised stock exchange" means a stock exchange recognised by the relevant authorities in the departure jurisdiction;

(c) such evidence of the current membership of the foreign converting company, or the method and form of recording such membership, authenticated in such a manner as the Registrar may require, as the Registrar accepts as adequate for compliance with the requirements of this regulation in respect of a list of members of that foreign converting company.

Approval of cross-border conversion and issuance of certificate of completion of cross-border conversion.

23. (1) After verifying that the provisions of these regulations and all other applicable provisions of the Act have been complied with, including the payment of any applicable fees, the Registrar shall, without delay, and in any event, not later than ten (10) working days from the submission of the documents referred to in regulation 21(2) and, if applicable regulation 22, approve the cross-border conversion and proceed to register the foreign converting company as a Maltese company in terms of the Act. For the purposes of such registration the Registrar shall issue a Certificate of Cross-Border Conversion which shall include the name, legal form and registration number of the converted company, a reference to the fact that the converted company has completed a cross-border conversion and the date on which the cross-border conversion takes effect. Upon the issuance of such certificate, the Registrar shall cause a statement to be published in the Gazette or on a website maintained by the Registrar confirming the completion of the cross-border conversion.

(2) A certificate issued by the Registrar under sub-regulation (1) is conclusive evidence that the requirements of these regulations have been complied with and it shall not be possible to declare the cross-border conversion null and void after the date on which the cross-border conversion takes effect:

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Provided that the provision in sub-regulation (1) shall be without prejudice to powers vested in national authorities, *inter alia*, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, and to impose measures and penalties under national law, after the date on which the cross-border conversion took effect.

(3) When the Registrar issues a Certificate of Cross-Border Conversion under sub-regulation (1), the Registrar shall without delay notify the registry of the departure jurisdiction that the cross-border conversion has taken effect, indicating the effective date of the cross-border conversion.

Pledged shares.

24. (1) Where shares in a foreign converting company are subject to a pledge, charge, assignment by way of security or other similar security, hereinafter referred to as "pledge", in the departure jurisdiction, such pledge shall continue to be valid and effective under the laws of Malta, and following the issuance of the Certificate of Cross-Border Conversion shall be fully enforceable as a pledge of shares in terms of article 122 of the Act subject to the following conditions:

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

(b) that the pledge is valid and effective as of the date of issue of the Certificate of Cross-Border Conversion;

(c) that a notice of consent from the pledgee be delivered to the Registrar for registration together with the other documents referred to in regulation 21(2).

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

(a) shall continue to be regulated by the law chosen by the parties and such law shall apply to all the rights, including rights of enforcement thereof, and obligations of the parties thereto, except to the extent that the pledge is enforced in Malta in which case the relevant provisions of article 122 of the Act shall apply;

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

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(3) The party delivering the notice of pledge to the Registrar in Malta in terms of this regulation shall also notify the other party to the pledge agreement by serving him with a true copy of the said notice within fourteen (14) days from the issuance of the Certificate of Cross-Border Conversion.

(4) On termination of the pledge, a notice of termination of the pledge shall be delivered to the Registrar for registration in accordance with the provisions of article 122(15) of the Act.

PART III – Consequences of the cross-border conversion

Legal consequences of a cross-border conversion.

25. (1) A cross-border conversion shall, from the date referred to in regulation 23(1) have the following consequences:

(a) all the assets and liabilities of the company, including all contracts, credits, rights and obligations, shall be those of the converted company;

(b) the members of the company shall continue to be members of the converted company, unless they have disposed of their shares in terms of regulation 13;

(c) the rights and obligations of the company arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect shall be those of the converted company.

(2) For the avoidance of doubt, a cross-border conversion shall not:

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

(b) release or impair any conviction, judgement, ruling, order, debt, liability or obligation due or to become due or any cause existing against the company or against any member, director, officer or persons vested with the administration or the representation of the company.

PART IV – Damages

Liability of director or expert for wilful or negligent misconduct.

26. Any director of a Maltese company responsible for wilful or negligent misconduct in the preparation and the implementation of the cross-border conversion, or an expert responsible for drawing up, on behalf of any Maltese company, the report on the draft terms of cross-border conversion responsible for wilful or negligent misconduct in the performance of his duties, shall be liable for all damages

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occasioned to any shareholder of such company as a consequence of his misconduct.

SCHEDULE

CROSS-BORDER CONVERSIONS OF LIMITED LIABILITY COMPANIES REGULATIONS, 2022

Application by Board of Directors to obtain a pre-conversion certificate in terms of Regulation 17(1)

Form CBC1- CONVERSION

Company Reg. No. .....

Name of Company .....

Delivered by . .....

To the Registrar of Companies:

I/We (a)…….....hereby submit the application in accordance with Regulation 17(1) of the Cross-Border Conversions of Limited Liability Companies Regulations, 2022, in order to obtain the pre-conversion certificate of (b)…….. having registration number (c) ……

I / We (d) confirm that the company has followed the procedures provided for by the Cross-Border Conversions of Limited Liability Companies Regulations, 2022 and the documents referred to in terms of regulation 17(2) are hereby attached.

Employee consultation in terms of the applicable legislation under the employment law framework stipulated in regulation 7 (10) has commenced/is not applicable (e)

Signature/s.....

Director/s

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

This form must be completed in typed form.

(a) *Delete as necessary and insert name and surname of director/s*

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(b) *Insert company name*

(c) *Insert company registration number*

(d) *Delete as necessary*

(e) *Delete as necessary*

CROSS-BORDER CONVERSIONS OF LIMITED LIABILITY COMPANIES REGULATIONS, 2022

Notice of consent by pledgee in terms of regulation 24(1)(c)

Form CBC2– PLEDGEE'S CONSENT

Delivered by .....

To the Registrar of Companies:

I / We, (a) ……., as the pledgee/s of shares held in the foreign converting company (b)……. having its registration number (c)……. registered in (d)……..

hereby give my/our (e) consent for the pledge in terms of regulation 24(1) of the Cross-Border Conversions of Limited Liability Companies Regulations, 2022, to be fully enforceable as a pledge of shares in the Maltese converted company in terms of article 122 of the Companies Act.

Signature/s .....

Pledgee/s

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

This form must be completed in typed form.

(a) *Delete as necessary and insert name and surname of pledgee/s*

(b) *Name of foreign converting company*

(c) *Registration number of foreign converting company in foreign jurisdiction*

(d) *Name of foreign jurisdiction*

(e) *Delete as necessary.*

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