CHAPTER 386

COMPANIES ACT

To regulate, in place of the Commercial Partnerships Ordinance, limited liability companies and other commercial partnerships.

1st January, 1996

ACT XXV of 1995 as amended by Acts XXIV of 1995, IX, XXX of 1997, XVII of 1998, XXII of 2000, XVII of 2002, IV, IX of 2003, II, XIII of 2004; Legal Notices 390, 391 of 2005, 181, 186 of 2006; Acts V, XII of 2006, XV of 2007; 425 of 2007; Acts IX of 2008, III of 2009 and XIX of 2010; Legal Notice 561 of 2010; Acts X and XVI of 2011; Legal Notices 171, 337, 338 of 2012; Acts III, XX of 2013, XXII of 2014; Legal Notice 478 of 2014; Acts XXXI, XXXIII of 2015, XIX, XXXVI, LIV of 2016, Act XI XXXI of 2017 and XXXVI of 2018and XXVI of 2019 and V and XXXI and XLVII of 2020, Acts XLVI and LX of 2021†, XVIII of 2024 and XVIII of 2025.*

ARRANGEMENT OF ACT

		Articles
	Short title	1
PART I	Preliminary Provisions	2-3
PART II	General Provisions	4-6
PART III	Partnership *En Nom Collectif*	7-50
PART IV	Partnership *En Commandite*	51-66A
PART V	Limited Liability Company	67-326
Title I	Formation and Functioning of Companies	67-213
Chapter I	Formation of a company and matters incidental thereto	67-82
Chapter II	Changes to a company's share capital	83-88
Chapter III	Capital issues by public companies	89-96
Chapter IV	Allotment of shares and debentures of companies	97-103
Chapter V	Maintenance of share capital and protection of class rights	104-116
Chapter VI	Miscellaneous provisions about shares and debentures	117-127
Chapter VII	Meetings and resolutions	128-135
Chapter VIII	Management and administration	136-150
Chapter IX	Auditors	151-162
Chapter X	Accounts, audit and annual return	163-191
Chapter XI	Distribution of profits and assets	192-208
Chapter XII	Private company	209-213
Title II	Dissolution and Consequential Winding up of Companies	214-326
Sub-title I	Winding up by the court	218-264
Chapter I	General provisions	218-224
Chapter II	Official receiver	225-227
Chapter III	Liquidators in a winding up by the court	228-244
Chapter IV	Liquidation committees in a winding up by the court	245-247
Chapter V	General powers of the court in a winding up by the court	248-264
Sub-title II	Voluntary winding up	265-294

*See *Legal Notice 311 of 2021*.
† See *Legal Notice 417 of 2021*.

		Articles
Chapter I	General provisions	265-268
Chapter II	Provisions applicable to a member's voluntary winding up	269-276
Chapter III	Provisions applicable to a creditor's voluntary winding up	277-285
Chapter IV	Provisions applicable to every voluntary winding up	286-294
Sub-title III	Provisions applicable to every mode of winding up	295-326
Chapter I	Effect of appointment of liquidator and convening of meetings	295-300
Chapter II	Proof and ranking of claims	301-302
Chapter III	Effects of winding up on antecedent transactions	303-304
Chapter IV	Qualification of liquidators and prohibition of certain transfers by liquidators	305-306
Chapter V	Offences antecedent to dissolution or in course of winding up	307-321
Chapter VI	Supplementary Provisions	322-326
PART VI	Company Reconstructions	327-329B
PART VII	Conversion Of Commercial Partnerships	330-335
PART VIII	Amalgamation Of Commercial Partnerships	336-359
Title I	Amalgamation Of Partnerships *En Nom Collectif* And *En Commandite*	336-342
Title II	Amalgamation Of Companies	343-359
Chapter I	Merger by acquisition	344-356
Chapter II	Merger by formation of a new company	357
Chapter III	Acquisition of one company by another which holds ninety per cent or more of its shares	358-359
PART IX	Division of Companies	360-375
Chapter I	Division by acquisition	361-373
Chapter II	Division by the formation of new companies	374
Chapter III	Division by a combination of a division by acquisition with a division by the formation of one or more new companies	374A
Chapter IV	Division under the supervision of the court	375
PART X	Association *En Participation*	376-383
PART XI	Bodies Corporate Constituted Outside Malta	384-399A
Chapter I	Provisions as to establishment of place of business in Malta	384-389
Chapter II	Issues by companies constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State	390-398
Chapter III	Provisions as to the winding up of the affairs in Malta of an oversea company	399-399A
PART XII	General	400-427
PART XIII	Transitional and Final Provisions	428-431

SCHEDULES

First Schedule	Model regulations for a limited liability company
Second Schedule	Matters to be specified in a prospectus and reports to be set out therein
Third Schedule	Additional Provisions Applicable to the Annual Financial Accounts of Large Undertakings, Medium-Sized Undertakings and Certain Other Undertakings, where applicable and Additional Provisions Applicable to Consolidated Accounts
Fourth Schedule	Reports on Payments to Governments
Fifth Schedule	Individual accounts and directors' report of an investment company with variable share capital
Sixth Schedule	Contents of directors' report
Seventh Schedule	Contents and form of annual return
Eighth Schedule	Conversion rules applicable on a change in the currency in which the share capital of a company is expressed and the corresponding reporting currency
Ninth Schedule	Explanation of expressions used in sub-article (2) of article 2 and provisions supplementary thereto
Tenth Schedule	Partnerships *en commandite* or limited partnerships
Eleventh Schedule	Penalties
Twelfth Schedule	Table of Concordance

Short title.

1. The short title of this Act is the Companies Act.

PART I - PRELIMINARY PROVISIONS

Interpretation.
Amended by:
XXIV. 1995.362;
IV. 2003.26;
L.N. 391 of 2005;
XV. 2007.2;
L.N. 425 of 2007;
IX. 2008.4;
X. 2011.68;
L.N. 338 of 2012;
XX. 2013.72;
XXII. 2014.15;
XXXI. 2015.3;
XIX. 2016.16;
XI. 2017.2;
XXXI. 2017.74;
V.2020.19;
LX. 2021.2;
XVIII.2024.2.

2. (1) In this Act, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

S.L. 595.27.

"Agency" means the agency established by the Malta Business Registry (Establishment as an Agency) Order;

"annual accounts" means the individual accounts required by article 167 and, where applicable, also the consolidated accounts required by article 170;

"appointed day" means the date appointed by the Minister for the coming into force of this Act;

"approval", in relation to a prospectus, means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the Malta Financial Services Authority or the regulatory authority;'

"associated undertaking" means an under-taking in which another undertaking has a participating interest, and over whose operating and financial policies that other undertaking exercises significant influence. An undertaking is presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that other undertaking;

Cap. 281.

"auditor" shall have the meaning assigned to it in the Accountancy Profession Act or regulations issued in terms thereof;

S.L. 373. 01.

"beneficial owner" shall, unless otherwise stated, have the same meaning assigned to it in the Prevention of Money Laundering and Funding of Terrorism Regulations, and "beneficial ownership" shall be construed accordingly;

"body corporate" means any entity having a legal personality distinct from that of its members, and includes a foreign corporation;

"central securities depository" means a legal person, that operates a securities settlement system and is authorised to provide at least one other of the following services:

(i) initial recording of securities in a book-entry system;

(ii) providing and maintaining securities accounts at the

top tier level;

"certificate of registration" when used in relation to a company means a certificate of registration issued under this Act or under the Ordinance and the words "registration", "registered" and their derivatives shall be construed accordingly;

"commercial partnership" means a company or other commercial partnership formed and registered under this Act or formed and registered under the Ordinance where applicable;

"the Community" means the European Community established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice, and as amended by accession agreements and as may be further amended from time to time;

"company" means a company formed and registered under Part V of this Act or the Ordinance;

""company secretary" means a person who holds the office of a company secretary in terms of article 138;

"consolidated accounts" means the accounts required by article 170;

"contributory" shall, unless otherwise stated, have the meaning assigned to it by articles 215 to 217;

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

"debenture" includes debenture stock, bonds and any other debt securities of a company;

"dematerialised form" in relation to securities issued by a company means the form where such securities exist only as book-entry records;

"director" includes any person occupying the position of director of a company by whatever name he may be called carrying out substantially the same functions in relation to the direction of the company as those carried out by a director;

"directors' report" in relation to a company, means the directors' report required by article 177;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"electronic means" means electronic equipment used for the processing, including digital compression, and the storage of data, and through which information is initially sent and received at its destination; that information being entirely transmitted, conveyed and received in a manner to be determined by the Registrar;

"equity securities" means shares and other securities which are equivalent to shares in companies or which are convertible to such shares, or securities which give such right of conversion, provided such securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said

issuer;

"euro" refers to the currency unit of the participating states in the European Monetary Union;

"exempt company" means a company satisfying the conditions laid down in sub-article (2) of article 211;

"expert", except where otherwise specifically defined in this Act, means an auditor whether or not assisted by a specialist valuer;

"extraordinary resolution" has the meaning given to it by article 135;

"group company", in relation to any company, means any body corporate which is that company's subsidiary or parent company, or a subsidiary of that company's parent company, and the term "group" shall be construed accordingly as well as meaning a parent undertaking and all its subsidiary undertakings;

(i) for all Community issuers of securities which are not mentioned in paragraph (ii) hereof, the Member State where the issuer has its registered office;

(ii) for any issues of non-equity securities whose denomination per unit amounts to at least one thousand euro (1,000), and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were offered to the public, at the choice of the issuer or the offeror, as the case may be. The same regime shall be applicable to non-equity securities in a currency other than the euro, provided that the value of such minimum denomination is nearly equivalent to one thousand euro (1,000);

(iii) for all issuers of securities incorporated in a third country, which are not mentioned in paragraph (ii) hereof, the Member State where:

(*a*) the securities are intended to be offered to the public for the first time after the date of entry into force of this provision; or

(*b*) where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offerer or the person asking for admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country in the following circumstances:

i. where the home Member State was not determined by their choice; or

ii. in accordance with point (1)(i)(iii) of Article 2 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

"immobilisation" means the act of concentrating location of physical certificates relating to securities issued by a company in a central securities depository in a way which enables subsequent transfers to be made by book-entry;

"individual accounts" means the accounts required by article 167;

"investment company with fixed share capital" means a public company falling within the terms of article 194;

"investment company with variable share capital" means a company falling within the terms of article 84;

"issuer" means an entity having a legal personality distinct from that of its members which issues or proposes to issue securities;

"Maltese regulated market" means a regulated market duly authorised by the competent authority in accordance with article 4 of the Financial Markets Act; Cap. 345.

"member", except where otherwise specifically defined, means a shareholder of a company and a partner in any other commercial partnership;

"Member State" means a member state of the European Community;

"Minister" means, unless otherwise stated, the Minister responsible for the registration of commercial partnerships;

"money market instruments" means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

"name" in relation to an individual means that individual's first name or names and surname;

"notice" shall mean a notice in writing of any kind;

"offer of securities to the public", unless otherwise stated, shall have the same meaning assigned to it in the Financial Markets Act; Cap. 345.

"officer" in relation to a company, includes a director, manager or company secretary, but does not include an auditor;

"the Ordinance" means the Commercial Partnerships Ordinance*; Cap. 168.

"ordinary resolution" has the meaning given to it by article 135;

"oversea company" means a body corporate constituted or

*Repealed by this Act.

incorporated outside Malta;

"participating interest" means rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds those rights. The holding of part of the capital of another undertaking is presumed to constitute a participating interest where it exceeds twenty per cent of the said capital. An interest in shares includes an interest which is convertible into an interest in shares and an option to acquire an interest in shares. Interests in shares held by subsidiary undertakings or held by third parties on behalf of the company or its subsidiary undertakings shall be deemed to be held by the company;

"prescribed" means prescribed by regulations made or deemed to have been made under this Act, and where no regulation is in force in respect of a matter which may or is to be prescribed, means determined, approved or allowed by the Minister;

"principal office" means, in relation to an undertaking not having a registered office, the office which, for the purposes of that undertaking serves the same or a similar purpose as the registered office of a commercial partnership under this Act;

"private company" means a private company as defined in article 209;

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription any shares or debentures of a company or other commercial partnership;

"Prospectus Regulation" means Regulation (EU) No. 2017/1129 of the European Parliament and of the Council of the 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been, or may be issued thereunder;

"public company" means a company which is not a private company;

"public-interest entities" means under-takings or entities as defined in article 2(1) of the Accountancy Profession Act; Cap. 281.

"recognised jurisdiction" means:

(a) a Member State;

(b) an EEA State;

(c) any country that is a member of the Organisation for Economic Co-operation and Development (OECD) established in 1961;

(d) any country that is a signatory of the IOSCO Multilateral Memorandum of Understanding; or

(e) any other jurisdiction where the competent authority, as referred to in the Financial Markets Act, has a memorandum of understanding covering securities; Cap. 345.

"Registrar" means the person appointed by the Minister pursuant to article 400;

"regulated market" means a regulated market as defined in the Financial Markets Act and includes a Maltese regulated market; Cap. 345.

"regulatory authority" means a body or bodies designated by a Member State other than Malta or an EEA State to carry out duties provided for in the Prospectus Directive;

"resident", for the purposes of this Act, means -

(*a*) any natural person regardless of nationality who is ordinarily resident in Malta;

(*b*) any body corporate established under the law of Malta;

"security" includes a share, debenture or any other similar instrument issued by a company or other commercial partnership:

Provided that for the purpose of sub-article (3) of this article and of Chapter III of Part V and Part A of the Second Schedule of this Act, the definition of "security" does not include money market instruments having a maturity of less than twelve months;

"share" includes stock except where a distinction between stock and shares is expressed or implied;

"shareholder" means a person entered in the register of members of a company pursuant to article 123;

"small and medium-sized enterprises" or "SMEs" means companies which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees, during the financial year, of less than 250, a total balance sheet not exceeding forty-three million euro (43,000,000) and an annual net turnover not exceeding fifty million euro (50,000,000);

"system of interconnection of registers" means the system of interconnection of central, commercial and companies registers composed of the registers of Member States and EEA States, the European central platform, and the European e-Justice portal serving as the European electronic access point, in terms of Directive 2009/101/EC, as amended by Directive 2012/17/EU;

"third country" means a country that is not a Member State or an EEA State;

"true and fair view" refers -

(*a*) in the case of individual accounts, to the requirements of article 167, and

(*b*) in the case of consolidated accounts, to the requirements of article 171;

"undertaking" means a body corporate or unincorporate which

carries on a trade or business.

(2) (*a*) For the purposes of this Act "parent company" is a company which -

(i) has a majority of the members' voting rights in another undertaking (a subsidiary undertaking); or

(ii) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted with the administration of another undertaking (a subsidiary undertaking) and is at the same time a member of that undertaking; or

(iii) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) pursuant to a contract entered into with that undertaking or to a provision in that undertaking's memorandum or articles of association; or

(iv) is a member of an undertaking and controls alone, pursuant to an agreement with other members of that undertaking (a subsidiary undertaking), a majority of members' voting rights in that undertaking; or

(v) holds a participating interest in another undertaking and has the power to exercise, or actually exercises a dominant influence over that undertaking (a subsidiary undertaking) or it manages the subsidiary undertaking on a unified basis together with it;

and "parent undertaking" shall be construed accordingly and shall include an undertaking which controls one or more subsidiary undertakings.

(*b*) For the purposes of the definition in paragraph (*a*), the provisions of the Ninth Schedule shall apply.

(*c*) The term "subsidiary undertaking" shall be construed in accordance with paragraph (*a*) and shall include an undertaking controlled by a parent undertaking including any subsidiary undertaking of an ultimate parent undertaking.

(*d*) References to shares of undertakings in this Act shall include references to beneficial interests in undertakings where the capital of such undertakings is not divided into shares; and references to "relevant shares", "the issue of equity shares", "the issued share capital" and "the nominal value of the equity shares" shall be construed accordingly.

(*e*) Other terms appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

(3) (*a*) (*deleted bu Act V of 2020).*

(*b*) The following shall not constitute offers of securities made to the public:

(i) an offer of securities made only to qualified investors; or

(ii) an offer made to less than one hundred and fifty persons per Member State or EEA State, not including qualified investors; or

(iii) an offer where the minimum consideration which may be paid by any person for securities acquired pursuant to the offer is at least one hundred thousand euro (100,000.00), for each separate offer; or

(iv) an offer of securities where the nominal value of each security amounts to at least one hundred thousand euro (100,000.00), or the total consideration of the offer in the European Union and the EEA shall not exceed one hundred thousand euro (100,000.00), which limit shall be calculated over a period of twelve months; or

(v) *Repealed by Act XVIII.2024.2.*

(vi) an offer in respect of non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the European Union and the EEA, over a period of twelve months is less than seventy five million euro (75,000,000), provided that these securities:

(*a*) are not subordinated, convertible or exchangeable; and

(*b*) do not give a right to subscribe to or acquire other types of securities and they are not linked to a derivative instrument:

Provided that any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in sub-paragraphs (i) to (iv) shall be regarded as a separate offer and the definition set out in paragraph (*a*) regarding an "offer of securities to the public" shall apply for the purpose of deciding whether that resale is an offer of securities to the public. The placement of shares through financial intermediaries shall be subject to publication of a prospectus if none of the conditions mentioned in sub-paragraphs (i) to (iv) above are met for the final placement:

Provided further that in the case of any such subsequent resale of securities or final placement of securities through financial intermediaries, it is not necessary to draw up another prospectus as long as a valid prospectus is available in accordance with paragraph 21 of Part A of

the Second Schedule to this Act and the issuer or the person responsible for drawing up such a prospectus consents to its use by means of a written agreement:

Provided further and without prejudice to Articles 1(4) and 4 of the Prospectus Regulation, offers of securities to the public shall be exempt from the obligation to publish a prospectus, in accordance with Article 3(1) of the Prospectus Regulation as long as:

(*a*) such offers are not subject to notification in accordance with Article 25 of the Prospectus Regulation; and

(*b*) the total consideration of each such offer in the European Union and the EEA is less than a monetary amount calculated over a period of twelve (12) months which shall not exceed five million euro (€5,000,000):

Provided further that in respect of offers mentioned in sub-paragraph (vi) and in the third proviso, an offeror may draw up a prospectus in accordance with any applicable rules.

(*c*) Where the offer is made by a commercial partnership, not being a company and whether formed or registered under this Act or any other Act, the provisions of this article shall apply to such offer *mutatis mutandis*.

(*d*) The Minister may by Order published in the Gazette revise or amend any of the figures or amounts referred to in this article.

(4) For the purposes of this Act, "generally accepted accounting principles and practice" shall have the meaning assigned to it in the Accountancy Profession Act or regulations issued in terms thereof.

Cap. 281.

(5) For the purposes of this Act, where a document required to be delivered to the Registrar for registration is required to state the name and residence or address of a person, it shall be deemed to require further the official identification, by number or otherwise of such person, as may be applicable.

(6) For the purposes of this Act, where any document, which is required to be delivered or given to or served on the Registrar, is to be signed by an expert and such expert is a company, partnership or other body corporate, such document shall carry the signature of an individual who is a director, partner or equivalent officer, as the case may be, duly authorised to sign on its behalf.

(7) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

3. (1) References in any other law to the Ordinance shall be construed as a reference to this Act and references in any other law to a provision of the Ordinance shall be construed, insofar as applicable, as a reference to the corresponding provision of this Act; and references in any other law to a partnership formed and registered under the Ordinance shall be construed as a reference, or as including a reference, to a commercial partnership formed and registered under this Act.

References in other Acts.
Amended by: IV. 2003.27.

(2) The table of concordance set out in the Twelfth Schedule to this Act may be used, insofar as applicable, in determining the corresponding provisions in accordance with sub-article (1).

3A. This Act, in part, seeks to transpose, implement and give effect to the provisions and requirements of the following European Union Directives and Regulations, as may be amended from time to time, including any implementing measures that have been or may be issued thereunder:

Transposition and implementation of EU instruments.
Added by: XX. 2013.73.
Amended by: XXII. 2014.16; XXXI. 2015.4; XIX. 2016.17; XXXVI. 2016.18; LIV. 2016.3; XVIII.2024.3.

(*a*) Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies;

(*b*) Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State;

(*c*) Directive 2003/58/EC of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies;

(*d*) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;

(*e*) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

(*f*) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies;

(*g*) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, which Directive was itself amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014;

(*h*) Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital;

(*i*) Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies;

(*j*) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent;

(*k*) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies;

(*l*) Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directives 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions;

(*m*) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies;

(*n*) Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;

(*o*) Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;

(*p*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings,

amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC hereinafter in this Act referred to as the "Accounting Directive;

(*q*) Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC;

(*r*) Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG);

(*s*) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE);

(*t*) Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities hereinafter referred to as "the Audit Regulation;

(*u*) Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups, amending Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;

(*v*) Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, and Directive (EU) 2019/2121 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;

(*w*) Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, hereinafter in this Act referred to as the "Country-by-Country Reporting Directive

which shall be interpreted and applied accordingly.

PART II - GENERAL PROVISIONS

Formation of commercial partnerships and different kinds of commercial partnerships. *Amended by: IV. 2003.28.*

4. (1) A commercial partnership may be of the following kinds:

(*a*) a partnership *en nom collectif*; or

(*b*) a partnership *en commandite* or limited partnership; or

(*c*) a company.

(2) A commercial partnership other than a company may be formed for the exercise of one or more acts of trade.

(3) A company may be formed for any lawful purpose and shall have the status of -

(*a*) a public company; or

(*b*) a private company.

(4) A commercial partnership has a legal personality distinct from that of its member or members, and such legal personality shall continue until the name of the commercial partnership is struck off the register, whereupon the commercial partnership shall cease to exist.

Law governing commercial partnerships.

5. A commercial partnership formed and registered under this Act or under the Ordinance shall be governed by this Act irrespective of the place where the management and control of the commercial partnership is exercised.

Indication of particulars in business letters, order forms, websites etc. *Amended by: IV. 2003.29; XV. 2007.3.*

6. (1) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a commercial partnership shall mention in legible characters its name, kind of commercial partnership, registered office and registration number.

(2) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, in respect of the branch or place of business in Malta, a body corporate registered under Part XI of this Act shall mention in legible characters its name, the country of its constitution or incorporation, its registration number and registered office in its country of constitution or incorporation, kind of commercial partnership, the address of the branch or place of business in Malta, its registration number under Part XI of this Act and, where applicable, the fact that the oversea company is being wound up.

(3) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a partnership *en nom collectif* shall also state in legible characters the names of its partners in addition to the requirements of sub-article (1).

(4) In all its business letters and order forms, whether they are in paper form or in any other medium, as well as on its internet website or websites, if any, a partnership *en commandite* or limited partnership shall also state in legible characters the names of the partners having unlimited liability in addition to the requirements

of sub-article (1).

(5) Every commercial partnership and every body corporate registered under Part XI of this Act shall mention its name in legible characters in all its notices and other official publications, bills of exchange, promissory notes, cheques and orders for money or goods purporting to be signed on its behalf and in all its bills of parcels, invoices, receipts and letters of credit.

(6) An officer signing a document on behalf of a commercial partnership or on behalf of a body corporate registered under Part XI of this Act shall state the capacity in which he is signing.

(7) Where a commercial partnership is being wound up, every letter, invoice or other document issued by or on behalf of the commercial partnership, being a document on or in which the name of the commercial partnership appears, shall, in addition to the requirements of the preceding sub-articles of this article, contain a statement that the commercial partnership is being wound up and, in respect of a company it shall also contain the names of the liquidators.

(8) Where a reference is made to the capital of a company in the documents or internet websites referred to in the preceding sub-articles, that reference shall include a reference to both the issued and the paid up capital.

(9) If default is made in complying with the provisions of sub-articles (1) to (6) and of sub-article (8) every officer of the commercial partnership who is in default shall be liable to a penalty.

(10) If default is made in complying with the provisions of sub-article (7) every liquidator or partner, as the case may be, who is in default shall be liable to a penalty.

PART III - PARTNERSHIP *EN NOM COLLECTIF*

Definition. *Amended by: IV. 2003.30; XXII. 2014.17.*

7. A partnership *en nom collectif* (referred to as a "partnership" in the following provisions of this Part) may be formed by two or more partners and operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of all the partners:

Provided that no action shall lie against the individual partners unless the property of the partnership has first been discussed:

Provided further that where, and for as long as, none of the partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members, the provisions of article 7A shall also apply to that partnership.

When none of the partners is an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.
Added by: XXII. 2014.18.

7A. (1) The provisions of this article shall apply to a partnership where, and for as long as, none of the partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

(2) A partnership which, either on formation or at any time thereafter, becomes subject to the provisions of this article shall, within fourteen days, deliver to the Registrar for registration a notice specifying that it is subject to this article and that it shall comply with the provisions laid down in this article.

(3) When a partnership ceases to be subject to the provisions of this article, the partnership shall, within fourteen days of such cessation, deliver to the Registrar for registration a notice specifying that it is no longer subject to this article and that the provisions of this article shall not apply to such partnership as from the date that it has ceased to be so subject.

(4) Notwithstanding any other penalties imposed by this Act, any partner who fails to comply with the provisions of sub-articles (2) and (3) shall be liable to a penalty, and, for every day during which the default continued, to a further penalty.

(5) The provisions of Chapters IX and X of Part V of this Act, other than the provisions of article 184, shall *mutatis mutandis* apply to a partnership subject to this article for as long as such partnership continues to be so subject.

(6) Where a partnership subject to the provisions of this article is dissolved, a liquidator shall be appointed and the provisions of articles 305 and 306 shall *mutatis mutandis* apply. The provisions of article 37(1) and article 48 shall not apply.

(7) (*a*) As soon as the affairs of the partnership are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the partnership has been disposed of, and shall draw up a scheme of distribution and he shall cause the account to be audited by one or more auditors appointed by a decision of the partners. The liquidator shall serve on each of the partners a copy of the accounts and of the scheme of distribution, if any, together with the auditors' report and any explanation thereof.

(*b*) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by application by any of the partners within three months of the service referred to in paragraph (*a*).

(*c*) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (*a*). Such auditor shall not be a person who has held the office of auditor of the partnership at any time during the last three years immediately preceding the date of dissolution.

(8) The Minister may make regulations for the better carrying

out of any of the provisions of this article; and without prejudice to the generality of the foregoing may, by such regulations, in particular exempt or provide for the exemption of such partnership from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions that may be specified thereunder.

Agreement to pay share of profits.

8. An agreement to pay a share of the profits of a partnership to a person in total or partial remuneration for his services shall not, of itself, make him a partner.

Partnership name.

9. (1) Subject to the provisions of sub-articles (2) and (3), a partnership may be designated by any name.

(2) A partnership shall not be registered by a name which -

(*a*) is the same as the name of another commercial partnership or so nearly similar as in the opinion of the Registrar it could create confusion; or

(*b*) is in the opinion of the Registrar offensive or otherwise undesirable; or

(*c*) has been reserved for registration for another commercial partnership by notice in writing to the Registrar given not more than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this sub-article without delay to the person requesting the registration.

(3) For the purposes of sub-article (2)(*b*), the Registrar shall have regard to the names of the partners, the business or proposed business of the partnership and to the protection of the names of individuals who are not connected in any way with the partnership.

Penalties.

10. Any person who knowingly makes use of a name falsely implying the existence of a partnership shall be liable to a penalty.

Contributions deemed to be made in ownership.

11. Unless specifically provided in the deed of partnership, things contributed to the partnership shall be deemed to have been transferred in full ownership:

Provided that, where any of the partners has contributed his own services only, the contributions made by the other partners shall, unless specifically provided in the deed of partnership, be deemed to have been made in usufruct.

Contribution of a debt owing to a partner.

12. Where a partner has contributed to the partnership a debt owing to him, he shall not be discharged until the partnership obtains payment of the amount for which the debt was contributed and, in case of non-payment at the due date, he shall be liable, jointly and severally with the debtor, for the said amount with interest from the date the debt contributed fell due.

How a partnership is constituted.

13. A partnership shall not be validly constituted unless a deed of partnership is entered into and signed and a certificate of registration is issued under this Act in respect thereof.

Contents of deed of partnership.

14. (1) The deed of partnership shall state:

(*a*) the name and residence of each of the partners;

(*b*) the partnership-name;

(*c*) the registered office in Malta of the partnership;

(*d*) the objects of the partnership, that is to say, whether the objects are trade in general or a particular branch of trade, and in the latter case, the nature of the trade;

(*e*) the contribution of each of the partners, specifying the value of the respective contribution of every partner;

(*f*) the period if any fixed for the duration of the partnership.

(2) The exclusion or omission of any matter from the objects stated in the deed of partnership may not be set up against third parties.

Registration of deed of partnership.

15. (1) The deed of partnership shall be delivered for registration to the Registrar who, being satisfied that it complies with the requirements of article 14 and of sub-article (2), shall register it.

(2) Where the deed of partnership is a public deed or a private writing enrolled in the records of a notary public, an authentic copy thereof shall be delivered in lieu of the original.

(3) The aforesaid delivery shall be made by any one of the partners or his authorised agent.

Duty of Registrar and effects of registration. *Amended by: XIII. 2004.95.*

16. (1) On the registration of the deed of partnership the Registrar shall certify under his hand that the partnership is registered and the partnership shall come into existence and shall be authorised to commence business under the partnership name as from the date of the certificate:

Provided that, if registration is obtained before the date fixed in the deed of partnership for the commencement of the partnership, the certificate shall indicate such date, and the partnership shall come into existence and shall be authorised to commence business as from such later date.

(2) A certificate of registration given in respect of a partnership is conclusive evidence that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the partnership is duly registered, under this Act.

(3) The registration of a partnership by the Registrar under this article shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the partnership under any other law.

Where certificate of registration is not issued.

17. Unless and until a certificate of registration is issued under this Act in respect of a partnership or until the date indicated in a certificate of registration as the date on which a partnership shall come into existence -

(*a*) any two or more persons carrying on business under a name falsely implying the existence of a partnership shall have, as against one another and limitedly to property acquired from such business, such rights only as are by law conferred on joint owners;

(*b*) any obligation contracted in favour of third parties in good faith under a name falsely implying the existence of a partnership shall be jointly and severally binding on those persons, who, if a certificate of registration had been issued, would have been partners carrying on business under that name.

Person holding himself out to be a partner.

18. (1) A person who holds himself out as being a partner shall be held liable unlimitedly and jointly and severally with the partners for all the obligations contracted by the partnership.

(2) The inclusion in the partnership-name of the name of a person who is not a partner shall be taken into account by the court in determining whether such person is holding himself out as being a partner.

Changes in deed of partnership.

19. (1) Every change relating to the administration or the representation of a partnership, the dissolution of a partnership before the period, if any, fixed for its duration, any extension of the said period not expressly provided for in the deed of partnership and generally any alteration or addition to the deed of partnership shall be made in writing and duly signed by the partners authorised to make that change and, subject to the provisions of article 21, shall not take effect unless and until the relative instrument or, where such instrument is a public deed or a private writing enrolled in the records of a notary public, an authentic copy thereof is delivered to the Registrar for registration and is registered by him. In the case of a change relating to the administration or the representation of a partnership, the relative instrument shall specify the name and residence of the person or persons entrusted with the said administration or representation.

(2) Where the extension of the period, if any, fixed for the duration of a partnership is expressly provided for in the deed of partnership, the partner or partners having the administration or representation of the partnership shall, notwithstanding that provision in the deed, deliver a notice of extension of the period of duration to the Registrar for registration and such extension shall not take effect unless and until the said notice is delivered to the Registrar and is registered by him.

(3) Where a partner ceases to be a partner or where a person whose name does not appear in the deed of partnership or in any alteration or addition thereto becomes a partner of an already existing partnership, a notice to that effect, specifying the name and residence of any new partner, shall, within one month, be delivered to the Registrar for registration by the partner or partners having the administration or the representation of the partnership:

Provided that any assignment of interest in whole or in part of any partner shall, unless otherwise provided in the deed of

partnership, require the prior consent in writing of all the other partners.

(4) If default is made in complying with the provisions of sub-article (3), the partner or partners having the administration or representation of the partnership shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Where alteration consists in change of partnership-name.

20. Where the alteration to the deed of partnership consists in a change of the partnership-name, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case:

Provided that the provisions of article 9 shall apply to the registration of such new name.

Reduction in contribution of a partner and dissolution of a partnership before period fixed for its duration.
Amended by: IV. 2003.31; L.N. 181 of 2006; L.N. 186 of 2006.

21. (1) Any reduction in the contribution of a partner, other than a contribution consisting in personal services, any dissolution of the partnership on the grounds mentioned in article 35(*b*) or (*f*), any reduction of the term of duration, if any, of the partnership or any assignment by a partner of all his interest in the partnership shall not be operative until three months from the date of publication of the statement in accordance with article 401(1)(*e*) relating to the instrument effecting such reduction, dissolution or assignment.

(2) Any creditor of the partnership whose debt existed prior to the publication referred to in sub-article (1) may object thereto by sworn application, within the period of three months as aforesaid and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the reduction of the contribution or the dissolution of the partnership or a reduction of the term of duration, if any, or the assignment of the interest of the partner, as the case may be, on sufficient security being given by the partnership.

Right of creditors of a partner to oppose extension of duration of a partnership.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

22. (1) Where the duration of a partnership is extended beyond the period, if any, in the deed of partnership, the separate creditor of a partner may object to such extension by sworn application filed within three months from the date of the publication of the statement in accordance with article 401(1)(*e*) relating to the instrument effecting such extension and, upon good cause being shown, the court shall direct the partnership to liquidate such partner's interest in the partnership within three months of the judgment.

(2) The provisions of sub-article (1) shall apply whether any extension of the period fixed for the duration of the partnership is or is not expressly provided for in the deed of partnership.

(3) A separate creditor of a partner may only object in pursuance of this article if his debt existed prior to the publication of the statement referred to in sub-article (1).

23. The Registrar of Courts shall, without delay, cause a copy of any sworn application filed under articles 21 and 22 and of any judgment given thereon to be served on the Registrar for registration.

Duties of Registrar of Courts.
Amended by: XXIV. 1995.362; L.N. 181 of 2006; L.N. 186 of 2006.

24. Unless otherwise provided in the deed of partnership, any alteration or addition thereto may only be made with the unanimous consent of the partners.

How deed of partnership may be altered..

25. (1) In so far as the deed of partnership does not otherwise provide, the administration and representation of the partnership shall vest in each of the partners severally.

Administration and representation of a partnership and how partnership may be bound.

(2) A partnership may not be bound in favour of third parties except by a partner acting under the partnership-name and having the representation of the partnership either by virtue of the deed of partnership or by operation of law.

(3) Where any such partner has acted as aforesaid, the partnership shall be bound even though it derives no benefit.

26. (1) Notwithstanding the provisions of article 26 of the Commercial Code, the accounting records of the partnership shall be kept for a period of ten years:

Keeping of accounting records.
Cap. 13.

Provided that where the accounting records are kept in a bound or unified form, the ten years shall commence to run from the date of the last entry made therein.

(2) If default is made in complying with the requirements of sub-article (1), every partner who is in default shall be liable to a penalty.

27. (1) Where a person becomes a partner of an already existing partnership, he shall thereby become liable for all the obligations of the partnership, even if incurred before the date at which he becomes a partner.

New partners.

(2) Any agreement to the contrary shall be of no effect with regard to third parties.

28. A partnership shall not distribute profits until it has made good all losses.

Distribution of profits.

29. The separate creditors of a partner may enforce their rights, during the continuance of the partnership, on the share of the profits if due to their debtor and, on the dissolution of the partnership, on such portion of the assets of the partnership as is due to their debtor on the partnership being wound up.

Rights of creditors of a partner.

30. (1) A partner shall not, in competition with the partnership and without the express consent of the other partners, carry on business on his own account or on account of others or be a partner with unlimited liability in another partnership.

Partner may not compete with partnership.
Amended by: XXXVI.2018.118.

(2) If a partner acts in contravention of the provisions of sub-article (1), the partnership may, at its option, either take action for damages and interest against the offending partner or demand payment of any profit made by him in violation of the aforesaid prohibition.

Death of a partner.

31. (1) Saving any provision to the contrary in the deed of partnership, in the event of death of one of the partners the surviving partners shall liquidate the deceased partner's interest in the partnership in favour of his heirs, unless the surviving partners unanimously elect either to dissolve the partnership or to continue the partnership with the heirs, if, in the latter case, such heirs accept:

Provided that where not all the heirs are in agreement, the partnership may continue with those who so elect as long as the dissenting heirs' interest in the partnership is liquidated in their favour.

(2) Where the deceased partner has bequeathed his interest by legacy, the provisions of sub-article (1) shall apply as though references to heirs were references to the legatees of such interest.

Expulsion of a partner.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

32. (1) A partner may be expelled from the partnership by a decision of the majority in number of the other partners unless a higher majority is required by the partnership deed -

(*a*) if he does not make his contribution in accordance with the partnership deed;

(*b*) if he commits a serious breach of duty as a partner;

(*c*) if he contravenes the provisions of article 30(1);

(*d*) if he is interdicted or incapacitated;

(*e*) in such other cases for which provision is made in the deed of partnership.

(2) Any decision taken as aforesaid shall be notified, together with the reasons therefor, by judicial act served on the expelled partner, and shall not take effect until the lapse of fourteen days from such notification.

(3) The expelled partner may, by sworn application filed within fourteen days from the notification as aforesaid, object to the decision and the court shall have power to stay the execution of the said decision pending its judgment.

(4) Where the partnership consists of two partners only, the expulsion of a partner may only be ordered by the court at the suit of the other partner.

Discontinuation of membership.

33. A partner shall not be entitled to continue as a partner if -

(*a*) he is adjudged bankrupt; or

(*b*) his interest in the partnership has been liquidated under the provisions of article 22.

Rights of persons ceasing to be partners.

34. (1) A partner who is expelled or who by virtue of the immediately preceding article is not entitled to continue as partner shall have the right to have his interest in the partnership liquidated.

(2) There shall be included in the liquidation of the interest of a partner who is expelled, or who by virtue of the immediately preceding article is not entitled to continue as a partner, a *pro rata*

share of the profits or losses on all work in progress up to the date of the expulsion.

Dissolution of partnerships *en nom collectif.* *Amended by: IV. 2003.32.*

35. A partnership *en nom collectif* is dissolved -

(*a*) where the period, if any, fixed for its duration expires;

(*b*) if, subject to the provisions of article 21, all the partners so agree;

(*c*) if the partnership is adjudged bankrupt;

(*d*) if in the opinion of the Court there exist grounds of sufficient gravity to warrant dissolution;

(*e*) if the number of partners is reduced below two and remains so reduced for more than six months;

(*f*) subject to the provisions of article 21, in such other cases for which provision is made in the deed of partnership.

Notice of dissolution. *Amended by: XXIV. 1995.362.*

36. (1) On the dissolution of a partnership, and in no case later than fourteen days after such dissolution, the partners having the administration or the representation thereof shall deliver to the Registrar for registration a notice of the dissolution:

Provided that, where a partnership is adjudged bankrupt or dissolved by order of the court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts.

(2) The following provisions of this Part shall apply to the dissolution of a partnership except where the partnership is adjudged bankrupt, in which case the provisions of the Commercial Code relating to bankruptcy shall apply.

Cap. 13.

How a partnership *en nom collectif* may be wound up.

37. (1) Where the manner in which the partnership is to be wound up is not provided for in the deed of partnership or is not determined by agreement between the partners, the partnership shall be wound up by one or more liquidators.

(2) If the partners do not agree as to the person who is to be appointed liquidator, the appointment shall be made by the court, on the application of any partner, creditor of the partnership or the Registrar.

(3) The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for registration a notice of his appointment stating his name and residence.

Power to remove liquidator. *Amended by: IV. 2003.33; L.N. 181 of 2006; L.N. 186 of 2006.*

38. (1) A liquidator, whether appointed by the partners or by the court, may be removed from office either by the partners, if they so agree, or by order of the court, on a demand by sworn application made by any of the partners, if the court is satisfied that there exist sufficient grounds to warrant his removal.

(2) Where the office of a liquidator becomes vacant, the provisions of article 37(2) shall apply.

Remuneration of liquidator.

39. The remuneration of the liquidator may be fixed by agreement between the partners and the liquidator, failing which it

shall be fixed by the court.

Costs of winding up payable in priority to all other claims.

40. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the partnership in priority to all other claims.

Penalty.

41. If default is made in complying with any of the requirements of article 36 and of article 37(3), every partner or liquidator, as the case may be, who is in default, shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Powers until provision is made for winding up.

42. Until such time as provision is made for the winding up of the partnership, only such acts as are of ordinary administration may be performed.

Duties of partners vested with administration.

43. (1) Where a liquidator is appointed, the partners vested with the administration of the partnership shall -

(*a*) deliver to the liquidator all the assets and all the accounting records and other documents of the partnership and shall draw up accounts relating to their administration for the period since the preceding accounts; and

(*b*) together with the liquidator, draw up a balance sheet showing the state of affairs of the partnership as at the date of the dissolution.

(2) Subject to the provisions of sub-article (1), on the appointment of a liquidator all the powers of administration or representation of the partnership vested in any of the partners shall cease.

Powers of liquidators.

44. (1) The liquidator shall represent the partnership and shall have power to perform all acts conducive and ancillary to the winding up of the affairs of the partnership:

Provided that he shall not refer any matter to arbitration or make any compromise unless so authorised in writing by the partners.

(2) The liquidator shall not undertake any new transaction.

(3) Where more than one liquidator is appointed, they shall act jointly and shall be jointly and severally liable for their acts, unless the partners have otherwise provided.

Liquidator not to distribute assets before paying debts.

45. (1) The liquidator shall not distribute any assets of the partnership among the partners unless either the debts and liabilities of the partnership have been paid or sufficient funds have been set aside for the payment thereof.

(2) Where the assets of the partnership are insufficient to meet its liabilities, the liquidator may demand from the partners payment of the contribution, if any, due by them, irrespective of the date when it falls due, and, if necessary, the sums required for the payment of the aforesaid liabilities in the proportion in which the liabilities of the partnership are to be borne by the partners.

(3) The liquidator may furthermore demand from the partners payment of the contribution, if any, due by them or any part of it, irrespective of the date when it falls due, for the purpose of adjusting the rights of the partners among themselves.

Duty of liquidator to give information, to render account and prepare scheme of distribution.

46. (1) The liquidator shall, at the request of any of the partners, inform the partners as to the state and progress of the liquidation.

(2) As soon as the affairs of the partnership are wound up, the liquidator shall render an account of the winding up and of his receipts and payments and draw up a scheme of distribution.

Rules applicable to distribution of assets.

47. In the distribution of the assets of a partnership the following provisions shall apply, unless otherwise provided in the deed of partnership, that is to say -

(*a*) where a thing has been contributed in usufruct or enjoyment, it shall be restored to the partner contributing it and the partnership shall be held liable in damages if the thing has perished or deteriorated for any cause attributable to any of the partners, saving the right of the partnership to the reimbursement of any sums so paid against the partner who is at fault;

(*b*) the assets of the partnership shall first be applied in repayment of the contributions of the partners and any balance shall be distributed among the partners in proportion to their share in the profits of the partnership;

(*c*) where it has been agreed that the distribution of the assets shall be made in kind, the provisions governing partition of common property shall apply.

Approval of accounts and scheme of distribution.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

48. (1) The liquidator shall by judicial act serve on each of the partners a copy of the accounts and of the scheme of distribution mentioned in article 46(2).

(2) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by sworn application by any of the partners within three months of the service of the judicial act referred to in sub-article (1).

Striking of name of partnership off register.
Amended by: IV. 2003.34; XV. 2007.4.

49. (1) On the approval of the accounts, the liquidator shall deliver to the Registrar for registration a notice of such approval and the Registrar shall thereupon register it. Subject to the provisions of article 21 in relation to the period established in sub-article (1) thereof and to the rights of creditors under sub-article (2) thereof, the Registrar shall strike the name of the partnership off the register and shall forthwith publish a notice of completion of the winding up and of such striking off.

(2) Where the manner in which the partnership is to be wound up is provided for in the deed of partnership or is determined by agreement between the partners, it shall be the duty of the partners to deliver to the Registrar for registration a notice, signed by all of

them, that the winding up has been completed and the Registrar shall thereupon register it. Subject to the provisions of article 21 in relation to the period established in sub-article (1) thereof and to the rights of creditors under sub-article (2) thereof, the Registrar shall strike the name of the partnership off the register and shall forthwith publish a notice of the completion of the winding up and of such striking off.

Preservation of accounting records and documents after dissolution.

50. (1) The accounting records and the documents of the partnership shall be kept by the liquidator, if any, or by the person elected for that purpose by the majority of the partners and shall be so kept for a period of ten years from the date at which the name of the partnership was struck off the register. The election of such person shall take place within fourteen days from the registration of the notice referred to in article 49 and shall not be effected until such person has signified his acceptance in writing to the partners within fourteen days from his election:

Provided that where there is no liquidator and the partners fail to elect such person or where such person refuses to accept his election, the accounting records and documents shall be delivered to the Registrar within fourteen days of the non-acceptance or failure to elect as the case may be, and the Registrar shall keep such records for the said period of ten years.

(2) Where a person has been elected to keep the accounting records and the documents of the partnership, or where the partners have failed to elect such a person, the partners shall inform the Registrar accordingly within fourteen days of the date when the election becomes effective or from the failure to elect within the prescribed period, as the case may be, and in default, the partners shall be liable to a penalty.

(3) If the liquidator or the person elected by the partners to keep the accounting records and documents of the partnership fails to keep them for the period prescribed by sub-article (1), he shall be liable to a penalty.

(4) If the liquidator or the person elected by the partners to keep the accounting records and documents of the partnership dies, his heirs shall be obliged to deliver the said accounting records and documents to the Registrar within six months and the Registrar shall keep them for the remainder of the period prescribed by sub-article (1).

(5) The heirs referred to in sub-article (4) shall be liable to a penalty if they do not comply with the provisions of that sub-article.

Amended by: IV. 2003.35.

PART IV - PARTNERSHIP *EN COMMANDITE* OR LIMITED PARTNERSHIP

Definition. *Amended by: IV. 2003.35, 36; XXII. 2014.19.*

51. A partnership *en commandite* or limited partnership operates under a partnership-name and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners, called general partners, and by the liability, limited

to the amount, if any, unpaid on the contribution, of one or more partners, called limited partners:

Provided that where, and for as long as, none of the general partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members, the provisions of article 51A shall also apply to that partnership *en commandite* or limited partnership.

When none of the general partners is an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.
Added by: XXII. 2014.20.

51A. (1) The provisions of this article shall apply to a partnership *en commandite* or limited partnership where, and for as long as, none of the general partners is either an individual or a body corporate which has its obligations guaranteed by the unlimited and joint and several liability of one or more of its members.

(2) A partnership *en commandite* or limited partnership which, either on formation or at any time thereafter, becomes subject to the provisions of this article shall, within fourteen days, deliver to the Registrar for registration a notice specifying that it is subject to this article and that it shall comply with the provisions laid down in this article.

(3) When a partnership *en commandite* or limited partnership ceases to be subject to the provisions of this article, the partnership shall, within fourteen days of such cessation, deliver to the Registrar for registration a notice specifying that it is no longer subject to this article and that the provisions of this article shall not apply to such partnership as from the date that it has ceased to be so subject.

(4) Notwithstanding any other penalties imposed by this Act, any partner of the partnership *en commandite* or limited partnership who fails to comply with the provisions of sub-articles (2) and (3) shall be liable to a penalty, and, for every day during which the default continued, to a further penalty.

(5) The provisions of Chapters IX and X of Part V of this Act, other than the provisions of article 184, shall *mutatis mutandis* apply to a partnership *en commandite* or limited partnership subject to this article for as long as such partnership continues to be so subject.

(6) Where a partnership *en commandite* or limited partnership subject to the provisions of this article is dissolved, a liquidator shall be appointed and the provisions of articles 305 and 306 shall mutatis mutandis apply. The provisions of article 37(1) and article 48 shall not apply.

(7) (*a*) As soon as the affairs of the partnership *en commandite* or limited partnership are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of such partnership has been disposed of, and shall draw up a scheme of distribution and he shall cause the account to be audited by one or more auditors appointed by a decision of the general

partners. The liquidator shall serve on each of the partners a copy of the accounts and of the scheme of distribution, if any, together with the auditors' report and any explanation thereof.

(*b*) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by application by any of the partners within three months of the service referred to in paragraph (*a*).

(*c*) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (*a*). Such auditor shall not be a person who has held the office of auditor of the partnership en commandite or limited partnership at any time during the last three years immediately preceding the date of dissolution.

(8) The Minister may make regulations for the better carrying out of any of the provisions of this article; and without prejudice to the generality of the foregoing may, by such regulations, in particular exempt or provide for the exemption of such partnership *en commandite* or limited partnership from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions that may be specified thereunder.

Applicability of provisions governing partnerships *en nom collectif*. *Amended by: IV. 2003.35.*

52. The provisions governing partnerships *en nom collectif* shall apply to partnerships *en commandite* or limited partnership except insofar as they are inconsistent with the provisions of this Part.

Partnership-name. *Amended by: IV. 2003.37.*

53. (1) A person, including a limited partner, who holds himself out as being a general partner shall be held liable unlimitedly and jointly and severally with the general partners for all the obligations contracted by the partnership.

(2) The inclusion in the partnership-name of the name of a person who is not a general partner shall be taken into account by the court in determining whether such person is holding himself out as being a general partner.

Contribution of limited partner not to include personal services.

54. The contribution of a limited partner shall not include personal services.

Contents of deed of partnership. *Amended by: IV. 2003.35.*

55. The deed of partnership of a partnership *en commandite* or limited partnership, in addition to the particulars prescribed by article 14, shall specify which of the partners are general partners and which of them are limited partners, and in default the partnership shall resolve itself into a partnership *en nom collectif*.

Rights and duties of partners.

56. (1) Unless otherwise provided in the other provisions of this Part the rights and duties of the general partners shall be the same as those of partners in a partnership *en nom collectif*.

(2) Unless otherwise provided in the deed of partnership but subject to the provisions of this Part, limited partners shall have

only the rights and duties provided by this Part.

57. The administration and representation of the partnership *en commandite* or limited partnership shall vest in the general partners, and unless the deed of partnership otherwise provides, such administration and representation shall vest in each of the general partners severally.

Administration and representation. *Amended by: IV. 2003.35.*

58. The general partners shall by unanimous decision have the right to appoint the partners from amongst themselves who are to administer and represent the partnership *en commandite* or limited partnership and to dismiss from office the partners so appointed:

Provided that the deed of partnership may provide that the limited partners shall have the right to participate in the appointment of general partners to, or the dismissal of general partners from the office of administration and representation of the partnership.

Appointment of partners to administer and represent partnerships *en commandite* or limited partnership. *Amended by: IV. 2003.35, 38.*

59. (1) A limited partner shall not perform any act of administration nor transact business on behalf of the partnership *en commandite* or limited partnership except by virtue of a power of attorney given for specified acts or transactions.

(2) If a limited partner acts in contravention of the aforesaid prohibition, he shall be bound, in regard to third parties, unlimitedly and jointly and severally with the general partners for all the obligations of the partnership *en commandite* or limited partnership and shall moreover be liable to be expelled from the partnership in accordance with the provisions of article 32:

Provided that a limited partner acting in contravention of the prohibition contained in sub-article (1) shall not be expelled from the partnership if he proves that he had been acting on the instructions of the general partners.

Limited partner cannot take part in management of partnership *en commandite* or limited partnership. *Amended by: IV. 2003.35.*

60. At the end of each accounting period the balance sheet and profit and loss account of the partnership *en commandite* or limited partnership shall be communicated to the limited partners, who, for the purpose of ascertaining their correctness, shall have a right of access to the accounting records and other documents of the partnership.

Communication of yearly accounts to limited partners. *Amended by: IV. 2003.35.*

61. The provisions of article 30 and of article 32(1)(*c*) shall not apply to a limited partner.

Non-applicability of certain articles to limited partners.

62. Notwithstanding the provisions of article 28, a limited partner shall in no case be bound to restore profits received in good faith.

Limited partner not bound to restore profits received in good faith.

63. (1) Unless the deed of partnership otherwise provides, a limited partner may assign his interest in the partnership *en commandite* or limited partnership:

Provided that, if the contribution of a limited partner is not fully paid up, any assignment of his interest in the partnership shall not have effect, with regard to the partnership, unless it is made with the consent of all the general partners.

Assignment of interest by limited partner and rights of limited partners. *Amended by: IV. 2003.35.*

(2) Unless the deed of partnership otherwise provides, any changes in the deed of partnership which deprive limited partners of any of their rights shall require the unanimous consent of all the general partners and of all the limited partners.

Death or expulsion of limited partner. *Amended by: IV. 2003.35.*

64. (1) Unless the deed of partnership otherwise provides, in the event of death of a limited partner, the partnership *en commandite* or limited partnership shall continue with his heirs.

(2) Notwithstanding the provisions of article 32, interdiction or incapacitation shall not be grounds for expulsion of a limited partner.

Dissolution of partnership *en commandite* or limited partnership. *Amended by: IV. 2003.35.*

65. (1) A partnership *en commandite* or limited partnership, besides being determinable for any of the causes mentioned in article 35, shall be dissolved if no general partner or no limited partner remains, unless, within six months, the partner who has ceased to be a partner shall have been substituted.

(2) Where no general partner remains, the limited partners may, for the said period of six months, appoint one of their number for the performance of acts of ordinary administration.

(3) A limited partner appointed as aforesaid shall not be subject to the provisions of article 59.

Division of capital into shares. *Amended by: IV. 2003.35, 39; L.N. 181 of 2006; L.N. 186 of 2006; IX. 2008.5.*

66. (1) Without prejudice to the foregoing provisions of this Part, the capital of a partnership *en commandite* or limited partnership may be divided into shares.

(2) The provisions of this Act relating to shares in a company other than the provisions of article 72 shall apply to the shares in a partnership *en commandite* or limited partnership in so far as they are not inconsistent with the foregoing provisions of this Part.

(3) The provisions of Chapters IX and X of Part V of this Act, other than for the provisions of article 184, shall apply to a partnership *en commandite* or limited partnership, the capital of which is divided into shares.

(4) It shall be the duty of the partner vested with the administration or representation of a partnership *en commandite* or limited partnership, the capital of which is divided into shares, to deliver to the Registrar for registration the instrument or a copy thereof as required by article 19 altering or adding to the deed of partnership within fourteen days from the date of the said alteration or addition, together with a printed copy of the deed of partnership, as amended; and any previous amended text of the deed of partnership may be discarded by the Registrar when a subsequent amended text is delivered to him for registration:

Provided that in the event of a discrepancy between the text of any amended deed of partnership and the text of the original deed of partnership registered in accordance with the provisions of article 16, the latter text together with any instruments registered in accordance with the provisions of sub-article (4), shall prevail.

(5) The provisions of article 78, of article 137(4), (5) and (6)

and of article 142(2) shall apply to a partnership *en commandite* or limited partnership, the capital of which is divided into shares, with the substitution of references to partners vested with administration or representation for references to directors, officials or the Board of directors; with the substitution of references to partnership *en commandite* or limited partnership, the capital of which is divided into shares, for references to company; with the substitution of references to deed of partnership for references to memorandum or memorandum and articles; with the substitution of partners for references to shareholders; and, with regard to article 137(5), with the substitution of the term "a decision of the partners" for the term "any resolution of the general meeting or from a decision of the Board of directors".

(6) If default is made in complying with the provisions of sub-article (4), every partner vested with the administration or representation of a partnership *en commandite* or limited partnership the capital of which is divided into shares who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(7) A partnership *en commandite* or limited partnership, the capital of which is not divided into shares, may change its status to a partnership *en commandite* or limited partnership, the capital of which is divided into shares, by a decision taken in accordance with the provisions of the deed of partnership, or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-fourth of the total contribution of the limited partners, have not given their consent the partnership *en commandite* or limited partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to liquidate and re-imburse to every partner who has not given his consent, if he so requests, his interest in the partnership *en commandite* or limited partnership on such terms as may be agreed, or as the court, on a demand of either the partnership or the limited partner, may deem fit to order.

(8) A partnership *en commandite* or limited partnership, the capital of which is divided into shares, may change its status to a partnership *en commandite* or limited partnership, the capital of which is not divided into shares, by a decision taken in accordance with the provisions of the deed of partnership or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-tenth of the share capital of the partnership, have not given their consent, the partnership *en commandite* or limited partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to redeem the shares held by every partner in the partnership *en commandite* or limited partnership who has not given his consent, if he so requests, on such terms as may be agreed

or as the court on a demand of either the partnership or of the limited partner may deem fit to order.

(9) It shall be the duty of the partner vested with the administration or representation of a partnership *en commandite* or limited partnership, which has decided to change its status in accordance with sub-article (7), to deliver to the Registrar for registration the instrument or a copy thereof as required by article 19, altering or adding to the deed of partnership together with a printed copy of the deed of partnership as amended, and the provisions of sub-article (4) shall thereafter apply to the partnership.

(10) It shall be the duty of the partner vested with the administration or representation of a partnership *en commandite* or limited partnership which has decided to change its status in accordance with sub-article (8), to deliver to the Registrar for registration, the instrument or a copy thereof as required by article 19, altering or adding to the deed of partnership together with a printed copy of the deed of partnership as amended, and the provisions of sub-article (4) shall thereafter no longer apply to the partnership.

(11) The change of status referred to in sub-article (7) or in sub-article (8) shall not take effect unless and until it is registered as required by sub-article (9) or by sub-article (10) respectively, of this article.

(12) (*a*) Where a partnership *en commandite* or limited partnership, the capital of which is divided into shares, is dissolved and a liquidator has been appointed, as soon as the affairs of the partnership are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the partnership *en commandite* or limited partnership has been disposed of, and shall draw up a scheme of distribution and he shall cause the account to be audited by one or more auditors appointed by a decision of the partners. The liquidator shall by judicial act serve on each of the partners a copy of the accounts and of the scheme of distribution, if any, together with the auditors' report and giving any explanation thereof.

(*b*) The accounts and the scheme of distribution shall be deemed to have been approved by all the partners if no objection thereto is lodged by sworn application by any of the partners within three months of the service of the judicial act referred to in paragraph (*a*).

(*c*) The provisions of article 153 shall apply to an auditor appointed in terms of paragraph (*a*). Such auditor shall not be a person who has held the office of auditor of the partnership *en commandite* or limited partnership at any time during the last three years immediately preceding the date of dissolution.

Partnership *en commandite* or limited partnership. *Added by: IV. 2003.40. Amended by: XV. 2007.5; XIX. 2010.29; XX. 2013.74; V.2020.20.*

66A. (1) This article shall apply to a partnership *en commandite* or limited partnership the capital of which may or may not be divided into shares, which in the deed of partnership expressly limits its object either to the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of giving the partners the benefit of the results of the management of its funds, and to matters ancillary or incidental thereto, and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act, or otherwise to any other purpose as may be prescribed in the Tenth Schedule or as the Minister may from time to time prescribe by regulations.

Cap. 370.

(2) A partnership *en commandite* or limited partnership within the meaning of sub-article (1) shall be regulated by the provisions contained in the Tenth Schedule and by any regulations made by the Minister in terms of this article; the provisions of this Part of this Act, other than this article, and articles 13 to 18, article 21 and Part III of the Commercial Code, shall not apply to any such partnership except and to the extent that they are expressly made applicable by means of the said Schedule or by means of any such regulations.

Cap. 13.

(3) The Minister may make regulations for the better carrying out of the provisions of this article and of any of the provisions of the Tenth Schedule, and may, without prejudice to the generality of the foregoing, by such regulations make provisions as to any of the following matters:

(*a*) the forms and returns to be used in respect of such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1), for the purposes of this Act or such other purposes as may be prescribed therein;

(*b*) the registration of such partnerships *en commandite* or limited partnerships under this Act within the meaning of sub-article (1) and any matters incidental thereto;

(*c*) the records and accounts to be kept by such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1) and any matter incidental thereto;

(*d*) the prescription of fees payable under this Act in respect of such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1);

(*e*) the exemption of partnerships *en commandite* or limited partnerships within the meaning of sub-article (1) or any category thereof from any of the provisions of the Tenth Schedule or of this Act or of any other law which may otherwise be applicable thereto, as the case may be, subject to such modifications, variations and conditions as may be specified;

(*f*) any other matters to be prescribed under this Act or the Tenth Schedule in respect of such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1), or any other matters to better regulate

the provisions of the Tenth Schedule in respect of such partnerships *en commandite* or limited partnerships within the meaning of sub-article (1) or any category thereof.

PART V - LIMITED LIABILITY COMPANY

TITLE I - FORMATION AND FUNCTIONING OF COMPANIES

Chapter I - Formation of a company and matters incidental thereto

Definition.

67. A company is formed by means of a capital divided into shares held by its members. The members' liability is limited to the amount, if any, unpaid on the shares respectively held by each of them.

How a company is constituted. *Amended by: XX. 2013.75.*

68. A company shall not be validly constituted under this Act unless a memorandum of association is entered into and subscribed by at least two persons, or in the case of a single member company constituted in terms of article 212, by the single member, and a certificate of registration is issued in respect thereof. Companies formed and registered under the Ordinance shall comply with this Act in accordance with the provisions of article 428.

Contents of memorandum. *Amended by: IV. 2003.41; XXXI. 2017.75; LX. 2021.3.*

69. (1) The memorandum of every company shall state:

(*a*) whether the company is a public company or a private company;

(*b*) the name and residence of each of the subscribers thereto;

(*c*) the name of the company;

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

(*e*) the objects of the company;

(*f*) the amount of share capital with which the company proposes to be registered (hereinafter referred to as "the authorised capital"), the division thereof into shares of a fixed amount, the number of shares taken up by each of the subscribers and the amount paid up in respect of each share and, where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;

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

(*h*) the name and residence of the first company secretary or secretaries, or where a company secretary is a body

corporate, the name, registration number and registered office of the body corporate;

(*i*) the period, if any, fixed for the duration of the company.

(2) In the case of a public company, there shall be annexed to the memorandum a document providing:

(*a*) the total amount or an estimate of all the costs payable by the company or chargeable to it by reason of its formation up to the time it is authorised to commence business, and of all the costs relating to transactions leading to such authorisation; and

(*b*) a description of any special advantage granted prior to the time the company is authorized to commence business to anyone who has taken part in the formation of the company or in transactions leading to such authorisation:

Provided that, where in accordance with the proviso to article 77(1), a company is authorised to commence business at a date later than the date of its registration, the said document shall be delivered to the Registrar for registration within fourteen days from the date the company is authorised to commence business.

(3) Companies formed and registered before the coming into force of this sub-article shall comply with the provisions of sub-article (1)(*f*) on the disclosure, in the memorandum of association of the company, of the rights attaching to the shares of each different class, within twelve months from the coming into force of this sub-article:

Provided that companies formed and registered before the coming into force of this sub-article shall be deemed to satisfy the requirements of sub-article (1)(*f*) on the disclosure, in the memorandum of association, of the rights attaching to the shares of each different class, if such provision or equivalent thereof is already incorporated in the articles of association of the company.

Name of company. *Amended by: IV. 2003.42; XIII. 2004.96; XX. 2013.76.*

70. (1) Subject to the provisions of sub-articles (3) to (6), a public company may be designated by any name, but such name must end with the words "public limited company" or their abbreviation "p.l.c.":

Provided that where the public company is a 'societas europaea' in accordance with Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company, in lieu of the words "public limited company" or their abbreviation "p.l.c.", the name of the public company shall be preceded or followed by the abbreviation "SE".

(2) Subject to the provisions of sub-articles (3) to (6), a private company may be designated by any name, but such name shall end with the words "private limited company" or the word "limited" or its abbreviation "ltd.".

(3) (*a*) Where a private company is an investment company

with variable share capital, the name of the company shall be followed by the words "investment company with variable share capital" or by "SICAV", followed by the words "private limited company", "limited" or its abbreviation.

(*b*) Where a public company is an investment company with fixed share capital or an investment company with variable share capital, the name of the company shall be followed by the words "investment company with fixed share capital" or "investment company with variable share capital", as the case may be, followed by the words "public limited company", or its abbreviation. The words "investment company with fixed share capital" may be replaced with the abbreviation "INVCO" and the words "investment company with variable share capital" may be replaced with "SICAV".

(4) A company shall not be registered by a name which -

(*a*) is the same as a name of another commercial partnership or so nearly similar as in the opinion of the Registrar it could create confusion; or

(*b*) is in the opinion of the Registrar offensive or otherwise undesirable; or

(*c*) has been reserved for registration for another commercial partnership by a notice in writing to the Registrar given not more than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this sub-article without delay to the person requesting the registration:

Provided further that in applying paragraph (*b*), the Registrar shall have regard, *inter alia*, to the business or proposed business of the company, to the protection of the names of persons who are not connected in any way with the company, and, in the case of a private company, to the names of the members.

(5) A company shall not be registered by a name which includes the word "fiduciary", "nominee" or "trustee", or any abbreviation, contraction or derivative thereof, unless such company is authorised to act as a trustee in terms of the applicable laws of Malta, or unless otherwise permitted to do so by the relevant competent authority.

(6) A person or persons trading or carrying on business or other activity -

(*a*) under a name or title which ends with the words "public limited company" or "p.l.c." or "private limited company" or "limited" or "ltd." or a contraction or imitation thereof and which is not the name of a duly registered company; or

(*b*) under a name or title which contains the words

"fiduciary", "nominee" or "trustee", or any abbreviation, contraction or derivative thereof, which is not the name of a company which is authorised to use such name as provided in sub-article (5); or

(*c*) under a name or title which contains the words "investment company with fixed share capital" or "INVCO" or a contraction or imitation thereof when the person or persons are not a public company which is an investment company with fixed share capital; or

(*d*) under a name or title which contains the words "investment company with variable share capital" or "SICAV" or a contraction or imitation thereof when the person or persons are not an investment company with variable share capital,

shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Objects of company.

71. The objects of a company may not be simply stated to be any lawful purpose or trade in general.

Minimum share capital.
Amended by: XV. 2007.6; L.N. 425 of 2007; XI. 2017.3.

72. (1) The authorised share capital of a company shall be -

not less than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) subscribed by at least two persons in the case of a public company; or

not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) subscribed by at least two persons in the case of a private company.

(2) Where the authorised share capital is equal to the minimum aforesaid, it shall be fully subscribed in the memorandum, and where it exceeds such minimum, at least that minimum shall be subscribed in the memorandum.

(3) In the case of a public company, not less than twenty-five per cent, and in the case of a private company, not less than twenty per cent, of the nominal value of each share taken up shall be paid up on the signing of the memorandum.

(4) The ordinary shares of a company shall not be redeemable, and every company shall at all times have ordinary shares.

(5) Only preference shares which are to be redeemed or are liable to be redeemed by the terms of their issue shall be redeemable, and other shares in a company may not be converted into redeemable shares.

Consideration for acquisition of shares.
Amended by: XVIII.2025.7.

73. (1) The consideration for the acquisition of shares in a company whether on the original subscription or a subsequent issue, may only consist of assets capable of economic assessment, and furthermore, future personal services and in general any undertakings to perform work or supply services may not be given by way of consideration.

(2) Where, on original subscription, the shares are issued for a

consideration other than in cash, the full consideration shall be transferred to the company within five years from the date the company is authorised to commence business.

(3) Where shares are issued other than on original subscription for a consideration other than in cash, the full consideration shall be transferred within five years from the date of the decision to issue the shares.

(4) A report on any consideration other than in cash shall be drawn up before the company is registered or before the shares are issued, as the case may be, by one or more experts who are independent of the company and approved by the Registrar:

Provided that when the said consideration does not exceed the equivalent monetary value of fifty thousand euro (€50,000), a director's declaration shall suffice and such report shall not be required. The said director's declaration shall be delivered to the Registrar for registration and the provisions of sub-article (6) shall apply.

(5) The expert's report shall contain at least a description of each of the assets comprising the consideration as well as the methods of valuation which have been used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value, and, where applicable, to the premium on the shares to be issued for them.

(6) The report shall be delivered to the Registrar for registration before the company is registered or before the shares are issued, as the case may be; and, in default, the Registrar shall accordingly refuse to register the company or the return of the allotments of the shares so issued, and, in the latter case, the issue shall be considered null and void.

(7) Where an amount standing to the credit of any of a company's reserve accounts or of its profit and loss account is applied in paying up to any extent any shares allotted to members of the company or any premiums on shares so allotted, the amount applied shall not be considered as consideration other than in cash for the purposes of this article.

Transfer to company of non-cash asset in first two years. *Amended by: IV. 2003.43; IX. 2008.6.*

74. (1) A company shall not acquire, within two years of its authorisation to commence business, any asset belonging to a person who subscribed the company's memorandum or who is a member of the company for a consideration which is equivalent to at least one tenth of the issued capital of the company unless the following conditions are satisfied:

(*a*) the asset to be received by the company, and any consideration other than cash to be given by the company, shall have been valued by one or more experts who are independent of the company and approved by the Registrar;

(*b*) a report with respect to the matters specified in paragraph (*a*) shall have been made to the company during the six months immediately preceding the date

of the agreement;

(*c*) the terms of the agreement shall have been approved by ordinary resolution; and

(*d*) not later than the giving of notice of the meeting at which the resolution is proposed, copies of the resolution and of the report shall have been circulated to the members of the company entitled to receive notice of the meeting and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(2) The report referred to in sub-article (1)(*b*) shall be delivered to the Registrar for registration at the same time as it is circulated in accordance with sub-article (1)(*d*). If the company fails to comply with this sub-article, every officer of the company who is in default shall be liable to a penalty.

(3) If a company enters into an agreement in contravention of this article and either -

(*a*) the person with whom the company made the agreement has not received the expert's report required for compliance with the conditions of this article; or

(*b*) there has been some other contravention of this article which that person knew or ought to have known amounted to a contravention,

the company shall be entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement, and the agreement, so far as not carried out, shall be void.

(4) The provisions of this article shall not apply -

(*a*) where it is part of the company's ordinary business to acquire, or arrange for other persons to acquire, assets of a particular description, to an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such person, as the case may be; or

(*b*) to acquisitions made by the company at the instance or under the supervision of the court; or

(*c*) to acquisitions made on a regulated market or on an equivalent market in a non-Member State or non-EEA State.

Articles of association.

75. (1) There may be registered with the memorandum, articles of association (hereinafter referred to as "articles") which shall be signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in the First Schedule, such regulations shall be the regulations of the company in the same manner and to the same

extent as if they were contained in duly registered articles.

Registration of memorandum and articles. *Amended by: IV. 2003.44.*

76. (1) The memorandum and articles, if any, shall be delivered for registration to the Registrar who, being satisfied that all the requirements of articles 68 to 73 and of articles 75 and 139 have been complied with, shall register them.

(2) Where the memorandum or the articles are drawn up in a public deed or in a private writing enrolled in the records of a notary public, an authentic copy thereof shall be delivered in lieu of the original.

(3) The aforesaid delivery shall be made by any one of the subscribers to the memorandum, or the authorised agent of such subscriber.

(4) Notwithstanding the provisions of sub-article (1), and without prejudice to the provisions of article 77(2), the responsibility for ensuring that the articles of association, if any, of a company, are correct, complete and in full compliance with this Act and any other applicable law shall lie with the persons who have entered into and subscribed to the memorandum of association.

Duty of Registrar and effects of registration. *Amended by: XIII. 2004.97.*

77. (1) On the registration of the memorandum and articles, if any, of a company, the Registrar shall certify under his hand that the company is registered, and the company shall come into existence and shall be authorised to commence business as from the date of registration which date shall be indicated in the certificate:

Provided that if registration is obtained before the date, if any, fixed in the memorandum for the commencement of the company, the certificate shall indicate such date and the company shall come into existence and shall be authorised to commence business as from such later date.

(2) A certificate of registration given in respect of a company is conclusive evidence that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the company is duly registered as a public or private company under this Act.

(3) The registration of a company by the Registrar under this article shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the company under any other law.

Where certificate of registration is not issued.

78. (1) All persons carrying on business or entering into agreements in the name of or on behalf of a company in respect of which a certificate of registration has not been issued under this Act, or before the date indicated in the certificate of registration as the date on which the company shall come into existence, shall, unless otherwise agreed, be personally and jointly and severally liable for their dealings with third parties entered into by them in the aforementioned capacity.

(2) Failing agreement to the contrary, the persons referred to in sub-article (1) shall have, as against one another and in respect of

the assets and liabilities arising out of the business carried on in the company's name or on its behalf, the rights and obligations of joint owners.

(3) Notwithstanding the provisions of sub-article (1), the dealings referred to in that sub-article shall, with respect to a third party who has dealt in good faith with persons purporting to act in the name of or on behalf of a company in respect of which a certificate of registration has not been issued under this Act or which has not yet come into existence, with effect from the date on which the company shall come into existence, be treated as having been undertaken by the company; provided that in such an event the provisions of sub-article (1) shall not apply. The company shall be entitled to be indemnified by the persons who had acted in its name or on its behalf in respect of its liability under this sub-article towards the said third party.

Alterations and additions to memorandum and articles.
Amended by: IV. 2003.45; XVIII.2024.4.

79. (1) A company may by extraordinary resolution alter or add to its memorandum or articles:

Provided that -

(i) where the alteration consists in a change of the registered office in Malta of the company such alteration may be effected by a resolution of the directors; and

(ii) where the alteration consists in the conversion of any shares into stock or in the reconversion of that stock into shares, such alteration may only be made if the shares to be converted are paid up shares and if the stock is reconverted into paid up shares, but, if the company is so authorised by its memorandum or articles, it may by ordinary resolution convert any paid up shares into stock and reconvert that stock into paid up shares of any denomination.

(2) It shall be the duty of the directors and of the company secretary to deliver to the Registrar for registration a copy of any resolution as aforesaid within fourteen days after the date of the resolution, together with a revised and updated copy of the memorandum, and of the articles, if any, as amended by the said resolution and incorporating all the changes effected to date relating to the directors, company secretary, the representation of the company, change in registered office of the company, or any transfer or transmission of shares or any allotment of shares. Where a copy of the memorandum and of the articles of association, if any, is delivered to the Registrar by electronic means, such electronic copy shall be authenticated in accordance with article 82. Any previous amended text of the memorandum and articles, if any, may be discarded by the Registrar when a subsequent amended text is delivered to him for registration:

Provided that in the event of a discrepancy between the text of any amended memorandum and articles, if any, and the text of the original memorandum and articles, if any, registered in

accordance with the provisions of article 76, the latter text together with resolutions registered in accordance with the provisions of sub-article (2) shall prevail.

Notwithstanding the provisions of sub-article (2), where the alteration consists in a change in the registered office in Malta of the company, the directors or company secretary shall send to the Registrar for registration a return of any change in the registered office, specifying the date of the change, together with the new registered office, within fourteen days from the happening thereof.

(3) Any alteration or addition to the memorandum or articles of a company shall not take effect, unless and until it is registered as provided in sub-article (2).

(4) The responsibility for ensuring that any proposed amendments to the articles of association, if any, of a company, are correct, complete and in full compliance with this Act and any other applicable law shall lie with the directors of the said company

(5) If default is made in complying with the provisions of sub-article (2), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Change of name of company.

80. Where a company changes its name under the provisions of article 79, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

Alteration in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

81. Notwithstanding anything in the memorandum or articles of a company no member shall be bound by any alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise pay money to, the company:

Provided that this article shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Authentication of documents.
Amended by: XV. 2007.7; XX. 2013.77.

82. (1) A document or proceeding requiring authentication by a company may be signed by a director, the company secretary or other authorised officer of the company.

(2) All documents supplied to the Registrar shall be authenticated in accordance with this article:

Provided that where documents are supplied to the Registrar by electronic means, such documents may be authenticated by a director, the company secretary, an authorised officer of the company or by an individual specifically authorised for such purpose by the memorandum, or by a resolution of the board of directors, or by an extraordinary resolution of the company. Authentication of documents supplied to the Registrar by electronic means shall be made by an electronic signature duly recognised by

the Registrar.

Chapter II - Changes to a company's share capital

Reduction of issued share capital.
Amended by: XXIV. 1995.362; IV. 2003.46; L.N. 181 of 2006; L.N. 186 of 2006; IX. 2008.7. Substituted by: XVIII.2024.5.

83. (1)(a) A company may by extraordinary resolution of the general meeting reduce its issued share capital or undistributable reserves, including for the purposes of creating a distributable reserve. The provisions of this sub-article shall be without prejudice to any higher percentage than that required for an extraordinary resolution, as may be set out in the company's memorandum or articles of association.

(*b*) Without prejudice to the provisions of sub-article (9), a reserve arising from the reduction of issued share capital or the reduction of an undistributable reserve carried out in accordance with sub-articles (1) to (3) shall be treated as authorised profit for the purposes of Chapter XI of Title I of Part V of this Act.

(*c*) The notice convening the general meeting at which an extraordinary resolution as referred to in paragraph (a) is to be taken shall, in addition to the requirements laid down in article 135(1)(a), also specify the purpose of the reduction and the way in which it is to be carried out.

(*d*) A reduction in share capital shall be void to the extent that it reduces the capital to less than the minimum prescribed by article 72.

(2) A copy of the resolution referred to in sub-article (1)(a) shall be delivered by the directors or by the company secretary to the Registrar for registration.

(3) A reduction of the issued share capital or of undistributable reserves of a company shall take effect immediately on the lapse of three (3) months from the date of the publication of the statement referred to in article 401(1)(e):

Provided that if a creditor of the company whose debt existed prior to the publication of the statement mentioned in this sub-article objects thereto by sworn application filed within the period of three (3) months reckoned as aforesaid and satisfies the Court that due to the proposed reduction his claims would be prejudiced and that no adequate safeguards have been obtained from the company, the Court shall either uphold the objection or allow the reduction on sufficient security being given.

(4) The Registrar of Courts shall without delay cause a copy of any application filed in accordance with sub-article (3) and of any decision given thereon to be served on the Registrar for registration.

(5) The total or partial waiving of the unpaid part of the issued shares and the release of the holders of those shares from their obligation to pay up that unpaid part shall, notwithstanding anything contained in the memorandum or articles of a company, in all cases be considered as a reduction in share capital.

(6) Where there are different classes of shares, the decision by the general meeting concerning a reduction in the issued share capital shall be subject to a separate vote for each class of shareholders whose rights are affected by the reduction, and for every separate vote taken the same majority shall be required as where the shares are not divided into different classes.

(7) A reduction of the issued share capital or of undistributable reserves whose purpose is to offset losses incurred shall take effect immediately on the registration of the resolution concerning such a reduction in accordance with sub-article (2) and the provisions of sub-article (3) shall not apply.

(8) A reduction of the issued share capital whose purpose is to include sums of money in a reserve shall take effect immediately on the registration of the resolution concerning such a reduction in terms of sub-article (2) and the provisions of sub-article (3) shall not apply:

Provided that following this operation, the amount of the reserve is not more than ten per cent of the reduced issued share capital:

Provided further that any such reserve shall be used only for offsetting losses incurred or for increasing the issued share capital by the capitalisation of such reserve.

(9) In the cases referred to in sub-article (8) the amounts deriving from the reduction may not be used for making payments or distributions to shareholders or to discharge shareholders from the obligation to pay calls on their shares.

(10) The prohibition referred to in sub-article (9) shall not apply to any amount derived from the reduction of any reserve referred to in sub-article (8) where:

(*a*) the said reduction is authorised by a new extraordinary resolution of the general meeting in terms of sub-article (1);

(*b*) the aforementioned resolution is delivered to the Registrar in terms of sub-article (2); and

(*c*) the provisions of sub-article (3) are applied to the reduction.

(11) A notice of reduction of the issued share capital shall be delivered by the company to the Registrar, for registration, within fourteen (14) days after the effective date of the reduction:

Provided that the notice referred to in this sub-article shall not be required in respect of reduction of non-distributable reserves, or the share premium account in terms of article 114(1) or a reduction of the capital redemption reserve in terms of article 115(1)(e).

(12) In cases of default in complying with the provisions of sub-article (11), every officer of the company who is in default shall be liable to an administrative penalty.

Investment companies with variable share capital.
Amended by: IV. 2003.47; IX. 2003.84; IX. 2008.8; XVI. 2011.59; XVIII.2024.6; XVIII.2025.9.

84. (1) A company may, by complying with the provisions of this article, be formed as, or be converted into, an investment company with variable share capital.

(2) (*a*) The memorandum of an investment company with variable share capital shall, in respect of the share capital of the company, state in lieu of the matters specified in article 69(*f*) that -

(i) the share capital of the company shall be equal to the value for the time being of the issued share capital of the company; and

(ii) such share capital shall be divided into a specified number of shares without assigning any nominal value thereto; and

(*b*) furthermore, the memorandum of the company shall limit the object of the company to either one of the following -

(i) the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of spreading investment risk; and giving shareholders of the company the benefit of the results of the management of its funds, and in the fulfilment of that object, it shall be entitled to perform any act which is connected with or ancillary thereto; or

(ii) to act and operate as a retirement scheme or retirement fund within the meaning of article 2 of the Retirement Pensions Act; and

Cap. 514.

(*c*) the memorandum or articles of the company shall provide -

(i) that the actual value of the paid up share capital of the company shall be at all times equal to the value of the assets of any kind of the company after the deduction of its liabilities; and

(ii) that the shares of the company shall be purchased by the company directly or indirectly out of the assets of the company, at the request of any of the holders thereof or as otherwise provided by the memorandum or articles of the company.

(3) Action taken by a company to ensure that the value of its

shares as quoted on a regulated market or any equivalent market in a non-member State or non-EEA State does not deviate from its net asset value by more than a percentage specified in its articles, which deviation shall not be greater than five per cent, shall be regarded as action taken for the purposes of sub-article (2)(*c*)(ii).

(4) An investment company with variable share capital shall not issue partly paid up shares.

(5) The purchase by an investment company with variable share capital of its own shares shall be on such terms and in such manner as may be provided by its articles.

(6) Shares of an investment company with variable share capital which have been purchased by the company itself shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares, and nothing in this Act shall require an investment company with variable share capital to create any reserve.

(7) Without prejudice to any requirements that may be imposed on an investment company with variable share capital pursuant to any other enactment, the provisions of article 70(1) and (2), articles 72, 83, 85 to 88, 97, 103, 105 to 113, 115 and Chapter XI of Part V of this Act, shall not apply to such a company.

(8) Notwithstanding any other provision of this Act, an investment company with variable share capital shall not be obliged to give any of the details in Parts 2 and 3 of the form of annual return set out in the Seventh Schedule, other than the share capital of the company and the number of shares issued.

(9) Any reference in this Act to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall be construed, in the case of an investment company with variable share capital, as a reference to the net asset value.

Cap. 370.

(10) The Minister may, in consultation with the Minister responsible under the Investment Services Act, acting on the advice of the Malta Financial Services Authority and the Registrar, make regulations for the better carrying out of any of the provisions of this article and without prejudice to the generality of the foregoing may by such regulations, in particular:

(*a*) make further provision regarding the contents of the memorandum and articles of the company, including provision for the issue of fractional shares;

(*b*) exempt or provide for the exemption of such company, or any category thereof, from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions as may be specified;

(*c*) provide for the constitution and regulation of investment companies with variable share capital as umbrella or multi-class companies, and provide for the constitution of

sub-funds, and the different classes of shares that may be issued by such companies;

(*d*) provide for the possibility of apportioning and allocating assets and liabilities between the different sub-funds or classes, for considering individual sub-funds or classes as separate and distinct entities for such purposes as may be established, and provide for the currency or currencies in which such sub-funds or different classes of shares may be designated;

(*e*) apply and extend, *mutatis mutandis*, the provisions of this article to other forms of commercial partnerships which constitute collective investment schemes for the purposes of the Investment Services Act and subject to such variations or modifications as may be prescribed; Cap. 370.

(*f*) provide for any matter incidental to, or connected with the above.

(11) The Minister may, in consultation with the Minister responsible under the Retirement Pensions Act, acting on the advice of the Malta Financial Services Authority and the Registrar, make regulations to apply and extend, *mutatis mutandis*, the provisions of this article to investment companies with variable share capital established for the purpose of acting and operating as a retirement scheme or a retirement fund within the meaning of article 2 of the Retirement Pensions Act and without prejudice to the generality of the foregoing may, by such regulations, provide for any matter referred to in sub-article (10). Cap. 514. Cap. 514.

84A. (1) The Minister, in consultation with the Minister responsible for finance and acting on the advice of the competent authority under the Insurance Business Act, may make regulations which provide for the formation, constitution, authorisation and regulation of cell companies, make it possible for a company authorised under the Insurance Business Act, to carry on business of insurance, or any other business as may be prescribed, to convert into a cell company, and for all matters that may arise in connection therewith; and for the better carrying out of the provisions of this article, and without prejudice to the generality of the foregoing, may, by such regulations, in particular -

Power to make regulations regarding cell companies. *Added by: XVII. 1998.70. Amended by: IV. 2003.48; IX. 2008.9; XXXIII. 2015.104; V.2020.21.* Cap. 403.

(*a*) make provision regarding the contents of the memorandum and articles of association of a cell company, including provision for the creation by the cell company of any one or more cells, and for segregating and protecting the cellular and other assets of the company, and establish reporting and other disclosure requirements;

(*b*) exempt or provide for the exemption of such company from any of the provisions of this Act or of any other law in force, subject to such modifications, variations

and conditions as may be specified; and that in so far as any of the provisions of such regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(*c*) make provision for the manner and the form whereby a cell company may create and issue cell shares and to make any provision relating to the assets of the cell company, including the requirement that the assets of a cell company should be of a specified class or description, or any other requirements in respect of the quality, nature or extent of such assets;

(*d*) make provision allowing cells or the cellular assets attributable to any cell of a cell company to be transferable to any other person;

(*e*) make provision for considering individual cells as separate and distinct entities for such purposes as may be established;

(*f*) provide for any matter consequential, incidental to or connected with any of the above matters.

(1A) Where any such regulations have been issued, the competent authority as defined in the Insurance Business Act may issue rules in terms of article 4 of the Insurance Business Act as may be required for the better carrying out and to better implement the provisions of any such regulations.

Cap. 403.

(2) For the purpose of this article -

(*a*) "business of insurance" has the same meaning as assigned to it in article 2(1) of the Insurance Business Act and shall include the business carried on by a captive insurance undertaking and captive reinsurance undertaking in terms of the said Act, the business of an insurance manager and the business of insurance broking under the Insurance Distribution Act;

Cap. 403.

Cap. 487.

(*b*) "cell" means a cell created by a cell company for the purpose of segregating and protecting the cellular assets of the company in such manner as may be prescribed and includes a reference to segregated accounts, compartments or units within a company having multiple accounts, compartments or units, by whatever name designated, and the word "cellular" shall be interpreted and applied accordingly;

(*c*) "cellular assets" of a cell company means the assets of the company attributable to any cell of the company as may be prescribed; and

(*d*) "cell company" is a company formed or constituted as such or converted into a cell company and creating within itself one or more cells for the purpose of segregating and protecting the cellular assets of the company in such manner as may be prescribed; and in relation to the business of insurance manager, as well as the business of insurance broking, reference to a

"company" shall include reference to a partnership *en commandite* or similar or equivalent body corporate, the capital of which is divided into shares.

Application of article 84(10)(*c*) to collective investment schemes. *Added by: IV. 2003.49.* Cap. 370.

84B. Nothing in article 84 shall be deemed to prohibit a company, which is not a company with variable share capital but which qualifies as a collective investment scheme and is duly licensed under the Investment Services Act, from being constituted as an umbrella or multi-class company and the provisions of article 84(10)(*c*) shall apply *mutatis mutandis* to such company.

Minister may make regulations relating to securitisation vehicles. *Added by: V. 2006.27. Amended by: V.2020.22.* Cap. 484.

84C. (1) The Minister, in consultation with the Minister responsible for finance and acting on the advice of the competent authority under the Securitisation Act, may make regulations which provide for the formation, constitution, authorisation and regulation of cell companies, and which make it possible for a securitisation vehicle to convert into a cell company and for all matters that may arise in connection therewith.

(2) For the better carrying out of the provisions of this article, and without prejudice to the generality of the foregoing, the Minister, acting as aforesaid, may, by such regulations, in particular:

(*a*) make provision regarding the contents of the memorandum and articles of association of a cell company, including provision for the creation by the cell company of any one or more cells, and for segregating and protecting the cellular and other assets of the company, and establish reporting and other disclosure requirements;

(*b*) exempt or provide for the exemption of such company from any of the provisions of this Act or of any other law in force, subject to such modifications, variations and conditions as may be specified;

(*bA*) provide for the applicability or inapplicability of any provision of this Act or of any other law to matters falling under such regulations, subject to such modifications, variations and conditions as may be specified, and that in so far as any of the provisions of such regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail;

(*c*) make provision for the manner and the form whereby a cell company may create and issue cell shares and to make any provision relating to the assets of the cell company, including the requirement that the assets of a cell company should be of a specified class or description, or any other requirements in respect of the quality, nature and extent of such assets;

(*d*) make provision allowing cells or the cellular assets attributable to any cell of a cell company to be transferable to any other person;

(*e*) make provision for considering individual cells as

separate and distinct entities for such purposes as may be established;

(*f*) provide for any matter consequential, incidental to or connected with any of the above matters.

(2A) Where any such regulations have been issued in terms of this article, the competent authority as defined in the Securitisation Act may issue rules in terms of article 20 of the Securitisation Act as may be required for the better carrying out and to better implement the provisions of any such regulations.

Cap. 484.

(3) For the purposes of this article, "securitisation vehicle" has the same meaning assigned to it in the Securitisation Act.

Cap. 484.

Minister may make regulations relating to formation, etc., of incorporated cell companies and cells.
Added by: XIX. 2010.30.
Cap. 403.
Cap. 370.

84D. The Minister, in consultation with the Minister responsible for finance and acting on the advice of the competent authority under the Insurance Business Act or the competent authority under the Investment Services Act, may make regulations which provide for the formation, constitution, authorisation and regulation of incorporated cell companies and incorporated cells as limited liability companies with separate legal personality under this Act, and which make it possible for such companies to carry on any financial services business as may be prescribed, and for all matters ancillary thereto or that may arise in connection therewith. Regulations issued in terms of this article may also provide for the applicability or inapplicability of, or the total or partial exemption from, any of the provisions of this Act or of any other law in force to incorporated cell companies and incorporated cells subject to any modifications, variations or conditions as may be specified.

Power to make regulations regarding cell companies carrying on or engaged in shipping or aviation business.
Amended by: XVIII.2025.10.

84E. (1) (*a*) The Minister may make regulations in order to:

(i) provide for the formation, constitution, authorisation and regulation of cell companies;

(ii) provide for the possibility for a company to convert into a cell company;

(iii) provide for all other matters that may arise in connection therewith; and

(iv) provide for the better carrying out of the provisions of this sub-article,

and, without prejudice to the generality of the foregoing, may, by such regulations, in particular regulate the matters referred to in article 84A(1)(a) to (f), which shall apply also to this article.

(*b*) For the purposes of this article, the term "shipping or aviation business" shall mean all or any of the following:

(i) the ownership, operation (under charter, lease or otherwise), administration and management (including personnel engagement, employment or management whether on board or otherwise) of any ship or of any aircraft or aircraft engine and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(ii) the holding of shares or other equity interests in any undertaking, whether Maltese or otherwise, established solely or mainly for the carrying on or carrying out of any one or more of the activities referred to in this definition and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(iii) the activities of a parent company which holds shares or other equity interests in undertakings, whether Maltese or otherwise, where any one or some of these undertakings is established solely or mainly for the carrying on or carrying out of any one or more of the activities referred to in this definition and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith; or

(iv) the raising of capital through loans, the issue of guarantees or the issue of securities by an undertaking when the purpose of such activity is to achieve the objects or activities stated in the preceding sub-paragraphs for the undertaking itself or for any other undertaking within the same group; or

(v) the carrying on of such other objects or activities within the maritime or the aviation sector and related or connected matters which the Minister may, on the advice of the Authority, from time to time prescribe by regulations.

For the purposes of this paragraph the terms "group", "parent company" and "undertaking" shall have the same meaning as is given to them in article 2.

(*c*) For the purposes of this article the terms "cell", "cellular assets" and "cell company" shall have the same meaning, *mutatis mutandis*, as is given to them in terms of article 84A(2):

Provided that for the purposes of this article references to a "company" shall also include references to a partnership *en commandite* or similar or equivalent body corporate, the capital of which is divided into shares.

(2) The Minister may furthermore make regulations which provide for the formation, constitution, authorisation and regulation of incorporated cell companies and incorporated cells as limited liability companies with separate legal personality under this Act, and which make it possible for such companies to carry on or be engaged in shipping or aviation business, and for all other matters related,

connected or ancillary thereto or that may arise in connection therewith.

(3) Regulations made in terms of this article may also provide for the applicability or inapplicability of, or the total or partial exemption from, any of the provisions of this Act or of any other law in force to incorporated cell companies and incorporated cells subject to any modifications, variations or conditions as may be specified.

Increase in issued share capital and directors' authority to issue shares. *Amended by: IV. 2003.50; XX. 2013.78.*

85. (1) Any increase in the issued share capital of a company shall be decided upon by an ordinary resolution of the company, unless the memorandum or articles require a higher percentage than that required for an ordinary resolution by article 135(2):

Provided that the memorandum or articles, or an extraordinary resolution of a company may permit either:

(*a*) the board of directors to issue shares up to a maximum amount as may be specified in the same memorandum or articles, or extraordinary resolution, which permission shall be for a maximum period of five years, renewable by ordinary resolution for further maximum periods of five years each; or

(*b*) the general meeting to authorise by ordinary resolution the board of directors to issue shares up to a maximum amount as may specified in the same memorandum or articles, or in the extraordinary resolution, which permission shall be for a maximum period of five years, renewable by ordinary resolution for further maximum periods of five years each.

(2) Where there are several classes of shares, any resolution referred to in sub-article (1) shall be subject to a separate vote for each class of shareholders whose rights are affected by such resolution, and the provisions relating to the majority required for the resolution shall apply for each class.

(3) A copy of any such ordinary or extraordinary resolution referred to in sub-articles (1) and (2) shall be delivered to the Registrar for registration, within fourteen days after the date of the relative resolution, failing which every officer of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(4) The provisions of sub-articles (1) to (3) shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

(5) Where an increase in the issued share capital is not fully taken up, that issue shall be deemed not to have taken effect:

Provided that if the conditions of the issue so provide, the issued share capital shall be increased by the amount of subscriptions received.

86. Shares shall be paid up on allotment to at least twenty-five per cent of their nominal value in the case of a public company.

Amount paid up on allotment of shares in a public company.

87. Shares shall be paid up on allotment to at least twenty per cent of their nominal value in the case of a private company.

Amount paid up on allotment of shares in a private company.

88. (1) Whenever shares of a public company are proposed to be allotted for consideration in cash, those shares shall be offered on a pre-emptive basis to shareholders in proportion to the share capital held by them:

Offering of shares on a pre-emptive basis on issue. *Amended by: IV. 2003.51; XIII. 2004.98; XI. 2017.4.*

Provided that shares in a company, whether public or private, shall not be offered on a pre-emptive basis to the company itself, notwithstanding any other provision of this Act empowering the company to hold its own shares.

(2) Where the issued share capital of a company as referred to in sub-article (1) having several classes of shares carrying different rights with regard to voting, or participation in distributions, or sharing in assets in the event of a winding up, is increased by issuing new shares for allotment in only one of these classes, the right of pre-emption of shareholders of the other classes is to be exercised only after the exercise of this right by the shareholders of the class in which the new shares issued are to be allotted.

(3) A copy of any offer of subscription on a pre-emptive basis indicating the period within which this right shall be exercised shall be delivered to the Registrar for registration:

Provided that such registration shall not be required as long as all the shareholders of the company are informed in writing of the offer of subscription on a pre-emptive basis and of the period within which this right shall be exercised.

(4) The right of pre-emption referred to in sub-article (3) shall be exercised within a period of not less than fourteen days from the date of publication of the offer in the Gazette or on a website maintained by the Registrar in accordance with article 401(1)(*e*), or from the date of dispatch of the letters to the shareholders referred to in the same sub-article.

(5) The right of pre-emption shall not be restricted or withdrawn by the memorandum or articles:

Provided that, for a particular allotment as referred to in this article, the right of pre-emption may be restricted or withdrawn by extraordinary resolution of the general meeting. In such case the Board of directors shall be required to present to that general meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption and justifying the proposed issue price.

(6) A copy of the resolution referred to in sub-article (5), shall be delivered by the directors or by the company secretary to the Registrar for registration.

(7) The memorandum or articles or an extraordinary resolution of the general meeting may authorise the Board of directors to

restrict or withdraw the right of pre-emption if the Board is authorised to issue shares in accordance with article 85 and for as long as the Board remains so authorised.

(8) A copy of the resolution referred to in sub-article (7) shall be delivered to the Registrar for registration.

(9) The provisions of sub-articles (1) to (8) shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

(10) The right of pre-emption shall not be excluded for the purposes of sub-articles (5) to (8) where, in accordance with the decision to allot shares, shares are issued to banks or financial institutions with a view to their being offered to shareholders of the company in accordance with sub-article (1).

(11) If default is made in complying with sub-articles (6) or (8), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Chapter III - Capital issues by public companies

Issue of applications for shares in or debentures of a public company to be made with a prospectus.
Amended by: IV. 2003.52; L.N. 391 of 2005; IX. 2008.10; L.N. 338 of 2012; XX. 2013.79; V.2020.24..

89. It shall not be lawful for a company to make an offer of securities to the public in a Member State or EEA State unless the company is a public company and the offer is made in the form of a prospectus which complies with the requirements of the Financial Markets Act and any applicable regulations made thereunder, and the provisions of articles 91 to 96 shall apply to such offers:

Provided that the provisions of this Chapter, including the obligation to draw up a prospectus, shall not apply to a form of application issued -

(*a*) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to securities which do not constitute an "offer of securities to the public" within the meaning of article 2(3); or

Cap. 370.

(*c*) by a holder of a collective investment scheme licence within the meaning of the Investment Services Act provided such issue is made in accordance with rules or regulations made under that Act; or

(*d*) in relation to dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer; or

(*e*) in connection with an offer where securities are allotted to existing or former directors or employees by their

employer or by an affiliated undertaking provided that the company has its head office or registered office in the Community and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer; or

(*f*) in relation to shares issued on the redemption or reduction of shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital; or

(*g*) in relation to an offer made in connection with a take-over bid, provided that a document is available containing information which is regarded by the Registrar as being equivalent to that of the prospectus; or

(*h*) in relation to an offer made in connection with or pursuant to a proposed merger or division, provided that a document is available containing information which is regarded by the Registrar as being equivalent to that of the prospectus:

Provided further that paragraph (*e*) shall also apply to a company established outside the European Union and the EEA and whose securities are admitted to trading either on a regulated market or on a third country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to in paragraph (*e*), is available in English provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned.

90. (*Deleted by Act V. 2020.25*).

Dating of prospectus and matters to be stated therein.
Amended by: L.N. 391 of 2005.

91. Any person responsible for the issue, circulation or distribution of a prospectus or for the issue of a form of application for shares or debentures, in contravention of article 89 shall be liable to a penalty:

Penalty.
Amended by: L.N. 391 of 2005; V. 2020.26.

Provided that a director or other person responsible for the prospectus shall not incur liability if -

(*a*) as regards any matter not disclosed he proves that he was not cognizant thereof; or

(*b*) he proves that the contravention arose from an honest mistake of fact on his part; or

(*c*) the contravention was in respect of matters which, in the opinion of the court, were immaterial or otherwise such as ought, having regard to all the circumstances of the case, reasonably to be excused.

Prospectus including a statement by experts.

92. (*Deleted by Act V. 2020.25*).

Registration of prospectus. *Amended by: L.N. 391 of 2005. Substituted by: V.2020.28.* Cap. 345.

93. (1) A copy of the prospectus signed in accordance with the provisions of the Financial Markets Act shall be delivered to the Registrar for registration within five days from the date of its publication.

(2) If default is made in complying with the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Civil liability for misstatements in prospectus. *Amended by: L.N. 391 of 2005; L.N. 338 of 2012; XVIII.2025.11.*

94. (1) The persons who are responsible for or who have authorised the issue of a prospectus shall be jointly and severally liable for any damage sustained by a person subscribing for shares or debentures on the faith of that prospectus, by reason of any untrue statement included therein.

(2) No person shall be liable under this article if -

(*a*) he proves that he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the statement was true; or

(*b*) he proves, as regards an untrue statement made by an expert, that he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the person making the statement was competent to make it; or

(*c*) on becoming aware of the untrue statement before any allotment is made under the prospectus, he gave reasonable public notice of the untruthfulness of the statement.

(3) No person shall be liable for statements made in the summary referred to in Part A of the Second Schedule, including the translation thereof, except when such statements are misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or if it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities. The summary shall contain a clear warning to that effect.

Document containing offer of shares or debentures for sale to be deemed prospectus. *Amended by: IV. 2003.53.*

95. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus and all the rules relating to prospectuses shall apply and have effect accordingly.

(2) It shall be presumed, unless the contrary is proved, that the allotment or agreement to allot was made with a view to the shares or debentures being offered for sale to the public if it is shown -

(*a*) that an offer for sale to the public was made within six months after the allotment; or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the public company in respect of the shares or debentures had not been so received.

(3) The provisions of article 93 as applied by this article shall have effect -

(*a*) as if that article further required a prospectus to have attached thereto a copy of any contract under which the said shares or debentures have been or are to be allotted or, in the case of a contract not reduced in writing, a memorandum giving full particulars thereof; and

(*b*) as though the persons making the offer were persons named in the prospectus as directors of a company.

Interpretation of provisions relating to prospectus. *Amended by: L.N. 391 of 2005.*

96. (1) For the purposes of the provisions of articles 89 to 95 -

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included or otherwise inaccurate or inconsistent; and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any document appearing on the face thereof or by reference incorporated therein or issued therewith.

(2) In this Chapter the term "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Offer of securities to the public in third countries. *Added by: V.2020.29.*

96A. (1) Where a public company makes an offer of securities to the public in a third country, its directors shall, within one month of the registration of the issued securities with the company, deliver to the Registrar for registration a notice specifying the following information, together with a copy of the offering document, if any:

(*a*) the country or countries where the offer is made;

(*b*) the purpose of the offer;

(*c*) the amount of the offer;

(*d*) the type of securities offered;

(*e*) the name of the authority or other body in the third country which was responsible for the approval of the offering document, if any.

(2) In default of complying with the provisions of sub-article (1), every officer of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(3) It shall be the responsibility of the issuer and the directors of the company to comply with the laws and regulations of the third country in which the securities are offered to the public.

(4) For the purpose of this article:

(*a*) "an offer of securities to the public in a third country" shall mean an offer of securities in such third country:

(i) to more than one hundred and fifty persons; or

(ii) where the total consideration of the offer exceeds one hundred thousand euro (€100,000), calculated over a period of twelve months;

(*b*) "offering document" includes a prospectus or other invitation to acquire securities.

Chapter IV -Allotment of shares and debentures of companies

No allotment unless minimum subscription received.

97. (1) No allotment shall be made of any share capital of a public company offered to the public for subscription -

(*a*) unless there has been subscribed and paid in cash the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, shall be raised by the issue of share capital in order to provide for the preliminary expenses, purchase of property and working capital as specified in the prospectus; and

(*b*) unless the capital is subscribed in full, whether or not in cash, or the conditions stated in the offer for allotment, where the offer is not fully subscribed, are satisfied.

(2) If the conditions referred to in sub-article (1) have not been complied with on the expiration of forty days after the issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(3) If any of the money is not repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay it with annual interest at the rate of two percentage points over the Central Bank of Malta minimum discount rate from the expiration of the fortieth day; except that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(4) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this article shall be void.

(5) All money received from applicants in pursuance of the

prospectus shall remain the property of the applicants until such time as the allotment is made in an irrevocable manner and shall not be available for the satisfaction of any debts of the company. Such money shall be kept in a separate bank account so long as the company may become liable to repay it under sub-article (2); and if default is made in complying with this sub-article, the company and every officer of it who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Effect of irregular allotment. *Amended by: L.N. 181 of 2006; L.N. 186 of 2006*

98. (1) An allotment made by a company in contravention of article 97 shall be voidable at the instance of the applicant for shares referred to in the same article by sworn application filed within one month after the date of the allotment:

Provided that the proceedings may be commenced even if the company has been dissolved and is being wound up.

(2) If a director knowingly contravenes or permits or authorises the contravention of article 97, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention:

Provided that proceedings to recover any such loss, damages or costs shall only be commenced by sworn application within two years from the date of allotment.

Time of the opening of the subscription lists. *Amended by: L.N. 391 of 2005.*

99. (*Deleted by Act V. 2020.25*)

Revocability of application for shares or debentures.

100. (*Deleted by Act V. 2020.25*)

Allotment of shares, etc., to be dealt in on stock exchange. *Amended by: IV. 2003.54; IX. 2008.11.*

101. (*Deleted by Act V. 2020.25*)

Operation of article 101 where prospectus offers shares for sale.

102. (*Deleted by Act V. 2020.25*)

Return as to allotments.

103. (1) Whenever a company makes any allotment of its shares, the company shall, within one month thereafter, deliver to the Registrar for registration -

(*a*) a return of the allotments stating the number and the nominal amount of the shares comprised in the allotment, the names and addresses of the allottees and the amount paid and that due, and payable, on each share, whether on account of the nominal value of the share or by way of premiums; and

(*b*) in the case of shares allotted as fully or partly paid up

otherwise than in cash, a contract in writing or, where the contract is not reduced to writing, a document containing the particulars of the contract, constituting the title of the allottee to the allotment, together with any contract of sale, or for services rendered or other consideration in respect of which the allotment was made, and a return stating the number and nominal value of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(*c*) where applicable, a declaration that the requirements of article 97 have been complied with.

(2) If default is made in complying with the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Chapter V - Maintenance of share capital and protection of class rights

Duty of directors on serious loss of capital.

104. (1) Where the net assets of a public company are half or less of its called-up issued share capital, the directors shall, not later than thirty days from the earliest day on which that fact is known to any director of the company, duly convene a general meeting of the company by means of a notice to that effect for a date not later than forty days from the date of the notice for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation, including consideration as to whether the company should be dissolved.

In this sub-article, "net assets" shall have the same meaning assigned to it under article 193(2).

(2) In a meeting convened in pursuance of sub-article (1), only the steps mentioned in the said sub-article may be considered.

(3) If a general meeting as required by sub-article (1) is not convened, each of the directors of the company in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Company may not subscribe for its own shares.

105. (1) A company shall not subscribe for any of its own shares, whether on original subscription or on any subsequent subscription, and if any of its shares have been subscribed for by a person acting in his own name but on behalf of the company the subscriber shall be deemed to have subscribed for them for his own account.

(2) On the registration of a company, the subscribers to the memorandum shall be jointly and severally liable to pay for the shares subscribed in contravention of sub-article (1).

(3) In the case of an increase in the issued share capital, the members and directors shall be liable jointly and severally to pay for the shares subscribed in contravention of sub-article (1)

provided that any member or director may be released from such liability if he proves that the breach occurred through no fault of his own.

Conditions in which a company may acquire its own shares. *Amended by: IX. 2008.12; XX. 2013.80; XVIII.2024.7.* Cap. 476.

106. (1) Without prejudice to the principle of equal treatment of the shareholders who enjoy the same rights in respect of the shares held by them and to any relevant provisions of the Prevention of Financial Markets Abuse Act, a company may acquire any of its own shares otherwise than by subscription, provided all the following conditions are respected -

(*a*) provision is made by the memorandum or articles of the company for authorising the acquisition by the company of its own shares;

(*b*) authorisation is given by an extraordinary resolution, which resolution shall determine the terms and conditions of such acquisitions and in particular the maximum number of shares to be acquired, the duration of the period for which the authorisation is given and which may not exceed eighteen months and, in the case of acquisition for valuable consideration, the maximum and minimum consideration;

(*c*) the provisions of article 135 shall apply in respect of the extraordinary resolution referred to in paragraph (*b*) above subject however to the condition that shares already held by the company itself shall be treated as carrying no voting rights;

(*d*) the nominal value of the acquired shares, including shares previously acquired by the company and held by it shall not exceed fifty per cent of the issued share capital;

(*e*) no acquisitions by a company of its own shares shall be made when on the closing date of the last accounting period the net assets as set out in the company's annual accounts are, or following such distribution, would become lower than the amount of called up issued share capital plus those reserves which may not be distributed under the provisions of this Act or the company's memorandum or articles; and in any case it shall not be possible for the company to acquire any of its own shares except out of the proceeds of a fresh issue of shares made specifically for the purpose, or out of profits available for distribution;

(*f*) the shares acquired shall be fully paid up shares; and

(*g*) a company may not as a result of the acquisition of any of its shares become the only holder of its ordinary shares.

(2) The company shall deliver to the Registrar for registration a copy of the resolution mentioned in sub-article (1). If default is made in complying with the provisions of this sub-article, every officer of the company who is in default shall be liable to a penalty,

and, for every day during which the default continues, to a further penalty.

(3) The provisions of sub-article (1)(*b*) shall not apply where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company.

(4) The provisions of sub-article (1)(*b*) shall furthermore not apply to shares acquired either by the company itself or by a person acting in his own name but on the company's behalf for distribution to that company's employees or to the employees of its parent company or of any of its subsidiary undertakings. Such shares shall be distributed within one year of their acquisition.

(5) References in this article and in articles 107 to 110 to a company holding, acquiring or otherwise dealing in its own shares shall be deemed to include references to the company so doing either itself or through a person acting in his own name but on the company's behalf.

(6) The company may, at any time, cancel any of the shares acquired in accordance with the provisions of this article and article 83 shall not apply to such cancellation. Upon the cancellation becoming effective, the amount of the issued share capital shall be reduced accordingly by the nominal value of the shares cancelled.

(7) Within fourteen (14) days after the cancellation of shares become effective as set out in sub-article (6), the company shall deliver to the Registrar a notice for registration.

(8) In cases of default in complying with the provisions of sub-article (7), every officer of the company who is in default shall be liable to an administrative penalty.

Acquisition of own shares by a company without application of article 106.
Amended by: IV. 2003.55; XX. 2013.81; XVIII.2024.8; XVIII.2025.12.

107. (1) A company may acquire any of its own shares otherwise than by subscription without complying with the provisions of article 106, other than sub-article (1)(*g*) thereof, where the shares are -

(*a*) acquired by the company in the course of a reduction of the issued share capital made in accordance with article 83; or

(*b*) *Deleted by Act XVIII.2025.12.*

(*c*) forfeited or surrendered in accordance with the provisions of article 112; or

(*d*) acquired in any new procedure for the conversion, the amalgamation or the division of companies pursuant to the provisions contained in Parts VII, VIII and IX of this Act respectively, or otherwise acquired in any procedure for the cross-border conversion, the cross-border merger or the cross-border division of companies pursuant to the Cross-border Divisions of Limited Liability Companies Regulations, Cross-border Conversions of Limited Liability Companies Regulations and the Cross-border Mergers of Limited Liability Companies

S.L. 386.26.
S.L. 386.27.
S.L. 386.28.

Regulations; or

(*e*) acquired in any procedure for the change of status of a company pursuant to the provisions of article 213; or

(*f*) acquired by the company from dissenting shareholders in accordance with the provisions of this Act and regulations issued thereunder or pursuant to an order of the Court made under the provisions of this Act and regulations issued thereunder for the re-purchase of shares held by dissenting shareholders, including any order made in terms of article 402(3)(d); or

(*g*) fully paid up and acquired by an investment company with fixed share capital or by another company forming part of the same group at the member's request provided that such acquisitions shall not have the effect of reducing the company's net assets below the amount of the issued share capital plus any reserves the distribution of which is forbidden by law;

(*h*) acquired by the company during a redemption of preference shares in accordance with article 115.

(2) Where shares acquired pursuant to sub-article (1)(*b*) to (*f*) are retained by the company and are not disposed of within thirty months of their acquisition the company shall by extraordinary resolution cancel such shares within six months of the expiry of the said thirty months.

(3) The provisions of article 83 dealing with the reduction of issued share capital shall apply where shares are cancelled pursuant to sub-article (2):

Provided that the court may not disallow the cancellation but, if good cause is shown, it shall only order that sufficient security be given to the creditor who had objected to the cancellation, and if sufficient security is not immediately available, the court shall order the provision of such security immediately it becomes available to the company and no distribution of dividend may be effected by the company in the meantime:

Provided further that this sub-article shall not apply where the company has acquired the shares otherwise than for valuable consideration.

(4) If the company fails to comply with sub-article (2) within the time limit prescribed, any member or director of the company may apply to the court for an order that such shares be cancelled.

(5) Where the nominal value of the shares held by the company in pursuance of any of the provisions of sub-article (1), including shares which the company may have acquired through a person acting in his own name but on behalf of the company, does not exceed ten per cent of the issued share capital thereof, the provisions of sub-articles (2) to (4) shall not apply.

Shares acquired or held in contravention of articles 106 and 107.

108. (1) If shares acquired or held in contravention of article 106 and of article 107(1) are not disposed of within one year of their acquisition, the company shall cancel such shares within six months of the expiry of the said year.

(2) Where shares are cancelled pursuant to sub-article (1) the provisions of article 83 shall apply subject to the proviso to article 107(3).

(3) If the company fails to comply with sub-article (1) within the time limit prescribed, any member or director of the company may apply to the court for an order that such shares be cancelled.

Conditions for acquisition by a company of its own shares where permitted by law. *Amended by: IV. 2003.56; XVIII.2024.9.*

109. During the time that a company holds any of its own shares -

(*a*) they shall carry no voting rights notwithstanding any provisions to the contrary in the company's memorandum or articles; and

(*b*) if the shares are included among the assets of the company shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the reserves:

Provided that following the cancellation of the shares pursuant to the provisions of article 106(6) or article 107(2), the reserves referred to in paragraph (b) shall become distributable.

Undertaking may not subscribe for or acquire shares in its parent company or provide financial assistance for the purchase of, or subscription for, its own or its parent company's shares. *Amended by: IV. 2003.57; IX. 2008.13.*

110. (1) It shall not be lawful for an undertaking -

(*a*) to subscribe for, hold, acquire or otherwise deal in shares in a company which is its parent company; or

(*b*) to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in the company or its parent company.

(2) The provisions of sub-article (1) shall not apply to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of a group company:

Provided that such transactions shall not have the effect of reducing the net assets of the company below the amount specified in article 106(1)(*e*).

(3) Sub-article (1) shall not apply to the provision of financial assistance by an investment company with fixed share capital for the purpose of or in connection with the acquisition of its fully paid up shares by another undertaking:

Provided that such provision of financial assistance may not have the effect of reducing the net assets of the company below the amount specified in article 106(1)(*e*).

(4) The provisions of sub-article (1)(*b*) shall not apply if the company granting the financial assistance is a private company and the following requirements are fulfilled:

(*a*) the Board of Directors has, after taking into account the financial position of the company and the obligations of the directors as set out in article 136A, resolved by the affirmative vote of a majority of all the directors forming the Board at the time of the particular resolution, to authorize the grant of financial assistance for a specific transaction;

(*b*) an extraordinary resolution has been passed affirming the resolution taken pursuant to paragraph (*a*); and

(*c*) a declaration in the prescribed form signed by two directors confirming that the requirements set out in paragraphs (*a*) and (*b*) have been satisfied is duly filed with the Registrar prior to the granting of the financial assistance, and the signature of one director shall suffice where the Board is composed of only one director.

Effect of acceptance of a company's own shares as security.

111. The acceptance of a company's own shares by way of pledge or other form of security shall be treated as an acquisition by the company of such shares for the purposes of articles 106, 107 and 109.

Forfeiture or surrender of shares.

112. (1) Any share in a company may be forfeited from any shareholder in favour of the company and any shareholder may surrender any or all of his shares in a company in favour of that company if the shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof and as long as provision to that effect is contained in the memorandum or articles of the company.

(2) The provisions of article 109 shall apply to a forfeiture or surrender of shares until such time as the company disposes of or otherwise cancels them.

Conditions for payment of commissions, discounts, etc. *Amended by: IV. 2003.58*

113. (1) It shall be lawful for a company to pay a commission or make a discount or allowance to any person in consideration for his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, provided that -

(*a*) authority therefor is given by the memorandum or articles; and

(*b*) the commission, discount or allowance does not exceed ten per cent of the price at which the shares are issued or the amount authorised by the memorandum or articles, whichever is the less; and

(*c*) the amount or rate per cent of the commission, discount or allowance and the number of shares which persons have agreed in consideration thereof to subscribe absolutely shall be disclosed in the manner

required by sub-article (3): and

(*d*) in no event may the value of such shares be reduced to below their nominal value as a result of the payment of such commission, discount or allowance.

(2) If shares are issued in contravention of the provisions of this article the holder thereof shall be bound to pay the company an amount equal to the amount of the commission, discount or allowance given in excess of that permitted by this article, with annual interest at the rate of two percentage points over the Central Bank of Malta minimum discount rate.

(3) The conditions specified in sub-article (1) shall, in the case of shares offered to the public for subscription, be disclosed in the prospectus and in the case of shares not so offered -

(*a*) they shall be disclosed in a statement signed by every director of the company or by any other person in representation of any director so authorised in writing and delivered to the Registrar for registration before the actual payment of the commission, discount or allowance; and

(*b*) where a circular or notice, not being a prospectus, giving subscription for the shares is issued, they shall also be disclosed in such circular or notice.

(4) If default is made in complying with sub-article (3)(*a*), every officer of the company who is in default shall be liable to a penalty.

Application of premium received on issue of shares.

114. (1) Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be immediately paid in full and transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the issued share capital of a company shall, except as provided in this article, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything contained in the foregoing sub-article, be applied by the company -

(*a*) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or

(*b*) in writing off the preliminary expenses of the company or the expenses of or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(*c*) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

Group reconstruction relief. *Added by: XV. 2007.8.*

114A. (1) Where a company issues shares (the "issuing company") and the issuing company -

(*a*) is a qualifying subsidiary of another company ("the holding company"); and

(*b*) allots shares -

(i) to the holding company; or

(ii) to another qualifying subsidiary of the holding company,

in consideration for the transfer to the issuing company of non-cash assets of a company that is a member of the group of companies that comprises the holding company and all its qualifying subsidiaries (the "transferor company"),

the issuing company shall not be required in terms of article 114 to transfer any amount in excess of the minimum premium value to the share premium account.

(2) For the purposes of this article the "minimum premium value" means the amount, if any, by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.

(3) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets so transferred.

(4) For the purposes of this article:

(*a*) the base value of assets transferred is taken as -

(i) the cost of those assets to the transferor company; or

(ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer; or

(iii) the fair market value of the assets,

whichever is less;

(*b*) the base value of the liabilities assumed is taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(5) For the purposes of this article the term "qualifying subsidiary" shall mean a company in which the holding company holds at least an eighty per cent equity holding. The term "eighty per cent equity holding" shall have the meaning assigned to it in article 114B(5).

Takeover relief. *Added by: XV. 2007.8.*

114B. (1) The provisions of article 114 shall not apply when the company issuing shares ("the issuing company") has secured at least an eighty per cent equity holding in another company in pursuance of an arrangement providing for the allotment of equity

securities in the issuing company on terms that the consideration for the shares allotted is to be provided:

(*a*) by the issue or transfer to the issuing company of equity securities in the other company; or

(*b*) by the cancellation of any such shares not held by the issuing company.

(2) The provisions of article 114 shall not apply when the equity securities in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity securities in the other company are issued at a premium.

(3) The provisions of article 114 shall not apply where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided:

(*a*) by the issue or transfer to the issuing company of non-equity securities in the other company; or

(*b*) by the cancellation of any such shares in that company not held by the issuing company.

(4) The provisions of this article shall not apply in cases falling under article 114A.

(5) For the purposes of this article an "eighty per cent equity holding" means a holding of eighty per cent of the nominal value of the company's issued equity securities:

Provided that in determining the existence of "eighty per cent equity holding" it shall be immaterial whether any of those securities were acquired in pursuance of the arrangement:

Provided further that shares held by the other company in itself shall be excluded in determining the nominal value of the company's issued equity securities.

(6) Where the issued share capital of the issuing company is divided into various classes of shares the requirement in sub-article (5) must subsist in relation to each of those classes of shares.

(7) For the purpose of this article, shares held by a group company of the issuing company or their nominees shall be treated as if they were held by the issuing company itself.

Relief may be reflected in company's balance sheet.
Added by: XV. 2007.8.

114C. An amount corresponding to the amount representing the premiums, or part of the premiums, on shares issued by a company that by virtue of any relief under articles 114A or 114B is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

Power to make further provisions by regulations.
Added by: XV. 2007.8.

114D. (1) The Minister may, by regulations published in the Gazette, make such provision as appears to him to be appropriate -

(*a*) for relieving companies from the requirements of article 114 in relation to premiums other than cash premiums;

(*b*) for restricting or otherwise modifying any relief from those requirements provided for in this Chapter.

(2) The regulations referred to in sub-article (1) may make different provision for different cases or classes of cases and may contain such incidental and supplementary provisions as the Minister may think fit.

Redeemable preference shares. *Amended by: IV. 2003.59.*

115. (1) Where a company, duly authorised by its memorandum or articles, issues preference shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder -

(*a*) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or, in accordance with sub-article (4), out of the proceeds of a fresh issue of shares made for the purpose of the redemption;

(*b*) no such shares shall be issued after 1st June 2003 unless the following conditions are satisfied as regards the terms and manner of redemption -

(i) the date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's memorandum or articles or, if the memorandum or articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued;

(ii) any other circumstances in which the shares are to be or may be redeemed must be specified in the company's memorandum or articles;

(iii) the amount payable on redemption must be specified in, or determined in accordance with, the company's memorandum or articles, and in the latter case the memorandum or articles must not provide for the amount to be determined by reference to any person's discretion or opinion; and

(iv) any other terms and conditions of redemption shall be specified in the company's memorandum or articles;

(*c*) no such shares shall be redeemed unless they are fully paid up and the terms of redemption shall require full payment on redemption;

(*d*) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(*e*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits, which would otherwise have been available for distribution as dividend, be transferred to a reserve to

be called "the capital redemption reserve", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the issued share capital of a company shall, except as provided in this article, apply as if the capital redemption reserve were paid up share capital of the company.

(2) The capital redemption reserve may, notwithstanding anything contained in this article, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(3) Preference shares redeemed under this article shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly:

Provided that a redemption of preference shares by a company shall not to be taken as reducing the amount of the company's authorised share capital.

(4) Without prejudice to the provisions of sub-article (3), where a company is about to redeem preference shares, it shall have the power to issue shares up to the nominal value of the preference shares to be redeemed as if those preference shares had never been issued.

(5) A notice of the redemption of preference shares referred to in the preceding sub-articles of this article shall be delivered by the company to the Registrar for registration, within fourteen days after the date of redemption.

(6) If default is made in complying with the provisions of sub-article (5) every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Rights of holders of special classes of shares and changes or variations thereof. *Amended by: XXIV. 1995.362; L.N. 181 of 2006; L.N. 186 of 2006.*

116. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the change of any shares in the company from one class into another or for the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class and of any other class affected thereby or the sanction of a resolution passed at a separate meeting of the holders of those shares and of the holders of any other shares affected thereby, and in pursuance of the said provision the shares are changed from one class into another or the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent either of the issued shares of that class or of any other class affected thereby, being persons who did not consent to or vote in favour of the resolution for the change or variation, may by sworn application filed within twenty-one days of the consent or the resolution, demand that the change or variation shall not have effect.

(2) On any such demand the court, if it is satisfied, having

regard to all circumstances of the case, that the change or variation would unfairly prejudice the holders of shares, the class of which is being changed or the rights of which are being varied, or the holders of any other class of shares affected thereby, shall disallow the change or variation.

(3) The Registrar of Courts shall without delay cause a copy of any sworn application filed under sub-article (1) and of any judgment given thereon to be served on the Registrar for registration, and the said sworn application shall, on pain of nullity, include a demand to that effect.

(4) Article 79(2) and (4) shall apply in respect of any consent or resolution given or taken in terms of sub-article (1).

(5) Where no provision is made by the memorandum or articles for authorising the change or variation referred to in sub-article (1), no such change or variation may be made

Chapter VI - Miscellaneous provisions about shares and debentures

Numbering of shares.

117. Each share in a company shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as they remain fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Usufructuary of shares. *Added by: XVIII.2025.13.*

117A. A usufructuary of shares in a company shall be entitled to attend any general meeting of the company and to receive dividends but he shall not be entitled to vote at any meeting of the company unless the right to vote is specifically mentioned and provided for in the:

(*a*) public deed creating the right of usufruct; or

(*b*) memorandum and articles of association of a company.

Transfer of shares or debentures. *Amended by: XIX. 2010.31; XI.2017.5; XXXI. 2017.76.*

118. (1) Notwithstanding any provisions contained in any other law, a transfer of shares in or debentures of a company shall be made in writing.

(2) It shall not be lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer or an authentic copy thereof has been delivered to the company:

Cap. 364.

Provided that, without prejudice to any obligation arising under the provisions of the Duty on Documents and Transfers Act, nothing in this article shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted *causa mortis*.

Substituted by: XXXI. 2017.76.

(3) This article shall not apply to shares or debentures of a company held or evidenced in a dematerialised form or represented in

book-entry form as immobilisation.

Registration of transfer or transmission of shares or debentures.

119. (1) On the application of the transferor or of the transferee of any share in or debenture of a company, the company shall enter in its register of members or of debentures, as the case may be, the name and address of the transferee and where the application is made by the transferor the entry shall be made in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) If a company refuses to register a transfer of shares or debentures, it shall, within two months after the date on which the transfer was lodged, send to the transferee notice of the refusal.

(3) Notwithstanding the provisions of the regulations contained in Part I of the First Schedule and notwithstanding anything contained in a public company's memorandum or articles, the directors of a public company shall be obliged to register the transfer of any shares in the company in favour of any person who has acquired those shares as a result of a judicial sale thereof.

(4) On the application of the person to whom the right to any shares in or debentures of a company has been transmitted *causa mortis*, the company shall register in its register of members or debentures, as the case may be, the name and address of such person.

(5) If a company refuses to register a transmission as is referred to in sub-article (4), it shall, within two months after the date on which the transmission is lodged, send to the person to whom the right to any shares or debentures of a company has been transmitted *causa mortis*, notice of the refusal.

(6) If default is made in complying with the provisions of sub-articles (2) or (5), every officer of the company who is in default, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Issue of certificates. *Amended by: XIX. 2010.32.*

120. (1) Every company shall, within two months after the allotment of any of its shares or debentures and within two months after the date on which a transfer of any such shares or debentures is registered with the company, and within one month from the date on which any such shares or debentures transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver the certificates of all shares, debentures or debenture stock allotted, transferred or transmitted *causa mortis* to the persons entitled thereto, unless the conditions of issue of the shares or debentures otherwise provide.

(2) The expression "transfer" for the purposes of this article means a transfer on which the relevant duty, if any, has been paid and is otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) In the case of a transfer or of a transmission *causa mortis* of shares the company shall within fourteen days after the date on which a transfer of any such shares is registered with the company,

and within one month from the date on which any such shares transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver to the Registrar for registration a notice of the transfer or the transmission *causa mortis* stating the names and addresses of the transferees or the names and addresses of the persons entitled to the shares transmitted *causa mortis*, as the case may be:

Provided that in the case of public companies whose shares are admitted to listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State, the delivery to the Registrar shall take place within ninety days after the date on which a transfer of any such shares is registered with the company, and within ninety days from the date on which any such shares transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof.

(4) If default is made in complying with any of the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Prohibition of share warrants. *Substituted by: XI.2017.6.*

121. No company may issue a share warrant to bearer notwithstanding anything contained in its memorandum and articles of association.

Transitory provisions. *Added by: XI. 2017.7.*

121A. (1) A holder of a share warrant shall, before the expiry of nine months from the coming into force of the Companies (Amendment) Act, 2017 surrender the share warrant to the company which had issued such warrant.

(2) Upon the surrender of a share warrant the company shall:

(*a*) cancel any share warrant issued by it;

(*b*) enter in its register of members the name of the persons requesting that their names and addresses be entered in the register of members in lieu of share warrants surrendered, and in this regard the provisions of article 123(1)(*a*), (1)(*b*) and (2) shall apply; and

(*c*) notify the Registrar of any changes in the register of members made consequently to that provided in sub-article (1) and paragraphs (*a*) and (*b*).

(3) Any share warrant which is not surrendered to the issuing company as aforesaid by the end of the period mentioned in sub-article (1) shall, after the end of the said period, no longer be recognised by the company and such share warrants shall be deemed to have been cancelled.

Pledging of securities. *Amended by: XXIV.1995.362; IX. 1997.7; IV. 2003.60; IX. 2008.14; XI. 2017.8; V.2020.32; XVIII.2025.14.*

122. (1) Securities may, unless otherwise provided in the memorandum or articles of the company or under the conditions of issue of those securities, be pledged by their holder in favour of any person as security for any obligation. The pledge of securities shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee:

Provided that in the case of a private company, securities may not be pledged unless the memorandum or articles of the

company specifically so provide; and in relation to transfers of shares by members of the company any restriction resulting from the memorandum or articles of the company shall, subject to the provisions of sub-article (10), be deemed not to apply to transfers by the pledgee in terms of sub-article (6) or resulting from any judicial sale.

(2) Notice of the pledge shall be delivered by the pledgor or the pledgee to the Registrar for registration within fourteen days of the granting of the pledge. The company whose securities have been pledged, shall also be notified of the pledge in writing within the said period and the company shall record that fact in the register of holders of the respective securities.

(3) The pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice referred to in sub-article (2).

(4) Saving the provisions of sub-article (3), during the existence of a pledge of securities, any transfer or other assignment, made by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void.

(5) Notwithstanding the provisions of sub-article (4), any transfer or other assignment of securities made with the consent of the pledgee shall be valid and the securities to be transferred shall continue to be subject to the pledge.

(6) Without prejudice to the right of the pledgee to apply for the judicial sale of the securities and notwithstanding the provisions of the Civil Code or of the memorandum or articles of the company, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the company, the pledgee shall be entitled to -

Cap. 16.

(i) dispose of the securities which are pledged in his favour; or

(ii) appropriate and acquire the securities himself, in settlement of the debt due to him or of part thereof.

(7) For the purposes of sub-article (6) the value of the securities may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgee to the pledgor in terms of the said sub-article (6), and no prior agreement thereon shall be valid:

Provided that, in case of disagreement, the fair value for the sale or appropriation of the securities shall be determined by a certified public accountant or a certified public accountant and auditor appointed by the Civil Court, First Hall, on the application of the pledgee.

(8) For the purposes of sub-article (7), the fair value of the securities shall be that obtaining on the date of the notice referred to in sub-article (6).

(9) The pledgee shall, in selling the securities in accordance with the provisions of sub-article (6), be obliged to seek the best

price being not less than their fair value as determined in accordance with sub-article (7). In the event that a buyer cannot be found for the securities at their fair value, the pledgee shall apply to the court for the securities to be sold at less than their fair value as aforesaid subject to such conditions as the court may deem fit.

(10) In the case of a pledge of shares in a private company, the pledgee shall be obliged, prior to the exercise of the right granted by sub-article (6), to offer the shares to other shareholders of the company in accordance with any pre-emption rights relating to the transfer of shares as laid down in the memorandum or articles of that company, and, failing such pre-emption rights, to all the other shareholders of the company in proportion to their holdings. In either case the shareholders shall be entitled to purchase the shares at the price determined in accordance with sub-article (7). Such offer shall be kept open for at least ten working days.

(11) In the case of a pledge of shares in a public company the memorandum or articles of which require any shareholder wishing to transfer shares in the company to offer them on a pre-emptive basis to other shareholders of the company, the pledgee shall accordingly be obliged, prior to the exercise of the right granted by sub-article (6), to offer the shares to those shareholders, who shall be entitled to purchase the shares at the price determined in accordance with sub-article (7). Such offer shall be kept open for at least ten working days.

(12) (*a*) In the case of a pledge of securities in a company which are listed on a Maltese regulated market and in respect of which securities arrangements have been made for the maintenance by such Maltese regulated market of the relevant register of holders thereof, the provisions of sub-articles (2) to (11) and (15) shall not apply for such quoted securities. The following provisions shall apply instead:

(i) the pledgor or the pledgee shall deliver within fourteen days of the granting of the pledge of a quoted security a certified copy of the signed pledge agreement to the Maltese regulated market, which shall also be served with a notice of termination of the pledge by the pledgee within fourteen days of the termination of the pledge;

(ii) the company whose listed securities have been pledged shall also be notified of the pledge or of its termination within the said periods and the company shall record that fact in the register of holders of the respective securities;

(iii) such pledge of securities shall be effective in relation to a third party only from the date of delivery of the signed pledge agreement to the Maltese regulated market and any transfer or other assignment made therefrom by the pledgor, whether by onerous or gratuitous title, of the

pledged securities shall be null and void; and

(iv) the pledgee shall, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor, the Maltese regulated market and the company, have the securities sold through a person duly licensed under the Investment Services Act.

Cap. 370.

(*b*) In the case of a pledge of securities in a public company which are listed on a regulated market other than a Maltese regulated market or on an equivalent market in a non-Member State or non-EEA State, the provisions of sub-articles (7) to (11) shall not apply and in the event of a default under the agreement of pledge, the pledgee shall, upon notice to the pledgor and the company in accordance with sub-article (6) have the securities sold through a person duly authorised for this purpose.

(13) In the exercise of his rights under this article, the pledgee shall only sell or appropriate such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining shares shall be released to the pledgor.

(14) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities including voting rights and the right to receive dividends and interest payments:

Provided that, should the agreement between the parties not make provision for such matters, all rights pertaining to a holder of securities shall, for the duration of the pledge, be exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the company, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee:

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the company, dividends or interests payments due on securities which are pledged shall, during such time as the pledge is registered in the register of holders of the respective securities, be paid by the company to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(15) Notice of termination of the pledge shall be delivered by the pledgee to the Registrar for registration within fourteen days of the termination of the pledge. The company, securities in which have been pledged, shall also be notified in writing of the termination of the pledge within the said period and the company shall record that fact in the register of holders of the respective securities.

(16) Subject to the provisions of sub-articles (6) to (9) and (13), the terms and conditions of the pledge of a debenture warrant shall be determined by agreement between the pledgor and the pledgee.

The pledge f a debenture warrant shall be effective in relation to a third party from the date of delivery of the share warrant or debenture warrant to the pledgee.

(17) For the purposes of any enforcement in accordance with this article and of any provisions relating to the enforcement of rights pertaining to the pledgee in accordance with this Act, it shall be permissible for a pledgee, or any person acting on its behalf, to exercise any such rights by acting on behalf of the pledgor as its mandatary, provided that the pledgee is authorised to so act, irrevocably and by way of security, in accordance with article 1887 of the Civil Code and that the right to act in such manner is clearly prescribed in the relevant agreement regulating the pledge of securities in terms of this article and the Act.

Cap. 16.

Register of members.
Amended by: XXXI. 2017.77.

123. (1) Every company shall keep a register of its members and shall enter therein the following particulars:

(*a*) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number, so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which each person was entered in the register as a member; and

(*c*) the date at which any person ceased to be a member.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this Act, be treated as a single member; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of members. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed *vis-à-vis* the company to be the member of the company in respect of all the shares so held.

(3) The register of members shall be kept at the registered office of the company or at such other place as may be specified in the memorandum or articles.

(3A) Notwithstanding the provisions of this article, a company may make arrangements for the register of its members to be kept in a dematerialised form or represented in book-entry form as immobilisation with a central securities depository established in a recognised jurisdiction:

Provided that the company shall remain responsible for the proper keeping of the register and shall keep a copy of all entries relating to registered shareholders held by the central securities depository.

(4) If default is made in complying with any requirement of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Register of debentures. *Amended by: XXXI. 2017.78.*

124. (1) Every company shall keep a register of debentures and shall enter therein the names and addresses of the registered holders and particulars of the debentures held by them respectively.

(2) The register of debentures shall be kept at the registered office of the company or at such other place as may be specified in the memorandum or articles.

(3) Where two or more persons hold one or more debentures jointly, they shall for the purposes of this Act be treated as a single debenture holder; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of debentures. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed *vis-à-vis* the company to be the holder of all the debentures so held.

(3A) Notwithstanding the provisions of this article, a company may make arrangements for the register of its members to be kept in a dematerialised form or represented in book-entry form as immobilisation with a central securities depository established in a recognised jurisdiction:

Provided that the company shall remain responsible for the proper keeping of the register and shall keep a copy of all entries relating to registered shareholders held by the central securities depository.

(4) If default is made in complying with any requirement of this article, every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Inspection of registers.

125. Except when duly closed in accordance with the provisions of article 126, and subject to such reasonable restrictions as the company in general meeting may impose -

(*a*) the register of members shall be open to the inspection of any member of the company without charge; and

(*b*) the register of debentures shall be open to the inspection of any person without charge.

Power to close registers.

126. (1) A company may, on giving notice by advertisement in a daily newspaper circulating wholly or mainly in Malta, close the register of members to inspection for any period or periods not exceeding in the whole thirty days in each year.

(2) The register of debentures may be closed to inspection in accordance with provisions contained in the memorandum or articles or in the debentures or, in the case of debenture stock, in the stock certificates, during such period or periods, not exceeding in the whole thirty days in any one year, as may be therein specified.

(3) The memorandum or articles may provide that, during such time as the register of members or the register of debentures is closed in accordance with the provisions of sub-articles (1) and (2), no new particulars may be entered therein.

126A. (1) Notwithstanding the provisions of articles 123 and 124, where shares or debentures of a company are held or evidenced in a dematerialised or uncertificated form within the meaning of the Financial Markets Act, the company shall remain responsible for the proper keeping of the register and shall keep a copy of all entries relating to registered shareholders and registered holders of debentures held by the central securities depository or by an overseas central securities depository.

Proper keeping of register in certain instances. *Added by: XIX. 2010.33. Amended by: XI. 2017.9.* Cap. 345.

(2) For the purposes of this article "central securities depository" and "overseas central securities depository" shall have the same meaning assigned to them in article 2 of the Financial Markets Act.

Cap. 345.

127. (1) Unless otherwise provided in its articles, a company formed and registered in Malta shall not recognise any nominee relationship or trust in respect of any security issued by it, and the company shall not recognise, even when having notice thereof, any interest or other right in such security, but shall only recognise the registered holder thereof.

Trustees and nominees. *Amended by: XIII. 2004.99.*

(2) Notwithstanding anything contained in this article, the persons beneficially entitled to a security shall be taken into account, and any nominee or any trust relationship shall be disregarded, for determining the status of the company for the purpose of Chapter XII of this Title:

Provided that the company shall not be obliged to obtain or to record any information on the number of beneficiaries and it shall be the sole duty of the trustee to inform the company of the number of beneficiaries if it appears to the trustee that, having regard to the number of beneficiaries, it may result in the aggregate number of persons interested exceeding fifty. The Registrar may at any time order any trustee to declare in writing to the company the number of beneficiaries and in such a case reference shall only be made to beneficiaries who enjoy a fixed interest in the shares under the trust.

(3) Where a trustee holds shares in a company for the benefit of beneficiaries:

(*a*) the memorandum of association and articles of association, if any, shall be deemed to be validly entered into for the purposes of articles 68 and 75 if they are signed only by the trustee when all the shares in the company are subscribed by the trustee;

(*b*) the memorandum of association, the register of members, share certificates, returns of allotments and any annual return of a company may specify the number of shares held by the trustee on its own account, if any, and the amount of shares held under trusts or each trust if more than one, and the provisions of article 123(1)(*a*), (*b*) and (*c*) shall be construed accordingly;

(*c*) a resolution in writing pursuant to article 210 shall be deemed to be valid and effective if it is signed only by

the trustee when all the shares in the company are subscribed by the trustee.

(4) (*a*) Where a beneficial owner of shares in a company which are held by a trustee, transfers or otherwise disposes of the beneficial ownership of such shares *inter vivos* to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfer Act, and for the purposes of article 5(1) of the Income Tax Act.

Cap. 364.
Cap. 123.

(*b*) Where a change in the registered holder of shares in a company does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfers Act, and for the purposes of article 5(1) of the Income Tax Act, but shall nevertheless be noted in the register of members.

Cap. 364.
Cap. 123.

(*c*) For the purposes of article 49 of the Duty on Documents and Transfers Act, "transferor" and "transferee" in a transfer of shares *inter vivos* shall be deemed to include a trustee acting on behalf of either the transferor or the transferee of the beneficial ownership of such shares, or of both such transferor and transferee.

Cap. 364.

(5) In this article:

"beneficial owner" means the person beneficially entitled to the shares under a trust or a fiduciary agreement;

"trustee" shall mean a person who may act as a trustee in accordance with the Trusts and Trustees Act and shall include any fiduciary holding shares on behalf of another person.

Cap. 331.

(6) Except where expressly permitted under article 212, nothing in this article shall be deemed to imply that a company may have less than two members.

Shares in companies held by private foundations, including those with segregated cells.
Added by: XXXVI.2018.119.

127A. (1) Except as provided for in this article, the provisions of the preceding article shall not apply to foundations and -

(*a*) a private foundation as an organisation with legal personality; or

(*b*) when the foundation is a multi-cell foundation, a segregated cell in a private foundation which constitutes a distinct patrimony administered by the private foundation,

shall be considered to be the holder of any shares registered in the name of the private foundation or in the name of the foundation with reference to a cell, and beneficial owners shall not be taken into account and shall be disregarded for determining the status of the company for the purpose of Chapter XII of this Title.

(2) (*a*) Where a beneficial owner of shares in a company, which are held by a private foundation, transfers or otherwise disposes of the beneficial ownership of such shares inter vivos to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfer Act, and for the purposes of article 5(1) of the Income Tax Act. Cap. 364. Cap. 123.

(*b*) Where a change in the registered holder of shares in a company does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of the Duty on Documents and Transfers Act, and for the purposes of article 5(1) of the Income Tax Act, but shall nevertheless be noted in the register of members. Cap. 364. Cap. 123.

(*c*) For the purposes of article 49 of the Duty on Documents and Transfers Act, "transferor" and "transferee" in a transfer of shares inter vivos shall be deemed to include a private foundation acting for the benefit of either the transferor or the transferee of the beneficial ownership of such shares, or of both such transferor and transferee. Cap. 364.

(3) When a transaction takes place relating to a cell of an organisation under article 20A or under article 20B of the Second Schedule to the Civil Code and the relevant private foundation, or the foundation with reference to a cell, is the registered holder of any shares in a company, any such transaction shall be treated as a change in the registered holder of the shares in a company without any change in the beneficial owner of the shares. As such transactions result in a change in legal ownership of any shares in a company, the administrators, or their delegates, of - Cap. 16.

(*a*) the transferring organisation and, if different, those of recipient organisation under the said article 20A; or

(*b*) the organisation of which the cell formed part and those of the new organisation under the said article 20B,

as the case may be, shall, within fifteen (15) days from the date of the act, deliver to the Registrar a form notifying him of the transfer of such shares from one foundation to the other, or from the foundation to a new organisation, as the case may be.

(4) The same principles above stated shall apply when the transferor and, or transferee are involved in a partnership *en commandite* the capital of which is divided into shares.

(5) In this article:

"beneficial owner" means the person beneficially entitled to the shares under a private foundation;

"private foundation" shall mean a foundation as defined in article 31B of the Second Schedule of the Civil Code. Cap. 16.

Chapter VII - Meetings and Resolutions

Holding of annual general meeting.

128. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as a company holds its first annual general meeting within eighteen months of its registration it need not hold it in the year of its registration or in the following year.

(2) Every general meeting other than an annual general meeting shall be an extraordinary general meeting.

(3) If default is made in complying with the provisions of sub-article (1), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Convening of extraordinary general meeting on requisition. *Substituted by: XVIII.2024.10.*

129. (1) The directors of a company shall on the requisition of one or more members of the company, holding not less than one-tenth of the paid-up share capital of the company on the date of the deposit of the requisition, which share capital carries the right of voting at general meetings of the company, forthwith proceed to duly convene an extraordinary general meeting of the company within twenty-one (21) days from the date of the deposit of the requisition, to be held not later than two (2) months from the date of the deposit of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form, each signed by all the requisitionists.

(3) If the directors do not duly proceed to hold a meeting as referred to in sub-article (1), the requisitionists may convene a meeting in the same manner, as far as possible, as that in which meetings are to be convened by the directors, provided that such a meeting shall be held before the expiration of three (3) months from the date of the deposit of the requisition.

(4) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors to hold a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be due personally by the directors who were in default and may be retained by the company out of any amount due or which may become due by the company by way of fees or other remuneration in respect of their services to such directors who were in default.

Length of notice for calling general meetings.

130. A general meeting of a company shall be deemed not to have been duly convened unless at least fourteen days' notice has been given in writing, and any provision in the company's memorandum or articles shall be construed as requiring fourteen

days' notice in writing in so far as it provides for the calling of a meeting of a company, other than an adjourned meeting, by a shorter notice:

Provided that a meeting of the company shall notwithstanding that it is called by a shorter notice, be deemed to have been duly convened if it is so agreed by all the members entitled to attend and vote thereat.

General provisions as to meetings and votes.
Amended by: L.N. 425 of 2007.

131. The following provisions shall have effect in so far as the articles of a company do not contain other provisions in that behalf-

(*a*) notice of any general meeting of a company shall be given to every member of the company and shall be served in the manner in which notices are required to be served by the First Schedule;

(*b*) two members personally present shall be a quorum;

(*c*) any member elected by the members present at a meeting may be chairman thereof;

(*d*) every member shall have one vote in respect of each share or each euro of stock held by him unless otherwise provided in the terms of issue of such shares or stock.

Powers of court to order meeting.

132. (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of the company may be called, or to conduct the meetings of that company in the manner prescribed by the articles or this Act, the court may, either on its own motion or on the demand of either of the parties to the proceedings during the course of such proceedings or, in the absence of any proceedings, on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) The provisions of sub-article (1) shall also apply to the calling of meetings of the board of directors of a company, if the court considers that the circumstances justify such course of action.

Proxies.

133. (1) Notwithstanding anything contained in the memorandum or articles of a company, any member entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to demand a poll.

(2) The appointment of a proxy shall be in writing.

(3) In every notice calling a meeting of a company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy and that a

proxy need not also be a member. If default is made in complying with this sub-article, every officer of the company who is in default shall be liable to a penalty.

(4) A provision in a company's memorandum or articles shall be void in so far as it would have the effect of requiring an instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting for that appointment to be effective.

(5) A company shall not issue at its own expense to some only of the members entitled to be sent a notice of a meeting and to vote thereat by proxy, invitations to appoint as proxy a person or one of a number of persons specified in the invitations. If default is made in complying with this sub-article, every officer of the company who is in default shall be liable to a penalty:

Provided that an officer shall not be liable to a penalty by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The provisions of this article shall apply to meetings of any class of members of a company as they apply to general meetings of the company.

Right to demand a poll.

134. (1) Any provision contained in the memorandum or articles of a company shall be void in so far as it would have the effect either-

(*a*) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(*b*) of making ineffective a demand for a poll on any such question which is made either -

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of the company shall be deemed to confer authority to demand or join in demanding a poll; and for the purposes of sub-article (1) a demand by a person as proxy for a member shall be the same as a

demand by the member.

(3) On a poll taken at a meeting of a company or a meeting of any class of members of that company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Extraordinary and ordinary resolutions. *Amended by: IV. 2003.61.*

135. (1) A resolution shall be an extraordinary resolution where-

(*a*) it has been taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given; and

(*b*) it has been passed by a member or members having the right to attend and vote at the meeting holding in the aggregate not less than seventy-five per cent in nominal value of the shares represented and entitled to vote at the meeting and at least fifty-one per cent, or such other higher percentage as the memorandum or articles may prescribe, in nominal value of all the shares entitled to vote at the meeting:

Provided that, if one of the aforesaid majorities is obtained, but not both, another meeting shall be convened within thirty days in accordance with the provisions for the calling of meetings to take a fresh vote on the proposed resolution. At the second meeting the resolution may be passed by a member or members having the right to attend and vote at the meeting holding in the aggregate not less than seventy-five per cent in nominal value of the shares represented and entitled to vote at the meeting. However, if more than half in nominal value of all the shares having the right to vote at the meeting is represented at that meeting, a simple majority in nominal value of such shares so represented shall suffice.

(2) An ordinary resolution shall be passed by a member or members having the right to attend and vote holding in the aggregate shares entitling the holder or holders thereof to more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting, or such other higher percentage as the memorandum or articles may prescribe.

(3) In the case of a private company a resolution shall be an extraordinary resolution where -

(*a*) the provisions of sub-article (1)(*a*) are complied with; and

(*b*) it has been passed by a number of members having the right to attend and vote at any such meeting holding in the aggregate not less than fifty-one per cent in nominal value of the shares conferring that right or such other higher percentage as the memorandum or articles may prescribe.

Chapter VIII - Management and Administration

Power of company to borrow money, hypothecate or charge its undertaking, etc. *Amended by: IV. 2003.62.*

136. A company shall, unless otherwise provided in its memorandum or articles, have the power to borrow money and to guarantee the obligations of any third party and, for such purpose, to hypothecate or charge its undertakings, property and uncalled capital or any part thereof including as security for its obligations or for those of any third party, and to issue debentures, debenture stock and other securities whether outright or as security for its liabilities or obligations or for those of any third party.

General duties of directors. *Added by: IV. 2003.63.*

136A. (1) A director of a company shall be bound to act honestly and in good faith in the best interests of the company.

(2) The directors of a company shall promote the well-being of the company and shall be responsible for:

(*a*) the general governance of the company and its proper administration and management; and

(*b*) the general supervision of its affairs.

(3) In particular, but without prejudice to any other duty assigned to the directors of a company, or to any one of them, by the memorandum or articles of association or by this Act or any other law, the directors of a company shall:

(*a*) be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person having both -

(i) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and

(ii) the knowledge, skill and experience that the director has;

(*b*) not make secret or personal profits from their position without the consent of the company, nor make personal gain from confidential company information;

(*c*) ensure that their personal interests do not conflict with the interests of the company;

(*d*) not use any property, information or opportunity of the company for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with the consent of the company in general meeting or except as permitted by the company's memorandum or articles of association;

(*e*) exercise the powers they have for the purposes for which the powers were conferred and shall not misuse such powers.

Directors.
Amended by: IV. 2003.64.

137. (1) Every public company shall have at least two directors.

(2) Every private company shall have at least one director, and where a private company has one director, all references in this Act to two or more directors shall be construed as references to such one director.

(3) The business of a company shall be managed by the directors who may exercise all such powers of the company, including those specified in article 136, as are not by this Act or by the memorandum or articles of the company, required to be exercised by the company in general meeting.

(4) Notwithstanding anything contained in the memorandum and articles of association relating to the manner in which the representation of the company is to be exercised, anything done by the board of directors of a company which exceeds the limits of their authority or by any director which is beyond his powers, shall be binding on the company unless that act exceeds the powers granted to the board of directors or to a director, as the case may be, by virtue of this Act.

(5) Any limitation on the powers of the board of directors or of any director of the company shall not be relied on as against third parties independently of whether that limitation, published or not, arises from the memorandum or articles or from any resolution of the general meeting or from a decision of the board of directors of the company.

(6) Where an act of the company falls outside the company's objects, the company shall not be bound if it proves that, when the act was done, the third party knew that it was outside the company's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the memorandum and articles of the company shall not in itself be sufficient to prove that the third party knew, or could not have been unaware, that the act was outside the company's objects.

(7) If the number of directors of a company is reduced below two any member of the company may at any time after the lapse of thirty days therefrom, make an application to the court for the court to appoint a director or directors for the company in accordance with its memorandum and this without prejudice to the right of the continuing director to fill any vacancy so created in accordance with the provisions of article 140(6) within the thirty days specified herein or at any time thereafter for as long as a director is not appointed by the court.

(8) A person appointed by the court in accordance with the provisions of sub-article (7) shall hold office until the next annual general meeting although he shall be eligible for re-election.

(9) The provisions of sub-article (7) shall furthermore be without prejudice to the provisions of article 140(1) to (5) and of article 214(2)(*b*)(ii) and to the right of the company to fill any such vacancy in general meeting.

Company secretary.
Amended by: IV. 2003.65; XXXI. 2017.79.

138. (1) Every company shall have a company secretary.

(2) No company shall:

(*a*) have as company secretary its sole director;

(*b*) have as sole director of the company a body corporate the sole director of which is company secretary to the company.

(*c*) have as company secretary a body corporate, unless such body corporate is duly registered as a company service provider in terms of the Company Service Providers Act:

Cap. 529.

Provided that, for the purposes of this paragraph, a body corporate which does not require registration in terms of article 3(1)(*a*) and (*b*) of the Company Service Providers Act may also act as a company secretary in terms of this article.

Cap. 529.

(3) It shall be the duty of the directors of a company to take all reasonable steps to ensure that the company secretary is an individual who appears to them to have the requisite knowledge and experience to discharge the functions of company secretary, or is a body corporate as referred to in sub-article (2)(*c*).

(4) In the event that the post of company secretary becomes vacant, the directors of the company shall, within fourteen days from the date when the post becomes vacant, appoint another individual, or a body corporate as referred to in sub-article (2)(*c*), to fill the post.

(5) The directors of a company shall have the power to remove the company secretary and they shall appoint another company secretary within fourteen days from the date of such removal.

(6) Anything required or authorised to be done by or to the company secretary may, if the office is vacant or if there is for any other reason no company secretary capable of acting, be done by or to any officer of the company authorised generally or specifically in that behalf by the directors.

(7) A provision authorising a thing to be done by or to a director and the company secretary is not satisfied by its being done by or to the same person acting both as director and as, or in place of, the company secretary.

(8) If default is made in complying with the provisions of sub-article (4) every director of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

Appointment of directors.
Amended by: XI. 2017.10; LX. 2021.5.

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

(2) Without prejudice to the provisions of sub-article (1), where

a director is by the memorandum or articles of a company required to hold a specified share qualification, he shall either sign the memorandum for a number of shares not less than his qualification or sign and deliver to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares:

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

(3) Unless otherwise provided in the memorandum or articles of a company, a director of a company other than the first directors shall be appointed by ordinary resolution of the company in general meeting.

(4) Where the holders of a particular class of shares have the right to appoint one or more directors, in terms of the memorandum and articles of the company, such appointment shall be made by a member or members holding in the aggregate more than fifty per cent in nominal value of the shares represented and entitled to vote at the meeting of the holders of the shares of that class.

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

Removal of directors and casual vacancies. *Amended by: IV. 2003.66; LX. 2021.6.*

140. (1) A company may remove a director before the expiration of his period of office by a resolution taken at a general meeting of the company and passed by a member or members having the right to attend and vote, holding in the aggregate shares entitling the holder or holders thereof to more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting.

(2) The provisions of sub-article (1) shall apply notwithstanding anything in the company's memorandum or articles or in any agreement between it and the director.

(3) On receipt of a notice of an intended resolution to remove a director under this article the company shall forthwith send a copy thereof to the director concerned and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) A vacancy created by the removal of a director under this article, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) Nothing in this article shall be taken as -

(*a*) depriving a person removed hereunder of compensation or damages payable to him in respect of

the termination of his appointment as director or of any other appointment terminating with the termination of his appointment as director; or

(*b*) derogating from any power to remove a director which may exist apart from this article.

(6) (*a*) Unless otherwise provided in the memorandum or articles of a company, a casual vacancy may be filled by the continuing director or directors, and without prejudice to the aforesaid powers of the directors, it may be filled by the company in general meeting.

(*b*) A person appointed by the directors to fill a casual vacancy shall hold office until the next following annual general meeting and shall be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

(*c*) A person appointed to fill a casual vacancy by the company in general meeting shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.

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

Cap. 529.

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

(9) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application. The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason. The expenses shall be borne by the company.

Representation of the company.

141. (1) Where for any reason the representation of a company ceases to be vested in any person or persons, the company shall appoint another person or persons to exercise such function. The appointment shall be made by ordinary resolution taken at a general

meeting notice of which shall be issued within fourteen days from the date when the vacancy occurs.

(2) The company may by ordinary resolution replace any person or persons vested with the representation of the company.

(3) Where, and for as long as, the representation of a company cannot be exercised in accordance with the memorandum of the company, any director shall represent the company in judicial proceedings against it.

Disqualification for appointment as director or company secretary. *Amended by: IV. 2003.67. Substituted by: XXXI.2020.2. Amended by: LX. 2021.7; XVIII.2024.11.* Cap. 373.

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

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

(*b*) he has been convicted of an offence of money laundering within the meaning of the Prevention of Money Laundering Act, associate predicate offences to money laundering and terrorist financing, or of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;;

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

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

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

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

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

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

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

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

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

Provided further that in any case the disqualification period in terms of this proviso

shall not be less than the term of imprisonment that the person would have been awarded;

Cap. 529.

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

(2) Notwithstanding the provisions of this Act or of the memorandum and articles of a company relating to the formalities of the appointment of a director or other officer and to his qualification, any irregularity concerning the appointment of a director or other officer of a company raised after the completion of the publication of his appointment shall not be relied upon by the company as against third parties unless the company proves that such parties were aware of the irregularity at the relevant time.

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

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

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

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

Directors competing with company. *Amended by: IV. 2003.68.*

143. (1) A director of a company may not, in competition with the company and without the approval of the same company given at a general meeting, carry on business on his own account or on account of others, nor may he be a partner with unlimited liability in another partnership or a director of a company which is in competition with that company.

(2) Where a director acts in violation of the prohibition contained in this article, the company may, at its option, either take action for damages and interest against him or demand payment of any profits made by him in contravention of this article.

(3) The provisions of this article shall be without prejudice to any other remedy which a company may have against a director for breach of duty.

Prohibition of loans, etc. to directors.

144. (1) It shall not be lawful for a company -

(*a*) to make a loan to any person who is its director or a director of its parent company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this paragraph shall apply either -

(i) to anything done, with the approval of the company given at a general meeting, to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(ii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business;

(*b*) to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

(2) For the purposes of this article, the expression "director" shall include any person in accordance with whose directives or instructions the directors of a company are accustomed to act.

Duty of director to disclose interest in a contract with company.

145. (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest to the other directors either at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the contract or proposed contract, at the next meeting of the directors held after he became so interested.

(2) Any director who fails to comply with the provisions of this article shall be liable to a penalty.

Return as to changes among directors, company secretary and in representation of company.
Amended by: XXXI. 2017.80; XVIII.2025.15.

146. (1) Every company shall send to the Registrar for registration a return of any change among its directors, or company secretary or in the representation of the company, specifying the date of the change, together with the name and residence or name, registered office and registration number, as the case may be, of any new director or company secretary, within fourteen days from the happening thereof:

Provided that the Registrar may, before registering the

return, take such steps and require such information as he may deem necessary to ascertain the correctness of the return and to determine whether the provisions of this Act have been complied with:

Provided further that the person appointed by an order of the Court or by a competent authority as administrator, legal and, or judicial representative or as the person *de facto* responsible for the management and administration of a company shall, within fourteen (14) days from said appointment, submit to the Registrar for registration a return in the prescribed form specifying the date of appointment, together with the name and residence or service address, or name, registered office and registration number, as the case may be. The said administrator, legal and, or judicial representative or person *de facto* responsible for the management and administration of the company shall, within fourteen (14) days from resigning or from being removed from the said office, submit to the Registrar for registration a return in the prescribed form.

(2) If default is made in complying with the provisions of sub-article (1), every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Joint and several liability of directors for breach of duty.

147. (1) The personal liability of the directors in damages for any breach of duty shall be joint and several:

Provided that where a particular duty has been entrusted to one or more of the directors, only such director or directors shall be liable in damages.

(2) A director shall not be liable for the acts of his co-directors if he proves either -

(*a*) that he did not know of the breach of duty before or at the time of its occurrence and that on becoming aware of it after its occurrence he signified forthwith to the co-directors his dissent in writing; or

(*b*) that, knowing that the co-directors intended to commit a breach of duty, he took all reasonable steps to prevent it.

Provisions as to liability of officers and auditors.

148. (1) Any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise for exempting any officer of the company or any person engaged by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would in the absence thereof have been attached to him in respect of negligence, default or breach of duty or otherwise of which he may be guilty in relation to the company shall be void:

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

(2) Nothing in this article shall be construed as preventing or restricting a company from purchasing and maintaining for any of its officers insurance against any such liability as is referred to in sub-article (1); or as preventing or restricting any officer or auditor of a company from personally purchasing and maintaining any such insurance.

Minutes of proceedings.

149. (1) Every company shall cause minutes of all proceedings of general meetings and all proceedings at meetings of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, or at such other place as may be specified in the memorandum or articles, and shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, be open to the inspection of any member of the company without charge.

(4) If a company fails to comply with the requirements of sub-articles (1) or (3), every officer of the company who is in default shall be liable to a penalty.

General duty of officers of a company.
Amended by: IV. 2003.69.

150. Anything required to be done by a company under any provision of this Act shall be deemed also to be required to be done by the officers of the company.

Chapter IX - Auditors

Appointment of auditors.
Amended by: XXXVI. 2016.19; XVIII.2024.13.

151. (1) A company shall, at each general meeting at which the annual accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which such accounts are laid. The company may appoint joint auditors and references in this Act to auditor or auditors shall be deemed to include references to single or joint auditors as the case may be.

(2) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which the annual accounts are laid, and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If the directors fail to exercise their powers under sub-article (2), the powers may be exercised by the company in general meeting.

(4) If no auditors are appointed or re-appointed as required by the foregoing sub-articles of this article, the court on an application made by any of the directors or by any member of the company or by the Registrar may appoint a person to fill the vacancy.

(5) In the case specified in sub-article (4), the company shall within two weeks of the general meeting at which an auditor or auditors should have been appointed by virtue of sub-article (1), give notice to the Registrar that his power to apply to the court has become exercisable.

(6) If a company fails to give the notice required by sub-articles (5) or (9), every officer of the company who is in default shall be liable to an administrative penalty and for every day during which the default persists, to a further administrative penalty.

(7) Any contractual clause restricting the choice by the general meeting of the company pursuant to sub-article (1) to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of the company shall be prohibited. Any such existing clause shall be null and void.

(8) For the purposes of the application of this article, for the appointment of auditors or audit firms by public-interest entities, the conditions set out in Article 16(2) to (6) of the Audit Regulation, and those in the relative sectoral legislation regulating each particular type of public-interest entity, shall apply.

(9) When the first auditor of the company is appointed and whenever a new auditor is appointed following a resignation or removal of a previous auditor, the company shall, within fourteen (14) days from the said appointment, submit to the Registrar for registration a return in the prescribed form, by means of which the Registrar is notified with the name and surname and warrant registration number of the appointed auditor.

Duration of the audit engagement of public-interest entities.

151A.(1)(*a*)A public-interest entity shall appoint an auditor or an audit firm for an initial engagement of at least one year. The engagement may be renewed.

(*b*) Neither the initial engagement of a particular auditor or audit firm by a public-interest entity, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of ten years.

(2) After the expiry of the maximum durations of engagements referred to in sub-article (1)(*b*), or after the expiry of the durations of engagements extended in accordance with sub-articles (3) or (5), neither the auditor or the audit firm nor, where applicable, any members of their networks within the European Union shall undertake the statutory audit of the same public-interest entity within the following four-year period.

(3) By way of derogation from sub-article (1), the maximum durations referred to in sub-article (1)(*b*) may be extended to the maximum duration of twenty (20) years, where a public tendering process for the statutory audit is conducted in accordance with Article 16(2) to (5) of the Audit Regulation and takes effect upon the expiry of the maximum durations referred to in sub-article (1)(*b*).

(4) The maximum durations referred to in sub-article (1)(*b*)

shall be extended only if, upon a recommendation of the audit committee, the board of directors proposes to the general meeting of the company, in accordance with Maltese law, that the engagement be renewed and that proposal is approved.

(5) After the expiry of the maximum durations referred to in sub-article (1)(*b*), or in sub-article (3), as appropriate, the public-interest entity may, on an exceptional basis, request that the Board grant an extension to re-appoint the auditor or the audit firm for a further engagement where the conditions in sub-article (3) are met. Such an additional engagement shall not exceed two years.

(6) (*a*) The key audit partners responsible for carrying out a statutory audit shall cease their participation in the statutory audit of the audited entity not later than seven (7) years from the date of their appointment. They shall not participate again in the statutory audit of the audited entity before three years have elapsed following that cessation.

(*b*) The auditor or the audit firm shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved in the statutory audit, including at least the persons who are registered as auditors. The gradual rotation mechanism shall be applied in phases on the basis of individuals rather than of the entire engagement team. It shall be proportionate in view of the scale and the complexity of the activity of the auditor or the audit firm.

(*c*) The auditor or the audit firm shall be able to demonstrate to the Board that such mechanism is effectively applied and adapted to the scale and the complexity of the activity of the auditor or the audit firm.

(7) (*a*) For the purposes of this article, the duration of the audit engagement shall be calculated as from the first financial year covered in the audit engagement letter in which the auditor or the audit firm has been appointed for the first time for the carrying-out of consecutive statutory audits for the same public-interest entity.

(*b*) For the purposes of this article, the audit firm shall include other firms that the audit firm has acquired or that have merged with it.

(*c*) If there is uncertainty as to the date on which the auditor or the audit firm began carrying out consecutive statutory audits for the public-interest entity, for example due to firm mergers, acquisitions, or changes in ownership structure, the auditor or the audit firm shall immediately report such uncertainties to the Board.

(8) As from 17 June 2020, a public-interest entity shall not enter into or renew an audit engagement with a given auditor or

audit firm if that auditor or audit firm has been providing audit services to that public-interest entity for twenty (20) and more consecutive years as at 16 June 2014.

(9) As from 17 June 2023, a public-interest entity shall not enter into or renew an audit engagement with a given auditor or audit firm if that statutory auditor or audit firm has been providing audit services to that public-interest entity for eleven (11) and more but less than twenty (20) consecutive years as at 16 June 2014.

(10) Without prejudice to sub-articles (8) and (9), the audit engagements that were entered into before 16 June 2014 but which are still in place as at 17 June 2016 may remain applicable until the end of the maximum duration referred to in sub-article (1)(*b*). Sub-article (3) shall apply.

(11) Article 16(3) of the Audit Regulation shall only apply to audit engagements after the expiry of the period referred to in sub-article (1)(*b*).

Filling of casual vacancies.

152. (1) The directors shall at any time before the general meeting of the company at which the annual accounts are laid fill a casual vacancy in the office of auditor:

Provided that the company in general meeting may fill such a casual vacancy itself.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Where it is proposed -

(*a*) to appoint an auditor to fill a casual vacancy in the office of auditor by resolution of the general meeting; or

(*b*) to re-appoint by resolution of the general meeting a retiring auditor who was appointed by the directors to fill a casual vacancy, as auditor, or to appoint a new auditor instead of that auditor,

notice specifying the terms of the proposed resolution shall be given forthwith to the person proposed to be appointed and, if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(4) Any director who fails to comply with the provisions of sub-article (1) shall be liable to the same penalty as that provided for in article 151(6).

Rules on auditor independence and professional ethics. *Substituted by: IX. 2008.15.* Cap. 281.

153. An auditor must at all times adhere to the rules on independence and professional ethics set out in the Code of Ethics and any other regulations, directives or guidelines issued from time to time in terms of the Accountancy Profession Act.

Right to information. *Amended by: L.N. 425 of 2007; XVIII.2025.16.*

154. (1) The auditors of a company shall have a right of access at all times to the company's accounting records, accounts and vouchers, and shall be entitled to require from the company's officers such information and explanations as they think necessary

for the performance of their duties as auditors.

(2) An officer of a company who knowingly or recklessly makes to the company's auditors a statement, whether written or oral, which:

(*a*) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and

(*b*) is misleading, false or deceptive in a material particular,

shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro (€4,658) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) A subsidiary undertaking which is registered in Malta, and the auditors of such an undertaking, shall give to the auditors of any parent company of the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a subsidiary undertaking fails to comply with the provisions of this sub-article, every officer thereof who is in default shall be liable to a penalty; and if an auditor fails without reasonable cause to comply with this sub-article he shall be liable to a penalty.

(4) A parent company having a subsidiary undertaking which is not registered in Malta shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a parent company fails to comply with the provisions of this sub-article, every officer of the company who is in default shall be liable to a penalty.

Right to attend company meetings.

155. A company's auditors shall be entitled -

(*a*) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;

(*b*) to attend any general meeting of the company; and

(*c*) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Remuneration of auditors.
Amended by: IX. 2008.16; III. 2009.22.

156. (1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. The remuneration of auditors appointed by the directors or the court shall be fixed by the directors or the court as the case may be.

(2) There shall be stated in the notes to the accounts the amount of the remuneration of the company's auditors in their capacity as such; and where consolidated accounts are prepared, the notes to

the consolidated accounts shall state the total remuneration paid to the auditors of the parent company in respect of all undertakings included in the consolidation, and also the total remuneration paid to all other auditors in respect of such undertakings.

(3) For the purposes of this article "remuneration" includes sums paid in respect of expenses.

(4) The provisions of this article shall apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value. The nature of any such benefit shall also be disclosed.

(5) There shall also be stated in the notes to the accounts separately the total fees charged by the auditor for:

(*a*) other assurance services;

(*b*) tax advisory services; and

(*c*) other non-audit services.

(6) The provisions of sub-article (5) shall not apply:

(*a*) where an undertaking is included within the consolidated accounts of another undertaking and the information required by sub-article (5) is provided in the notes to such consolidated accounts; or

(*b*) to a company which on its balance sheet date does not exceed the limits of two out of the three criteria set out in article 185(1)(*a*). Notwithstanding the provisions of this paragraph, the Accountancy Board established in terms of the Accountancy Profession Act may request the information specified in sub-article (5) to be delivered to it within such period as it may establish for that purpose.

(7) The provisions of sub-article (6) shall not apply to a public interest entity as defined in the Accountancy Profession Act.

Cap. 281.

Removal of auditors. *Amended by: IX. 2008.17; XXXVI. 2016.21.*

157. (1) Notwithstanding anything in a company's memorandum or articles or in any other agreement, the company may at any time remove an auditor from office in the same manner as that specified in article 140(1):

Provided that an auditor may only be removed from office as aforesaid if there is a proper ground for dismissal:

Provided further that divergence of opinions on accounting treatments or audit procedures shall not constitute a proper ground for dismissal.

(2) (*a*) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice thereof to the Registrar for registration. The company shall also, within the same period, deliver to the Board a statement by the company giving an adequate explanation of the reasons for the removal of the auditor. If a company fails to give the aforesaid notice to the Registrar or the aforesaid statement to the Board,

every officer of the company who is in default shall be liable to a penalty in respect of each default, and for every day during which the default continues, to a further penalty.

(*b*) For the purposes of this sub-article, the Board shall have the meaning assigned to it by the Accountancy Profession Act. Cap. 281.

(3) Nothing in this article shall be taken as depriving a person removed under its provisions of compensation for damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that of auditor.

(4) An auditor of a company who has been removed shall have, notwithstanding his removal, the rights conferred by article 155 in relation to any general meeting of the company -

(*a*) at which his term of office would otherwise have expired; or

(*b*) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that article to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

(5) In the case of a statutory audit of a public-interest entity, it shall be permissible for -

(*a*) shareholders representing five per cent or more of the voting rights or of the share capital of the company; or

(*b*) the Board referred to in sub-article (2),

to bring a claim before the court for the dismissal of the statutory auditor(s) or the audit firm(s) where there are proper grounds for so doing.

Rights of auditors who are removed or not re-appointed.

158. (1) Notice specifying the text of and reasons for a proposed resolution of a general meeting of a company whereby it is intended to -

(*a*) remove an auditor before the expiration of his term of office; or

(*b*) appoint as auditor a person other than a retiring auditor;

shall be sent forthwith by the company to the person proposed to be removed, to the person proposed to be appointed and to the retiring auditor, as the case may be.

(2) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution representations in writing to the company not exceeding a reasonable length and request their notification to members of the company.

(3) The company shall, unless the representations are received by it too late for it to do so -

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

Resignation of auditor.
Amended by: XV. 2007.9; IX. 2008.18.
Cap. 281.

159. (1) Without prejudice to the notification obligations in terms of article 17 of the Accountancy Profession Act, an auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office. The notice shall not be effective unless it is accompanied by the statement required by article 161.

(2) An effective notice of resignation shall operate to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within fourteen days of the deposit of a notice of resignation give notice thereof to the Registrar for registration. If default is made in complying with this sub-article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Rights of resigning auditor.

160. (1) The provisions of this article shall apply where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) The resigning auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The resigning auditor may request the company to circulate to its members -

(*a*) before the meeting convened on his requisition; or

(*b*) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;

a statement in writing of the circumstances connected with his resignation as referred to in sub-article (1).

(4) The company shall, unless the statement is received too late for it to comply -

(*a*) in any notice of the meeting given to members of the

company, state the fact of the statement having been made; and

(*b*) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within twenty-one days from the date of the deposit of a requisition under this article proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned in sub-article (2) shall be liable to a penalty.

(6) If a copy of the statement is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the statement be read out at the meeting.

(7) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by article 155 in relation to any such general meeting of the company as is mentioned in sub-article (3)(*a*) or (*b*), and, in such a case, the references in that article to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by person ceasing to hold office as auditor.

161. (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than fourteen days before the general meeting at which auditors are to be reappointed; in any other case, the statement shall be deposited not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(3) Where the statement is of circumstances which the auditor requests to be brought to the attention of the members or creditors of the company, the company shall within fourteen days of the deposit of the statement either -

(*a*) send a copy of it to every person who under article 180 is entitled to be sent copies of the annual accounts; or

(*b*) submit an application to the court for an order that there are grounds of sufficient gravity to warrant that the statement should not be circulated.

(4) Where the company submits an application to the court, the court shall notify the auditor of the application and shall hear both parties before making a decision on the company's application.

(5) Unless the auditor receives notice of such an application

before the end of the period of twenty-one days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the Registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter -

(*a*) it shall direct that copies of the statement need not be sent out; and

(*b*) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within fourteen days of the court's decision send to the persons mentioned in sub-article (3)(*a*) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within fourteen days of the court's decision -

(*a*) send copies of the statement to the persons mentioned in sub-article (3)(*a*); and

(*b*) notify the auditor of the court's decision,

and the auditor shall within seven days of receiving such notice send a copy of the statement to the Registrar.

Failure to comply with article 161.

162. (1) If a person ceasing to hold office as auditor fails without just cause to comply with the provisions of article 161 he shall be liable to a penalty.

(2) In proceedings for a default under sub-article (1) it shall be a defence for the person against whom action is taken to show that he took all reasonable steps and exercised all due diligence to avoid that default.

(3) If a company makes default in complying with the provisions of article 161, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Chapter X - Accounts, Audit and Annual Return

Keeping of accounting records.
Amended by: L.N. 425 of 2007; XVIII.2025.17.
Cap. 13.

163. (1) In lieu of the requirements of articles 13 to 18 of the Commercial Code a company shall be required to keep proper accounting records with respect to -

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) the assets and liabilities of the company;

(*c*) if the company's business involves dealing in goods:

(i) statements of stocks held by the company at the end of each accounting period of the company;

(ii) all statements of stocktakings from which any such statement of stocks as is mentioned in sub-paragraph (i) has been or is to be prepared; and

(iii) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(2) For the purposes of sub-article (1), proper accounting records shall be deemed to have been kept with respect to the matters aforesaid if such records are sufficient to show and explain the company's transactions and are such as to -

(*a*) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and

(*b*) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Chapter complies with the requirements of this Act.

(3) The accounting records shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be at all times open to inspection by the officers of the company:

Provided that if accounting records are kept at a place outside Malta there shall be sent to, and kept at a place in Malta and at all times be open to the inspection of the officers of the company such accounts and returns with respect to the business dealt with in the accounting records so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared, in accordance with this Act, the company's balance sheet and its profit and loss account.

(4) A parent company which has a subsidiary undertaking, in relation to which the above requirements do not apply, shall take reasonable steps to secure that the subsidiary undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any balance sheet and profit and loss account prepared complies with the requirements of this Act.

(5) Notwithstanding the provisions of article 26 of the Commercial Code, the accounting records of the company shall be kept for a period of ten years: Cap. 13.

Provided that where the accounting records are kept in a bound or unified form, the ten years shall commence to run from the date of the last entry made therein.

(6) If a company fails to comply with any provision of sub-articles (1) to (4), every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro (€11,646), unless he shows that he acted diligently and that, in the circumstances in which the company's business was carried on, the default was excusable.

(7) If a company fails to comply with the provisions of sub-article (5), every officer of the company who is in default shall be liable to a penalty.

Accounting reference period and accounting reference date.

164. (1) A company's accounting periods are determined by reference to its accounting reference date.

(2) A company may give notice in the prescribed form to the Registrar specifying a date in the calendar year as being its accounting reference date:

Provided that no such notice shall have effect unless it is given before the end of nine months beginning with the date of the company's registration; and, failing such notice, the company's accounting reference date shall be the thirty-first of December.

(3) A company's first accounting reference period shall be such period ending with its accounting reference date as begins on the date of its registration and is a period of not less than six months and not more than eighteen months; and each successive period of twelve months beginning after the end of the first accounting reference period and ending with the accounting reference date shall also be an accounting reference period of the company.

(4) A company's first accounting period shall commence on the first day of its first accounting reference period and shall end on a date not more than seven days before or after the end of that accounting reference period as the directors may determine. Subsequent accounting periods shall commence on the day immediately following the company's previous accounting period and shall end on a date not more than seven days before or after the end of the next accounting reference period as the directors may determine.

(5) The directors of a parent company shall secure that, except where there are good reasons against it, the accounting period of each of its subsidiary undertakings shall coincide with the parent company's own accounting period.

Alteration of accounting reference period. *Amended by: IV. 2003.70.*

165. (1) At any time during a period which is an accounting reference period of a company by virtue of article 164 or 166 the company may give notice in the prescribed form to the Registrar specifying a date in the calendar year ("the new accounting reference date") on which that accounting reference period ("the current accounting reference period") and each subsequent accounting reference period of the company is to be treated as coming to an end or, as the case may require, as having come to an end.

(2) At any time after the end of a period which was an accounting reference period of a company by virtue of article 164 or 166 the company may give notice in the prescribed form to the Registrar specifying a date in the calendar year ("the new accounting reference date") on which that accounting reference period ("the previous accounting reference period") and each subsequent accounting reference period of the company is to be treated as coming or, as the case may require, as having come to an

end.

(3) A notice under sub-article (2), shall, however -

(*a*) have no effect unless the company is a subsidiary undertaking or parent company of another company and the new accounting reference date coincides with the accounting reference date of that other company; and

(*b*) have no effect if the period allowed under article 182 for delivery of the annual accounts in relation to the previous accounting period to be laid before the company in general meeting has already expired at the time when the notice is given.

(4) A notice under this article shall state whether the current or previous accounting reference period of the company -

(*a*) is to be treated as shortened, so as to come to an end or, as the case may require, be treated as having come to an end on the new accounting reference date on the first occasion on which that date falls or fell after the beginning of that accounting reference period; or

(*b*) is to be treated as extended, so as to come to an end or, as the case may require, be treated as having come to an end on the new accounting reference date on the second occasion on which that date falls or fell after the beginning of that accounting reference period.

(5) A notice which states that the current or previous accounting reference period is to be extended shall have no effect if the current or previous accounting reference period, as extended in accordance with the notice, would exceed eighteen months.

(6) Subject to any direction given by the Registrar under sub-article (7), a notice which states that the current or previous accounting reference period is to be extended shall have no effect unless -

(*a*) no earlier accounting reference period of the company has been extended by virtue of a previous notice given by the company under this article; or

(*b*) the notice is given not less than five years after the date on which any earlier accounting reference period of the company which was so extended came to an end; or

(*c*) the company is a subsidiary undertaking or parent company of another undertaking and the new accounting reference date coincides with the accounting reference date of that other undertaking.

(7) The Registrar may, if he thinks fit, direct that the provisions of sub-article (6) shall not apply to a notice already given by a company under this article or, as the case may be, in relation to a notice which may be so given.

Consequence of giving notice under article 165.

166. (1) Where a company has given notice with effect in accordance with article 165 and that notice has not been superseded by a subsequent notice by the company which has such effect, the new date specified in the notice shall be the company's accounting reference date in substitution for that which, by virtue of article 165 or this article, was its accounting reference date at the time when the notice was given.

(2) Where by virtue of a notice as is referred to in sub-article (1) one date is substituted for another as the accounting reference date of a company -

(*a*) the current or previous accounting reference period, shortened or extended, as the case may be, in accordance with the notice; and

(*b*) each successive period of twelve months beginning after the end of that accounting reference period, as so shortened or extended, and ending with the new accounting reference date,

shall be treated as having been an accounting reference period of the company, instead of any period which would have been an accounting reference period of the company if the notice had not been given.

(3) The provisions of article 165 and the provisions of this article shall not affect any accounting reference period of the company which -

(*a*) in the case of a notice under article 165(1) is earlier than the current accounting reference period; or

(*b*) in the case of a notice under article 165(2) is earlier than the previous accounting reference period.

General provisions as to content and form of individual accounts.
Amended by: IV. 2003.71; IX. 2008.19; XXXI. 2015.5; XVIII.2025.18.

167. (1) The directors of every company shall prepare for each accounting period individual accounts comprising the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for that period, the notes to the accounts and any other financial statements and other information which may be required by generally accepted accounting principles and practice. These documents shall constitute a composite whole. The name, registration number, legal form and registered office address of the company and where appropriate, the fact that the company is being wound up shall be indicated in these accounts.

(2) The individual accounts shall be drawn up clearly in accordance with generally accepted accounting principles and practice and the provisions of this Act including, where applicable, the requirements of the Third Schedule.

(3) The individual accounts shall give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Where the application of this Act would not be sufficient to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss, such additional information as is necessary to comply with that requirement shall be given in the notes to the financial statements.

(4) *Deleted by Act XVIII.2025.18.*

(5) Where in exceptional cases the application of a provision of this Act is incompatible with the obligation for the individual accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

Annual accounts of certain types of undertakings. *Amended by: XVII. 1998.70; IV. 2003.72; IX. 2008.20; XXXI. 2015.6.* Cap. 371. Cap. 376. Cap. 403.

168. (1) The provisions of this Chapter and the Schedules enacted under it shall apply only to the extent that they are not inconsistent with, or contradicted by provisions on the financial reporting of certain types of undertakings or provisions regarding the distribution of an undertaking's capital which are laid down in other legislative acts in force in Malta.

(2) Banks and financial institutions shall follow the Banking Rules and Financial Institutions Rules issued by the relevant competent authority under the Banking Act and the Financial Institutions Act, respectively, in relation to the form and content of their annual accounts and any other Rules issued by the competent authority in this regard.

Cap. 371. Cap. 376.

(3) Insurance and reinsurance undertakings shall comply with any Insurance Rules made under the Insurance Business Act in respect of their annual accounts.

Cap. 403.

(4) Special provisions may be prescribed by the Minister by notice in the Gazette for the annual accounts of investment companies with fixed share capital in lieu of the provisions of the Third Schedule.

Accounts of investment company with variable capital. *Amended by: IV. 2003.73; IX. 2008.21.*

169. (1) An investment company with variable share capital shall prepare its individual accounts in accordance with the format set out in the Fifth Schedule.

(2) The director's report of an investment company with variable share capital shall provide information sufficient to enable investors to make an informed judgment on the development of the company's activities and its financial performance.

(3) In all other respects, the annual accounts and director's report of an investment company with variable share capital shall be prepared in accordance with the provisions applicable to companies generally to the extent that they are not inconsistent with the provisions of the preceding sub-articles of this article and the Fifth Schedule.

Duty to prepare consolidated accounts. *Amended by: X. 2011.69; XXXI. 2015.7.*

170. (1) If at the end of an accounting period a company is a parent company the directors shall, as well as preparing the individual accounts for that company, also prepare consolidated accounts.

(2) A parent company and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the

registered offices or principal offices of such subsidiary undertakings are situated.

(3) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more subsidiary undertakings may be excluded only if their inclusion is not material when taken together.

(4) A subsidiary undertaking may be excluded from consolidation where -

(*a*) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking; or

(*b*) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated accounts prepared by the parent company; or

(*c*) in extremely rare cases, where the information necessary for the preparation of consolidated accounts in accordance with the provisions of this Act cannot be obtained without disproportionate expense or undue delay.

The reference in paragraph (*a*) to the rights of the parent company and the reference in paragraph (*b*) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of article 2(2) in the absence of which it would not be the parent company.

(5) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no consolidated accounts shall be required.

Form and content of consolidated accounts.
Amended by: IV. 2003.74; IX. 2008.22; XXXI. 2015.8; XVIII.2025.19.

171. (1) Consolidated accounts shall comprise the consolidated balance sheet as at the last day of the accounting period to which these refer, the consolidated profit and loss account for that period, the notes to the consolidated accounts and any other financial statements which may be required by generally accepted accounting principles and practice. These documents shall constitute a composite whole.

(2) Without prejudice to articles 170, 173 and 174, and to the provisions of article 2(2) and the Ninth Schedule, insofar as may be relevant to articles 170, 173 and 174, the consolidated accounts shall be drawn up in accordance with generally accepted accounting principles and practice and the provisions of this Act including, where applicable, the requirements of the Third Schedule:

Provided that the disclosure in indent (ii) of sub-paragraph (1) of paragraph 3 of Part I of the Third Schedule shall apply to the consolidated accounts as if the undertakings included in the consolidation were a single company and the disclosures in indents (iv) and (vi) of sub-paragraph (1) of paragraph 2 of Part II of the Third Schedule shall apply to the consolidated accounts.

(3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.Where the application of the provisions of this Act would not be sufficient to give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole, such additional information as is necessary to comply with such requirement shall be given in the notes to the consolidated financial statements.

(4) *Deleted by Act XVIII.2025.18.*

(5) Where in exceptional cases the application of a provision of this Act is incompatible with the obligation for the consolidated accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the consolidated accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit and loss.

Responsibility and liability for drawing up and publishing the financial statements and the directors' report. *Substituted by: XXXI. 2015.9. Amended by: XVIII.2025.20.*

172. The directors of a company, acting within the competences assigned to them by law, have collective responsibility for ensuring that:

(*a*) the annual financial statements, the directors' report and, when provided separately, the corporate governance statement and the remuneration report; and

(*b*) the consolidated financial statements, consolidated directors' reports, and when provided separately, the consolidated corporate governance statement and the remuneration report,

are drawn up and published in accordance with the requirements of this Act.

Consolidated accounts - size exemption. *Amended by: IV. 2003.75; IX. 2008.23; III. 2013.69; XXXI. 2015.10.*

173. A parent company shall be exempt from the requirements to prepare consolidated accounts if as at its balance sheet date the undertakings to be consolidated do not together, on the basis of their latest individual accounts, exceed the limits of two of the three criteria laid down in article 185(5):

Provided that none of the undertakings to be consolidated is a company the securities of which have been admitted to trading on a regulated market or on an equivalent market in a non-Member State or non-EEA State:

Provided further that none of the group companies is a public-interest entity.

Exemption for parent companies included in accounts of larger groups. *Amended by: IV. 2003.76; IX. 2008.24; XXXI. 2015.11.*

174. (1) A parent company shall be exempt from the requirement to prepare consolidated accounts if it is itself a subsidiary company in the following cases -

(*a*) where the said parent company is a wholly-owned subsidiary company of an immediate parent company formed and registered under the law of a Member State or an EEA State; or

(*b*) where more than fifty per cent in nominal value of the shares in the said parent company are held by a parent company and notice requesting the preparation of consolidated accounts has not been served on the first mentioned company by shareholders holding in the aggregate not less than ten per cent in nominal value of all the shares thereof. Such notice shall not be valid unless it is served not later than six months after the commencement of the accounting period to which it relates.

(2) The exemption referred to in sub-article (1) shall be conditional upon compliance with all of the following requirements -

(*a*) that in the case of a parent company which is itself a subsidiary company of a parent company formed and registered under the law of a Member State or an EEA State, such company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same accounting period, by a parent company formed and registered under the law of a Member State or an EEA State;

(*b*) that in the case of a parent company which is itself a subsidiary company of a parent undertaking not registered under the law of a Member State or an EEA State, the exempted undertaking is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same accounting period, provided such consolidated accounts and the director's report thereon are drawn up in a manner equivalent to that required by this Act and have been audited by one or more persons authorised to audit accounts under the national law governing the undertaking which drew them up;

(*c*) that the said parent company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver consolidated accounts;

(*d*) that the said parent company states in its individual accounts the name and registered office of the parent undertaking which draws up the consolidated accounts referred to in paragraph (*a*) or (*b*);

(*e*) that the said parent company delivers to the Registrar within the period allowed for delivering its individual accounts, copies of the consolidated accounts referred to in paragraph (*a*) or (*b*), and of the parent undertaking's directors' report or its equivalent, together with the auditors' report on those consolidated accounts; and

(*f*) that if any document comprised in accounts and reports delivered in accordance with paragraph (*e*) is in a language other than Maltese or English, there is annexed to the copy of that document a translation of it

into Maltese or English, certified to be a correct translation in such manner as may be prescribed.

(3) The exemption shall not apply to a parent company any of whose transferable securities have been admitted to trading on a regulated market or on an equivalent market in a non-Member State or non-EEA State.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of sub-article (1)(*a*) whether the company is a wholly-owned subsidiary company.

(5) For the purposes of sub-article (1)(*b*) shares held by a wholly-owned subsidiary undertaking of the parent undertaking, or held on behalf of the parent company or a wholly-owned subsidiary undertaking, shall be attributed to the parent company.

Disclosure required in notes to accounts. *Substituted by: III. 2009.23.*

175. (1) Individual accounts prepared in terms of article 167 shall, in the notes to the accounts, disclose the information required by generally accepted accounting principles and practice together with such other information required to be disclosed therein by this Act.

(2) Consolidated accounts prepared in terms of article 170 shall, in the notes to the accounts, disclose the information required by generally accepted accounting principles and practice together with such other information required to be disclosed therein by this Act.

Approval and signing of annual accounts.

176. (1) A company's annual accounts shall be approved by the board of directors and the balance sheet shall be dated and signed on behalf of the board by two directors of the company.

(2) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the directors who signed the balance sheet on behalf of the board.

(3) The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the board by the same directors who signed the balance sheet pursuant to sub-article (1).

(4) If annual accounts are approved which do not comply with the provisions of this Act, every director of the company who is party to their approval and who knows that they do not comply or is negligent as to whether they comply shall be liable to a penalty. For this purpose every director of the company at the time the accounts are approved shall be taken to be a party to their approval unless he proves that he took all reasonable steps to prevent their being approved.

(5) If a copy of the annual accounts -

(*a*) is laid before the company, or otherwise circulated, published or issued, without having been signed as required by this article or without the required statement of the signatory's name being included; or

(*b*) is delivered to the Registrar without being signed as

required by this article,

every officer of the company who is in default shall be liable to a penalty.

Contents of the directors' report. *Amended by: XXXI. 2015.12; XVIII.2025.22.*

177. (1) For each accounting period the directors shall prepare a report, hereinafter referred to as "the directors' report".

(2) The directors' report shall state the names of the persons who, at any time during the accounting period, were directors of the company, the principal activities of the company and its subsidiaries in the course of the accounting period and any significant change in those activities during such period, and a fair review of the development of the business of the company and its subsidiaries during the accounting period, and of their position at the end of that period together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the undertaking's business and of its position, consistent with the size and complexity of the business.

To the extent necessary for an understanding of the undertaking's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters. In providing the analysis, the directors' report shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

(3) The directors' report shall furthermore comply with the Sixth Schedule as regards the disclosure of the matters mentioned therein.

(4) In the case of default in complying with the provisions of this article, every person who was a director of the company immediately before the end of the period for laying annual accounts for the relevant accounting period shall be liable to a penalty. In proceedings against a person under this sub-article, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements of this article.

(5) Where consolidated accounts are required under this Act, the consolidated directors' report shall, as a minimum, in addition to any other information required under other provisions of this Act, set out the information required by this article and the Sixth Schedule, taking account of the essential adjustments resulting from the particular characteristics of a consolidated directors' report as compared to a directors' report in a way which facilitates the assessment of the position of the undertakings included in the consolidation taken as a whole.

(6) Where a consolidated directors' report is required in addition to the directors' report, the two reports may be presented as a single report.

Approval and signing of directors' report.

178. (1) The directors' report shall be approved by the board of directors and dated and signed on behalf of the board by two directors of the company.

(2) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' report which is delivered to the Registrar shall be signed and dated on behalf of the board by a director or the company secretary of the company.

(4) If a copy of the directors' report -

(*a*) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this article or without the required statement of the signatory's name being included; or

(*b*) is delivered to the Registrar without being signed as required by this article,

every officer of the company who is in default shall be liable to a penalty.

Auditors' report.
Amended by: IV. 2003.77; IX. 2008.25; XXXI. 2015.13; XXXVI. 2016.22; LIV. 2016.4.

179. (1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall be drawn up in accordance with generally accepted auditing standards and shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given -

(*a*) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the accounting period;

(*b*) in the case of an individual profit and loss account, of the profit or loss of the company for the accounting period;

(*c*) in the case of consolidated accounts, of the state of affairs as at the end of the accounting period, and the profit or loss for the accounting period, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) The auditors shall consider whether the information given in the directors' report for the accounting period for which the annual accounts are prepared is consistent with those accounts; and if they are of the opinion that it is not they shall state that fact in their report.

The auditors shall also:

(*a*) express an opinion on whether the directors' report has been prepared in accordance with the applicable legal

requirements;

(*b*) state whether, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, they have identified material misstatements in the directors' report, and shall give an indication of the nature of any such misstatements:

Provided that the requirement mentioned in paragraphs (*a*) and (*b*) shall not apply to the non-financial information to be disclosed in accordance with paragraphs 8 and 11 of the Sixth Schedule, but the auditors shall check whether such information is provided.

(4) The audit report shall comply with the provisions of article 179A.

(5) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the names of the auditors.

(6) The copy of the auditors' report which is delivered to the Registrar shall state the names of the auditors and be signed by them.

(7) If a copy of the auditors' report -

(*a*) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names; or

(*b*) is delivered to the Registrar without the required statement of the auditors' names or without being signed as required by this article,

every officer of the company who is in default shall be liable to a penalty.

(8) References in this article to signature by the auditors are, where the office of auditor is held by an audit firm, to the signature of a principal authorised to sign on behalf of such audit firm.

(9) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to -

(*a*) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and

(*b*) whether the company's individual accounts are in agreement with the accounting records and returns.

(10) If the auditors are of the opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(11) If the auditors are unable to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purpose of their audit, they shall state that fact in their report.

(12) In this article "audit firm", "generally accepted auditing standards" and "principal", shall have the meaning assigned to them in the Accountancy Profession Act or regulations issued in terms thereof. Cap. 281.

(13) The audit report on the consolidated financial statements shall comply with the requirements set out in this article and in article 179A. In reporting on the consistency of the directors' report and the financial statements the auditor or audit firm shall consider the consolidated financial statements and the consolidated directors' report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the audit reports required by this article may be combined.

Audit reporting. *Added by; XXXVI. 2016.23.*

179A. (1) The audit report shall be in writing and shall:

(*a*) identify the entity whose annual or consolidated financial statements are the subject of the statutory audit; specify the annual or consolidated financial statements and the date and period they cover; and identify the financial reporting framework that has been applied in their preparation;

(*b*) include a description of the scope of the statutory audit which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;

(*c*) include an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the auditor(s) or the audit firm(s) as to:

(i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework; and

(ii) where appropriate, whether the annual financial statements comply with statutory requirements.

If the statutory auditor(s) or the audit firm(s) are unable to express an audit opinion, the report shall contain a disclaimer of opinion;

(*d*) refer to any other matters to which the auditor(s) or the audit firm(s) draw(s) attention by way of emphasis without qualifying the audit opinion;

(*e*) include an opinion and statement, both of which shall be based on the work undertaken in the course of the audit, referred to in article 179(3);

(*f*) provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue

as a going concern;

(*g*) identify the place of establishment of the auditor(s) or the audit firm(s).

(2) Where the statutory audit was carried out by more than one auditor or audit firm, the auditor(s) or the audit firm(s) shall agree on the results of the statutory audit and submit a joint report and opinion. In the case of disagreement, each statutory auditor or audit firm shall submit his, her or its opinion in a separate paragraph of the audit report and shall state the reason for the disagreement.

(3) The audit report shall be signed and dated by the auditor. Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the auditor(s) carrying out the statutory audit on behalf of the audit firm. Where more than one auditor or audit firm have been simultaneously engaged, the audit report shall be signed by all auditors or at least by the auditors carrying out the statutory audit on behalf of every audit firm:

Provided that the audit report may also be co-signed by an auditor authorised in another Member State as long as he/she/it is a member of the same network and has obtained the prior written consent of the Board.

(4) Without prejudice to the provisions of sub-articles (1) to (3), and articles 179 and 179B, the scope of the statutory audit shall not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the management or the board of directors has conducted or will conduct the affairs of the entity.

Audit report. *Added by; XXXVI. 2016.23.*

179B. (1) The audit report of public-interest entities shall be prepared in accordance with the provisions of articles 179 and 179A and in addition shall at least:

(*a*) state by whom or by which body the auditor(s) or the audit firm(s) was (were) appointed;

(*b*) indicate the date of the appointment and the period of total uninterrupted engagement including previous renewals and reappointments of the auditors or the audit firms;

(*c*) provide, in support of the audit opinion, the following:

(i) a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud;

(ii) a summary of the auditor's response to those risks; and

(iii) where relevant, key observations arising with respect to those risks.

Where relevant to the above information provided in the audit report concerning each significant assessed risk of material misstatement, the audit report shall include a clear reference to the relevant disclosures in

the financial statements;

(*d*) explain to what extent the statutory audit was considered capable of detecting irregularities, including fraud;

(*e*) confirm that the audit opinion is consistent with the additional report to the audit committee referred to in Article 11 of the Audit Regulation;

(*f*) declare that the prohibited non-audit services referred to in article 18A(1) of the Accountancy Profession Act were not provided and that the auditor(s) or the audit firm(s) remained independent of the audited entity in conducting the audit; Cap. 281.

(*g*) indicate any services, in addition to the statutory audit, which were provided by the auditor or the audit firm to the audited entity and its controlled undertaking(s), and which have not been disclosed in the directors' report or financial statements.

(2) Except as required by sub-article (1)(e) the audit report shall not contain any cross-references to the additional report to the audit committee referred to in Article 11 of the Audit Regulation. The audit report shall be in clear and unambiguous language.

(3) The statutory auditor or the audit firms shall not use the name of any competent authority in a way that would indicate or suggest endorsement or approval by that authority of the audit report.

Persons to whom a copy of the accounts of a company are to be sent.
Amended by: IV. 2003.78; XXVI.2019.87.

180. (1) In the case of every company, a copy of the annual accounts of a company for the accounting period shall, not less than fourteen days before the date of the meeting at which they are to be laid in accordance with the provisions of article 181, be sent to each of the following persons:

(*a*) every member of the company;

(*b*) every holder of the company's debentures; and

(*c*) all other persons who are entitled to receive notice of general meetings.

(2) Notwithstanding the provisions of sub-article (1), copies of the annual accounts shall, unless otherwise provided in the memorandum or articles, not be required to be sent to:

(*a*) a debenture holder who is not entitled to receive notices of general meetings; and

(*b*) members of a company who have been duly given notice of a general meeting of the company at which the company's annual accounts shall be laid in accordance with article 181, and where the company has made available to its members an electronic copy of such annual accounts, either on its website or otherwise, and has informed its members accordingly:

Provided that the company shall provide a printed copy of such annual accounts to any member upon written request.

(3) If copies of the annual accounts are sent less than fourteen days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend the meeting who received them late.

(4) If default is made in complying with sub-article (1), the company and every officer who is in default shall be liable to a penalty.

(5) Any member of the company and any holder of the company's debentures, whether or not such holder is entitled to have sent to him copies of the company's annual accounts, shall be entitled to be furnished, on demand and without charge, with a copy of the last annual accounts laid before the company in general meeting.

(6) If, when a person makes a demand for a document with which he is entitled by this article to be furnished, every officer of the company who defaults in complying with the demand within seven days after its making, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) For the purposes of this article, reference to the term "annual accounts" shall include the directors' report as specified in article 177 and the auditors' report as specified in article 179.

Directors to lay accounts before the general meeting.

181. (1) In respect of each accounting period of a company the directors shall lay before the company in general meeting for its approval copies of the annual accounts of the company for that period. There shall be annexed to the annual accounts, the auditors' report as specified in article 179 and the directors' report as specified in article 177.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) If default is made in complying with the provisions of sub-article (1), or if the annual accounts laid before the company do not comply with the provisions of this Act, every person who immediately before the end of the period for laying such accounts was a director of the company shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

(4) It shall be a defence for a person charged under sub-article (3) to prove that he took all reasonable steps for securing that the requirements of sub-article (1) would be complied with before the end of the period for laying of annual accounts. It shall not be a defence to prove that the document or documents in question were not in fact prepared as required by this Act.

Period for laying and approval of accounts.
Amended by: XV. 2007.10; XX. 2013.82; XXXI. 2015.14.

182. (1) The period allowed for laying before and approval by the company in general meeting of a company's annual accounts for an accounting period shall be as provided in this article.

(2) Subject to the following sub-articles of this article, the period allowed shall be -

(*a*) for a private company, ten months after the end of the

relevant accounting reference period; and

(*b*) for a public company, seven months after the end of that period.

(3) Where a company's first accounting period is a period of more than twelve months from the date of its registration, the period otherwise allowed for laying before and approval by the company in general meeting of annual accounts shall be reduced by the number of days by which the relevant accounting period is longer than twelve months. However, the period allowed shall not by this provision be reduced to less than three months after the end of that accounting period.

(4) Where a company's relevant accounting period has been shortened due to a change in the accounting reference date, the period allowed for laying and delivering annual accounts shall be -

(*a*) the period allowed in accordance with sub-articles (2) and (3); or

(*b*) the period of three months beginning with the date of a notice given to the Registrar when notice has been given to change the accounting reference date,

whichever of those periods last expires.

Copies of accounts to be provided to Registrar.
Amended by: IV. 2003.79; IX. 2008.26; XX. 2013.83; XXXI. 2015.15.

183. (1) The company directors shall deliver to the Registrar for registration a copy of the company's annual accounts laid before the company in general meeting in accordance with article 181 together with a copy of the auditors' report thereon, and the directors' report accompanying the annual accounts within forty-two days from the end of the period for laying of annual accounts prescribed by article 182. Where a copy of the annual accounts, auditors' report and directors' report is delivered to the Registrar by electronic means, without prejudice to the requirements of articles 176(3), 178(3) and 179(6), such electronic copy shall be authenticated in accordance with article 82.

(2) A company which qualifies as a small company in terms of article 185(1) need not deliver to the Registrar the directors' report:

Provided that where the company which qualifies as a small company is a private company having the status of an exempt company, it need not deliver to the Registrar the directors' report and the profit and loss account:

Provided further that where the exempt company also qualifies in terms of article 185(2), it need also not deliver to the Registrar an auditors' report.

(3) Where the directors of a company take advantage of any of the exemptions conferred by sub-article (2), a declaration on the prescribed form signed by the same directors who signed the balance sheet shall, together with the annual accounts, be delivered to the Registrar confirming that the company qualifies for the exemption or exemptions.

(4) Where a company, which is a parent company, prepares consolidated accounts in accordance with the provisions of this Act

it need not include a copy of its profit and loss account with the annual accounts to be delivered to the Registrar as prescribed in sub-article (1) where the following conditions are fulfilled -

(*a*) the application of this exemption is disclosed in the notes to the accounts of the parent company and in the notes to the consolidated accounts; and

(*b*) the profit or loss of the parent company, determined in accordance with the provisions of this Act, shall be shown separately either on the face of the parent company's balance sheet or in the notes to the accounts of the parent company.

(5) If any document comprised in the annual accounts is in a language other than Maltese or English, the company shall annex to the copy of that delivered document a translation of it into either Maltese or English, certified to be a correct translation in such manner as may be prescribed.

(6) In the case of default in complying with the provisions of this article, or where the annual accounts delivered to the Registrar do not comply with the provisions of this Act, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty. In proceedings under this sub-article it shall not be a defence to prove that the document or documents in question were not in fact prepared as required by this Act.

Annual return. *Substituted by: IV. 2003.80. Amended by: XV. 2007.11; XX. 2013.84.*

184. (1) Every company shall, after 1st January 2004, upon each anniversary of its registration, make a return in the form set out in the Seventh Schedule showing the matters therein specified and made up to the date of such anniversary:

Provided that -

(*a*) where a company was, immediately before the 1st January 2004, in default with respect to the delivery of one or more annual returns, this article shall not affect the obligation of the company to make such a return or returns or the payment of any penalty arising from such a default;

(*b*) where a company has converted any of its shares into stock and registered the conversion as provided in article 79, the list of past and present members shown in Part 3 of the Seventh Schedule shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that part.

(2) The annual return, duly completed, shall be signed by at least one director of the company or the company secretary and forwarded to the Registrar for registration within forty-two days after the date to which it is made up. Where the annual return is forwarded to the Registrar by electronic means it may be signed by one director or the company secretary or by an individual specifically authorised for such purpose by the memorandum, or by a resolution

of the board of directors, or by an extraordinary resolution of the company. The signature of such annual return shall be by means of an electronic signature duly recognised by the Registrar.

(3) If default is made in complying with the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Exemptions for certain small companies. *Amended by: IV. 2003.81; L.N. 391 of 2005; L.N. 425 of 2007; IX. 2008.27; XXXI. 2015.16; XVIII.2025.26.*

185. (1) Companies which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

- balance sheet total: four million euro (4,000,000);
- net turnover: eight million euro (8,000,000);
- average number of employees during the accounting period: fifty (50);

shall in this Chapter be designated as "small companies" and shall be exempted from the requirement imposed by article 177. When advantage is taken of this exemption the information required in paragraph 3 of the Sixth Schedule regarding the acquisition by a company of its own shares shall be given in the notes to the accounts.

(2) Private companies which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

- balance sheet total: forty-six thousand six hundred euro (46,600);
- net turnover : ninety-three thousand euro (93,000);
- average number of employees during the accounting period: two (2);

shall be exempted from the provisions of Chapter IX of Title I of Part V and from the requirements imposed by article 179 and the Third Schedule.

(3) Where on its balance sheet date other than its first balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in sub-articles (1) and (2), that fact shall affect the application of the derogation provided for in those sub-articles only if it occurs in two consecutive accounting periods.

(4) The balance sheet total referred to in this article shall be calculated by taking the amount of total assets shown in the balance sheet drawn up in accordance with generally accepted accounting principles and practice.

(5) A parent company shall not be treated as qualifying as a small company in relation to an accounting period unless the group of which it is parent qualifies as a small group. A group qualifies as a small group in relation to an accounting period if it consists of parent and subsidiary undertakings to be included in a consolidation and which on a consolidation basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:

- aggregate balance sheet total: four million euro

(4,000,000) net or four million eight hundred thousand euro (4,800,000) gross;

- aggregate turnover: eight million euro (8,000,000) net or nine million and six hundred thousand euro (9,600,000) gross:
- aggregate number of employees: fifty (50):

Provided that the provisions of this sub-article shall not apply to a parent company which is exempted from the requirement to prepare consolidated accounts in accordance with article 174.

(6) The provisions of sub-article (3) shall apply to parent companies as though the reference to company were a reference to parent company.

(7) The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with sub-articles (1), (2) and (5). In relation to the aggregate figures for turnover and balance sheet total, "net" means with the set-offs and other adjustments required for the preparation of consolidated accounts and "gross" means without those set-offs and other adjustments; and a company may satisfy the relevant requirements on the basis of either the net or the gross figure.

(8) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant accounting period, that is -

(*a*) if its accounting period ends with that of the parent company, that accounting period; and

(*b*) if not, its accounting period ending last before the end of the accounting period of the parent company.

If such figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

(9) The net turnover referred to in this article means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover.

(10) In determining the average number of employees during the accounting period, for the purposes of this article -

(*a*) in relation to whole-time employees, the average number of employees shall be that established on the basis of the following formula:

- the aggregate number of full weeks worked during the accounting period by all the whole-time employees of the company divided by the number of full weeks comprised in that period, rounded off to the nearest number; and

(*b*) in relation to part-time employees, the average number of employees shall be that established on the basis of the following formula:

- the aggregate number of hours worked during

the accounting period by all the part-time employees of the company divided by the number of full weeks comprised in that period and again divided by forty, rounded off to the nearest number.

Share capital in any convertible currency. *Amended by: IV. 2003.82; L.N. 425 of 2007.*

186. (1) The share capital of a company may be denominated in any currency which is a convertible currency within the meaning assigned to it by the Central Bank of Malta Act, and, for the purposes of this Chapter, the euro shall be a convertible currency.

(2) A company may by extraordinary resolution change the currency in which its share capital is expressed, and for this purpose the conversion rules set out in the Eighth Schedule shall apply in respect of any company other than an investment company with variable share capital.

(3) For the purposes of applying the provisions of this Act relating to minimum share capital, share capital expressed in a currency other than euro shall be calculated on the basis of the euro equivalent at the date of -

(*a*) the registration of the memorandum, in the case of formation of a company; or

(*b*) the registration of the extraordinary resolution, in the case referred to in sub-article (2); or

(*c*) the registration of the extraordinary resolution effecting a reduction of the issued share capital, in the case where a company reduces its issued share capital.

(4) Without prejudice to the provisions of article 83, a copy of the extraordinary resolution referred to in sub-article (2) shall be delivered to the Registrar for registration and shall not be effective until it is so registered.

(5) The exchange rate to be used shall be the average of the buying and selling rates prevailing at the date of registration referred to in sub-article (3), as the case may be.

(6) An investment company with variable share capital may only change the currency in which its share capital is expressed by complying with such conversion rules as may be prescribed by the Minister under article 188.

Accounts in any convertible currency. *Amended by: IV. 2003.83; L.N. 425 of 2007; IX. 2008.28; XX. 2013.85.*

187. (1) A company shall present its annual accounts in the same currency as that of its share capital.

(2) Where the annual accounts of a company are presented in a currency other than euro, there shall be stated on the balance sheet of the company the exchange rate between the currency used and euro on the balance sheet date and such rate shall be the official euro reference middle exchange rate published by the European Central Bank, or the indicative middle exchange rate published by the Central Bank of Malta, as the case may be, for that date.

(3) For the purposes of applying any provision of this Act which sets a threshold by reference to an amount in euro in the annual accounts of a company, such amount as stated in a foreign currency in the company's annual accounts shall be converted into

euro by using the exchange rate referred to in sub-article (2).

(4) Annual accounts shall be published in the currency in which they are presented. They may also be published in both the currency in which they are presented and in euro. The conversion into euro shall be made by using the exchange rate between the currency used and the euro on the balance sheet date, and such rate shall be the official euro reference middle exchange rate published by the European Central Bank, or the indicative middle exchange rate published by the Central Bank of Malta, as the case may be. This rate shall be disclosed in the notes to the accounts.

Power of Minister to make regulations altering accounting requirements. *Amended by: IV. 2003.84; IX. 2008.29.*

188. For the purposes of this Chapter, the Minister may by order make regulations which -

(*a*) add to the classes of documents required to be prepared, laid before the company in general meeting or delivered to the Registrar;

(*b*) restrict the categories of companies which have the benefit of any exemption, exception or special provision;

(*c*) require additional matter to be included in a document of any class;

(*d*) otherwise render the accounting requirements of this Act more onerous;

(*e*) in derogation of the provisions of article 187, permit a company to present its annual accounts in a different currency from that of its share capital, regulate the manner and the conditions as may be considered appropriate for this purpose, and make provision in the Eighth Schedule to this Act for the application of the said Schedule, with such variations as may be specified, in relation to such a company;

(*f*) prescribe conversion rules applicable on a change in the currency in which the share capital of an investment company with variable share capital is expressed; or

(*g*) amend or vary any of the provisions of this Chapter for the purpose of bringing them in line with the requirements of generally accepted accounting principles and practice or generally accepted auditing standards.

Consequential provisions to article 188.

189. (1) Regulations made under article 188 may -

(*a*) make different provision for different cases; and

(*b*) repeal and re-issue provisions of any regulation with modifications of form or arrangement, whether or not they are modified in substance.

(2) Regulations made under article 188 may contain such transitional and other supplementary and incidental provisions as appear to the Minister to be appropriate.

Court order to make good failure to lay or deliver accounts.

190. (1) If -

(*a*) in respect of a company's accounting period any of the requirements of article 182(1) has not been complied with before the end of the period prescribed by that article; and

(*b*) the directors of the company fail to make good the default within fourteen days after the service of a notice on them requiring compliance,

the court may, on application by any member or creditor of the company, or by the Registrar, make an order directing the directors, or any of them, to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this article shall prejudice the provisions of this Act relating to penalties for non-compliance.

Application to other commercial partnerships. *Amended by: IV. 2003.85; XVIII.2025.27.*

191. (1) Where all the partners of a partnership *en nom collectif* or where all the partners having unlimited liability of a partnership *en commandite* or limited partnership, the capital of which is not divided into shares, are themselves partnerships *en commandite* or limited partnerships, the capital of which is divided into shares, the provisions of Chapter IX and of this Chapter of this Title shall, in so far as they are applicable, apply to such a partnership.

(2) The provisions of sub-article (1) shall also apply where all the partners of a partnership *en nom collectif* or where all the partners having unlimited liability of a partnership *en commandite* or limited partnership the capital of which is not divided into shares are themselves companies, or are partnerships or firms constituted or incorporated outside Malta which are of a type which is comparable to that of a company or that of a partnership *en commandite* or limited partnership the capital of which is divided into shares as regulated by this Act.

(3) Where all the partners of a partnership *en nom collectif* or where all the partners having unlimited liability of a partnership *en commandite* or limited partnership the capital of which is not divided into shares are themselves companies or are partnerships *en commandite* or limited partnerships the capital of which is divided into shares, or are commercial partnerships to which sub-article (1) or sub-article (2) applies, the provisions of Chapter IX and of this Chapter of this Title shall, in so far as applicable, apply to such a partnership, provided that the provisions of article 184 shall not apply to partnerships governed by this article.

Chapter XI - Distribution of Profits and Assets

Certain distributions prohibited.

192. (1) A company shall not make a distribution except out of profits available for the purpose.

(2) For the purposes of this Chapter, "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of -

(*a*) an issue of shares as fully or partly paid bonus shares;

(*b*) the redemption or purchase of any of the company's own shares out of capital, including the proceeds of any fresh issue of shares, or out of undistributable reserves as stipulated in article 193(3);

(*c*) the reduction of the issued share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of issued share capital not paid up, or by paying off paid up issued share capital; and

(*d*) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Chapter, a company's profits available for distribution shall be its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of issued share capital duly made. The provisions of this sub-article shall be subject to the provisions of articles 194 and 195.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued share capital.

(5) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the 1st January, 1995 is realised or unrealised, they may treat the profit as realised; and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

Distributions by companies.
Amended by: XXXI. 2015.17; XVIII.2025.28.

193. (1) A public company may only make a distribution at any time -

(*a*) if at that time the amount of its net assets is not less than the aggregate of its called-up issued share capital and undistributable reserves; and

(*b*) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

The provisions of this sub-article shall be subject to the provisions of articles 194 and 195.

(2) In sub-article (1), "net assets" means the aggregate of the company's assets less the aggregate of its liabilities. "Liabilities" include any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely

to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

(3) A company's undistributable reserves are -

(*a*) the share premium account;

(*b*) the capital redemption reserve;

(*c*) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by capitalization of a description to which this paragraph applies, exceed its accumulated, unrealised losses, so far as not previously written off in a reduction or reorganisation of capital duly made;

(*d*) the difference by which the profit attributable to the participating interest and recognised in the profit and loss account exceeds the amount of dividends already received or the payment of which can be claimed;

(*e*) the amount of development costs included under 'Assets' which have not been completely written off; and

(*f*) any other reserve which the company is prohibited from distributing by any legislation or by its memorandum or articles; and paragraph (*c*) shall apply to every description of capitalization except a transfer of profits of the company to its capital redemption reserve on or after 1st January 1995;

(*g*) the revaluation reserve unless it represents a gain actually realised.

(4) A public company shall not include any uncalled issued share capital as an asset in any accounts relevant for the purposes of this article.

Other distributions by investment companies with fixed share capital. *Amended by: IV. 2003.86. IX. 2003.85; IX. 2008.30; XVI. 2014.59.*

194. (1) Subject to the following provisions of this article, an investment company with fixed share capital may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by a distribution or capitalisation, less its accumulated revenue losses, whether realised or unrealised, so far as not previously written off in a reduction or reorganisation of capital duly made -

(*a*) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities, and

(*b*) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(2) In sub-article (1)(*a*), "liabilities" includes any provision for liabilities or charges within the meaning of paragraph 7 of the Third Schedule.

(3) An investment company with fixed share capital shall not include any uncalled issued share capital as an asset in any accounts relevant for the purposes of this article.

(4) An investment company with fixed share capital may not make a distribution by virtue of sub-article (1) unless -

(*a*) its shares are listed on a regulated market; and

(*b*) during the relevant period it has not -

(i) distributed any of its capital profits, or

(ii) applied any unrealised profits or any capital profits, realised or unrealised, in paying up debentures or amounts unpaid on its issued share capital.

(5) The "relevant period" under sub-article (4) shall be the period beginning with -

(*a*) the first day of the accounting period immediately preceding that in which the proposed distribution is to be made; or

(*b*) where the distribution is to be made in the company's first accounting period, the first day of that period,

and ending with the date of the distribution.

(6) "Investment company with fixed share capital" means a public company which complies with the following requirements:

(*a*) the business of the company consists of investing in funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;

(*b*) none of the company's holdings in companies other than those which are, for the time being, in investment companies with fixed share capital, represents more than fifteen per cent by value of the investing company's investments;

(*c*) distribution of the company's capital profits is prohibited by its memorandum or articles; and

(*d*) the company has not retained, otherwise than in compliance with this Chapter, in respect of any accounting period, more than fifteen per cent of the income it derives from securities.

Extension of article 194 to other companies.

195. (1) The Minister may make regulations extending the provisions of article 194, with or without modifications, to investment companies with variable share capital or to other companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.

(2) Regulations made under this article may make different provision for different categories of companies and may contain such transitional and supplemental provisions as the Minister considers necessary.

Treatment of development costs. *Amended by: XXXI. 2015.18.*

196. (1) Subject to the following provisions of this article, where development costs are shown as an asset in a company's annual accounts, any amount shown in respect of those costs is to be treated -

(*a*) under article 192, as a realised loss; and

(*b*) under article 194, as a realised revenue loss.

(2) The provisions of sub-article (1) shall not apply to any part of that amount representing an unrealised profit made on revaluation of those costs.

Distribution to be justified by reference to company's accounts. *Amended by: XVIII.2025.29.*

197. (1) The provisions of this article and of articles 198 to 203 shall apply for determining the question whether a distribution may be made by a company without contravening articles 192, 193, or 194.

(2) The amount of a distribution which may be made shall be determined by reference to the following items as stated in the company's accounts -

(*a*) profits, losses, assets and liabilities;

(*b*) provisions; and

(*c*) share capital and reserves, including undistributable reserves.

(3) The company's accounts which are relevant for the purposes of this article shall be its last annual accounts, that is to say those which were laid in respect of the last preceding accounting period in respect of which accounts so prepared were laid:

Provided that in the following two cases -

(*a*) where the distribution would be found to contravene the relevant article in this Chapter if reference were made only to the company's last annual accounts; or

(*b*) where the distribution is proposed to be declared during the company's first accounting period, or before any annual accounts are laid in respect of that period,

the accounts relevant under this article, called "interim accounts" in the first case, and "initial accounts" in the second, shall be those necessary to enable a reasonable judgment to be made as to the amounts of the items mentioned in sub-article (2).

(4) The relevant article of this Chapter is treated as contravened in the case of a distribution unless the requirements laid down in this article and in the following three articles, as and where applicable, in respect of the relevant accounts are complied with in relation to that distribution.

Requirements for last annual accounts.

198. (1) If the company's last annual accounts constitute the only accounts relevant under article 197, the requirements laid down in this article shall apply in regard to such accounts.

(2) The accounts shall have been properly prepared in

accordance with the provisions of this Act, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in article 197(2), whether the distribution would contravene the relevant article of this Chapter.

(3) Without prejudice to the provisions of sub-article (2) -

(*a*) so much of the accounts as consists of a balance sheet shall give a true and fair view of the state of the company's affairs as at the balance sheet date; and

(*b*) so much of the accounts as consists of a profit and loss account shall give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(4) The auditors shall have made their report on the accounts, and sub-article (5) shall apply if the report is not a report without qualification to the effect that in the auditor's opinion the accounts have been properly prepared in accordance with the provisions of this Act.

(5) The auditors shall, in the case referred to in sub-article (4), have stated in writing, either at the time of their report or subsequently, whether in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in article 197(2), whether the distribution would contravene the relevant article, and a copy of the statement shall have been laid before the company in general meeting.

(6) A statement under sub-article (5) shall suffice for purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which include that particular distribution, notwithstanding that at the time of the statement it had not been proposed.

Requirements for interim accounts. *Amended by: IV. 2003.87.*

199. (1) The provisions of this article shall constitute the requirements in respect of interim accounts prepared for a proposed distribution by a public company.

(2) The accounts shall have been properly prepared, or shall have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in article 197(2), whether the proposed distribution would contravene the relevant article of this Chapter.

(3) "Properly prepared" shall mean that the accounts shall comply with this Act with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting period and any balance sheet comprised in the accounts shall have been signed in accordance with article 176.

(4) Without prejudice to the provisions of sub-article (3) -

(*a*) so much of the accounts as consists of a balance sheet shall give a true and fair view of the state of the

company's affairs as at the balance sheet date; and

(*b*) so much of the accounts as consists of a profit and loss account shall give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(5) A copy of the accounts shall have been delivered to the Registrar for registration.

(6) If the accounts are in a language other than English or Maltese, a translation into English or Maltese of the accounts, certified to be a correct translation in such manner as may be prescribed, shall also have been delivered to the Registrar.

Requirements for initial accounts.

200. (1) The provisions of this article shall constitute the requirements in respect of initial accounts prepared for a proposed distribution by a public company.

(2) The accounts shall have been properly prepared, or they shall have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in article 197(2), whether the proposed distribution would contravene the relevant article of this Chapter.

(3) Article 199(3) and (4) shall apply as respects the meaning of "properly prepared".

(4) The company's auditors shall have made a report stating whether, in their opinion, the accounts have been properly prepared, and sub-article (5) shall apply if their report is a qualified report, that is to say it is not a report without qualification to the effect that in the auditors' opinion the accounts have been so prepared.

(5) The auditors shall in the case referred to in sub-article (4) also have stated in writing, whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in article 197(2), whether the distribution would contravene the relevant article of this Chapter.

(6) A copy of the accounts, of the auditors' report under sub-article (4) and of the auditors' statement, if any, under sub-article (5) shall have been delivered to the Registrar.

(7) If the accounts are, or the auditors' report under sub-article (4) or their statement, if any, under sub-article (5), is in a language other than Maltese or English, a translation into English or Maltese of the accounts, the report or the statement, as the case may be, certified to be a correct translation in such manner as may be prescribed, shall also have been delivered to the Registrar.

Method of applying article 197 to successive distributions.

201. For the purpose of determining, by reference to particular accounts, whether a proposed distribution may be made by a company, article 197 shall have effect, in a case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of

the distributions so made.

Treatment of assets in the relevant accounts.

202. For the purposes of articles 192 and 193, a provision of any kind mentioned in the Third Schedule in paragraph 7(1) and paragraphs 16 and 17 including these paragraphs as applied by paragraph 28 of the said Third Schedule, shall be treated as a realised loss.

Distributions in kind.

203. Where a company makes a distribution of, or including, a non-cash asset, and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with articles 197 to 202 represents an unrealised profit, that profit is to be treated as a realised profit -

(*a*) for the purpose of determining the lawfulness of the distribution in accordance with this Chapter, whether before or after the distribution takes place; and

(*b*) for the purpose of paragraph 14(*c*)(i) and paragraph 30(3) of the Third Schedule in relation to anything done with a view to or in connection with the making of that distribution.

Consequence of unlawful distribution.

204. Where a distribution, or part of a distribution, made by a company to one of its members is made in contravention of this Chapter and, at the time of the distribution, that member knows or has reasonable grounds for believing that it is so made, he shall be liable to repay it, or that part of it, as the case may be, to the company or, in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution, or of the part of the distribution, at that time.

Obligations imposed apart from article 204 not to be prejudiced.

205. The provisions of article 204 shall apply without prejudice to any obligation imposed apart from that article on a member of a company to repay a distribution unlawfully made to him.

Saving for provision in articles operative before 1st January, 1995.

206. Where immediately before 1st January, 1995 a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision shall continue, subject to any alteration of the articles, as authority for those profits to be so applied after that date.

Interpretations for the purposes of this Chapter.

207. (1) The provisions of this article shall have effect for the interpretation of this Chapter.

(2) "Capitalisation", in relation to a company's profits, shall mean any of the following operations, whenever carried out -

(*a*) the application of the profits to wholly or partly pay up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares; or

(*b*) the transfer of the profits to the capital redemption reserve.

(3) References in this Chapter to profits and losses of any description shall be, respectively, to profits and losses of that

description made at any time and, except where the context otherwise requires, shall be, respectively, to revenue and capital profits and revenue and capital losses.

208. The provisions of this Chapter shall be without prejudice to any other provision of law, or any provision of a company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

Saving for other restraints on distribution.

Chapter XII - Private Company

209. (1) A private company is a company which, besides fulfilling the requirements of this Act for it to hold the status of a private company, is one which, by its memorandum or articles -

Definition. *Amended by: IV. 2003.88; XIX. 2010.34 XI. 2017.11.*

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members to fifty; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company shall not -

(*a*) offer to the public, whether for cash or otherwise, any shares in or debentures of the company; or

(*b*) allot or agree to allot, whether for cash or otherwise, any shares in or debentures of the company with a view to all or any of those shares or debentures being offered to the public, within the meaning given to the expression "offers of securities made to the public" in article 2(3); or

(*c*) allow any of its equity securities to be admitted to listing or trading.

(3) Where a private company contravenes the provisions of sub-article (2), every officer thereof who is in default shall be liable to a penalty.

210. Subject to the provisions of this Act, in the case of a private company, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at the general meetings shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held and the provisions of article 155 shall not apply. Annual general meetings of the company may be held in accordance with this article:

Resolutions in writing. *Amended by: IV. 2003.89; XX. 2013.86.*

Provided that a resolution in writing as aforesaid shall be void if it purports to remove a director or an auditor before the expiration of his term of office, or otherwise purports to deprive the auditors of the right to attend and be heard at any general meeting of the company on any part of the business of the meeting which concerns them as auditors.

211. (1) A private company shall have the status of an exempt company if the conditions mentioned in sub-article (2) are contained in its memorandum or articles.

Exempt company. *Amended by: III. 2013.70.*

(2) The conditions required by sub-article (1) are -

(*a*) that the number of persons holding debentures of the company is not more than fifty; and

(*b*) that no body corporate is a director of the company, and neither the company nor any of the directors is party to an arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members or debenture holders thereof.

(3) Companies referred to in sub-article (1) shall be exempt from the requirements of article 138(7) and of article 144(1)(*a*); and the proviso to article 183(2) shall apply.

(4) A sole director of an exempt company shall be entitled to hold office as a company secretary thereof during his directorship.

(5) Where an exempt company has only one director, any requirement of this Act that two directors of a company shall act, shall be interpreted in relation to the exempt company as requiring one director to act.

Single member companies. *Amended by: IV. 2003.90; XX. 2013.87.*

212. (1) A company referred to in article 211(1) may have a single member notwithstanding the provisions of article 68 and of article 72(1) or of any other provision of this Act, where the objects of such a company specify which activity of the company shall be its main activity and the business of the company shall consist principally of that activity.

(2) The provisions of article 214(2)(*b*)(i) shall not apply to companies falling within the terms of this article.

(3) A company may have a single member upon registration or it may become a single member company through the acquisition of all its shares by one person, provided that such a company complies with the provisions laid down in sub-article (1).

(4) When a company becomes a single member company through the acquisition of all its shares by one person, the company shall, within fourteen days, deliver to the Registrar for registration a notice -

(*a*) specifying the fact that it has become a single member company and stating the name and residence of that single member; and

(*b*) confirming compliance with the provisions laid down in sub-article (1).

Such notice shall be deemed to satisfy the requirements of article 120(3).

(5) Where a person becomes a single member as a result of acquiring shares in the company *causa mortis*, such fact shall be stated in the notice referred to in sub-article (4) and such notice shall be deemed to satisfy the requirements of article 120(3).

(6) If default is made in complying with sub-articles (4), (5) and (10), every officer of the company who is in default shall be

liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) The single member shall exercise the powers of the general meeting of the company and the decisions taken by him in this capacity shall be recorded as minutes of the general meeting and the provisions of this Act regulating general meetings shall be construed accordingly. The decisions referred to in this sub-article shall be deemed to be resolutions of the company for the purposes of the application of the provisions of this Act:

Provided that the provisions of this sub-article shall not prejudice the rights of the auditors of the company under the provisions of article 155, and the rights granted to persons as are, by the articles of the company, entitled to receive notices of, attend and be heard at general meetings of the company.

(8) The single member shall record in writing all agreements between him and the company as represented by him in a minute book kept by the company specifically for the purpose.

(9) If default is made in complying with the provisions of sub-article (8), the single member shall be liable to a penalty.

(10) When a company ceases to be a single member company, it shall, within fourteen days, deliver to the Registrar for registration a notice specifying the fact that it is no longer a single member company and the provisions of this article shall not apply to such company from the date it has ceased to be a single member company.

Change of status of company.

213. (1) A private company may change its status to a public company by altering its memorandum or articles and incorporating in such alteration all those changes required by the provisions of this Act for a company to hold the status of a public company, including the removal of the restrictions resulting by virtue of the provisions of article 209 which conflict with the status of a public company.

(2) The alteration referred to in sub-article (1) shall not take effect unless and until it is registered and the provisions of article 79(2) shall apply thereto.

(3) The Registrar shall, upon the registration referred to in sub-article (2), enter in the register the fact of such change as referred to in sub-article (1) and he shall issue a certificate of registration altered to reflect that change.

(4) A public company may change its status to a private company if, after having effected compliance with the restrictions resulting by virtue of the provisions of article 209, it alters its memorandum or articles, incorporating in such alteration all those changes required by the provisions of this Act for a company to hold the status of a private company, including the introduction of the restrictions resulting by virtue of the provisions of article 209.

(5) The alteration referred to in sub-article (4) shall not take effect unless and until that alteration, accompanied by a declaration made by the directors of the company that the company is

effectively in compliance with the provisions of article 209, is registered, and the provisions of article 79(2) shall apply thereto.

(6) The Registrar shall, upon the registration referred to in sub-article (5), enter in the register the fact of such change as referred to in sub-article (4) and he shall issue a certificate of registration altered to reflect that change.

(7) A private company may change its status to an exempt company if, after having effected compliance with the conditions laid down in article 211, it alters its memorandum or articles by incorporating therein all the said conditions.

(8) The alteration referred to in sub-article (7) shall not take effect unless and until that alteration, accompanied by a declaration made by the directors of the company that the company is effectively in compliance with the provisions of article 211, is registered, and the provisions of article 79(2) shall apply thereto.

(9) An exempt company which resolves not to continue fulfilling any of the conditions of article 211, shall change its status to a private company by altering its memorandum or articles to remove any such conditions.

(10) The alteration referred to in sub-article (9) shall not take effect unless and until it is registered and the provisions of article 79(2) shall apply thereto.

(11) Where a private company changes its status to a public company in accordance with the provisions of this article, the company shall, in addition to the documents referred to in sub-article (2), deliver to the Registrar for registration -

(*a*) a copy of a balance sheet prepared as at a date being not more than four months before the date of the registration of the alteration referred to in sub-article (1), together with a report of the company's auditors in relation to that balance sheet; and

(*b*) a written statement by the company's auditors that in their opinion the balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up issued share capital and undistributable reserves; and

(*c*) a declaration by any director of the company that between the balance sheet date and the date of delivery of the alteration to the Registrar for registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called up issued share capital and undistributable reserves.

In this sub-article, "net assets" shall have the same meaning assigned to it under article 193(2).

(12) A private company which proceeds to change its status to a public company in accordance with the provisions of this article shall not allot or propose to allot shares for a consideration otherwise than in cash at any time between the date of the balance

sheet and the date of delivery of the alteration referred to in sub-article (11).

(13) Where a public company changes its status to a private company in accordance with the provisions of this article, it shall be required to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed or as the court, on a demand of either the company or the dissenting members, thinks fit to order.

Undertakings required to report on payments to governments. *Added by: XXXI. 2015.19.*

213A. (1) Large undertakings, as defined in the Third Schedule, and all public-interest entities active in the extractive industry or the logging of primary forests shall prepare and make public a report on payments made to governments on an annual basis.

(2) That obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:

(*a*) the parent undertaking is subject to the laws of a Member State; and

(*b*) the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking in accordance with paragraph 3 of the Fourth Schedule.

(3) All undertakings which qualify to make the report mentioned in sub-article (1) shall abide by the requirements provided for in the Fourth Schedule.

Undertakings and branches that are required to report on income tax information. *Added by: XVIII.2024.14.*

213B. (1) Ultimate parent undertakings governed by the laws of Malta as defined in the Fourth Schedule, where the consolidated revenue on their balance sheet date exceeded a total of seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years, as reflected in their consolidated financial statements, shall draw up, publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, as regards the latter of those two consecutive financial years:

Provided that an ultimate parent undertaking shall no longer be subject to the reporting obligations set out in sub-article (1) where the total consolidated revenue on its balance sheet date falls below seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years as reflected in its consolidated financial statements.

(2) Standalone undertakings governed by the laws of Malta, where the revenue on their balance sheet date exceeded a total of seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years, as reflected in their annual financial statements, shall draw up, publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, as regards the latter of those two consecutive financial years:

Provided that a standalone undertaking shall no longer be subject to the reporting obligations stipulated in sub-article (2) where the total revenue on its balance sheet date falls below seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years as reflected in its consolidated financial statements.

(3) The provisions established in sub-articles (1) and (2) shall not apply to standalone undertakings or ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, are established, or have their fixed places of business or permanent business activity, within the territory of a single Member State or in a state which is a member of the European Economic Area and no other tax jurisdiction.

(4) The provisions established in sub-articles (1) and (2) shall not apply to standalone undertakings and ultimate parent undertakings where such undertakings or their affiliated undertakings disclose a report, in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, that encompasses information on all of their activities, and in the case of ultimate parent undertakings, on all the activities of all the affiliated undertakings included in the consolidated financial statements.

(5) Medium-sized and large subsidiary undertakings as referred to in paragraph (1) of the Third Schedule that are governed by the laws of Malta and controlled by an ultimate parent undertaking that is not governed by the law of a Member State or of a state which is a member of the European Economic Area, where the consolidated revenue on its balance sheet date exceeded a total of seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years, as reflected in its consolidated financial statements, shall publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, concerning that ultimate parent undertaking as regards the latter of those two consecutive financial years:

Provided that where that information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking to provide it with all the information required to enable it to meet its obligations under sub-article (5). If the ultimate parent undertaking does not provide all the required information, the subsidiary undertaking shall draw up, publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, containing all the information in its possession, obtained or acquired, and a statement indicating that its ultimate parent undertaking did not make the necessary information available:

Provided further that medium-sized and large subsidiary undertakings shall no longer be subject to the reporting obligations established in sub-article (5) where the total consolidated revenue of the ultimate parent undertaking on its balance sheet date falls below seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years as reflected in its consolidated financial statements.

(6) Branches opened in Malta by undertakings that are not governed by the law of a Member State or by the law of a state which is a member of the European Economic Area shall publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, concerning the ultimate parent undertaking or the standalone undertaking referred to in paragraph (a) of the fifth proviso to this sub-article, as regards the latter of the last two consecutive financial years:

Provided that where that information or report is not available, the Registrar shall request the ultimate parent undertaking or the standalone undertaking referred to in paragraph (a) of the fifth proviso to this sub-article, to provide him with all the information necessary to enable him to meet his obligations:

Provided further that in the event that not all the required information is provided, the branch shall draw up, publish and make accessible a report on income tax information, as detailed in Part II of the Fourth Schedule, containing all the information in its possession, obtained or acquired, and a statement indicating that the ultimate parent undertaking or the standalone undertaking did not make the necessary information available:

Provided further that the reporting obligations established in this sub-article shall apply only to branches which have a net turnover that exceeded the threshold pursuant to article 185(1) for each of the last two consecutive financial years:

Provided further that a branch subject to the reporting obligations in accordance with this sub-article shall no longer be subject to those obligations where its net turnover falls below the threshold pursuant to article 185(1) for each of the last two consecutive financial years:

Provided further that the rules established in this sub-article shall apply to a branch only where the following criteria are met:

(*a*) the undertaking that opened the branch is either an affiliated undertaking of a group whose ultimate parent undertaking is not governed by the law of a Member State or by the law of a state which is a member of the European Economic Area and the consolidated revenue of which on its balance sheet

date exceeded a total of seven hundred and fifty million euro (€750,000,000) for each of the last two consecutive financial years, as reflected in its consolidated financial statements, or a standalone undertaking the revenue of which on its balance sheet date exceeded for each of the last two consecutive financial years a total of seven hundred and fifty million euro (€750,000,000) as reflected in its financial statements; and

(*b*) the ultimate parent undertaking referred to in paragraph (a) does not have a medium-sized or large subsidiary undertaking as referred to in sub-article (5):

Provided that a branch shall no longer be subject to the reporting obligations established in this sub-article where the criterion provided for in paragraph (a) ceases to be met for two consecutive financial years.

(7) The provisions established in sub-articles (5) and (6) shall not apply where a report on income tax information is drawn up by an ultimate parent undertaking or a standalone undertaking that is not governed by the law of a Member State or by the law of a state which is a member of the European Economic Area, in a manner that is consistent with the Fourth Schedule, and meets the following criteria:

(*a*) it is made accessible to the public, free of charge and in an electronic reporting format which is machine-readable:

(i) on the website of that ultimate parent undertaking or of that standalone undertaking;

(ii) in at least one of the official languages of the Union;

(iii) not later than twelve (12) months after the balance sheet date of the financial year for which the report is drawn up; and

(*b*) it identifies the name and the registered office of a single subsidiary undertaking, or the name and the address of a single branch governed by the law of a Member State or by the law of a state which is a member of the European Economic Area, which has published a report in accordance with Article 48d(1) of the Country-by-Country Reporting Directive.

(8) Subsidiary undertakings or branches not subject to the provisions of sub-articles (5) and (6) shall publish and make accessible a report on income tax information where such subsidiary undertakings or branches serve no other objective than to circumvent the reporting requirements set out in this article and the Fourth Schedule.

Responsibility for drawing up, publishing and making accessible the report on income tax information. *Added by: XVIII.2024.14.*

213C. (1) Directors of the ultimate parent undertakings or the standalone undertakings referred to in article 213B(1) and (2), acting within the competences assigned to them under the law of Malta, shall have collective responsibility for ensuring that the report on income tax information is drawn up, published and made accessible in accordance with article 213B and Part II of the Fourth Schedule.

(2) Directors of the subsidiary undertakings referred to in article 213B(5) and the persons designated to carry out the disclosure formalities provided for in Article 41 of Directive (EU) 2017/1132 for the branches referred to in article 213B(6), acting within the competences assigned to them by the Act, shall have collective responsibility for ensuring, to the best of their knowledge and ability, that the report on income tax information is drawn up in a manner that is consistent with or in accordance with, as applicable, article 213B and Part II of the Fourth Schedule, and that it is published and made accessible in accordance with Part II of the Fourth Schedule.

(3) Any director or person referred to in sub-articles (1) and (2) shall notify the Registrar whether the undertaking that he represents is an ultimate parent undertaking or a standalone undertaking or a subsidiary undertaking or an affiliated undertaking or a branch within the meaning of the provisions of article 213B, not later than the last day for registering with the Registrar the report on income tax information and statement as detailed in Part II of the Fourth Schedule.

(4) Any director or person referred to in sub-articles (1) and (2) who is in breach of the provisions of this article or articles 213B or 213D or Part II of the Fourth Schedule shall be liable to an administrative penalty and, for every day during which the default persists, to a further administrative penalty.

Statement by statutory auditor. *Added by: XVIII.2024.14.*

213D. Where the financial statements of an undertaking governed by the law of a Member State or by the law of a state which is a member of the European Economic Area are required to be audited by one or more statutory auditors or audit firms, the audit report shall state whether, for the financial year preceding the financial year for which the financial statements under audit were prepared, the undertaking was required in accordance with Article 48b of the Country-by-Country Reporting Directive or under Part II of the Fourth Schedule to publish a report on income tax information and, if that is the case, whether the report was published in accordance with Article 48d of the Country-by-Country Reporting Directive or in accordance with Part II of the Fourth Schedule.

TITLE II - DISSOLUTION AND CONSEQUENTIAL WINDING UP OF COMPANIES

Causes of dissolution and consequential winding up. *Amended by: IV. 2003.91.*

214. (1) A company shall be dissolved and consequently wound up in the following cases -

(*a*) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up by the court;

(*b*) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up voluntarily.

(2) In addition to the modes of dissolution referred to in sub-article (1) -

(*a*) a company may be dissolved and wound up by the court in the following cases -

(i) if the business of the company is suspended for an uninterrupted period of twenty-four months;

(ii) the company is unable to pay its debts; and

(*b*) a company shall be dissolved by the court in the following cases -

(i) the number of members of the company is reduced to below two and remains so reduced for more than six months:

Provided that this paragraph shall not apply to single member companies specified in article 212(3);

(ii) the number of directors is reduced to below the minimum prescribed by article 137 and remains so reduced for more than six months;

(iii) the court is of the opinion that there are grounds of sufficient gravity to warrant the dissolution and consequent winding up of the company;

(iv) when the period, if any, fixed for the duration of the company by the memorandum or articles expires, or the event occurs, if any, on the occurrence of which the memorandum or articles provide that the company is to be wound up, and the company in general meeting has not before such expiry or event passed a resolution to be wound up voluntarily.

(3) In the cases of dissolution falling within sub-article (2)(*b*), the court shall, at its discretion, determine whether the company shall be wound up by the court or voluntarily:

Provided that for the purposes of sub-paragraphs (ii) and (iv) of the said paragraph (*b*), the court at its discretion and upon good cause being shown may, and for the purposes of sub-paragraph (i) of the same paragraph, the court shall, before ordering the dissolution of the company, allow a period of time not exceeding thirty days, within which the company may remedy the default and upon proof being submitted to it that any such default has been remedied, the court shall not order the company's dissolution.

(4) Where a company continues carrying on business without having at least two members beyond the period of six months referred to in sub-article (2)(*b*)(i), a person who, for the whole or any part of the period that the company carries on business after the said six months, is a member of the company and knows that it is carrying on business with only one member, shall be held unlimitedly and jointly and severally liable with the company for all the obligations contracted by the company for the whole period or as the case may be, that part of it, from the lapse of the six months until the dissolution of the company or until such time as the default is remedied by the company in accordance with the proviso to sub-article (3).

(5) For the purposes of sub-article (2)(*a*)(ii), a company shall be deemed to be unable to pay its debts -

(*a*) if a debt due by the company has remained unsatisfied in whole or in part after twenty-four weeks from the enforcement of an executive title against the company by any of the executive acts specified in article 273 of the Code of Organization and Civil Procedure; or Cap. 12.

(*b*) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

(6) Where a company has passed a resolution in accordance with sub-article (1)(*a*), it shall be required to give the notice specified in article 265(1) and sub-article (2) thereof shall apply.

(7) For the purposes of this Title, a company shall be wound up by the court if it is wound up in accordance with the provisions of Sub-Title I of this Title; and a company shall be wound up voluntarily if it is wound up in accordance with the provisions of Sub-Title II of this Title.

Meaning of "contributory".

215. The term "contributory" means every person liable to contribute to the assets of a company in the event of its dissolution, and the provisions of articles 216 and 217 shall apply for determining the persons so liable:

Provided that a reference in a company's memorandum or articles to a contributory shall not, unless the context otherwise requires, include a person who is a contributory only by virtue of article 217.

Liability as contributories of present and past members.

216. In the winding up of a company every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of rights of the contributories among themselves, subject to the following qualifications -

(*a*) no contributions shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(*b*) a past member shall not be liable to contribute in any of the following cases -

(i) if he has ceased to be a member for at least one year before the dissolution of the company;

(ii) in respect of any debt or liability contracted after he has ceased to be a member;

(iii) unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(*c*) a sum due to any member of a company, as a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company payable to that member in the case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Liability of past directors and shareholders. *Amended by: IV. 2003.92.*

217. (1) The provisions of sub-articles (2) and (3) shall only apply following the dissolution of a company where a company before its dissolution -

(*a*) has made a payment out of capital in respect of the redemption or purchase of any of its own shares, which payment is referred to in the following provisions of this article as "the relevant payment"; and

(*b*) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets in terms of article 216, apart from the provisions of this article, is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) Where the dissolution has occurred within twelve months of the date on which the relevant payment was made, then -

(*a*) the person from whom the shares were redeemed or purchased, and

(*b*) the directors who authorised the redemption or purchase,

shall, so as to enable the insufficiency referred to in sub-article (1)(*b*) to be met, be liable to contribute to the company's assets to the extent referred to in sub-article (3).

(3) A person from whom any of the shares were redeemed or purchased shall be liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors shall be jointly and severally liable with that person to contribute that amount.

SUB-TITLE I - WINDING UP BY THE COURT

Chapter I - General Provisions

Dissolution and winding up application.
Amended by: XXIV.1995.362; IV. 2003.93; IX. 2003.86; XVIII.2024.15.

218. (1) A request to the court (hereinafter referred to as the "winding up application") for the -

(*a*) winding up of a company by the court in accordance with article 214(1)(*a*); or

(*b*) dissolution and winding up of a company by the court in accordance with article 214(2)(*a*); or

(*c*) dissolution and winding up of a company in accordance with article 214(2)(*b*),

shall be made by means of an application which may be made either by the company following a decision of the general meeting or by its board of directors, or by any debenture holder, creditor or creditors, or by any contributory or contributories:

Provided that an application in terms of paragraphs (*b*) or (*c*) may also be made by any shareholder or director of the company.

(2) Except as provided in sub-article (3), a contributory shall not be entitled to make a winding up application unless -

(*a*) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least six months during the eighteen months before the date of the company's dissolution, or have devolved on him through the death of a former shareholder; or

(*b*) the number of members was reduced and remains reduced below the minimum prescribed by article 72 while he holds shares in respect of which he is a contributory.

(3) Notwithstanding the provisions of sub-article (1), a person who is liable under article 217 to contribute to a company's assets in the event of its dissolution may only file a winding up application on either of the grounds set out in article 214(2)(*a*)(ii) and (*b*)(iii).

(4) The Registrar may file a winding up application where it appears to him that it is expedient or in the public interest that a company should be dissolved and wound up for any of the reasons set out in article 214(2)(*b*)(ii) and (iii).

(5) By virtue of article 294, a winding up application for a winding up by the Court may be filed notwithstanding that a company is being wound up voluntarily. Such an application may also be made by the official receiver appointed in accordance with the provisions of article 225.

(6) The directors, the company secretary, and every contributory and creditor of the company shall be entitled to make submissions on the hearing of a winding up application made under this article.

(7) In the event of a winding up application made under sub-article (1)(*c*), if the court decides that the company shall be wound

up voluntarily, the provisions of Sub-title II of this Title other than article 265 shall apply.

(8) On the making of a winding up application, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

Powers of the court. *Amended by: IV. 2003.94.*

219. (1) On the hearing of the winding up application, the court may either dismiss the application or make an order acceding thereto (hereinafter referred to as a "winding up order") and in either case make such other orders, including provisional orders, and adjourn the hearing conditionally or otherwise as it thinks fit; but no winding up order shall be made before the application has been served on such persons as the court in the circumstances, and upon information given by the applicant, deems it appropriate to call upon to make their submissions.

(2) Notwithstanding the provisions of sub-article (1), where the Court is satisfied that the requirements of article 218(1)(*a*) have been complied with, the Court shall accede to the application.

Power to stay proceedings against company.

220. At any time after the filing of a winding up application, and before a winding up order has been made, the company, or any creditor or contributory, may apply to the court for a stay of judicial proceedings pending against the company, and the court may stay those proceedings accordingly on such terms as it thinks fit.

Dispositions of property etc., after date of deemed dissolution.

221. In a winding up by the court, any disposition of the property of the company, including any rights of action, and any transfer of shares, or alteration of the status of the members of the company, made after the date of its deemed dissolution, shall be void, unless the court otherwise orders.

Warrants not to be carried into effect against company. *Amended by: IV. 2003.95.*

222. When a company is being wound up by the court, any act or warrant, whether precautionary or executive, other than a warrant of prohibitory injunction, issued or carried into effect against the company after the date of its deemed dissolution, shall be void.

Deemed date of dissolution. *Amended by: IV. 2003.96.*

223. (1) Where a winding up order has been made, the company shall be deemed to have been dissolved at the time of the filing of the winding up application:

Provided that where a winding up order has been made in terms of article 214(2)(*b*)(iii), the company shall be deemed to have been dissolved on the date when the winding up order is made:

Provided further that where a winding up order has been made by virtue of article 218(1)(*a*), the date of dissolution shall be the date of passing of the resolution for dissolution and consequential winding up by the Court or such later date as may be specified in the said resolution.

(2) Notwithstanding the provisions of sub-article (1), where, before the filing of a winding up application, an extraordinary resolution had been passed by the company for it to be dissolved and consequently wound up voluntarily, the company shall be deemed to have been dissolved at the time of the passing of the resolution, and unless the court, upon proof of fraud or mistake

thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Consequences of a winding up order. *Amended by: XXIV.1995.362; IV. 2003.97.*

224. (1) On the making of a winding up order, or on the dismissal of a winding up application, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

(2) Where a winding up order has been made or a provisional administrator has been appointed in accordance with the provisions of article 228, no action or proceeding shall be proceeded with or commenced against the company or its property except by the leave of the court and subject to such terms as the court may impose.

Chapter II - Official Receiver

Official receiver. *Amended by: XVII. 2002.232; XX. 2013.88; V.2020.33.*

225. (1) The Minister shall appoint a senior official of the Agency to be the official receiver for the purposes of this Act and may at any time terminate any such appointment or designation.

(2) The official receiver may authorise in writing any individual to perform any of the functions assigned to the official receiver under this Act or any other law.

(3) Notwithstanding anything to the contrary contained in this Act or any other law, the official receiver and any other individual authorised in terms of sub-article (2), shall be exempt from any personal liability whatsoever, including any liability in damages for anything done or omitted to be done in the discharge or purported discharge of any of his functions under this Act or under any other law, or otherwise in the exercise of his official duties, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Statement of company's affairs to be submitted to official receiver.

226. (1) Where the court has made a winding up order or appointed a provisional administrator, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, or in such form as the official receiver accepts, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors of the company and by such of the persons hereinafter in this sub-article mentioned, as the official receiver may require to submit and verify the statement, that is to say, persons -

(*a*) who are or have been officers of the company at any time in the three years immediately preceding the date of the winding up order;

(*b*) who have taken part in the formation of the company at any time within twelve months before the relevant date;

(*c*) who are in the employment of the company, or have been in the employment of the company within the said twelve months, and are in the opinion of the official receiver capable of giving the information required;

(*d*) who are or have been within the said twelve months officers of or in the employment of a company which is, or within the said twelve months was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date or within such extended period as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this article shall be allowed, and shall be paid by the official receiver or provisional administrator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable subject to an appeal to the court.

(5) The official receiver, if he thinks fit, may -

(*a*) at any time release a person from an obligation imposed on him under sub-article (1) or (2); or

(*b*) either when giving the period mentioned in sub-article (3) or subsequently, extend the period so mentioned,

and where the official receiver has refused to exercise a power conferred by this sub-article, the court, if it thinks fit, may exercise it.

(6) If any person, without reasonable excuse, makes default in complying with the requirements of this article, he shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled personally or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this article, and to a copy thereof or extract therefrom.

(8) In this article the expression "relevant date" means, in a case where a provisional administrator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by official receiver.

227. (1) In a case where a winding up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under article 226 or, in a case where he or the court orders that no statement shall be submitted, as soon as practicable after the date of the order, carry out such investigations

as he may deem appropriate and submit to the court a preliminary report, if any, as he thinks fit -

(*a*) as to the amount of share capital issued, and paid up, and the estimated amount of the assets and liabilities;

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company since the formation thereof, and any other matter which, in his opinion, is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report that in his opinion a fraud has been committed as specified in sub-article (2), the court shall have the further powers provided in article 260, without prejudice to the exercise of any other powers it may have.

Chapter III - Liquidators in a winding up by the court

Appointment and powers of provisional administrator.

228. (1) The court may by order appoint a provisional administrator at any time after the presentation of a winding up application and before the making of a winding up order, and either the official receiver or any other competent person may be so appointed.

(2) The provisional administrator shall carry out such functions and powers in relation to the administration of the estate or business of the company as the court may specify in the order appointing him.

(3) The provisional administrator holds office until such time as the winding up order is made or the winding up application is dismissed unless before such time he resigns or he is removed by the court upon good cause being shown.

Functions of official receiver in relation to office of liquidator.
Amended by: XX. 2013.89.

229. (1) The official receiver, by virtue of his office and upon notification by the Court, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Title, and shall, upon notification by the Court, be the liquidator during any vacancy.

(2) The official receiver shall, within fourteen days of notification by the court, deliver an authenticated copy of such notification to the Registrar for registration.

(3) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to

be liquidator of the company in place of the official receiver.

(4) It shall be the duty of the official receiver to summon meetings under sub-article (3) if he is at any time requested to do so by one-fourth in value of the company's creditors.

(5) Without prejudice to the provisions of sub-articles (3) and (4), the official receiver shall within a period of twelve weeks from the date of the winding up order give notice to the court and to the company's creditors and contributories of his intentions whether or not to summon the said meetings. The notice shall indicate the right of the creditors arising under sub-article (3).

Choice of liquidator at meetings of creditors and contributories. *Amended by: IV. 2003.98.*

230. (1) The provisions of this article shall apply where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company in accordance with article 229.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator. The nomination by the creditors shall be made by resolution of the creditors, and the nomination by the contributories shall be made by a resolution of the contributories.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person, if any, nominated by the contributories.

(4) Where no person is nominated by either the creditors or the contributories to act as liquidator, the official receiver may, at any time, apply to the court for the appointment of a liquidator.

Meetings of creditors and contributories.

231. (1) The dates of meetings of creditors and contributories shall be fixed and the meetings shall be summoned by the liquidator.

(2) The notices of meetings of creditors and contributories shall state the time and place appointed for the respective meetings.

Creditors entitled to vote.

232. (1) In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the liquidator, not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he claims to be due to him from the company.

(2) In the case of a subsequent meeting of creditors held in a winding up by the court, a person shall not be entitled to vote as a creditor unless he has lodged with the liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held.

(3) The chairman as provided for in article 297(3) shall have power to admit or reject a creditor's proof of his debt for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether a creditor's proof of his debt shall

be admitted or rejected, the chairman shall mark it as objected to and allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(4) A guarantor of a debt owed by the company shall not be deemed a creditor for the purposes of this Title unless he has discharged the guaranteed debt in full.

Notice of first meeting to officers of company.

233. (1) The official receiver shall also give to each of the officers of the company who, in his opinion ought to attend the first meetings of creditors and contributories, seven days' notice of the time and place appointed for each meeting.

(2) It shall be the duty of every officer who is given notice of such meeting to attend if so required by the official receiver and if such officer fails to attend the official receiver shall report such failure to the court.

Summary of statement of affairs.

234. (1) The official receiver shall also, as soon as practicable before the first meeting, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's accounting records or otherwise to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make, but the proceedings at a meeting shall not be invalidated by reason of any summary aforesaid not having been sent or received before the meeting.

(2) Where prior to the winding up order, winding up of the company has commenced voluntarily, the official receiver may, if in his absolute discretion he sees fit to do so, send to the persons aforesaid or any of them an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company has been disposed of and any further observations he may think fit to make.

Where person other than the official receiver is appointed liquidator.

235. (1) Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person -

(*a*) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar;

(*b*) shall give the official receiver such information and such access to and facilities for inspecting the accounts, accounting records and documents of the company and generally such aid as may be requisite for enabling the official receiver to perform his duties under this Act.

(2) The Registrar shall on receipt of the notice of appointment specified in sub-article (1)(*a*) register it.

(3) Until the person appointed to act as liquidator is capable of acting within the meaning of sub-article (1)(*a*), the official receiver shall continue to act as liquidator.

General provisions as to liquidators. *Amended by: XX. 2013.90.*

236. (1) A liquidator appointed in accordance with the provisions of article 230 may resign or, on the application of any creditor or contributory, may be removed by the court if it is satisfied that there exist sufficient grounds for his removal.

(2) The official receiver and any person appointed as liquidator by the Court shall be remunerated out of the assets of the company or otherwise, and on such basis as the Court may direct.

(3) More than one person may be appointed to exercise the function of liquidator of a company, and the remuneration of each liquidator so appointed shall be determined on such basis as the court may direct.

(4) A vacancy resulting from the death or resignation of a liquidator or from his removal by the court, shall be filled by the court.

(5) If more than one liquidator is appointed by the court, the court shall declare whether any act which is by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons so appointed.

(6) Subject to the provisions of article 305, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment.

Custody and control of company's property.

237. Where a company is being wound up by the court, the liquidator or the provisional administrator, as the case may be, shall take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the company to be entitled.

Powers of liquidator. *Amended by: IV. 2003.99.*

238. (1) The liquidator in a winding up by the court shall have the power, with the sanction either of the court or of the liquidation committee appointed under the provisions of Chapter IV of this Sub-title -

(*a*) to bring or to defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(*c*) to pay creditors according to their ranking at law;

(*d*) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the company or whereby the company may be rendered liable, and to refer any such matter to arbitration;

(*e*) to make calls on contributories or alleged contributories and to effect any compromise or arrangement in relation to debts, liabilities and claims of the company present or future, certain or contingent, ascertained or which may be due in damages, subsisting or supposed to subsist between

the company and a contributory or alleged contributory or other debtor or alleged debtor, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;

(*f*) to represent the company in all matters and to do all such things as may be necessary for winding up the affairs of the company and distributing its assets:

Provided that the Court may provide by an order that the liquidator may, where there is no liquidation committee, exercise any of the powers mentioned in paragraphs (*a*) or (*b*) without the sanction of the Court.

(2) The liquidator in a winding up by the court shall, in particular, have the power -

(*a*) to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents;

(*c*) to raise on the security of the assets of the company any money requisite;

(*d*) to appoint a mandatory to act for him in his capacity as liquidator for particular purposes.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this article shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

239. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directives that might be given by resolution of the creditors or contributories at any general meeting or by the liquidation committee, and any directives given by the creditors and contributories in common shall, in case of conflict with any directives given by the liquidation committee, be deemed to override such latter directives; otherwise the directives given by the liquidation committee shall prevail.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-fourth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding up.

(4) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court and the court may confirm, reverse or modify the act or decision complained of, and make such order on the matter as it thinks just.

Books to be kept by liquidator.

240. Every liquidator of a company which is being wound up by the court shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed.

Payments of liquidator into bank.
Amended by: L.N. 425 of 2007; XX. 2013.91.

241. (1) Upon his appointment the liquidator shall notify the Registrar of any bank account which the liquidator shall use for the purposes of receiving and making payments on behalf of the company. The liquidator shall not be entitled to receive and make payments until he has made such notification.

(2) If any such liquidator retains for more than ten days, other than in a bank account mentioned in sub-article (1), a sum exceeding five hundred euro (500) or such other amount as the Registrar in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Registrar, the liquidator shall pay interest on the amount so retained in excess, at the annual rate of two percentage points above the Central Bank of Malta minimum discount rate and shall be liable to forfeiture of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall furthermore be liable to pay any expenses occasioned by his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into an account or accounts other than an account or accounts which has been notified to the Registrar.

(4) It shall not be lawful to issue precautionary or executive warrants over any accounts opened by the liquidator in accordance with this article.

Audit of liquidator's accounts.

242. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar, and to such other place as the Registrar may direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a proper form, shall be made in duplicate, and shall be duly certified by the liquidator:

Provided that the Minister may make regulations prescribing the proper form in which the account is to be made.

(3) The Registrar may, at the company's expense, cause such account to be audited, and for the purpose of the audit the liquidator shall furnish the auditor appointed by the Registrar with such vouchers and information as the auditor may require and the auditor may at any time require the production of and inspect any accounting records or documents kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be delivered to the Registrar for registration and the other copy shall be delivered to the court for filing, and each copy shall be open to inspection of any person on payment of the prescribed fee.

Control over liquidators.

243. (1) If an application is made to the court by any creditor or contributory complaining on the conduct of a liquidator of a company the court shall inquire into the matter and take such action thereon as it may think expedient.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and the Registrar may, if he thinks fit, apply to the court to examine the liquidator or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the accounts, accounting records and documents of the liquidator.

Release of liquidator from his appointment. *Amended by: XXIV.1995.362.*

244. (1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final payment, if any, to the creditors, and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, the court shall, on the liquidator's application, cause a report to be prepared on the liquidator's accounts at the company's expense. On being satisfied that the liquidator has complied with the requirements of this Act and such other requirements, if any, as may be laid down by it and, after taking into consideration the report and any objection which may be raised by any creditor or contributory or person interested, the court shall proceed to release the liquidator from his appointment.

(2) The Registrar of Courts shall forthwith deliver a notice of the release to the Registrar for registration.

Chapter IV - Liquidation Committees in a winding up by the court

Determination whether committee is to be appointed.

245. (1) When a winding up order has been made by the court, the separate meeting of the creditors referred to in article 229 summoned for the purpose of choosing a liquidator in place of the official receiver shall determine further whether or not to appoint a liquidation committee to act with the liquidator and who are to be the members of the committee, if appointed.

(2) Where a liquidation committee has not been appointed in accordance with the provisions of sub-article (1), the liquidator, other than the official receiver, may at any time, if he thinks fit, summon a separate meeting of the company's creditors for the purpose of determining whether such a committee should be

appointed and, if it is so determined, of appointing it.

(3) Where a liquidation committee has not been appointed in accordance with the provisions of sub-article (1), the liquidator, other than the official receiver, shall summon a meeting of creditors for the appointment of such a committee if he is requested to do so by one-fourth in value of the company's creditors.

Constitution and proceedings of liquidation committee. *Amended by: IV. 2003.100.*

246. (1) The liquidation committee shall consist of not more than five creditors of the company elected by the meeting of creditors.

(2) Where the meeting of creditors does not appoint a liquidation committee, the meeting of contributories may appoint one of their members to make an application to the court for an order to the liquidator that a further meeting of creditors be summoned for the purpose of appointing a liquidation committee.

(3) If the meeting of creditors so summoned does not appoint a liquidation committee, the meeting of contributories may do so.

(4) The committee shall then consist of not less than three and not more than five contributories elected by that meeting.

(5) The committee shall meet at such times as they may from time to time determine, and, failing such appointment, at least once every six months, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(6) A meeting of the committee may not be held unless a majority in number of the committee is present and decisions shall be taken by a majority in number of the members present at the meeting.

(7) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(8) If a member of the committee is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(9) A member of the committee may be removed by a resolution of a meeting of the creditors, if he represents creditors, or by a resolution of a meeting of the contributories, if he represents contributories, in accordance with article 298:

Provided that at least seven days' notice of the meeting has been given, stating the object of the meeting.

(10) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the state of the winding up, is of the opinion that it is unnecessary for the

vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(11) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of official receiver where there is no committee.

247. Where there is no liquidation committee, the official receiver may, on the request of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done by the committee.

Chapter V - General Powers of the court in a winding up by the court

Power to stay winding up. *Amended by: XXIV.1995.362.*

248. (1) The court may at any time after a winding up order, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, for such duration and on such terms and conditions as the court thinks fit. Any such stay of proceedings shall not affect the continuing validity and operation of the winding up orders.

(2) On an application under this article the court may, before making an order, require the official receiver or liquidator to furnish to the court a report with respect to any facts or matters which are in its opinion relevant to the application.

(3) A copy of every order made under this article shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

Settlement of list of contributories and application of assets.

249. As soon as may be after making a winding up order, the court shall draw up a list of contributories and shall have the power to rectify the register of members, if required, and shall cause the assets of the company to be collected, and applied in the discharge of the company's liabilities in accordance with the provisions of article 302:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the drawing up of a list of contributories.

Delivery of property to liquidator.

250. The court may, at any time after making a winding up order, require -

(*a*) any contributory for the time being on the list of contributories; and

(*b*) any person who holds any money, property or accounting records and documents in his hands to which the company is *prima facie* entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, accounting records or documents to

the liquidator forthwith or within such time as the court directs.

Debts due by contributory and extent of set-off.

251. (1) The court may at any time after making a winding up order, make an order on any contributory for the time being appearing on the list of contributories to pay, in the manner directed by the order, any money due from him to the company, exclusive of any money payable by him by virtue of any call in pursuance of the provisions of this Act.

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be set-off against any subsequent call made on him.

Power to make calls.

252. (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being appearing on the list of contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or fully fail to pay the call.

Order of court to be conclusive evidence.

253. An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid, is due; and all other pertinent matters stated in the order shall be taken as truly stated as against all persons and in all proceedings.

Appointment of special manager.

254. (1) The liquidator or provisional administrator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may, on such application, by order appoint a special manager of the said estate or business to act during such time as the court may direct, with such functions and powers as may be entrusted to him by the court in the order appointing him. The special manager shall restrict his activities to the said functions and powers and to such acts as may be necessary or consequential thereto.

(2) The special manager shall give an account of his management as the court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Fixing of time for proofs of debt.
Amended by: IV. 2003.101.

255. The court may fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

Adjustments of rights of contributories.

256. The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Inspection of books of company. *Amended by: IV. 2003.102.*

257. (1) The court may, at any time after making a winding up order, make such order for inspection of accounts, accounting records and documents of the company by creditors and contributories as the court thinks fit, and any accounts, accounting records and documents in the possession of the company may be inspected by creditors and contributories in accordance with that order.

(2) Nothing contained in this article shall be construed as excluding or restricting any rights deriving from any law of Malta of a government department or other authority or person acting under the authority of any such department or authority.

Payments of costs of winding up out of assets. *Amended by: XX. 2013.92; XI. 2017.12.*

258. (1) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit.

(2) In so doing the court shall have regard to the following general order of priority -

(*a*) expenses properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or collecting any of the assets of the company;

(*b*) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company;

(*c*) the remuneration of the provisional administrator, if any;

(*d*) any necessary disbursements by the special controller in the course of his office in terms of articles 329A and 329B;

(*e*) the remuneration of the special controller;

(*f*) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;

(*g*) the remuneration of the special manager, if any;

(*h*) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;

(*i*) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;

(*j*) any necessary disbursements by the liquidator in the course of his administration, including any expenses

incurred by members of the liquidation committee or their representatives and allowed by the liquidator;

(*k*) the remuneration of any person employed by the liquidator to perform any services for the company, as required or authorised by the provisions of this Act;

(*l*) the remuneration of the official receiver and of the liquidator;

(*m*) any new financing granted to the company for the purpose of a recovery procedure in terms of articles 329A and 329B.

(3) For the purposes of sub-article (2), "official receiver" shall include any individual authorised in terms of article 225(2).

Summoning of persons suspected of having property of the company, etc.

259. The court may, at any time after the appointment of a provisional administrator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, and any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company. The court may require any such officer or person to produce any accounting records and documents in his custody relating to the company.

Power to order examination of promoters and officers.
Amended by: XVII. 2002.233.

260. (1) Where a winding up order has been made by the court, and the official receiver has made a report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by an officer of the company in relation to the company since its formation, the court may direct that person or officer to attend before the court on a day appointed by the court for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof.

(2) The Official Receiver shall take part in the examination, and for that purpose may be assisted by an advocate.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or represented by an advocate.

(4) The court may put such questions to the person referred to in sub-article (1) as the court thinks fit.

(5) The person shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this article shall, before his examination, be furnished with a copy of the official receiver's report and may, at his own cost be assisted by an advocate, who shall be at liberty to put to him such questions as the court may deem fit for enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be

discharged from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this article may, if the court so directs, be held before a magistrate, and the powers of the court may, in any such case, be exercised by the magistrate before whom the examination is held.

Power to arrest absconding contributory.

261. The court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory is about to leave Malta or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be precluded from leaving Malta and his accounting records, documents and movable property to be seized, and the court may further order the contributory's detention and the safekeeping of his accounting records, documents and movable property until such time as the court thinks fit.

Powers of court cumulative.

262. Any powers conferred by this Act on the court shall be in addition to any powers exercisable by any person under this Act of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Liquidator may exercise certain powers of court.

263. The powers conferred and the duties imposed on the court by this Act in respect of the following matters -

(*a*) the holding and conduct of meetings to ascertain the wishes of creditors and contributories;

(*b*) the drawing up of lists of contributories and the rectification of the register of members, if required, and the collection and application of assets;

(*c*) the payment, delivery, conveyance, surrender or transfer of money, property, accounting records or documents to the liquidator;

(*d*) the making of calls;

(*e*) the fixing of a time within which debts and claims must be proved;

may, subject to the provisions of this article or any other provision of this Act, be exercised or performed by the liquidator, subject to

the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members and shall not make any call without either the special leave of the court or the sanction of the liquidation committee.

Striking of name of the company off the register. *Amended by: XXIV.1995.362.*

264. (1) When the affairs of the company have been completely wound up and the requirements of article 244 have been complied with, the court shall make an order that the name of the company be struck off the register from the date of the order.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the Registrar of Courts to the Registrar who shall comply therewith.

SUB-TITLE II - VOLUNTARY WINDING UP

Chapter I - General Provisions

Notice of resolution for dissolution and consequential voluntary winding up. *Amended by: IV. 2003.103.*

265. (1) When a company has passed a resolution for dissolution and consequential voluntary winding up, it shall, within fourteen days after the date of dissolution of the company, deliver a notice of the resolution to the Registrar for registration.

(2) If default is made by the company in complying with this article, every liquidator or officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Date of dissolution in a voluntary winding up. *Amended by: IV. 2003.104.*

266. Where a company is dissolved in accordance with the provisions of article 214(1)(*b*), the date of dissolution shall be the date of the passing of the resolution for dissolution and consequential voluntary winding up or such later date as may be specified in the said resolution:

Provided that where the Court has ordered that the company be wound up voluntarily by virtue of the provisions of article 214(3), the company shall be deemed to have been dissolved at the time of the filing of the winding up application.

Effects of voluntary winding up.

267. (1) In case of a voluntary winding up, the company shall, from the date of dissolution, cease to carry on its business except so far as may be required for the beneficial winding up thereof.

(2) Any transfer of shares, not being a transfer made with the sanction in writing of the liquidator, and any alteration in the status

of the members of the company, made after, or so as to have effect after, the date of dissolution, shall be void.

Declaration of solvency.
Amended by: IV. 2003.105; L.N. 425 of 2007; XVIII.2025.33.

268. (1) When it is proposed to dissolve and wind up a company voluntarily, in accordance with article 214(1)(*b*), the directors of the company, or in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the date of dissolution as may be specified in the declaration.

(2) A declaration made in accordance with sub-article (1) shall have no effect for the purposes of this Act unless -

(*a*) it is made within the month immediately preceding the date of the passing of the resolution for dissolution and consequential voluntary winding up of the company and is delivered to the Registrar for registration together with the notice of the said resolution pursuant to article 265(1); and

(*b*) it contains a statement of the company's assets and liabilities made up to a date not earlier than the date of the declaration by more than three months.

(3) When the court has ordered that the company be wound up voluntarily by virtue of the provisions of article 214(3), the court shall, before making the winding up order require the directors of the company to make the declaration referred to in sub-article (1) within such time as it may establish and the provisions of sub-article (1) and of sub-article (2)(*b*) shall apply accordingly.

(4) Any director of a company making a declaration under this article without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or to imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment; and if the debts of the company are not paid or provided for in full within the period stated in the declaration, it shall be presumed, until the contrary is shown that the director did not have reasonable grounds for this opinion.

(5) A winding up in relation to which a declaration has been made and delivered in accordance with this article is in this Act referred to as "a members' voluntary winding up", and a winding up in relation to which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

Chapter II - Provisions applicable to a members' voluntary winding up

Provisions applicable to a member's voluntary winding up.

269. The provisions contained in articles 270 to 275 shall, subject to the provisions of article 276, apply in relation to a members' voluntary winding up.

Appointment, remuneration and removal of liquidators. *Amended by: IV. 2003.106.*

270. (1) The company shall by extraordinary resolution appoint a liquidator for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him.

(2) Except where a company has appointed a liquidator at the meeting at which the extraordinary resolution referred to in article 214(1)(*b*) has been passed, the directors shall call a general meeting of the company, to be held within thirty days after the date of the dissolution, for the purposes of sub-article (1).

(3) If for any cause whatsoever, a liquidator is not appointed by the general meeting, any director shall apply to the court for the appointment of a liquidator and the appointment shall be made by the court; the application to the court for the appointment of a liquidator under this sub-article shall be made within fourteen days from the date for which the general meeting referred to in sub-article (2) was summoned.

(4) If default is made by the directors in complying with the provisions of sub-articles (2) and (3), every director who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(5) Notwithstanding the preceding sub-articles of this article, where the court has ordered that the company be wound up voluntarily by virtue of the provisions of article 214(3), and a declaration has been made in accordance with article 268, the court shall in the winding up order, at its sole discretion, either appoint a liquidator for the purpose of winding up the affairs and distributing the assets of the company and shall fix the remuneration to be paid to him; or give the necessary directives for the holding of a general meeting for the purpose of appointing a liquidator and for the fixing of the remuneration to be paid to him.

(6) A liquidator appointed in accordance with the provisions of this article may be removed by extraordinary resolution of the company; except where he has been appointed by the court in terms of this article.

Vacancy in office of liquidator. *Amended by: IV. 2003.107.*

271. (1) If a vacancy occurs by death, resignation or removal in the office of liquidator appointed by the company, the company shall by extraordinary resolution fill the vacancy.

(2) For the purposes of sub-article (1), a general meeting shall be convened by any member, contributory or, if there were more than one liquidator, by the continuing liquidator or liquidators and notice of the meeting shall be given within fourteen days of the occurrence of the vacancy referred to in sub-article (1).

(3) The general meeting shall be held in the manner provided

by this Act or by the memorandum and articles, or in such manner as may, on the application of any member, contributory or by the continuing liquidator, be determined by the court.

(4) If for any cause whatsoever a liquidator is not appointed in the manner specified by sub-article (1), or if a vacancy occurs in the office of a liquidator appointed by the Court, any member, contributory or the continuing liquidator or liquidators may, at any time thereafter, apply to the court for the appointment of a liquidator, and the appointment shall be made by the court.

Duty of liquidator in case of insolvency.

272. (1) If the liquidator is, at any time after a declaration is made in accordance with article 268, of opinion that the company will not be able to pay its debts within the period stated in the said declaration, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company and the provisions of article 276 shall apply.

(2) If the liquidator fails to comply with the provisions of this article, he shall be liable to a penalty.

Liquidator to hold general meeting where winding up continues for more than twelve months.

273. (1) Subject to the provisions of article 276, in the event of the winding up continuing for more than twelve months, the liquidator shall summon a general meeting of the company at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a summary of receipts and expenditure.

(2) If the liquidator fails to comply with the provisions of sub-article (1) he shall be liable to a penalty.

(3) A member or members holding not less than one-tenth of the paid up share capital having the right to vote at general meetings of the company may at any time, by request in writing require the liquidator to convene a general meeting of the company. Such request shall be signed by such member or members and shall state the objects of the meeting.

Final meeting.
Amended by: IV. 2003.108; IX. 2008.31.

274. (1) Subject to the provisions of article 276, as soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of and shall draw up a scheme of distribution indicating the amount due in respect of each share from the assets of the company, where applicable, and he shall cause the account to be audited by one or more auditors appointed by ordinary resolution of the company, or in default by the court. The liquidator shall thereupon call a general meeting of the company for the purpose of laying before it the account and scheme of distribution, if any, together with the auditors' report, and giving any explanation

thereof.

(2) Within seven days after the meeting, the liquidator shall send to the Registrar a copy of the account and of the scheme of distribution, if any, together with the auditors' report, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-article the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in this sub-article, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-article as to the making of the return shall be deemed to have been complied with.

(3) If the liquidator fails to call a general meeting of the company as required by this article, he shall be liable to a penalty.

(4) The provisions of article 153 shall apply to an auditor appointed in terms of sub-article (1). Such auditor shall not be a person who has held the office of auditor of the company at any time during the last three years immediately preceding the date of dissolution.

Striking company's name off the register. *Amended by: XXIV. 1995.362.*

275. (1) The Registrar, on receiving the account and the scheme of distribution, if any, together with the auditors' report and either of the returns mentioned in article 274(2), shall forthwith register them, and on the expiration of three months from the publication of the notice referred to in article 401(1)(*e*), the Registrar shall strike the name of the company off the register:

Provided that the court may, on the application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.

(2) When an order by the court is made under the proviso to sub-article (1), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of sub-article (1) in accordance with the order given by the court referred to in that sub-article.

Alternative provisions in case of insolvency.

276. Where the provisions of article 272 have effect, articles 283 to 285 shall apply to the winding up in lieu of articles 273 to 275, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.

Chapter III - Provisions applicable to a creditors' voluntary winding up

Provisions applicable to creditors' voluntary winding up.

277. The provisions of articles 278 to 285 shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

278. (1) The directors of the company shall cause a meeting of the creditors of the company to be summoned for a day not later than the fourteenth day from the day of the general meeting of the company at which the resolution for dissolution and consequential voluntary winding up is passed, and shall cause the notice of the said meeting of the creditors to be sent by post to the creditors at least seven days before the date of that meeting.

(2) The directors of the company shall -

(*a*) cause a full statement of the position of the company's affairs, together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(3) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(4) Where the court has ordered that the company be wound up voluntarily by virtue of the provisions of article 214(3) and a declaration in accordance with article 268 has not been made, the court shall, at its sole discretion, determine whether or not to appoint a liquidator itself in the winding up order. Where no liquidator is so appointed the general meeting of the company and the meeting of the creditors referred to in this article, shall be summoned within fourteen days from the date of the winding up order, and notice thereof shall be given by the directors of the company at least seven days before the date of such meetings; and the provisions of sub-articles (2) and (3) shall apply.

(5) The directors of the company shall cause the notice of the meeting of the creditors referred to in this article to be advertised once in at least one local daily newspaper.

(6) If default is made by the directors, or the director, as the case may be, in complying with any of the provisions of this article, every director who is in default shall be liable to a penalty.

Appointment and removal of liquidator.
Amended by: IV. 2003.109.

279. (1) The creditors and the company at their respective meetings mentioned in article 278 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. The nomination of a person as liquidator by the creditors shall be made by a resolution of the creditors, and the nomination by the company shall be made by an extraordinary resolution of the company. If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors

the person, if any, nominated by the company shall be liquidator.

(2) Where no person is nominated to act as liquidator by either the creditors or the company, an application to the court for the appointment of a liquidator shall be made by any director of the company within fourteen days from the date for which the meeting of the creditors referred to in article 278 was summoned, and the appointment shall be made by the court.

(3) If default is made by the directors in complying with the provisions of sub-article (2), every director who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(4) A liquidator appointed in accordance with the provisions of this article may be removed by a resolution of the creditors except where he has been appointed by the court in terms of article 278 or of this article.

(5) In this article, a resolution of the creditors shall have the meaning assigned to it under article 298.

Liquidation committee. *Amended by: IV. 2003.110.*

280. (1) The creditors at the meeting to be held in pursuance of article 278, or at any subsequent meeting may, if they think fit, by resolution appoint not more than five representatives of the creditors to a liquidation committee, and if such committee is appointed, the contributories may by resolution appoint up to five persons to act as their representatives on the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under the provisions of this sub-article the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of sub-article (1) or as may be otherwise prescribed, the provisions of article 246, other than sub-articles (1) to (4) thereof, shall apply with respect to a liquidation committee appointed under this article as they apply with respect to a liquidation committee appointed in a winding up by the court.

Remuneration of liquidator.

281. The liquidation committee or, if there is no such committee, the creditors, shall fix the basis of remuneration to be paid to the liquidator or liquidators.

Vacancy in office of liquidator. *Amended by: IV. 2003.111.*

282. If a vacancy occurs, by death, resignation or removal in the office of a liquidator who was not appointed by the Court, a new liquidator shall be appointed in accordance with the provisions of article 279(1):

Provided that if a liquidator is not appointed in accordance with the provisions of the said sub-article, any member or creditor of the company may apply to the court for the appointment of a liquidator and the appointment shall be made by the court.

Liquidator to hold meeting of company and creditors where winding up continues for more than twelve months.
Amended by: IV. 2003.112.

283. (1) In the event of the winding up continuing for more than twelve months, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a summary of receipts and expenditure.

(2) If the liquidator fails to comply with the provisions of sub-article (1), he shall be liable to a penalty.

(3) A member or members holding not less than one tenth of the paid up share capital having the right to vote at general meetings of the company or a creditor or creditors representing not less than one tenth in value of the company creditors may, at any time, by request in writing require the liquidator to convene a general meeting of the company, or a creditors' meeting, as the case may be. Such request shall be signed by such member or members, or such creditor or creditors, as the case may be, and shall state the objects of the meeting.

Final meetings.

284. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and shall draw up a scheme of distribution indicating the amount due in respect of each share from the assets of the company, where applicable, and he shall cause the account to be audited by one or more auditors appointed by resolution of the creditors, or in default by the court. The liquidator shall thereupon call a general meeting of the company and a meeting of the creditors for the purpose of laying the account and scheme of distribution, if any, together with the auditors' report, before the meetings and giving any explanations thereof.

(2) Within seven days after the date of the meetings or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account and of the scheme of distribution, if any, together with the auditors' report, and shall make a return to him of the holding of the meetings and of their dates; and if the copy is not sent or the return is not made in accordance with this sub-article the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return mentioned in this sub-article, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this sub-article as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(3) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this article, he

shall be liable to a penalty.

(4) The provisions of article 274(4) shall apply to an auditor appointed in terms of sub-article (1).

Striking company's name off the register. *Amended by: XXIV.1995.362.*

285. (1) The Registrar shall, on receiving the account and the scheme of distribution, if any, together with the auditors' report and, in respect of each such meeting as is referred to in article 284, the return or returns as mentioned in that article, forthwith register them, and on the expiration of three months from the publication of the notice referred to in article 401(1)(*e*), the Registrar shall strike the name of the company off the register:

Provided that the court may, on an application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.

(2) When an order by the court is made under the proviso to sub-article (1), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of sub-article (1) in accordance with the order given by the court referred to in that sub-article.

Chapter IV - Provisions applicable to every voluntary winding up

Provisions applicable to every voluntary winding up.

286. The provisions contained in articles 287 to 294 shall apply to every voluntary winding up, whether a members' or a creditors' voluntary winding up.

Distribution of property of company.

287. Subject to the provisions of this Act and of any other law as to preferential debts or payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator.

288. (1) The liquidator may -

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or of the liquidation committee or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by article 238(1)(*c*), (*d*) and (*e*) to a liquidator in a winding up by the court;

(*b*) without sanction, exercise any of the other powers given by this Act to a liquidator in a winding up by the court;

(*c*) exercise the power of the court under this Act of drawing up a list of contributories, which list shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the court of making calls;

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) More than one person may be appointed to exercise the function of liquidator of a company. Where more than one liquidator is appointed, any power given by this Act may be exercised by one or more of them as may be determined at the time of their appointment, or in default of such determination, by any two of them acting jointly.

(4) Subject to the provisions of article 305, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment.

Powers of the court to remove liquidators. *Amended by: IV. 2003.113.*

289. (1) The court may, on the application of any member, creditor or contributory, remove a liquidator if it is satisfied that there exist sufficient grounds to warrant his removal and appoint another liquidator.

(2) A vacancy resulting from the death or resignation of a liquidator appointed by the Court may, on the application of any member, creditor or contributory, be filled by the Court.

(3) The person who applied to the Court in terms of sub-article (2) shall, in the case of a vacancy resulting from the death of a liquidator, inform the Registrar of the demise of the liquidator.

Notice by liquidator of his appointment. *Amended by: IV. 2003.114.*

290. (1) The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for registration a notice of his appointment stating his name and residence.

(2) If the liquidator fails to comply with the requirements of this article he shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

When arrangement is binding on members.

291. (1) Any arrangement entered into between a company in the course of being wound up, and its creditors shall, subject to the right of appeal under this article, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by two-thirds in value.

(2) Any creditor or contributory may, within fourteen days from the completion of the arrangement, apply to the court contesting the arrangement, and the court may thereupon, as it thinks fit, amend, vary or confirm the arrangement.

Court may determine questions and exercise powers. *Amended by: XXIV.1995.362; IV. 2003.115.*

292. (1) The liquidator or any member, contributory or creditor may apply to the court to determine any question arising in the course of winding up of a company, or to exercise, as respects the enforcement of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The liquidator may apply to the Court to fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

(3) The court, if satisfied that the determination of the question or the required exercise of power referred to in sub-articles (1) and (2) will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it so determines.

(4) A copy of any order made by virtue of this article staying the proceedings in the winding up shall forthwith be forwarded by the Registrar of Courts to the Registrar who shall make a minute of the order in the register relating to the company.

Costs of voluntary winding up.

293. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims, and they shall, in so far as applicable, be paid in the order of priority established under article 258, unless the court otherwise directs.

Savings for rights of creditors and contributories.

294. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up, and the provisions of article 223(2) shall apply.

SUB-TITLE III - PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Chapter I - Effect of appointment of liquidator and convening of meetings

Powers of directors and company secretary to cease.

295. On the appointment of a liquidator, all the powers of the directors and of the company secretary shall cease, except as may be otherwise provided in this Title.

Summoning of meetings.

296. (1) The liquidator, including the official receiver while occupying the office of liquidator, shall summon all meetings of creditors or contributories by giving not less than fourteen days' notice thereof in a daily newspaper circulating wholly or mainly in Malta; and shall, not less than fourteen days before the day appointed for the meeting, send by post to every person appearing in the company's accounting records to be a creditor of the

company, notice of the meeting of creditors, and, to every person appearing in the company's accounting records or otherwise to be a contributory of the company, notice of the meeting of contributories.

(2) The notice to each creditor shall be sent to the address given in the creditors' proof of his debt, or, if he has not proved his debt, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(3) Where there is no continuing liquidator, any member, creditor or contributory may apply to the court for directions as to the summoning and holding of a meeting.

(4) The provisions of this article shall not apply to meetings held under article 278 or article 284.

Proof of notice and chairman of meeting.

297. (1) A certificate by the official receiver, or an affidavit by the liquidator or creditor, or as the case may be by some officer of the company, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

(2) The involuntary omission of any notice required to be given by article 296 or any other provision of this Title shall not invalidate the meeting.

(3) Where a meeting is summoned by the official receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting.

Resolutions of creditors and contributories. *Amended by: IV. 2003.116.*

298. (1) (*a*) At a meeting of creditors a resolution shall be deemed to be passed when a majority in value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution.

(*b*) At a meeting of contributories a resolution shall be deemed to be passed when three-fourths in value of the contributories present in person or by proxy and voting on the resolution, or a majority in value of all the contributories, have voted in favour of the resolution. The value of the contributories shall be determined according to the number of votes conferred on each contributory by the memorandum or articles of the company or, if the memorandum and articles are silent, according to the value of their respective liabilities to contribute.

(2) The provisions of this Act and of the memorandum or articles of the company with respect to proxies at general meetings of the company shall apply to proxies at meetings of creditors and contributories, with such modifications and adaptations as may be required.

(3) A copy of every resolution of a meeting of creditors or contributories in a winding up by the court shall be certified by the official receiver or the liquidator, as the case may be, and filed in

the Registry of the Superior Courts.

(4) Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed at any earlier date.

Other proceedings at meetings.

299. (1) A meeting of creditors or contributories may act provided there is a quorum present consisting of:

(*a*) in the case of a creditors' meeting, at least three creditors or all the creditors where these number less than three; and

(*b*) in the case of a meeting of contributories, at least three contributories, or all the contributories where these number less than three.

(2) If within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven and not more than twenty-one days from the day from which the meeting was adjourned, and at such adjourned meeting the number present or represented shall form a quorum and may act for any purpose.

(3) The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

(4) The chairman shall cause minutes of the proceedings of meetings to be drawn up and properly entered in a book kept for that purpose and the minutes shall be signed by him.

(5) A list of creditors and contributories present at every meeting shall be made and kept in such form as the chairman may deem appropriate or as may be prescribed.

Notice of resignation or removal of liquidator. *Amended by: XXIV.1995.362.*

300. (1) Upon the resignation of a liquidator from his office, he shall deliver to the Registrar for registration a notice of his resignation and the resignation shall only become effective on such registration.

(2) Where a liquidator is removed from office by the court in accordance with the provisions of this Title, the Registrar of Courts shall forthwith deliver a notice of such removal to the Registrar for registration.

(3) Where a liquidator has been removed by an extraordinary resolution of the company in a members' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any member of the company who has duly been authorised by the same resolution or by the company in general meeting.

(4) Where a liquidator has been removed by a resolution of the creditors in terms of article 298, in a creditors' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any creditor of the company who has been duly authorised by the same resolution or by the creditors' meeting.

Rectification of scheme of distribution. *Added by: IV. 2003.117.*

300A. (1) Where in the course of the winding up of a company the liquidator has not taken into account any asset of the company, and the name of the company has been struck off the register, any interested person may, by an application, request the Court to order the rectification of the scheme of distribution, and the Court may, where it considers it appropriate, order such rectification under those terms and conditions it may deem fit.

(2) Where a company has made a distribution to its shareholders pursuant to a scheme of distribution and the name of such company has been struck off the register, any creditor whose claim against the company has not been satisfied may, by an application, claim what is due to him from the shareholders of the company *pro rata* to the amount received by the shareholders upon the distribution, and the Court may, where it considers it appropriate, order that payments be made by the shareholders to such creditor under those terms and conditions it may deem fit:

Provided that in no case shall a shareholder be required to contribute an amount exceeding that received by him upon distribution.

(3) No application may be made under this article after the expiration of five years from the date on which the name of the company has been struck off the register.

Restoration of company name on register. *Added by: IV. 2003.117.*

300B. (1) Where a company has been struck off the register, any interested person may, by an application, request the Court to order that the name of the company be restored to the register and the winding up be reopened.

(2) Where, on an application made in terms of sub-article (1), the Court is satisfied that the winding up and striking off of the company has been vitiated by fraud or illegality of a material nature, the Court may order that the name of the company be restored to the register and the winding up be reopened for such purposes and such period as the Court shall specify in its decision, and the Court shall give such directives and impose such conditions as it may consider appropriate.

(3) The Court shall only accede to the application where it is satisfied that this is the only remedy available.

(4) In its decision the Court shall also determine whether its orders and directives shall be effective in favour of all persons or shall apply limitedly to specified persons indicated in the decision.

(5) No application may be made under this article after the expiration of five years from the date on which the name of the company has been struck off the register.

Chapter II - Proof and ranking of claims

Debts of all descriptions may be proved.

301. In every winding up of a company the assets of which are sufficient to meet the liabilities, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or which may be due in damages, shall be admissible as proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

Application of rules on ranking.

302. In the winding up of a company the assets of which are insufficient to meet the liabilities, the rights of secured and unsecured creditors and the priority and ranking of their debts shall be regulated by the law for the time being in force.

Chapter III - Effects of winding up on antecedent transactions

Fraudulent preference. *Substituted by: IV. 2003.118.*

303. (1) Every privilege, hypothec or other charge, or transfer or other disposal of property or rights, and any payment, execution or other act relating to property or rights made or done by or against a company, and any obligation incurred by the company within six months before the dissolution of the company shall be deemed to be a fraudulent preference against its creditors whether it is of a gratuitous nature or an onerous nature if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made, done or incurred, proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency, and in the event of the company being so dissolved every such fraudulent preference shall be void.

(2) For the purposes of this article -

(*a*) a company enters into a transaction at an undervalue if:

(i) the company makes a gift or otherwise enters into a transaction on terms that provide for the company to receive no consideration, or

(ii) the company enters into a transaction for a consideration the value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the company;

(*b*) a company gives a preference to a person if:

(i) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(ii) the company does anything or suffers anything

to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent winding up, will be better than the position he would have been had that act or omission not occurred.

Liabilities and rights with respect to fraudulent preferences.

304. (1) Where anything made or done after the appointed day is void under article 303 as a fraudulent preference of a person interested in property privileged, hypothecated or otherwise charged to secure the company's debt, then, without prejudice to any rights or liabilities arising apart from the provisions of this article, the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the preferred person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances or burdens other than those to which the charge for the company's debt referred to in sub-article (1) was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court may determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereto.

(4) The provisions of sub-article (3) shall apply, with the necessary modifications, in relation to transactions other than payments of money, as they apply in relation to such payments.

Chapter IV - Qualification of Liquidators and Prohibition of Certain Transfers by Liquidators

Qualification of liquidators. *Amended by: IV. 2003.119.*

305. (1) A person shall not be qualified to act as liquidator unless he is an advocate or is an individual who is a certified public accountant or certified public accountant and auditor, or is registered with the Registrar as fit and proper to exercise the function of liquidator.

(2) A person who is qualified to act as liquidator in virtue of sub-article (1), may not act as liquidator if he has held the office of director or company secretary or has held any other appointment with or in connection with that company, at any time during the four years prior to the date of dissolution of the company as determined in accordance with the provisions of this Act.

For the purposes of this sub-article, director includes a person in accordance with whose directions or instructions the directors of the company are or have been accustomed to act.

Prohibition of certain transfers by liquidators.
Amended by: L.N. 425 of 2007; XVIII.2025.34.

306. (1) A liquidator shall be prohibited from transferring or disposing of any assets of a company, directly or indirectly, in favour of -

(*a*) the liquidator himself, his partners or employees, or to the spouse of the liquidator, or to any other person related to him by consanguinity or affinity in the direct line, or, up to the third degree, in the collateral line; or

(*b*) a commercial partnership, other than a company, of which he is a partner; or

(*c*) a company of which he is a director, or of which he holds more than half in nominal value of its issued share capital, or in which he is entitled to more than half its voting power, or to a subsidiary or parent company thereof.

(2) A person who acts in contravention of any of the provisions of sub-article (1) or of article 305 shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro (€11,646).

Chapter V - Offences antecedent to dissolution or in course of winding up

Fraud in anticipation of dissolution.
Amended by: L.N. 425 of 2007; XVIII.2025.35.

307. (1) When a company has been dissolved in accordance with the provisions of article 214, any person, being a past or present officer of the company, shall be guilty of an offence if, within the twelve months immediately preceding the deemed date of dissolution, he has -

(*a*) concealed any part of the company's property, or concealed any debt due to or from the company; or

(*b*) fraudulently removed any part of the company's property; or

(*c*) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs; or

(*d*) made any false entry in any book or paper affecting or relating to the company's property or affairs; or

(*e*) fraudulently parted with, or altered any document affecting or relating to the company's property or affairs; or

(*f*) pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pledging or disposal was in the ordinary course of the company's business; or

(*g*) by any false representation or other fraud, obtained property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*h*) exercised any false representation or fraud for the

purpose of obtaining the consent of the creditors of the company or of any of them to an agreement with reference to the affairs of the company or to its dissolution.

(2) Such person shall be guilty of an offence if within the period mentioned in sub-article (1) he has been a party to the doing by others of any of the things mentioned in paragraphs (*c*), (*d*) and (*e*) thereof, and he shall be guilty of an offence if, at any time after the deemed date of dissolution, he does any of the things mentioned in paragraphs (*a*) to (*h*) of the said sub-article, or is party to the doing by others of any of the things mentioned in paragraphs (*c*) to (*e*) of that sub-article.

(3) It shall be a defence for a person charged to prove that he had no intent to defraud or to conceal the affairs of the company or to defeat the law.

(4) Where a person pledges or otherwise disposes of any property in circumstances which amount to an offence under sub-article (1)(*f*), every person who receives the property on pledge or otherwise receives the property knowing it to be pledged or disposed of in such circumstances, shall be guilty of an offence.

(5) For the purposes of this article, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) A person guilty of an offence under this article shall be liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or to imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment.

Fraud by officers of companies being wound up.
Amended by: L.N. 425 of 2007; XVIII.2025.36.

308. (1) When a company is being wound up by the court or voluntarily, a person shall be guilty of an offence if, being an officer of the company, he -

(*a*) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of any executive title against, the property of the company; or

(*b*) has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money against the company.

(2) A person shall not be guilty of an offence under sub-article (1) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

(3) A person guilty of an offence under this article shall be liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment.

(4) For the purposes of this article, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Other offences by officers of companies being wound up.
Amended by: L.N. 425 of 2007; XVIII.2025.37.

309. (1) If any person, being a past or present officer of a company -

(*a*) does not to the best of his knowledge and belief fully and truly reveal to the liquidator all the property, movable and immovable, corporeal or incorporeal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company; or

(*b*) does not deliver up to the liquidator, or as the liquidator directs, all or such part of the property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(*c*) does not deliver up to the liquidator, or as the liquidator directs, all accounts, accounting records and documents in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(*d*) makes any material omission in any statement relating to the affairs of the company; or

(*e*) knowing or believing that a false debt has been proved by any person in the winding up, fails for the period of one month to inform the liquidator thereof; or

(*f*) after the dissolution of the company prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(*g*) after the dissolution of the company or at any meeting of the creditors of the company within twelve months immediately preceding the dissolution of the company attempts to account for any part of the property of the company by fictitious losses or expenses,

he shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or to imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment if, at the time of the commission of the alleged offence, the company is being wound up, whether by the court or voluntarily, or if, subsequent to the commission of the alleged offence, the company is dissolved in accordance with the provisions of article 214.

(2) For the purposes of this article, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

310. It shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*) and (*d*) of article 309(1), if the accused proves that he had no intent to defraud; and to a charge under paragraph (*f*) of the said article, if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

Defence to a charge under article 309.

311. If any contributory of any company being wound up destroys, mutilates, alters or falsifies any accounts, accounting records, documents, books or securities, or makes or is party to the making of any false or fraudulent entry in any register, accounting record or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or to imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment.

Fraud by contributory. *Amended by: L.N. 425 of 2007; XVIII.2025.38.*

312. (1) The provisions of this article shall apply if in the course of the winding up of a company, whether by the court or voluntarily, it appears that a person who -

Remedy against delinquent directors, liquidators, etc.

(*a*) is or has been an officer of the company;

(*b*) has acted as liquidator of the company; or

(*c*) not being a person falling within paragraphs (*a*) and (*b*), is or has been concerned, or has taken part in the promotion, formation or management of the company,

has misapplied or retained or become accountable for, any money or other property of the company, or been guilty of any improper performance or breach of duty in relation to the company.

(2) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine the conduct of any person referred to in sub-article (1) and may compel him -

(*a*) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks fit; or

(*b*) to contribute such sum to the company's assets by way of compensation in respect of the improper performance or breach of duty as the court thinks fit.

313. (1) If any person, being at the time of the commission of the alleged offence, an officer of a company which is subsequently dissolved in accordance with the provisions of article 214, has -

Fraud by officers of companies subsequently dissolved. *Amended by: L.N. 425 of 2007; XVIII.2025.39.*

(*a*) by false pretences or by means of any other fraud induced any person to give credit to the company; or

(*b*) with intent to defraud creditors of the company, made or caused to be made any gift or transfer of or charge on, or has caused or connived at the enforcement of any executive title against, the property of the company; or

(*c*) with intent to defraud creditors of the company, concealed or removed any part of the property of the

company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment.

(2) A person shall not be guilty of an offence under sub-article (1) by reason of conduct constituting an offence under paragraph (*b*) of the said sub-article which occurred more than five years before the date of deemed dissolution.

Liability when proper accounting records are not kept by insolvent company. *Amended by: L.N. 425 of 2007; XVIII.2025.40.*

314. If, where a company is dissolved, it is shown that proper accounting records were not kept by the company throughout the period of two years immediately preceding the dissolution or the period between the registration of the company and the dissolution, whichever is the shorter, and it is furthermore shown that the company was, at the moment of its dissolution, unable to pay its debts, every officer of the company who is in default shall, unless he shows that he acted diligently and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment.

Responsibility for fraudulent trading. *Amended by: L.N. 425 of 2007; XVIII.2025.41.*

315. (1) If in the course of the winding up of a company, whether by the court or voluntarily, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court on the application of the official receiver, or the liquidator or any creditor or contributory of the company, 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 company as the court may direct.

(2) Where the business of a company is carried on with such intent or for such purposes as is mentioned in sub-article (1), every person who was knowingly a party in the carrying on of the business in the manner aforesaid, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or imprisonment for a term not exceeding five years, or to both such fine (*multa*) and imprisonment.

Wrongful trading.

316. (1) The provisions of this article shall apply where a company has been dissolved and is insolvent and it appears that a person who was a director of the company knew, or ought to have known prior to the dissolution of the company that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency.

(2) The court, on the application of the liquidator of a company to which this article applies, may declare the person who was a director referred to in sub-article (1) liable to make a payment towards the company's assets as the court thinks fit.

(3) The court shall not grant an application under this article if it is satisfied that the person who was a director knew that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency and accordingly took every step he ought to have taken with a view to minimising the potential loss to the company's creditors.

(4) For the purposes of sub-articles (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take, are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both -

(*a*) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and

(*b*) the knowledge, skill and experience that the director has.

(5) For the purposes of this article, "director" includes a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Restriction on reuse of company names.
Amended by: L.N. 425 of 2007; XVIII.2025.42.

317. (1) The provisions of this article shall apply to a person who, on or after the appointed day, was a director of a company ("the company being wound up") at any time in the twelve months preceding its dissolution and the company is insolvent upon such dissolution.

(2) Except with leave of the court, or in such circumstances as may be prescribed, any person referred to in sub-article (1) shall not at any time during the winding up of the company and up to two years from the date when its name is struck off the register -

(*a*) be a director of a company that is known by a name which is prohibited by virtue of the provisions of sub-article (3): or

(*b*) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company; or

(*c*) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on under such a prohibited name.

(3) For the purposes of sub-article (2), a name is a prohibited name in relation to any person referred to in sub-article (1) if -

(*a*) it is a name by which the company being wound up was known at any time in that period of twelve months; or

(*b*) it is a name which is so similar to a name falling

within paragraph (*a*) as to suggest an association with that company.

(4) A person who acts in contravention of the provisions of this article shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro (€11,646). Such person shall also be personally responsible for the debts of any company referred to in sub-article (2)(*a*) and (*b*) which are incurred while he acts in relation to the company in the manner described in those paragraphs.

(5) For the purposes of this article, "director" includes a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Reference by court for prosecution of delinquent officers, etc.
Amended by: XXIV.1995.362.

318. If it appears to the court in the course of a winding up by the court that any past or present officers, or any member of the company, or any other person, has been guilty of any offence in relation to the company which is an offence under this Act or for which he is otherwise criminally liable, the court shall, either on the application of any person interested in the winding up or of its own motion, refer the matter to the Commissioner of Police through the Registrar of Courts.

Report by liquidator for prosecution of delinquent officers, etc.

319. If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company which is an offence under this Act or for which he is otherwise criminally liable, he shall forthwith report the matter to the Commissioner of Police.

Disqualification orders.
Amended by: XXIV. 1995.362; L.N. 425 of 2007; XXXI.2020.3; XVIII.2025.43.

320. (1) The court, upon the application of the Attorney General, the Official Receiver or the Registrar, may make a disqualification order against any person who is found guilty of an offence under this Act, other than an offence punishable only with a fine, or who has infringed any requirement of this Act with the consequence that the person becomes liable to contribute to the assets of a company or becomes personally liable for the debts of the company.

(2) The court, upon the application of the Attorney General, the Official Receiver or the Registrar, may also make a disqualification order against any person if it is satisfied -

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

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

(3) A disqualification order made under this article may be for a minimum period of one year and a maximum period of fifteen years.

(4) For the purposes of this article, a disqualification order is an order whereby a person shall not, without leave of the court, be -

(*a*) a director or company secretary of a company; or

(*b*) a liquidator or provisional administrator of a company; or

(*c*) a special manager of the estate or business of a company; or

(*d*) concerned in any way, whether directly or indirectly, or take part in the promotion, formation or management of a company,

for a specified period beginning with the date of the order.

(5) A notice of a disqualification order made under this article shall -

(*a*) be delivered by the Registrar of Courts to the Registrar for registration;

(*b*) be furthermore recorded in a register to be kept for this purpose by the Registrar and which shall be open for public inspection.

(6) Any person who, while being subject to a disqualification order, acts in contravention thereof, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment.

Other remedies.

321. The provisions of this Chapter shall be without prejudice to any other offences or remedies which may exist under any other law.

Chapter VI - Supplementary Provisions

Statement by liquidator in respect of pending winding up. *Amended by: IV. 2003.120. XVIII.2025.44.*

322. (1) If, where a company is being wound up, whether by the court or voluntarily, the winding up is not concluded within twelve months after the dissolution of the company, the liquidator, not being the official receiver, shall, within thirty days from the expiry of the said period of twelve months, and subsequently at intervals of six months, send to the Registrar for registration a statement with respect to the proceedings in and position of the winding up commencing on the date when the liquidator was first appointed and drawn to the end of the period in respect of which the statement is due, and made in such form and containing such particulars as may be prescribed. In a winding up by the court, where the assets of the company have been fully realised and distributed before the expiration of a six-monthly interval, a final statement shall be sent to the Registrar for registration.

(2) If a liquidator fails to comply with the provisions of this article, he shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Supplementary powers of the court.

323. (1) The court may, with respect to all matters relating to the dissolution and winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes direct that meetings of the creditors or contributories be called, held and conducted in such manner as the court considers appropriate and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditors' debt; and in the case of contributories, regard shall be had to the number of votes conferred on each contributory by the memorandum or articles of the company or, if the memorandum and articles are silent, to the value of their respective liabilities to contribute.

Publication of striking off and disposal of accounting records of company. *Amended by: XIII. 2004.100.*

324. (1) Where the name of a company is struck off the register, the Registrar shall forthwith proceed to publish a notice thereof in the Gazette or on a website maintained by the Registrar.

(2) The liquidator shall keep the accounts, accounting records and documents of the company for a period of ten years from the date of publication of the striking of the company's name off the register.

(3) If the liquidator fails to comply with sub-article (2) he shall be liable to a penalty.

Defunct companies. *Substituted by: IV. 2003.121. Amended by: XIII. 2004.101; XVIII.2025.45.*

325. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month of sending the letter receive an answer thereto, he may send to the company by post and publish a notice in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta that, at the expiration of three months from the date of the last publication of the said notice, the company's name shall, unless cause is previously shown to the contrary or the Registrar is satisfied that there are sufficient grounds not to proceed with the striking off, be struck off the register; and the assets of the company shall devolve upon the Government of Malta.

(3) If, in any case where a company is being wound up voluntarily, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator in terms of article 322 are overdue by six months or more, the Registrar may publish in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta, a notice that at the expiration of three months from the date of the last publication of the said notice, the winding up of the company shall, unless cause is previously shown to the contrary, be

deemed to be concluded and consequently that the company's name be struck off the register. The Registrar shall also cause a copy of the said notice to be sent by post to the company and to the liquidator, if any. At the expiration of the aforesaid period of three months the winding up of the company shall, unless cause is previously shown to the contrary, be deemed to be concluded and the Registrar shall strike the name of the company off the register and the company's assets shall devolve upon the Government of Malta.

(4) If any member or creditor of the company, or any other person who appears to the Court to have an interest feels aggrieved by the fact that the name of the company has been struck off the register by virtue of this article, the Court on an application made by the member or creditor or such other person before the expiration of five years from the publication of the notice of the striking off provided for in sub-articles (2) and (3) may, if satisfied that it is proper that the name of the company be restored to the register, order that such name be restored to the register, and upon an official copy of the order being delivered by the Registrar of the Courts to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by its order give such directions and make such provisions as seem fit for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. The Registrar shall forthwith proceed to publish a notice in the Gazette or on a website maintained by the Registrar and in a daily newspaper circulating wholly or mainly in Malta that the name of the company has been restored to the register:

Provided that in the event that a company's name is restored on the register in accordance with this sub-article, and the Court by its decree, would have directed that the name of the company be restored on the register for a definite period and such definite period would be nearing expiration, and the member or creditor of the company, or any other person who appears before the Court and informing it that is has an interest, would still have such an interest due to ongoing proceedings, the said person may, jointly with the Registrar submit an application to the Court asking for an extension of the time period for which the company's name is to remain restored to the register:

Provided further that the said joint application before the Court is to be accompanied, on pain of nullity, with documentary evidence, including the pending court case reference number of the ongoing proceedings.

(5) A notice to be sent under this article to a liquidator may be addressed to the liquidator at his last known place of business or address, and a letter or notice to be sent under this article to a company may be addressed to the company at its registered office.

(6) Notwithstanding that the name of the company has been struck off the register in terms of the preceding provisions of this article, the liability, if any, of every director or other officer of the

company and of every member of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

(7) Notwithstanding the provisions of article 429(1), the provisions of this article shall apply to companies whose dissolution and consequential winding up is regulated by the Ordinance.

Relationship with enactments on bankruptcy.

326. (1) Part III of the Commercial Code relating to bankruptcy shall not apply to a company.

Cap. 13.

(2) References in other laws other than Part III of the Commercial Code to a bankrupt shall, when the context requires, be interpreted as including references to a company being wound up in circumstances of insolvency under the provisions of this Title, and references to bankrupt shall be construed accordingly.

PART VI - COMPANY RECONSTRUCTIONS

Power of company to compromise with creditors and members.
Amended by: IV. 2003.122; XI. 2017.13.

327. (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them:

(*a*) the court may, on the application of the company or any creditor or member of it or, in the case of a company being wound up, the liquidator, order a meeting of the creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs; or

(*b*) the company or any creditor, with the sanction of not less than two-thirds of the creditors or class of creditors, may seek the appointment of a mediator in terms of article 20 of the Mediation Act, and such mediation shall organise a meeting of the creditors, or class of creditors, as the case may be, in order for such creditors and the company to reach a compromise or arrangement. The principles under the Mediation Act shall apply.

Cap. 474.

(2) (a) If a majority in number representing two-thirds in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting called in terms of sub-article (1)(a), agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, shall be binding on all creditors or the class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(b) If all the creditors, as a result of the mediation process, execute a written agreement containing a compromise or arrangement in terms of sub-article (1)(b), such arrangement shall be binding on all creditors, and also on the company or, in the case of a company in the

course of being wound up, on the liquidator.

(3) The court's order, compromise or agreement reached during mediation in terms of sub-article (2) shall have no effect until a copy of every such order, compromise or arrangement has been delivered to the Registrar for registration in accordance with article 329(5); and a copy of every such order, compromise or arrangement shall be annexed to every copy of the company's memorandum issued after order, compromise or arrangement has been made.

(4) If a company makes default in complying with sub-article (3), the company and every officer thereof who is in default shall be liable to a penalty.

(5) For the purposes of this article and article 328 -

(*a*) "company" means any company which is unable to pay its debts in terms of article 214(5) or in those circumstances where the court is of the opinion that there are grounds of sufficient gravity that would have otherwise warranted the dissolution and consequent winding up of the company in terms of article 214(2)(*b*)(iii); and

(*b*) "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

Information as to compromise to be circulated. *Amended by: XI. 2017.14.*

328. (1) The provisions of this article shall apply where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned or where a mediator is appointed in terms of article 327.

(2) With every notice summoning the meeting which is sent to a creditor or member there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) In every notice summoning the meeting which is given by advertisement there shall be included either such a statement as abovementioned or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as regards the holders of any security for the issue of the debentures as it is required to give as regards the company's directors.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors

or members entitled to attend the meeting, every such creditor or member shall, on making a request in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company makes default in complying with any requirement of this article, the company and every officer thereof who is in default shall be liable to a penalty; and for this purpose a liquidator of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this sub-article if he shows that the default was due to the refusal of another person, being a director, to supply the necessary particulars of his interests.

(7) It shall be the duty of any director of the company to give notice to the company and to any debenture holders of such matters relating to himself as may be necessary for purposes of this article; and any person who makes default in complying with this sub-article shall be liable to a penalty.

Provisions for facilitating company reconstruction or amalgamation.

329. (1) The provisions of this article shall apply where application is made to the court under article 327 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that article.

(2) If it is shown -

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(*b*) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this article referred to as "a transferor company") is to be transferred to another company (in this article referred to as "the transferee company"),

the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the matters specified in sub-article (3).

(3) The matters for which the court's order may make provision are -

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, securities or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company

of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution of any transferor company and the striking off of its name, without its having to be wound up;

(*e*) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order under this article provides for the transfer of property or liabilities, then -

(*a*) that property shall by virtue of the order be transferred to, and vest in, the transferee company; and

(*b*) those liabilities shall, by virtue of the order, be transferred to and become liabilities of that company,

and property, if the order so directs, shall vest freed from any charge or other burden which shall, by virtue of the compromise or arrangement, cease to have effect.

(5) Where an order is made under this article, every company in relation to which the order is made shall cause a certified copy of the order to be delivered to the Registrar for registration within seven days after its making; and if default is made in complying with this sub-article, the company and every officer thereof who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Duties of directors where company unable to pay debts.
Added by: IV. 2003.123.

329A. Where the directors of a company become aware that the company is unable to pay its debts or is imminently likely to become unable to pay its debts, they shall forthwith, not later than thirty days from when the fact became known to them, duly convene a general meeting of the company by means of a notice to that effect for a date not later than forty days from the date of the notice for the purpose of reviewing the company's position and of determining what steps should be taken to deal with the situation, including consideration as to whether the company should be dissolved or, where applicable, whether the company should make a company recovery application in terms of article 329B.

Company recovery procedure.
Added by: IV. 2003.123. Amended by: L.N. 425 of 2007; IX. 2008.32; XXXI. 2015.20; XI. 2017.15; XXXI.2020.4; XVIII.2025.46.

329B. (1) (*a*) Where a company is unable to pay its debts or is imminently likely to become unable to pay its debts, a company recovery application may be made to the Court requesting the Court to place the company under the company recovery procedure and to appoint a special controller to take over, manage and administer the business of the company for a period to be specified by the Court subject to the limitation imposed by paragraph (*d*).

(*b*) A company recovery application, hereinafter in this article also referred to as the "application", shall be made by means of an application which may be made:

(i) by the company following an extraordinary resolution;

(ii) by the directors following a decision of the board of directors whenever, following a notice to convene a general meeting in terms of article 329A, the general meeting does not convene, or a quorum is not present at the said meeting, or a resolution with regard to the filing of a recovery application is not passed due to an unresolved tie following a vote; or

(iii) by creditors of the company representing more than half in value of the company's creditors; or

(iv) by creditors forming part of a class of creditors if such creditors represent more than half in value of the company's creditors in that class.

(*c*) (i) Creditors with different interests should be treated in separate classes which reflect those interests.

(ii) Where both secured and unsecured creditors exist, they shall be treated as separate classes.

(*d*) The appointment of a special controller shall be made for a period not exceeding four months; provided that, at any time during which the company recovery procedure is in force, the court may, upon good cause being shown, extend the period by further periods of four months, provided that the aggregate additional periods do not exceed a further eight months.

(*e*) The Minister may, by regulations, amend or substitute the criteria for the purpose of establishing the applicability of the provisions of this article.

(*f*) No application may be submitted by a company after it has been dissolved voluntarily or if, in respect of the same company, a winding-up order has already been made.

(2) (*a*) The application shall, as far as possible, give the full facts, circumstances and reasons which led to the company's inability or likely imminent inability to pay its debts, together with a statement by the applicants as to how the financial and economic situation of the company can be improved in the interests of its creditors, employees and of the company itself as a viable going concern.

(*b*) Where an application is made by the company, the following documents shall be annexed to it:

(i) a statement of the company's assets and liabilities made up to a date not earlier than the date of the application by more than two months; and

(ii) a list containing the names and addresses, including electronic mail addresses, of the creditors together with an indication of the

amount due to each such creditor and the security, if any, of the respective creditors.

(*c*) Where the application is made by the creditors, it shall be accompanied by appropriate supporting documentation and statements.

Power of the Court.

(3) (*a*) On the hearing of an application, the Court may, after examining all the circumstances and the options that are available, either dismiss the application or issue a company recovery order, hereinafter also referred to in this article as an "order", acceding thereto and placing the company under the company recovery procedure.

(*b*) The Court shall accede to the application, and accordingly place the company under the company recovery procedure and issue an order, only if -

(i) it is satisfied that the company is, or is imminently likely to become, unable to pay its debts within the meaning of article 214(5); and

(ii) if it considers that the making of the order would be likely to achieve one of the following purposes:

- the survival of the company as a viable going concern in part or in whole; or
- the sanctioning under article 327 of a compromise or arrangement between the company and any of its creditors or members.

(*c*) In making an order, the Court shall take into account:

(i) the best interests of the creditors, regard being had to the different classes of creditors, of the shareholders and of the company itself, and the possibility of safeguarding employment as appears to be reasonably and financially possible in the circumstances; and

(ii) the cost that would have to be incurred by adopting the company recovery procedure, particularly the fees and charges that would have to be incurred.

(*d*) Where the company is in possession of a licence or other authorisation under the laws regulating banking, insurance, investment services, financial institutions or listing of securities on a Maltese regulated market, the court shall not proceed to make an order without first having consulted with the relevant competent authority responsible for supervising that company or any of its activities.

(*e*) The Court shall take its decision whether to dismiss the application or to make a company recovery order within not more than forty working days from the filing of the application.

Effect of the company recovery order.

(4) (i) The provisions of this article shall not apply with respect to any new financing given to the company for the purpose of implementing a recovery plan:

Provided that new financing under this Act shall exclude financing, debts or obligations which already existed at the time of the recovery order, even if such financing, debts, or obligations are restructured in any manner in order to be included with any financing obtained or to be obtained after the recovery order.

(ii) Upon the submission of an application and unless it is dismissed, or during the period during which the company recovery procedure is in force:

(*a*) any pending or new winding up application shall be stayed;

(*b*) no resolution for the dissolution and consequential winding up of the company may be passed or given effect to;

(*c*) the execution of claims of a monetary nature against the company and any interest that may otherwise accrue thereon shall be stayed;

(*d*) during the tenure of the lease, no landlord or other person to whom rent is payable may exercise any right of termination of lease in relation to premises leased to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with leave of the Court and subject to such terms as the Court may deem fit to impose;

(*e*) no other steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may deem fit to impose;

Cap. 12.

(*f*) no precautionary or executive act or warrant mentioned in the Code of Organization and Civil Procedure shall be made or continued against the company or any property of the company, including any warrant in terms of article 312 of the Code of Organization and Civil Procedure except with leave of the Court and subject to such terms as the Court may deem fit to impose;

(*g*) no arbitration proceeding shall be made or continued against the company or any property of the company; and

(*h*) notwithstanding anything contained in this sub-article, no judicial proceedings shall be commenced or continued against the company or its property except with leave of the Court and subject to such terms as the Court thinks fit to impose.

Appointment of special controller.

(5) (*a*) In the order, the Court shall:

(i) appoint an individual to act as a special controller for a period as specified in sub-article (1)(*c*). The special controller shall carry out such functions and powers as the Court may entrust to him in the administration and management of the property and business of the company;

(ii) fix such reasonable remuneration of the special controller, as the Court may consider appropriate after taking into account the company's financial position, business and assets, and in terms of any applicable regulations made by the Minister;

(iii) order that the remuneration and the disbursements of the special controller are initially paid out of a fund established by regulations in terms of sub-article (15), which expense shall be recoverable from the company in accordance with this article. On the making of such order, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Official Receiver.

The expense paid out pursuant to this article shall be notified in writing to the company.

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

Without prejudice to the previous paragraph, a copy of the aforementioned request for payment, served by means of a judicial act on the company or its officers, shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

(*b*) The Court shall appoint as the special controller an individual from the list of individuals eligible to occupy the office of special controller held by the Official Receiver, regard being given to the nature of the company to be restructured and the special controller's experience and expertise in the management of business enterprises. The Court shall ascertain that there is no conflict of interest in relation to his appointment.

(*c*) For so long as the special controller holds office, the fact of his appointment to such office and his full name together with his residential or business address shall be clearly indicated in all the business letters, order forms, invoices and any other documents of the

company.

Powers and duties of the special controller.

(6) (*a*) During the period that an order is in force, the company shall continue to carry on its normal activities under the management of the special controller.

(*b*) The special controller shall, as soon as possible upon his appointment, take into his custody or under his control all the property of the company and he shall thenceforth be responsible to manage and supervise its activities, business and property.

(*c*) The special controller shall examine the assets, affairs and business performance of the company, and any proposals made by the applicant in terms of sub-article (2)(*a*) as to how the financial and economic situation of the company can be improved, and shall ascertain and verify whether there is a reasonable expectation of the company's recovery and continuation as a viable going concern, in whole or in part, and he shall submit an initial report thereon to the Court not later than two months from the date of his appointment.

(*d*) On the appointment of the special controller, any power conferred on the company, its directors or its officers, whether by this Act, by any other law, or by the Memorandum or Articles of Association of the company, shall be suspended unless the consent of the special controller to exercise such power has been obtained, which consent may be given either generally or in relation to a particular case or cases, and no meeting of the company may be summoned except with leave of the Court and subject to such terms as the Court may deem fit to impose.

(*e*) During such time as the company recovery procedure is in force, any duty conferred on the company, its directors or its officers, whether by this Act, by any other law, or by the Memorandum or Articles of Association of the company, shall be assumed and exercised by the special controller.

(*f*) In addition and without prejudice to any other duty assigned to the special controller by the Court or this Act or any other law, the special controller shall be obliged to perform his functions fairly and equitably taking into account the best interests of the company, its shareholders and creditors together with the interests of any other interested party.

(*g*) In addition to the functions and powers entrusted to him by the Court, the special controller shall have the power:

(i) after informing the Court, by means of a note, to remove any director of the company and to appoint any individual to serve as a manager;

(ii) to engage persons for the provision of

professional or administrative services, and commit the company to the payment of their respective fees or charges; or

(iii) to call any meeting of the members or creditors of the company.

(*h*) The special controller shall not, without the prior express authorisation of the Court:

(i) engage the company into any commitment of more than six months duration; or

(ii) terminate the employment of company employees as he considers necessary for insuring the continuation of the company as a viable going concern in whole or in part; or

(iii) sell or otherwise dispose of property of the company to himself, or to his spouse or relatives and the provisions of article 306 shall apply as though references to the liquidator were references to the special controller.

(*i*) The Court may, upon the request of the special controller, and upon good cause being shown, extend his appointment and relative functions and powers to any company being a group company in relation to the company placed under the company recovery procedure, provided that, in so far as possible, the Court shall, before so doing, hear the views of the directors, or any of them, of such group company, as it may deem appropriate.

Meeting of creditors and members.

(7) (*a*) Within one month from his appointment, the special controller shall convene a meeting or meetings of creditors and members, or classes thereof, whether separately or jointly as he may consider appropriate, for the purpose of -

(i) laying before them for their information and review a comprehensive statement of the company's affairs together with preliminary proposals on the future prospects and management of the company;

(ii) appointing a joint creditors and members committee, consisting of not more than three creditors and not more than three members, to render such advice and assistance as the special controller may require in the management of the affairs, business and property of the company and its recovery as a viable going concern;

(iii) discussing the proposals for the future prospects and management of the company, to be presented to the court.

(*b*) Not less than seven days notice shall be given of the holding of the first meeting of creditors and members, or classes thereof, and the special controller shall also

send a copy of the notice convening the meeting to any directors or other officers of the company, including persons who have been directors or other officers in the past, whose presence at the meeting is, in the opinion of the special controller, required.

(*c*) The special controller shall publish a notice of the first meeting of creditors and members, or classes thereof, in a daily newspaper circulating wholly or mainly in Malta, not later than seven days before the holding of the meeting.

(*d*) Where for any reason the creditors or the members or both do not appoint their representatives on the joint creditors' and members' committee, the special controller may proceed to continue in the exercise of his functions without such committee or solely with a creditors' or members' committee, as the case may be;

(*e*) The special controller shall ensure that any notice convening the first meeting of creditors or members, or classes thereof, shall also be given to known creditors residing or based abroad, and such foreign creditors shall also be given the opportunity to participate in any such meeting, and any voting rights may be exercised by means of electronic communication.

Fraudulent trading.

(8) (*a*) If during such time as the company recovery procedure is in force, it appears that any business of the company has been carried on with intent to defraud creditors of the company or for any fraudulent purpose, the Court on the application of the special controller, 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 company as the Court may direct.

(*b*) Where the business of a company is carried on with such intent or for such purposes as is mentioned in paragraph (*a*), every person who was knowingly a party in the carrying on of the business in the manner aforesaid, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than two hundred and thirty-two thousand and nine hundred and thirty-seven euro (€232,937), or imprisonment for a term not exceeding five (5) years, or to both such fine (*multa*) and imprisonment.

Wrongful trading.

(9) (*a*) The provisions of this sub-article shall apply where a company recovery procedure is in force and it appears that a person who is a director of the company knew, or ought to have known, that the company is unable to pay its debts or is imminently likely to become unable to pay its debts.

(*b*) The Court, on the application of the special controller

of a company to which this sub-article applies, may declare the person being a director referred to in paragraph (*a*) liable to make a payment towards the company's assets as the Court thinks fit.

(*c*) The Court shall not grant an application under this sub-article if it is satisfied that the person who is a director took every step he ought to have taken with a view to minimising the potential loss to the company's creditors.

(*d*) For the purposes of paragraphs (*b*) and (*c*), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take, are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both -

(i) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and

(ii) the knowledge, skill and experience that the director has.

(*e*) For the purposes of this sub-article, director includes a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Removal or vacancy in the office of special controller.

(10) (*a*) If a vacancy occurs by reason of death, resignation or otherwise in the office of the special controller, the Court may appoint another individual to fill the vacancy on an application made for this purpose by the outgoing special controller, by a creditor, by a member, by a director, or by the Court of its own motion, as the case may be.

(*b*) The Court may, of its own motion or on the application of any member or creditor, review, confirm, modify or reverse any act or decision of the special controller and give him such directions or orders as it deems fit or remove a special controller if it is satisfied that there exist sufficient grounds to warrant his removal and appoint another special controller.

Reports to be submitted by the special controller.

(11) (*a*) (i) At the end of the original period of appointment or at the end of each extension, the special controller shall submit to the Court a comprehensive report in writing on the proceedings of his administration and of his proposals regarding the prospects for the recovery of the company as a viable going concern in whole or in part.

(ii) The special controller may, if he deems it is reasonably necessary, together with the said report, present an application to the court for a one time extension of his appointment for a further period of four

months up to a maximum period of appointment not exceeding twelve months;

(*b*) When the special controller submits to the Court the report referred to in paragraph (*a*), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration;

(*c*) The court shall within a period not exceeding twenty working days from the termination of the period of appointment of the special controller, including any extension thereof, declare the termination of the company recovery procedure, and that the company has recovered, or that it shall be dissolved and wound up, irrespective whether it has received the said report from the special controller. The court shall make such provisions and conditions, as it may consider necessary in the circumstances of the case;

(*d*) Any creditor or member or the Registrar or the Official Receiver may at any time after the lapse of the twenty working days mentioned in paragraph (c) apply to the court for a declaration of the termination of the recovery procedure.

Termination of company recovery order.

(12) (*a*) If, at any time during which a company recovery procedure is in force, it results to the special controller, after consulting the joint creditors' and members' committee, that it would serve no useful purpose for the company to continue with the said procedure, the special controller shall forthwith make an application to the Court for the termination of the company recovery procedure, containing his detailed and comprehensive reasons therefor.

Following the receipt of the application made by the special controller for the termination of the company recovery procedure, the Court shall order that the company be wound up by the Court. On the making of the winding up order, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

(*b*) If, at any time during which a company recovery procedure is in force, it results to the special controller, after consulting the joint creditors' and members' committee, that the affairs of the company have improved to the extent that it is in a position to pay its debts, he shall submit an application to the Court, containing his detailed and comprehensive reasons to that effect, and requesting the Court to issue an order for the termination of the company recovery procedure. In the event that the Court accedes the application, it shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.

(*c*) If, at any time during which a company recovery

procedure is in force, the directors of the company or the members at an extraordinary general meeting become satisfied that the affairs of the company have improved to the extent that it is in a position to pay its debts, they may submit an application to the Court, accompanied by appropriate supporting documentation and information, confirming that they are so satisfied, and requesting the Court to issue an order for the termination of the company recovery procedure, and the Court shall not proceed to make an order acceding to or declining the application without having first heard the special controller.

In the event that the Court accedes the application, it shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.

(*d*) At the end of the period of his appointment, the special controller shall submit a written final report to the Court containing his detailed and comprehensive opinions and reasons as to whether or not the company has a reasonable prospect of continuing as a viable going concern in whole or in part and will be in a position to pay its debts regularly in the future.

(*e*) Where the final report submitted by the special controller expresses the opinion that the company has a reasonable prospect of continuing as a viable going concern, in whole or in part, regard being had to the interests of the creditors, the company and its members, and the particular classes of members and creditors, or where an application is made to the Court by the special controller under paragraph (*b*), it shall additionally have attached to it a precise and detailed recovery plan which shall contain all the proposals required to enable the company to continue as a viable going concern, with such explanations as may be required to give effect to such recovery, including proposals in relation to financial resources, including new financing the retention of employees and the future management of the company. The said recovery plan shall also explain the proposed manner of paying creditors the whole or a proportion of their claims, whether a voluntary compromise has been reached with all the creditors, or whether it is proposed that the Court sanction a compromise which has not been approved by all the creditors, and shall include the position of the creditors with regard to the said proposals.

(*f*) Following receipt of the application referred to in paragraph (*b*) or of the final report and the recovery plan, the Court may request any explanations and clarifications as it may consider appropriate which shall be provided either verbally or in writing as the Court may direct.

(*g*) The Court may either reject the proposed recovery

plan, or it may accept and approve it in whole or in part and may require amendments thereto. Where the Court approves the recovery plan submitted by the special controller, whether with or without amendments as the Court may direct, the recovery plan shall be effective and binding on all interested parties for all purposes of law.

(*h*) Where the court accepts the proposed recovery plan, with or without amendments, the dissenting creditors may apply to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and Civil Procedure, if they consider that their rights are likely to be reduced to a level which is lower than what they would be granted had the company been dissolved and wound up at the time of the recovery application in terms of sub-article (1)(b). In the interest of the creditors supporting the plan, such appeal shall not automatically suspend the implementation of the recovery plan and procedures, and remedies shall be limited to compensation for the loss suffered by the applicant as a result of the recovery procedure.

(*i*) Where the proposed recovery plan seeks new financing, the providers thereof shall, in the absence of any fraudulent actions, be exempt from civil and criminal liability relating to the recovery procedure.

Submission of documents to Registrar for registration.

(13) (*a*) Upon the submission of a company recovery application, the issue of a company recovery order, the appointment and termination of the appointment of a special controller and the appointment of a replacement thereof, the submission of an application for the termination of a company recovery order and the order of the Court terminating the company recovery 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 Registrar for registration.

(*b*) The Registrar of Courts shall forthwith forward a true copy of the final report, as accepted and approved by the Court, to the Registrar for registration.

(*c*) Notwithstanding the provisions of paragraphs (*a*) and (*b*), a copy of the recovery plan, attached to the final report or required to be attached to an application for the termination of a company recovery order, shall not be delivered to the Registrar together with such report or application.

Winding up by the Court.

(14) Where, in terms of any of the provisions of this article, the Court issues an order for the termination of the company recovery procedure on the grounds that the company has no reasonable prospect of continuing as a viable going concern and will not be in a position to pay its debts regularly in the future, it shall order that the company be wound up by the Court. On the making of the winding up order, a copy thereof shall forthwith be forwarded by

the Registrar of Courts to the Registrar for registration.

(15) The Minister may make regulations for the better carrying out of any of the provisions of this article.

Power to make regulations.

PART VII - CONVERSION OF COMMERCIAL PARTNERSHIPS

330. (1) A commercial partnership (in this Chapter referred to as "the commercial partnership to be converted") may, by complying with the requirements prescribed in relation to the formation, share capital and validity of the kind of commercial partnership into which it is to be converted, be converted into a commercial partnership of that kind (in this Chapter referred to as "the commercial partnership resulting from the conversion").

Requirements for conversion of commercial partnerships. *Amended by: IV. 2003.124.*

(2) Where the commercial partnership to be converted is either an *en nom collectif* or an *en commandite* or limited partnership the conversion may only be made by a decision taken in accordance with the provisions of the deed of partnership or, in the absence of any such provision, with the consent of all the partners both general and limited:

Provided that where one or more limited partners holding in the aggregate not more than one-fourth of the total contribution of the limited partners of a partnership *en commandite* or limited partnership, the capital of which is not divided into shares, or one-tenth of the share capital of the partnership *en commandite* or limited partnership, the capital of which is divided into shares, have not given their consent, the commercial partnership may nevertheless proceed with the conversion, but it shall be required, for the purposes of the conversion, to liquidate and re-imburse to every limited partner who has not given his consent, if he so requests, his interest in the commercial partnership or to redeem the shares held by him on such terms as may be agreed or as the court, on a demand of either the commercial partnership or the limited partner, thinks fit to order.

(3) Where the commercial partnership to be converted is a company, whether public or private, the conversion may only be made if it has been approved by an extraordinary resolution taken at a general meeting of the company. The company shall be required, for the purpose of the conversion, to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed or as the court, on a demand of either the company or the dissenting members, thinks fit to order.

(4) The commercial partnership to be converted shall be dissolved without having to be wound up in accordance with the provisions of Title II of Part V of this Act in relation to a company and with the relevant provisions of Part III of this Act in relation to the other kinds of commercial partnerships; and dissolution shall be deemed to take place when the conversion becomes effective in accordance with the provisions of article 332.

Registration of the conversion of commercial partnerships.

331. (1) The decision or resolution approving the conversion of a commercial partnership together with the instruments giving effect to the decision or resolution, or an authentic copy thereof, shall be delivered for registration to the Registrar who, being satisfied that the requirements of article 330 have been complied with, shall register it.

(2) The aforesaid delivery shall be made by any of the partners or directors of the new commercial partnership as the case may be.

Where commercial partnership ceases to exist on conversion.

332. (1) Upon the conversion of a commercial partnership which has become effective either through the lapse of the period referred to in article 334 or, where objection is made under that article, by a decision of the court, the Registrar shall strike the name of the commercial partnership that has been converted off the register and shall issue a new certificate of registration for the commercial partnership resulting from the conversion, denoting the fact of the formation of that commercial partnership as a result of the conversion. Where a conversion which has been registered under this article becomes ineffective by a decision of the court under article 334, the Registrar shall amend the registration accordingly.

(2) The Registrar shall, in the cases specified in sub-article (1), either proceed to publish the conversion after it has become effective or to publish a notice that the conversion has become ineffective by decision of the court under article 334, in accordance with the provisions of article 401(1)(*e*).

Partners with unlimited liability to remain bound unless creditors consent to conversion.

333. The conversion of a commercial partnership shall not discharge partners with unlimited liability from liability for the obligations of the commercial partnership contracted prior to the publication of the statement referred to in article 401(1)(*e*) unless it is proved that the creditors of the commercial partnership have given their consent to the conversion.

Rights of creditors to oppose conversion.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

334. (1) The conversion of a commercial partnership shall not take effect until three months from the date of the publication of the statement referred to in article 401(1)(*e*) relating to the decision or resolution approving the conversion.

(2) During the aforesaid period of three months any creditor of the commercial partnership whose debt existed prior to the publication of the statement referred to in sub-article (1) may by sworn application object to the conversion and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the conversion on sufficient security being given.

(3) Without prejudice to the provisions of sub-article (2) any partner or shareholder, as the case may be, of the commercial partnership being converted, or the Registrar, shall have the right to challenge the validity of the conversion only within the aforesaid period of three months by means of a sworn application.

(4) Where as a result of the proceedings for which provision is made in sub-article (3), the court is satisfied that the conversion is

not valid, the court shall disallow the said conversion:

Provided that the court shall have the right to suspend its decision disallowing the conversion and to grant time, which shall not be in excess of six months, to the commercial partnership in default, to remedy the default rendering the conversion invalid; and if the default is remedied within the time allowed the conversion shall take effect.

Commercial partnership formed succeeds commercial partnership ceasing to exist.
Amended by: IV. 2003.125; XIX. 2010.35.

335. (1) The commercial partnership resulting from the conversion shall succeed to all the assets, rights, liabilities and obligations without the requirement of any formalities other than those arising under this Part, and shall retain the same legal personality of the commercial partnership that has been converted; and the said succession shall be effective as regards third parties.

(2) Where the commercial partnership resulting from the conversion is a partnership *en nom collectif* or a partnership *en commandite* or limited partnership the unlimited liability of all the partners in the partnership *en nom collectif* and that of the general partners in the partnership *en commandite* or limited partnership, as the case may be, shall also extend to the obligations of the commercial partnership that has been converted.

PART VIII - AMALGAMATION OF COMMERCIAL PARTNERSHIPS

TITLE I - AMALGAMATION OF PARTNERSHIPS *EN NOM COLLECTIF* AND *EN COMMANDITE*

Application of articles 337 to 342.
Amended by: IV. 2003.126.

336. (1) The provisions of articles 337 to 342 shall apply to the amalgamation of partnerships *en nom collectif* and partnerships *en commandite* or limited partnerships.

(2) Amalgamation between two or more commercial partnerships (referred to in this Part as "the amalgamating commercial partnerships") may be effected where all the amalgamating commercial partnerships are *en nom collectif* or where they are all *en commandite* or limited partnerships or where at least one of the commercial partnerships being amalgamated is *en nom collectif* and the other commercial partnership or partnerships are *en commandite* or limited partnerships, or vice versa.

Requirements for amalgamation of commercial partnerships.

337. (1) The provisions of article 330(2) shall apply to the amalgamation of any two or more commercial partnerships whether such an amalgamation is effected by the formation of a new commercial partnership (referred to in this Part as "the new commercial partnership") instead of the existing commercial partnerships (referred to in this Part as "the commercial partnerships to be substituted") or by the merger of one or more commercial partnerships (referred to in this Part as "the commercial

partnerships to be acquired") with another existing commercial partnership (referred to in this Part as "the acquiring commercial partnership") as though references to conversion therein were references to amalgamation.

(2) The commercial partnerships to be acquired or, as the case may be, the commercial partnerships to be substituted, shall be dissolved without having to be wound up in accordance with the relevant provisions of Part III of this Act, and dissolution shall be deemed to take place when the amalgamation becomes effective in accordance with the provisions of article 339.

Registration of the amalgamation of commercial partnerships.

338. (1) The decisions taken by each of the amalgamating commercial partnerships approving the amalgamation together with the instruments giving effect thereto, or an authentic copy thereof, shall be delivered for registration to the Registrar, who, being satisfied that the requirements of article 337 have been complied with, shall register them.

(2) The aforesaid delivery shall be made by any of the partners of the new commercial partnership or of the acquiring commercial partnership as the case may be.

Where a commercial partnership ceases or partnerships cease to exist on amalgamation.

339. (1) Upon the amalgamation of two or more commercial partnerships which has become effective either through the lapse of the period referred to in article 341 or where objection is made under that article, by a decision of the court, the Registrar shall strike the name of the commercial partnership or of each of the commercial partnerships ceasing to exist off the register and shall, according to the case, either issue a new certificate of registration for the new commercial partnership denoting the fact of the formation of the commercial partnership as a result of the amalgamation, or issue a certificate of registration altered to meet the circumstances of the case and denoting the fact of the amalgamation for the acquiring commercial partnership; and where an amalgamation which has been registered under this article becomes ineffective by a decision of the court under article 341, the Registrar shall amend the registration accordingly.

(2) The Registrar shall, in the cases specified in sub-article (1), in respect of every one of the amalgamating commercial partnerships, either proceed to publish the amalgamation after it has become effective or to publish a notice that the amalgamation has become ineffective by decision of the court under article 341, in accordance with the provisions of article 401(1)(*e*).

Partners with unlimited liability to remain bound unless creditors consent to amalgamation.

340. The amalgamation of two or more commercial partnerships shall not discharge partners with unlimited liability from liability for the obligations of the amalgamating commercial partnerships contracted prior to the publication of the statement referred to in article 401(1)(*e*), unless it is proven that the creditors of the amalgamating commercial partnerships have given their consent to the amalgamation.

Right of creditors to oppose amalgamation.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

341. (1) The amalgamation of two or more commercial partnerships shall not take effect until three months from the date of the publication of the statement referred to in article 401(1)(*e*) relating to the decisions approving the amalgamation.

(2) During the aforesaid period of three months any creditor of any of the amalgamating commercial partnerships whose debt existed prior to the publication of the statement referred to in sub-article (1) may by sworn application object to the amalgamation, and if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the amalgamation to proceed upon sufficient security being given.

(3) Without prejudice to the provisions of sub-article (2) any partner of any of the amalgamating commercial partnerships or the Registrar shall have the right to challenge the validity of the amalgamation only within the aforesaid period of three months by means of a sworn application.

(4) Where as a result of the proceedings for which provision is made in sub-article (3), the court is satisfied that the amalgamation is not valid, the court shall disallow the said amalgamation:

Provided that the court shall have the right to suspend its decision disallowing the amalgamation and to grant time which shall not be in excess of six months, to the commercial partnership or partnerships in default to remedy the default rendering the amalgamation invalid; and if the default is remedied within the time allowed, the amalgamation shall take effect.

Acquiring or new commercial partnership succeeds commercial partnership ceasing to exist.
Amended by: IV. 2003.127; II. 2004.59.

342. (1) An acquiring commercial partnership or, where a new commercial partnership is formed, the new commercial partnership, shall succeed to all the assets, rights, liabilities and obligations of the commercial partnership or partnerships ceasing to exist, without the requirement of any formalities other than those required under this Title, and the said succession shall be effective as regards third parties.

(2) Where the acquiring commercial partnership or the new commercial partnership, as the case may be, is a partnership *en nom collectif*, the unlimited liability of all the partners thereof shall also extend to the obligations of the commercial partnership or partnerships ceasing to exist.

(3) Where the acquiring commercial partnership or the new commercial partnership as the case may be is a partnership *en commandite* or limited partnership the unlimited liability of all the general partners thereof shall also extend to the obligations of the commercial partnership or partnerships ceasing to exist.

TITLE II - AMALGAMATION OF COMPANIES

Amalgamation in the form of a "merger by formation of a new company" or "merger by acquisition". *Amended by: IV. 2003.128.*

343. (1) Amalgamation of two or more companies may be effected by -

(*a*) merger by acquisition; or

(*b*) merger by formation of a new company.

(2) Merger by acquisition is the operation whereby a company (referred to in this Part as "the acquiring company") acquires all the assets and liabilities of one or more other companies (referred to in this Part as "the companies being acquired") in exchange for the issue to the shareholders of the companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding ten per cent of the nominal value of the shares so issued.

(3) Merger by formation of a new company is the operation whereby two or more companies (referred to in this Part as "the merging companies") deliver to a company which they set up (referred to in this Part as "the new company") all their assets and liabilities in exchange for the issue to the shareholders of the merging companies of shares in the new company and a cash payment, if any, not exceeding ten per cent of the nominal value of the shares so issued.

(4) The companies being acquired or, as the case may be, the merging companies, shall be dissolved without having to be wound up in accordance with the provisions of Title II of Part V of this Act and dissolution shall be deemed to take place when the amalgamation becomes effective in accordance with the provisions of article 353.

(5) The fact that one or more of the companies being acquired, or one or more of the merging companies has been dissolved voluntarily by an extraordinary resolution, and a declaration of solvency has been filed shall not prevent such companies taking part in the amalgamation provided that none of their assets have been distributed to shareholders after dissolution. Any provision of this Part requiring the directors of a company to act shall be interpreted in relation to a company which has been dissolved as requiring the liquidator to act.

(6) The fact that one or more of the companies being acquired or one or more of the merging companies has been dissolved by the court in terms of article 214, and in the case of a voluntary winding up a declaration of solvency has not been filed, shall invalidate the amalgamation with respect to all the amalgamating companies.

(7) A company may only be amalgamated with one or more companies, and may not be amalgamated with any other kind of commercial partnership.

Chapter I - Merger by acquisition

Draft terms of merger.

344. (1) The directors of the acquiring company and of each of

the companies being acquired (hereinafter referred to in this Part as "the amalgamating companies") shall draw up draft terms of merger in writing.

(2) The draft terms of merger shall specify the following:

(*a*) the status, name and registered office of each of the amalgamating companies;

(*b*) the share exchange ratio and the amount of any cash payment;

(*c*) the terms relating to the allotment of shares in the acquiring company;

(*d*) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

(*e*) the date from which the transactions of each of the companies being acquired shall be treated for accounting purposes as being those of the acquiring company;

(*f*) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and on the holders of debentures or other securities, or the measures proposed concerning them; and

(*g*) any special advantage granted to the experts referred to in article 348 acting on behalf of each of the amalgamating companies authorised to examine the draft terms of merger and to draw up a written report to the shareholders, and to the directors of each of the amalgamating companies.

(3) The draft terms of merger, duly completed, shall be signed by at least one director and the company secretary of each of the amalgamating companies, and forwarded to the Registrar for registration, who being satisfied that the requirements of sub-article (2) have been complied with, shall register them.

Approval by extraordinary resolution of amalgamation. *Amended by: IV. 2003.129; XIX. 2010.36.*

345. (1) A merger by acquisition shall only be made if it has been approved by an extraordinary resolution of each of the amalgamating companies. Each of such companies shall be required to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed or as the court, on a demand by either the company or the dissenting members, thinks fit to order.

(2) For the purposes of sub-article (1), approval shall not be valid unless the extraordinary resolution is adopted at least one month after the publication of the draft terms of merger and not later than three months therefrom.

(3) The provisions of this Act governing alterations and additions to the memorandum and articles shall, as appropriate, apply to any alterations and additions to the memorandum and articles necessitated by any amalgamation referred to in this Part.

(4) Where there is more than one class of shares in any of the

amalgamating companies the extraordinary resolutions of those companies concerning the amalgamation shall be subject to a separate vote by at least each class of shareholders whose rights are affected thereby.

(5) The extraordinary resolution taken by each of the amalgamating companies shall cover both the approval of the draft terms of merger and any alterations and additions to the memorandum and articles necessitated by the amalgamation.

(6) The approval of the general meeting of the acquiring company shall not be required if the following conditions are fulfilled -

(*a*) the draft terms of the merger for the acquiring company have been duly published in accordance with paragraph (*e*) of sub-article (1) of article 401 by the Registrar at least one month before, and not more than three months before the date fixed for the general meeting of the company or the latest of the separate general meetings of the companies being acquired which are to decide on the draft terms of merger; and

(*b*) at least one month before the date specified in paragraph (*a*), all shareholders of the acquiring company shall be entitled to inspect the documents referred to in article 349, in accordance with the provisions of that article:

Provided that, in any case, one or more shareholders of the acquiring company holding at least five per cent of the issued share capital of the company entitled to vote at general meetings of the company shall have the right to require that a general meeting of the acquiring company be called to decide whether to approve the amalgamation.

Drawing up of detailed written report on draft terms of merger by directors. *Substituted by: XIX. 2010.37.*

346. (1) The directors of each of the amalgamating companies shall:

(*a*) draw up a detailed written report explaining the draft terms of the merger and setting out the legal and economic grounds for them, in particular the share exchange ratio, and shall describe any special valuation difficulties which have arisen; and

(*b*) inform the general meeting of their company and the directors of the other amalgamating company or companies so that they may inform their respective general meetings, of any material change in the assets and liabilities between the date of preparation of the draft terms of merger and the date of the general meetings which are to decide on the draft terms of merger.

(2) The report referred to in sub-article (1)(*a*) and the information referred to in sub-article (1)(*b*) shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the amalgamating companies have so

agreed.

Non applicability of article 73(4), (5) and (6) in certain cases of amalgamation. *Amended by: XIX. 2010.38.*

347. In the event of an increase in the issued share capital made to pay the shareholders of the companies being acquired in order to give effect to an amalgamation, article 73(4), (5) and (6) shall not apply where an independent expert's report on the draft terms of merger is drawn up.

Written report to shareholders to be drawn up by one or more experts. *Amended by: IX. 2008.33.*

348. (1) One or more experts acting on behalf of each of the amalgamating companies, but independent of them and approved by the Registrar, shall examine the draft terms of the merger and draw up a written report to the shareholders.

(2) The report shall specify whether the share exchange ratio is fair and reasonable and to this effect it shall -

(*a*) indicate the method or methods used to arrive at the share exchange ratio proposed; and

(*b*) state whether such method or methods are adequate in the case in question, indicating the values arrived at using each such method and giving an opinion on the relative importance attributed to such method or methods in arriving at the value decided on.

(3) The report shall describe any special valuation difficulties which have arisen.

(4) Each expert shall be entitled to obtain from the amalgamating companies all relevant information and documents and to carry out all necessary investigations.

(5) One or more independent experts may be appointed to draw up a joint report for all the amalgamating companies by the Registrar at the joint request of the companies involved.

(6) The provisions of this article shall not apply if all the shareholders of all the companies involved in the amalgamation have so agreed.

Documents which shareholders of amalgamating companies are entitled to inspect. *Amended by: IX. 2008.34; XIX. 2010.39; XLVI.2021.60.*

349. (1) All shareholders of every amalgamating company are entitled to inspect the following documents at the registered office of each company at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger -

(*a*) the draft terms of merger;

(*b*) the annual accounts and the directors' reports of the amalgamating companies for the preceding three accounting periods;

(*c*) where required, an accounting statement drawn up as at a date which shall not be earlier than the first day of the third month preceding the date of the draft terms of the merger, if the latest annual accounts relate to an accounting period which ended more than six months before that date;

(*d*) where required, the reports of the directors of the amalgamating companies relating to the amalgamation;

(*e*) where required, the reports of the experts relating to the amalgamation; and

(*f*) for the purposes of paragraph (*c*), an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Capital Markets Rules issued in terms of the Financial Markets Act and governing such reports, and makes it available to shareholders in accordance with this sub-article. Furthermore, an accounting statement shall not be required if all the shareholders and all holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

Cap. 345.

(2) The accounting statement provided for in paragraph (*c*) of sub-article (1) shall be drawn up using the same methods and the same layout as used for the latest balance sheet:

Provided that -

(*a*) it shall not be necessary to take a fresh physical inventory; and

(*b*) the valuations shown in the latest balance sheet shall be altered only to reflect entries in the accounting records.

Notwithstanding the provisions of paragraphs (*a*) and (*b*), interim depreciation and provisions as well as material changes in actual values not shown in the accounting records shall be taken into account.

(3) Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents mentioned in sub-article (1), and where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided in such manner.

(4) A company shall be exempt from the requirement to make the documents referred to in sub-article (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of merger and ending not earlier than the conclusion of that meeting, it makes them available on its website.

(5) Sub-article (3) shall not apply if the company's website gives shareholders the possibility, throughout the period referred to in sub-article (4), of downloading and printing the documents referred to in sub-article (1).

Registration of the amalgamation of companies.

350. The extraordinary resolutions taken by each of the amalgamating companies approving the amalgamation together with the instruments giving effect thereto, or an authentic copy thereof, shall be delivered for registration to the Registrar, who, being satisfied that the requirements of this Part have been complied with, shall register them.

Rights of creditors to oppose amalgamation. *Amended by: L.N. 181 of 2006; L.N. 186 of 2006.*

351. (1) The amalgamation of two or more companies shall not take effect until three months from the date of the last publication of the statement referred to in article 401(1)(*e*) relating to the extraordinary resolutions approving the amalgamation, referred to in article 350.

(2) During the aforesaid period of three months any creditor of any of the amalgamating companies whose debt existed prior to the publication of the draft terms of merger in terms of article 345(6)(*a*) may by sworn application object to the amalgamation and, if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the amalgamation on sufficient security being given.

(3) The provisions of sub-articles (1) and (2) shall apply to the debenture holders of the amalgamating companies so long as the merger has not already been approved by the debenture holders individually, or by a special meeting of the debenture holders called specifically for the purpose, at which meeting all the debenture holders shall signify their consent.

Protection of holders of securities in an amalgamation.

352. The holders of securities, other than shares, in the companies being acquired, to which special rights are attached shall be given rights against the acquiring company in accordance with the draft terms of merger at least equivalent to those they possessed in the companies being acquired, unless -

(*a*) the holders of those securities individually agree to the alteration of their rights; or

(*b*) the alteration has been approved by a meeting of the holders of those securities called specifically for the purpose, at which meeting all the holders of such securities shall signify their consent; or

(*c*) the holders of those securities are entitled to have their securities re-purchased by the acquiring company.

Duties of Registrar in respect of amalgamations.

353. (1) Upon the amalgamation of two or more companies which has become effective either through the lapse of the period referred to in article 351 or, where objection is made under that article, by decision of the court, the Registrar shall strike the name of the companies being acquired off the register and issue a certificate of registration, altered to meet the circumstances of the case and denoting the fact of the merger for the acquiring company; and where an amalgamation which has been registered under this Part does not become effective pursuant to a decision of the court under article 351, the Registrar shall amend the registration accordingly.

(2) The Registrar shall in respect of every one of the amalgamating companies, either proceed to publish a notice of the amalgamation after it has become effective or to publish a notice that the amalgamation has not become effective pursuant to a decision of the court under article 351, in both cases as specified in sub-article (1).

Consequences of amalgamation.
Amended by: IV. 2003.130; II. 2004.60; XIX. 2010.40.

354. (1) An amalgamation shall have the following consequences:

(*a*) the acquiring company shall succeed to all the assets, rights, liabilities and obligations of the companies being acquired, both as between the companies being acquired and the acquiring company and as regards third parties, without the requirement of any formalities other than those arising under this Title;

(*b*) the shareholders of the companies being acquired shall become shareholders of the acquiring company; and

(*c*) the companies being acquired shall cease to exist.

(2) No shares in the acquiring company shall be exchanged for shares in the companies being acquired held either -

(*a*) by the acquiring company; or

(*b*) by the companies being acquired.

(3) Where the assets of a company being acquired include immovable property or rights relating thereto, the directors of the acquiring company shall cause within one month from the coming into force of the amalgamation, a declaratory public deed to be published, containing a detailed description of the immovable property or rights relating thereto delivered to the acquiring company, and a true copy of the said deed shall be lodged with the Registrar within fourteen days from the enrolment thereof at the Public Registry.

Liability of director or expert for misconduct.

355. Any director of any of the amalgamating companies answerable for wilful or negligent misconduct in the preparation and the implementation of the amalgamation, or any expert responsible for drawing up, on behalf of any of the amalgamating companies, of the report on the draft terms of the merger answerable for wilful or negligent misconduct in the performance of his duties, shall be liable for all damages occasioned to any shareholder of any of the amalgamating companies as a consequence of his misconduct.

Appeal from decision of the Registrar.
Amended by: XIII. 2004.102.

356. Any interested party may contest the registration made by the Registrar, by virtue either of article 344 or article 350 before the court in accordance with the following conditions:

(*a*) the contestation shall be made by application against the Registrar within one month from the publication following the registration referred to in article 344 on the grounds that the draft terms of merger were not drawn up in accordance with the provisions of article 344; or within three months from the publication following the registration referred to in article 350 on the grounds that the resolution of the extraordinary general meeting was void or voidable; notice of the application shall be published by the Registrar in the Gazette or on a website maintained by the Registrar;

(*b*) where it is possible to remedy a defect liable to render an amalgamation void or voidable, the court shall

grant the companies involved a period within which to rectify the situation;

(*c*) 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 the Registrar, which notice shall specify whether the application has been allowed or dismissed;

(*d*) a judgment declaring an amalgamation void or voidable shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was delivered and after the date of registration of the draft terms of merger referred to in article 344 or of the resolutions and the other instruments referred to in article 350 according to the case;

(*e*) companies which have been parties to an amalgamation shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in paragraph (*d*);

(*f*) the amalgamation shall not take effect until the lapse of the three months referred to in paragraph (*a*) or, if an application is filed, until the date of the final judgment, if the application is refused; and

(*g*) upon the delivery of the judgment the Registrar shall, where the application is allowed, amend the registration accordingly as if the amalgamation procedure had never commenced.

Chapter II - Merger by formation of a new company

Application of articles 344 to 356 to merger by formation of a new company. *Amended by: IV. 2003.131; II. 2004.62; XIX. 2010.41.*

357. (1) The provisions of articles 344 to 356 other than article 345(6) shall apply to merger by formation of a new company as though references to the acquiring company were references to the new company and as though references to the amalgamating companies and to the companies being acquired were references to the merging companies:

Provided that, in the case of a merger by formation of a new company, the draft terms of merger shall only be drawn up by each of the merging companies:

Provided further that in article 344(2)(*a*), the reference to amalgamating companies shall also include the new company.

(2) The draft terms of merger of each of the merging companies and the memorandum and articles of association of the new company shall be approved by an extraordinary resolution of each of the merging companies.

(3) The new company shall be formed in accordance with the

provisions of this Act except that the rules governing the verification of any consideration other than cash laid down in article 73(4), (5) and (6) shall not apply where an independent expert's report on the draft terms of merger is drawn up.

(4) The Registrar shall, after striking the name of the company being acquired off the register in accordance with the provisions of article 353(1), proceed to issue a certificate of registration for the new company denoting the fact of the formation of that company as a result of the merger.

Chapter III - Acquisition of one company by another which holds ninety per cent or more of its shares

Acquisition of one company by another which holds all its shares. *Amended by: IV. 2003.132; XIX. 2010.42.*

358. (1) The operation whereby the assets and liabilities of one or more companies are delivered to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings and whereby the former companies are dissolved without having to be wound up shall be regulated by articles 344 to 356 to the exclusion of the provisions contained in article 344(2)(*b*), (*c*) and (*d*), article 346, article 348, particle 349(1)(*d*) and (*e*), article 354(1)(*b*) and article 355.

(2) For the purpose of this article and of article 359, any reference to "draft terms of acquisition" shall be taken to be a reference to "draft terms of merger" as specified in article 344.

(3) The approval of the general meeting of each of the companies involved in the operation shall not be required and article 345 shall not apply to the operation specified in sub-article (1), if the following conditions are fulfilled:

(*a*) the draft terms of acquisition as regards each company involved in the operation shall be delivered to the Registrar for registration and shall be published by him at least three months before the operation takes effect; and

(*b*) within the period mentioned in paragraph (*a*), all shareholders of the acquiring company shall be entitled to inspect at the registered office of the company the documents specified in article 349(1)(*a*), (*b*) and where required, (*c*) which those same shareholders would be entitled to inspect in case of an amalgamation made in any of the manners specified in article 343; and the provisions of article 349(2), (3), (4) and (5) shall apply:

Provided that, in any case, the shareholders of the acquiring company holding at least five per cent of the issued share capital carrying the right to vote at general meetings of the company shall be entitled to require that a general meeting of the acquiring company be called to decide whether to approve the operation.

Acquisition of one company by another which holds 90% or more, but not all, of its voting shares.
Amended by: IV. 2003.133; IX. 2008.35; XIX. 2010.43.

359. (1) Where a merger by acquisition is carried out by a company which holds ninety per cent or more, but not all, of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, the general meeting of the acquiring company need not approve the acquisition provided the following conditions are fulfilled:

(*a*) the draft terms of the acquisition as regards the acquiring company shall be delivered to the Registrar for registration and shall be published by him;

(*b*) the general meetings of the companies being acquired which are to decide on the draft terms of acquisition shall be held at least one month after, and not later than three months from the publication referred to in paragraph (*a*);

(*c*) within the period mentioned in the preceding paragraph, all shareholders of the acquiring company shall be entitled to inspect the documents referred to in article 358(3)(*b*) and the provisions of the said article 358(3)(*b*) shall apply;

(*d*) the provisions of the proviso to article 358(3) shall apply to the acquisition regulated by this article.

(2) All the other provisions of Chapter I of this Part relating to merger by acquisition shall apply:

Provided that the provisions regarding the drawing up of a report on the draft terms of the merger by the directors and by the experts as specified in articles 346 and 348 respectively and the right of all shareholders to inspect and obtain copies of the documents specified in article 349 shall not apply, as long as the dissenting minority shareholders of the company or companies being acquired have the right to have their shares purchased by the acquiring company for a consideration corresponding to the fair value of their shares and in the event of disagreement regarding the fair value of such consideration, as shall be determined by the court.

PART IX - DIVISION OF COMPANIES

Division of a company by acquisition or by formation of new companies.
Amended by: IV. 2003.134.

360. (1) Division of a company into two or more companies may be effected by -

(*a*) division by acquisition; or

(*b*) division by formation of new companies; or

(*c*) division by a combination of a division by acquisition with a division by the formation of one or more new companies.

(2) Division by acquisition is the operation whereby a company (referred to in this Part as "the company to be divided") delivers to two or more existing companies (referred to in this Part as "the recipient companies") all its assets and liabilities in exchange for the allocation to the shareholders of the company to be divided of

shares in the recipient companies and a cash payment, if any, not exceeding ten per cent of the nominal value of the shares so issued.

(3) Division by formation of new companies is the same as the operation described in sub-article (2) except that the recipient companies are formed as new companies for the purposes of taking part in the division. The expression "the companies involved in a division" used in the case of a division by formation of new companies in this Part shall be interpreted as referring only to the company to be divided.

(4) Division by a combination of a division by acquisition with a division by formation of one or more new companies is the same as the operation described in sub-article (2) combined with the operation as described in sub-article (3).

(5) The company to be divided shall be dissolved without having to be wound up in accordance with the provisions of Title II of Part V of this Act; dissolution shall be deemed to take place when the division becomes effective in accordance with the provisions of article 370.

(6) The fact that the company to be divided has been dissolved voluntarily by an extraordinary resolution, and a declaration of solvency has been filed, shall not prevent that company taking part in the division provided that none of its assets have been distributed to shareholders after dissolution. Any provision of this Part requiring the directors of a company to act shall be interpreted in relation to a company which has been dissolved as requiring the liquidator to act.

(7) The fact that the company to be divided has been dissolved by the court in terms of article 214, and in the case of a voluntary winding up a declaration of solvency has not been filed, shall invalidate the division with respect to all the companies involved in the division.

(8) A division of a company may only be effected into two or more companies, and it shall not be possible to effect a division involving any other kind of commercial partnership.

Chapter I - Division by acquisition

Draft terms of division. *Amended by: IV. 2003.135.*

361. (1) The directors of the company to be divided and of each of the recipient companies (hereinafter referred to in this Part as "the companies involved in a division") shall draw up draft terms of division in writing.

(2) The draft terms of division shall specify the following:

(*a*) the status, name and registered office of each of the companies involved in the division;

(*b*) the share exchange ratio and the amount of any cash payment;

(*c*) the terms relating to the allotment of shares in each of the recipient companies;

(*d*) the date from which the holding of such shares entitles

the holders to participate in profits and any special conditions affecting that entitlement;

(*e*) the date from which the transactions of the company to be divided shall be treated for accounting purposes as being those of one or other of the recipient companies;

(*f*) the rights conferred by each of the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

(*g*) any special advantage granted to the experts referred to in article 364 and to the directors of each of the companies involved in the division;

(*h*) the precise and detailed description and allocation of the assets, rights, liabilities and obligations to be delivered to each of the recipient companies; and

(*i*) the allocation to the shareholders of the company to be divided of shares in the recipient companies and the criterion upon which such allocation is based.

(3) Where an asset is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of the division.

(4) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it:

Provided that such joint and several liability shall be limited to the net assets allocated to each company.

(5) The draft terms of division for each of the companies involved in a division duly completed, shall be signed by at least one director and the company secretary of each of the companies involved in the division, and forwarded to the Registrar by each company for registration, who being satisfied that the requirements of the provisions of this article have been complied with, shall register them.

Approval by extraordinary resolution of division. *Amended by: IV. 2003.136; XIX. 2010.44.*

362. (1) A division may only be made if it has been approved by an extraordinary resolution of each company involved in the division to be adopted by each such company at least one month after the publication of its draft terms of division and not later than three months therefrom.

(2) Where shares in the recipient companies are allocated to the shareholders of the company to be divided otherwise than in proportion to their rights in the capital of that company, the dissenting members of that company may exercise the right to have their shares redeemed. In such case, the shares shall be redeemed on such terms as may be agreed or as the court, on a demand made either by any of the recipient companies or by any of the dissenting

members of the company to be divided, thinks fit to order.

(3) The provisions of this Act governing alterations and additions to the memorandum and articles shall, as appropriate, apply to any alterations and additions to the memorandum and articles necessitated by any division referred to in this Part.

(4) Where there is more than one class of shares in any of the companies involved in a division the extraordinary resolutions of those companies concerning the division shall be subject to a separate vote by at least each class of shareholders whose rights are affected thereby.

(5) The extraordinary resolution taken by each of the companies involved in a division shall cover both the approval of the draft terms of division and any alterations and additions to the memorandum and articles necessitated by the division.

(6) The general meeting of any recipient company shall not be required if the following conditions are fulfilled:

(*a*) the publication of the statement referred to in article 401(1)(*e*), provided for pursuant to the registration required by virtue of article 361(5) shall be effected, for each recipient company, at least one month and not more than three months before the date fixed for the general meeting of the company to be divided which is to decide on the draft terms of division;

(*b*) at least one month before the date specified in paragraph (*a*) all shareholders of each recipient company shall be entitled to inspect the documents specified in article 365(1) in accordance with the provisions of that article; and

(*c*) one or more shareholders of any recipient company holding at least five per cent of the issued share capital which carries a right to vote at general meetings of the company shall be entitled to require that a general meeting of that recipient company be called to decide whether to approve the division.

(7) Without prejudice to sub-article (6), approval of the division by the general meeting of the company being divided shall not be required if the recipient companies together hold all the shares and other securities conferring the right to vote at general meetings of the company being divided, and the following conditions are fulfilled:

(*a*) the publication of the statement referred to in article 401(1)(*e*), provided for pursuant to the registration required by virtue of article 361(5) shall be effected, for all companies involved in the division, at least one month and not more than three months before the date fixed for the general meeting of the company to be divided which is to decide on the draft terms of division;

(*b*) at least one month before the date specified in

paragraph (*a*) all shareholders of all companies involved in the division shall be entitled to inspect the documents specified in article 365(1) in accordance with the provisions of that article; and

(*c*) where a general meeting of the company being divided, required for the approval of the division, is not convened, the information provided for by article 363(4) covers any material change in the assets and liabilities after the date of preparation of the draft terms of division.

Drawing up of detailed written report on draft terms of division by directors. *Amended by: IV. 2003.137; XIX. 2010.45.*

363. (1) The directors of each of the companies involved in a division shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares. The report shall also describe any special valuation difficulties which have arisen.

(2) Where applicable, the report shall refer to any report prepared pursuant to article 73(4).

(3) The directors of a company to be divided shall inform the general meeting of that company of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company to be divided which is to be convened to decide on the draft terms of division.

(4) The directors of a company to be divided shall furthermore inform the directors of the recipient companies so that these directors can inform the respective general meetings of any material change in the assets and liabilities as specified in sub-article (3).

Written report to shareholders to be drawn up by one or more experts. *Amended by: XIX. 2010.46.*

364. (1) One or more experts acting on behalf of each of the companies involved in a division but independent of them and approved by the Registrar, shall examine the draft terms of division and draw up a written report to the shareholders.

(2) The provisions of article 348(2) to (5) shall apply to the report.

(3) The report on considerations other than in cash referred to in article 73(4) and the report on the draft terms of division drawn up in accordance with sub-article (1) shall be drawn up by the expert or experts approved under sub-article (1):

Provided that the report on considerations other than in cash shall not be required if a written report in accordance with sub-article (1) has been drawn up.

Documents which shareholders of companies involved in a division are entitled to inspect. *Amended by: XIX. 2010.47.*

365. (1) All shareholders of the companies involved in a division shall be entitled to inspect the following documents at the registered office of each company involved in the division at least one month before the date of the general meeting which is to decide on the draft terms of division:

(*a*) the draft terms of division;

(*b*) the annual accounts and directors' reports of the companies involved in the division for the preceding three accounting periods;

(*c*) an accounting statement drawn up as at a date which shall not be earlier than the first day of the third month preceding the date of the draft terms of division, if the latest annual accounts relate to an accounting period which ended more than six months before that date;

(*d*) the reports of the directors of the companies involved in the division provided for in article 363(1); and

(*e*) the reports provided for in article 364:

Provided that for the purposes of paragraph (*c*), an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Capital Markets Rules issued in terms of the Financial Markets Act and governing such reports, and makes it available to shareholders in accordance with this sub-article.

Cap. 345.

(2) The accounting statement provided for in sub-article (1)(*c*) shall be drawn up using the same methods and the same layout as the latest balance sheet:

Provided that -

(*a*) it shall not be necessary to take a fresh physical inventory;

(*b*) the valuations shown in the latest balance sheet shall be altered only to reflect entries in the accounting records; and

(*c*) the following shall nevertheless be taken into account: interim depreciation and provisions, and material changes in actual values not shown in the accounting records.

(3) Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in sub-article (1) and where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided in such manner.

(4) A company shall be exempt from the requirement to make the documents referred to in sub-article (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of division and ending not earlier than the conclusion of that meeting, it makes them available on its website.

(5) Sub-article (3) shall not apply if the website gives shareholders the possibility, throughout the period referred to in sub-article (4), of downloading and printing the documents referred to in sub-article (1).

366. The provisions of article 363, article 364(1) and (2) and article 365(1)(*c*), (*d*) and (*e*) shall not apply if all the shareholders of all the companies involved in a division have so agreed.

Non-applicability of certain provisions where shareholders involved in a division are in agreement.

367. The extraordinary resolution approving the division passed by the company to be divided and the extraordinary resolutions passed by the recipient companies together with the instruments giving effect to the division, or an authentic copy thereof, shall be delivered for registration to the Registrar who, being satisfied that the requirements of the preceding provisions of this Part have been complied with, shall register them.

Delivery of extraordinary resolutions relating to division to Registrar for registration.

368. (1) The division shall not take effect until three months from the date of the publication of the statement referred to in article 401(1)(*e*) relating to the extraordinary resolutions approving the division.

Rights of creditors to oppose division. *Amended by: IV. 2003.138; L.N. 181 of 2006; L.N. 186 of 2006.*

(2) During the aforesaid period of three months any creditor of any of the companies involved in a division whose debt existed prior to the publication of the statement referred to in article 401(1)(*e*), provided for pursuant to the registration required by virtue of article 361(5) may, by sworn application, object to the division, and if he shows good cause why it should not take effect, the court shall either uphold the objection or allow the division on sufficient security being given.

(3) In so far as a creditor of a company to which the obligation or liability has been allocated in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation:

Provided that as regards the recipient companies other than the one to which the obligation or liability has been allocated, this liability shall be limited to the net assets allocated to each of those companies:

Provided further that this sub-article shall not apply where the operation involving the division is subject to the supervision of the court in accordance with article 375 and a majority in number representing three-fourths in value of the creditors of the company to be divided have agreed to forego such joint and several liability at a meeting held pursuant to article 375(2)(*c*).

(4) The provisions of sub-articles (1), (2) and (3) shall apply to the debenture holders of the companies involved in a division so long as the division has not already been approved by the debenture holders, individually or by a special meeting of the debenture holders called specifically for the purpose, at which meeting all the debenture holders shall signify their consent.

369. The holders of securities, other than shares, to which special rights are attached, shall be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company to be divided, unless -

Protection of holders of securities in a division.

(*a*) the holders of those securities individually agree to the alteration of their rights; or

(*b*) the alteration has been approved by a meeting of the holders of those securities called specifically for the purpose at which meeting all the holders of such securities shall signify their consent; or

(*c*) the holders of these securities are entitled to have their securities repurchased.

Duties of Registrar in respect of a division.
Amended by: IV. 2003.139.

370. (1) Upon the division becoming effective either through the lapse of the period referred to in article 368 or, where objection is made under that article, by a decision of the court, the Registrar shall strike the name of the company to be divided off the register and issue a certificate of registration, altered to meet the circumstances of the case and denoting the fact of the division, for all the recipient companies, and where a division which has been registered under this Part does not become effective pursuant to a decision of the court under article 368, the Registrar shall amend the registration accordingly.

(2) The Registrar shall, in respect of every company involved in a division, either proceed to publish a notice of the division after it has become effective or to publish a notice that the division has not become effective pursuant to a decision of the court under article 368 in both cases as specified in sub-article (1). The publication shall be made in accordance with the provisions of article 401(1)(*e*).

Consequences of division.
Amended by: IV. 2003.140; II. 2004.61.

371. (1) A division shall have the following consequences:

(*a*) the recipient companies shall succeed to all the assets, rights, liabilities and obligations of the company to be divided, both as between the company to be divided and the recipient companies and as regards third parties without the requirement of any formalities other than those arising under this Part;

(*b*) the shareholders of the company to be divided shall become shareholders of one or more of the recipient companies; and

(*c*) the company to be divided shall cease to exist.

(2) No shares in a recipient company shall be exchanged for shares held in the company to be divided either -

(*a*) by that recipient company; or

(*b*) by the company to be divided.

(3) The division shall not prejudice the rights enjoyed by the creditors of the company to be divided over any of the assets of that company.

(4) Where the assets of the company to be divided include immovable property or rights relating thereto, the directors of the recipient companies shall cause within one month from the coming into force of the division, a declaratory public deed to be published,

containing a detailed description and the allocation of the immovable property or rights relating thereto delivered to each of the recipient companies, and a true copy of the said deed shall be lodged with the Registrar within fourteen days from the enrolment thereof at the Public Registry.

Liability of director or expert for wilful or negligent misconduct. *Amended by: IV. 2003.141.*

372. Any person who -

(*a*) being a director of a company to be divided and who is responsible for the preparation and the implementation of the division, or

(*b*) being an expert who is responsible for drawing up on behalf of the said company the report on the draft terms of the division,

and who, as a consequence of his wilful or negligent misconduct in the performance of his duties causes damages to any shareholder of the company to be divided, shall be liable for such damages.

Appeal from decisions of Registrar. *Amended by: IV. 2003.142.*

373. Any interested party may contest the registration made by the Registrar, by virtue either of article 361 or of article 367 before the court in accordance with the following conditions:

(*a*) the contestation shall be made by application against the Registrar within one month from the publication following the registration referred to in article 361 on the grounds that the draft terms of division were not drawn up in accordance with the provisions of article 361, or within three months from the publication following the registration referred to in article 367 on the grounds that any of the resolutions of the extraordinary general meetings mentioned therein was void or voidable; notice of the application shall be published by the Registrar;

(*b*) where it is possible to remedy a defect liable to render a division void or voidable, the court shall grant the companies involved a period within which to rectify the situation;

(*c*) a notice that the judgment of the court has been delivered shall be published by the Registrar, which notice shall specify whether the application has been allowed or dismissed;

(*d*) a judgment declaring a division void or voidable shall not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was delivered and after the date of registration of the draft terms of division referred to in article 361 or of the resolutions and the other instruments referred to in article 367 according to the case;

(*e*) each of the recipient companies shall be liable for its obligations arising after the date on which the division took effect and before the date on which the judgment declaring the division void was delivered;

(*f*) the company to be divided shall also be liable for the obligations referred to in paragraph (*e*):

Provided that the extent of this liability shall be limited to the share of the net assets delivered to the recipient company on whose account such obligations arose;

(*g*) the division shall not become operative until the lapse of the three months referred to in paragraph (*a*) or, if an application is filed, until the date of the final judgment, if the application is refused; and

(*h*) upon the delivery of the judgement the Registrar shall, where the application is allowed, amend the registration accordingly as if the division procedure had never commenced.

Chapter II - Division by the formation of new companies

Application of preceding articles of this Part to division by formation of new companies. *Amended by: IV. 2003.143; II. 2004.63; XX. 2013.93.*

374. (1) The provisions of articles 361, 362(1) to (5), 363, 364(1) and (2) and articles 365 to 373 shall apply to division by the formation of new companies, as though references to the companies involved in a division were references only to the company to be divided.

(2) In addition to the information specified in article 361(2), the draft terms of division, which in the case of a division by formation of new companies shall only be drawn up by the company to be divided, shall indicate the status, name and registered office of each of the new companies.

(3) The draft terms of division of the company to be divided and, if they are contained in a separate document, the draft memorandum and the draft articles of each of the new companies shall be approved by an extraordinary resolution taken at a general meeting of the company to be divided.

(4) (*Deleted by Act XX. 2013.93*).

(5) Neither article 364 nor article 365, in so far as they relate to the expert's report, shall apply where the shares in each of the new companies are allocated to the shareholders of the company to be divided in proportion to their holding in the issued share capital of that company.

(6) The Registrar shall, after striking the name of the company to be divided off the register in accordance with the provisions of article 370(1), proceed to issue a certificate of registration for each one of the new companies formed, denoting the fact of its formation as a result of the division.

Added by: IV. 2003.145.

Chapter III - Division by a combination of a division by acquisition with a division by the formation of one or more new

companies

Division by a combination of division by acquisition and division by formation of new companies. *Added by: IV. 2003.145. Amended by: II. 2004.64.*

374A. (1) The provisions of articles 361, 362, 363, 364(1) and (2) and articles 365 to 373 shall apply to division by combination of a division by acquisition with a division by formation of one or more new companies.

(2) In addition to the information specified in article 361(2), the draft terms of division, shall also indicate the status, name and registered office of the new company or companies.

(3) The draft terms of division and, if they are contained in a separate document, the draft memorandum and the draft articles of the new company or companies shall be approved by an extraordinary resolution taken at a general meeting of the company to be divided and of each existing recipient company.

(4) Neither article 364 nor article 365, in so far as they relate to the written report drawn up by one or more experts shall apply in respect of new companies where the shares in such companies are allocated to the shareholders of the company to be divided in proportion to their holding in the issued share capital of that company.

(5) The Registrar shall, after striking the name of the company to be divided off the register in accordance with the provisions of article 370(1), proceed to issue a certificate of registration for each one of the new companies formed, denoting the fact of its formation as a result of the division.

Chapter IV - Division under the supervision of the court

Amended by: IV. 2003.144.

Application to court to supervise division and powers of the court in relation thereto. *Amended by: IV. 2003.146.*

375. (1) The company to be divided may apply to the court for it to supervise the division.

(2) The court shall as a result have the power -

(*a*) to call a general meeting of the shareholders of the company to be divided in order to decide upon the division by extraordinary resolution;

(*b*) to ensure that the shareholders of each of the companies involved in the division have received or can obtain at least the documents referred to in article 365 in time to examine them before the date of the general meeting of their company called to decide upon the division:

Provided that if, by virtue of article 362(6), the general meeting of any of the recipient companies is not to be held, the court shall ensure that the shareholders of the recipient companies shall have at least one month within which to exercise the rights conferred on them by that article:

Provided further that the provisions of this paragraph shall, with regard to division by the

formation of new companies, apply only to the company being divided;

(*c*) to call any meeting of creditors of each of the companies involved in the division in order to decide upon the division;

(*d*) to ensure that the creditors of each of the companies involved in the division have received or can obtain at least the draft terms of division in time to examine them before the date referred to in paragraph (*b*); and

(*e*) to approve the draft terms of division.

(3) Where the court establishes that the conditions referred to in sub-article (2)(*b*) and (*d*) have been fulfilled and that no prejudice would be caused to shareholders or creditors, it may -

(*a*) relieve the Registrar from the obligation relating to the publication of the statement referred to in article 401(1)(*e*) required pursuant to the registration of the draft terms of division in accordance with article 361(5);

(*b*) relieve the companies involved in the division from applying the conditions referred to in article 362(6)(*a*) and (*b*); and

(*c*) relieve the companies involved in the division from applying the provisions of article 365, in so far as they relate to the period and the manner prescribed for the inspection of the documents referred to therein.

(4) The provisions of article 368(3) shall not apply to a division under this Chapter where a majority in number representing three-fourths in value of the creditors of the company to be divided have agreed to forego such joint and several liability as is referred to in article 368(3).

PART X - ASSOCIATION *EN PARTICIPATION*

Definition.

376. An association *en participation* is a contract whereby a person assigns to another person, for a valuable consideration contributed by the latter, a portion of the profits and losses of a business or of one or more commercial transactions.

Consent of associates required for admission of other associates.

377. Saving any agreement to the contrary, the associating party may not have other associates in the same business or transactions without the consent of his associates.

Relations of parties *vis-à-vis* third parties and among themselves.

378. (1) In regard to third parties the ownership of, or other rights over, a thing contributed by an associate shall vest in the associating party.

(2) In the relations of the parties among themselves, saving any agreement that a thing contributed is to be restored in kind, the associate shall, on the termination of the association, be entitled to

the reimbursement of the value of his contribution.

379. A third party shall acquire rights and assume obligations against and in favour only of the associating party.

Only associating party acquires rights and assumes obligations.

380. The management of the business or of the transactions in respect of which the association was formed shall vest only in the associating party:

Rights of associating party and of associates.

Provided that the associate may, where it is so agreed and to the extent agreed, supervise such business or transactions:

Provided further that the associate shall, in all cases, be entitled to an account of any transaction that is completed and, where the association lasts for more than one year, to an annual account of the management of the business or transactions in respect of which the association was formed.

381. Unless otherwise agreed, the associate shall bear the losses in the same proportion in which he partakes in the profits, and his liability shall be limited to his contribution.

Liability of associate.

382. Saving the provisions of the preceding articles of this Part, an association *en participation* may be formed in such manner, in such proportions of interests and upon such conditions as may be agreed upon by the parties.

Agreements allowed between parties.

383. An association *en participation* shall be constituted by an instrument in writing although any such association so constituted shall not be subject to any other formalities prescribed in regard to partnerships and it shall not have a legal personality distinct from that of its members.

Formalities required for association *en participation*.

PART XI - BODIES CORPORATE CONSTITUTED OUTSIDE MALTA

Chapter I - Provisions as to establishment of branch or place of business in Malta

Amended by: IV. 2003.147.

384. Articles 385 to 389 shall apply to all companies, commercial partnerships, as well as other legal organisations enjoying legal personality which have characteristics similar to companies and commercial partnerships constituted or incorporated outside Malta (hereinafter in this Chapter and in Chapter III of this Part referred to as "oversea companies") which establish a branch or place of business within Malta.

Application of articles 385 to 389. *Amended by: IV. 2003.147. Substituted by: XXXVI.2018.120.*

385. (1) Oversea companies which, on or after the appointed day, establish a branch or place of business within Malta shall, within one month of the establishment of the place of business, deliver to the Registrar for registration -

Documents, etc., to be delivered by oversea companies carrying on business in Malta. *Amended by: IV. 2003.147, 148.*

(*a*) an authentic copy of the charter, statutes or memorandum and articles of the oversea company or other instrument constituting or defining the

constitution of the oversea company, and, if the instrument is not written in the English or Maltese language, a translation thereof into either of such languages, certified to be a correct translation in such manner as may be prescribed;

(*b*) a list of the directors and company secretary, if any, or of the persons vested with the administration of the oversea company, where that company does not have directors or a company secretary, and, in all cases, a list of the persons vested with the representation of the oversea company. Such lists shall include the following particulars:

(i) in the case of an individual, his name, his usual residential address, his nationality and his business occupation; and

(ii) in the case of a body corporate, its registered or corporate name and registered or principal office;

(*c*) a return containing the following particulars:

(i) the name under which the branch or place of business is carrying on its activities where different from the name of the oversea company;

(ii) the address of the branch or place of business established in Malta by the oversea company, and where more than one branch or place of business has been established, there shall be indicated the address of the principal branch or place of business;

(iii) the activities to be carried out by the branch or place of business established in Malta;

(iv) the names and addresses of one or more individuals resident in Malta authorised to represent the oversea company for the activities of the branch or place of business established in Malta; and

(v) the extent of the authority of any individual falling within sub-paragraph (iv), including whether that individual is authorised to act alone or jointly with others, and in the latter case, the name of any person with whom he is authorised to act;

(*d*) unless disclosed by the document specified in paragraph (*a*), a return containing the following particulars about the oversea company:

(i) the legal form of the oversea company; and

(ii) the identity of the register in which the oversea company is registered and the number with which it is so registered.

(2) Oversea companies constituted or incorporated outside Malta which, before the appointed day, have been duly registered

with the Registrar in accordance with the provisions of Part VIII of the Ordinance, shall be deemed to be registered in accordance with the provisions of this Part:

Provided that oversea companies which have, before the appointed day, established a branch or place of business within Malta and continue to have an established branch or place of business within Malta on the appointed day, shall comply with the provisions of this Part and in particular shall deliver to the Registrar for registration the documents and particulars specified under sub-article (1)(*a*), (*b*) and (*c*) within six months of the appointed day, unless they have already registered such documents and particulars under the Ordinance.

Return to be delivered by oversea company where documents, etc., altered. *Amended by: IV. 2003.149.*

386. If any alteration is made in -

(*a*) the charter, statutes or memorandum and articles of an oversea company or any such instrument as aforesaid; or

(*b*) the directors or company secretary or the persons vested with the administration or the representation of an oversea company, or in the particulars specified under article 385(1)(*b*); or

(*c*) the names or addresses of the individuals authorised to represent an oversea company for the activities of the branch or place of business established in Malta,

the company shall, within one month of any such alteration, deliver to the Registrar for registration a return containing the particulars of the alteration, signed by a director, the company secretary or other authorised officer of the company.

Accounts of oversea company. *Amended by: XV. 2007.12; XXXI. 2015.21.*

387. (1) Every oversea company shall, within within twelve months from the end of every accounting period, make out and deliver to the Registrar for registration a balance sheet, a profit and loss account and the notes to the accounts in such form, and containing such particulars and including such documents as, under the provisions of this Act, the directors would, if the company had been a company formed and registered under this Act, be required to make out and lay before the company in general meeting:

Provided that the Registrar may accept for registration a balance sheet, profit and loss account and the notes to the accounts prepared in the form required under the law of the place of the company's constitution or incorporation if, in his opinion, or if as prescribed, such accounts give substantially the same information as, or greater information than, that required to be given in the accounts referred to in article 167.

(2) Notwithstanding that the balance sheet, profit and loss account and the notes to the accounts prepared in the form required under the law of the place of the company's constitution or incorporation do not give substantially as much information as that required in the accounts referred to in article 167, the Registrar may, in his absolute discretion, nevertheless agree to accept such accounts for registration in compliance with sub-article (1); but in

that event, subject as provided by sub-article (4), the company shall also deliver to the Registrar for registration -

(*a*) a profit and loss account made out as nearly as may be in the form and containing the particulars required by the provisions of Chapter X of Title I of Part V and generally accepted accounting principles and practice governing the profit and loss account of companies formed and registered in Malta and giving a true and fair view of the profit and loss, during the period to which it relates, on the company's operations in Malta as if such operations had been conducted by a separate company formed and registered in Malta under this Act;

(*b*) a statement, as at the end of the period to which the profit and loss account referred to in paragraph (*a*) relates, showing the company's assets locally situated in Malta classified, distinguished and valued in accordance with the provisions governing the accounts of companies formed and registered in Malta contained in Chapter X of Title I of Part V and generally accepted accounting principles and practice, and the nature and amount of the specific charges on such assets; and

(*c*) the notes to the accounts giving additional information to that given in the profit and loss account and in the balance sheet referred to in paragraphs (*a*) and (*b*) relating to the company's operations in Malta and the assets locally situated in Malta, drawn up in accordance with the provisions of Chapter X of Title I of Part V and generally accepted accounting principles and practice governing the notes to the accounts of companies formed and registered in Malta; and

(*d*) a report on the account and statement referred to in the foregoing paragraphs of this sub-article by an auditor qualified in accordance with article 153 stating that in his opinion and to the best of his information the accounts and statements are in accordance with the accounting records of the company and give the information required by this Act in the manner therein required and give a true and fair view of the matters therein stated:

Provided that the provisions of this sub-article shall not apply to any company which has at any time made in Malta any invitation to the public to acquire any of its shares or debentures or to deposit money with it.

(3) In the profit and loss account referred to in sub-article (2)(*a*), the company may make such apportionments and add such explanations as shall, in its opinion, be necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Malta and for this purpose may debit a reasonable rate of interest on capital employed in Malta.

(4) Notwithstanding that the Registrar agrees to accept a balance sheet, profit and loss account and the notes to the accounts under sub-article (2) he may waive compliance with paragraphs (*a*), (*b*), (*c*) and (*d*) of that sub-article or any of such paragraphs if satisfied that compliance therewith is impracticable having regard to the nature of the company's operations in Malta.

(5) If any such document as is mentioned in sub-articles (1) to (4) is not written in the Maltese or English language there shall be annexed to it a translation thereof into either of such languages, certified to be a correct translation in such manner as may be prescribed.

Other obligations of oversea company.

388. (*Deleted by Act V. 2020.25*)

Penalties.

389. If an oversea company fails to comply with any of the foregoing provisions of this Part, any officer or agent of the company who is in default shall be liable to a penalty, and, in the case of a continuing default, to a further penalty for every day during which the default continues.

Chapter II - Issues by companies constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State

Amended by: L.N. 391 of 2005.

Application of articles 391 to 399. *Amended by: IV. 2003.150; L.N. 391 of 2005.*

390. (*Deleted by Act V. 2020.35*)

Prospectus of oversea company. *Amended by: IV. 2003.147, 151; L.N. 391 of 2005; IX. 2008.36.*

391. (*Deleted by Act V. 2020.35*)

Attempted evasion of article 391 to be void. *Amended by: L.N. 391 of 2005.*

392. (*Deleted by Act V. 2020.35*)

Prospectus containing statement by expert. *Amended by: IV. 2003.147; L.N. 391 of 2005.*

393. (*Deleted by Act V. 2020.35*)

Restrictions on allotment to be secured in prospectus. *Amended by: IV. 2003.147; L.N. 391 of 2005.*

394. (*Deleted by Act V. 2020.35*)

Certificate exempting from compliance with Part B of the Second Schedule.
Amended by: IV. 2003.147, 152; L.N. 391 of 2005; IX. 2008.37.

395. (1) (*Deleted by Act V. 2020.35*)

Registration of oversea prospectus before issue.
Amended by: IV. 2003.147, 153; L.N. 391 of 2005; IX, 2008.38.

396. (*Deleted by Act V. 2020.35*)

Consequences of non-compliance with articles 391 to 396.
Amended by: IV. 2003.147; L.N. 391 of 2005.

397. (*Deleted by Act V. 2020.35*)

Supplementary.
Amended by: L.N. 391 of 2005.

398. (*Deleted by Act V. 2020.35*)

Chapter III - Provisions as to the winding up of the affairs in Malta of an oversea company

Affairs in Malta of an oversea company may be wound up by the court.

399. (1) The court may wind up the affairs in Malta of an oversea company constituted or incorporated outside Malta in any of the cases mentioned in article 214 in which it may dissolve and wind up a company formed and registered in Malta.

(2) The court may exercise its power under sub-article (1) irrespective of whether the oversea company is being or has been wound up or has otherwise been dissolved or ceased to exist as a company under the law of its constitution or incorporation.

(3) For the purposes of this article, every person, who is liable to pay or contribute to the payment of any debt or liability of the oversea company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the expenses of the winding up of the company, shall be deemed to be a contributory.

(4) Every contributory shall be liable to contribute to the oversea company's assets all sums due from him in respect of such liability as is mentioned in sub-article (3).

(5) Subject to the provisions of sub-articles (1) to (4), the winding up of the oversea company's affairs in Malta shall be carried out by applying the provisions of Title II of Part V of this Act, with such modifications as are necessary to accommodate the fact that the oversea company, the affairs of which are being wound up, is a company constituted or incorporated outside Malta.

Closure by oversea company of its branch or place of business in Malta. *Added by: IV. 2003.154.*

399A. (1) (*a*) An oversea company shall within one month of the closure of its branch or place of business in Malta deliver a notice to the Registrar for registration notifying him of such closure.

(*b*) Where an oversea company, constituted or incorporated outside Malta, which has established a branch or place of business within Malta, has been dissolved or for any other reason is being wound up, it shall, within one month from the date of the dissolution or the date on which the winding-up begins, deliver to the Registrar for registration a return in the prescribed form containing the following particulars:

(i) a brief description of the winding-up or other proceedings to which the oversea company has become subject to, specifying whether such proceedings amount to insolvency proceedings, or an arrangement or composition, or any analogous proceedings;

(ii) whether the oversea company has been dissolved or is being wound up by an order of a court;

(iii) if the company is not being so dissolved or wound up, as a result of what action the dissolution or winding-up has commenced;

(iv) whether the dissolution or winding up has been instigated by:

(*a*) the oversea company's members;

(*b*) the oversea company's creditors; or

(*c*) some other person or persons; and

(v) the date on which the dissolution or winding-up became or will become effective.

(*c*) If an oversea company fails to comply with the provisions of this sub-article, the liquidator or any officer or agent of the company, as the case may be, who is in default shall be liable to a penalty and, in the case of a continuing default, to a further penalty for every day during which the default continues.

(2) (*a*) A person appointed to be the liquidator of the oversea company shall, within one month from the date of his appointment, deliver to the Registrar for registration a return in the prescribed form containing the following particulars:

(i) his name, his residential address and his business or professional occupation;

(ii) the date of his appointment; and

(iii) a description of his powers together with an explanation of the extent to which these powers are derived otherwise than from the general law or the company's constitution.

(*b*) The liquidator of the oversea company shall, within one month from the termination of the winding up of the oversea company, deliver to the Registrar for registration, a return in the prescribed form notifying him of such termination.

(*c*) If the liquidator fails to comply with any of the requirements of paragraphs (*a*) and (*b*) he shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

PART XII - GENERAL

Power of Minister to appoint Registrar.
Amended by: XIX. 2010.48; XX. 2013.94; V.2020.36; XVIII.2024.17.

400. (1) The Minister shall appoint a senior official of the Agency to be Registrar of Companies and other Commercial Partnerships, who shall be designated "Registrar of Companies", and may appoint persons to assist such Registrar, conferring on any such persons all or any of the powers of the Registrar under this Act or any other law.

(2) Without prejudice to the provisions of sub-article (1), the Registrar may authorise in writing any person serving with the office of the Registrar to perform any of the functions assigned to the Registrar under this Act or any other law.

(3) Notwithstanding anything to the contrary contained in this Act or any other law, the Registrar and any other person authorised in accordance with sub-article (2), shall be exempt from any personal liability whatsoever, including any liability in damages for anything done or omitted to be done in the discharge or purported discharge of any of his functions under this Act or under any other law, or otherwise in the exercise of his official duties, unless the act or omission is proved to have been done or omitted to be done, as the case may be, in bad faith.

Additional duties of Registrar.
Amended by: IV. 2003.155; XIII. 2004.103; XV. 2007.13; IX. 2008.39; XXII. 2014.21; XLVII.2020.8; LX. 2021.9; XVIII.2024.18.

401. (1) In addition to the other duties prescribed by this Act, it shall be the duty of the Registrar -

(*a*) to ensure compliance with any provision of this Act requiring an act to be done or to be omitted to be done whether under a penalty or not; and to consult the official receiver where such action relates to matters falling within Title II of Part V of this Act;

(*b*) to recover penalties due under this Act in accordance with the provisions of sub-articles (3) to (17);

(*c*) to exercise any powers of investigation conferred upon him by this Act and any other subsidiary legislation, including but not limited to on-site investigations to verify that the registered office address of the commercial partnership is truly existent and valid;

(*d*) (i) to retain and register any document which is required to be delivered or given to or served on him for registration under any of the provisions of this Act and any such delivery, submission or service to the Registrar and the retention and registration of any document by the Registrar, may be carried out in such manner and by such means and in such format, including electronic communication within the meaning of the Electronic Commerce Act, as the Registrar may deem appropriate: Cap. 426.

Provided that any such document shall be drawn up in any one of the official languages of Malta;

(ii) to retain, in addition to any document which is required to be delivered or given to or served on him as indicated in sub-paragraph (i), a translation of any such document which may voluntarily be delivered or given to or served on him, and provided it is a certified translation into one of the official languages of the Community.

In case of conflict between any document delivered in accordance with the provisions of sub-paragraph (i) and any translation delivered voluntarily in accordance with this sub-paragraph, the translation may not be relied upon against third parties. Third parties may nevertheless rely on the translation voluntarily delivered, unless the company proves that the third parties had knowledge of the version which was required to be delivered or submitted or served to the Registrar;

(*e*) where under any of the provisions of this Act -

(i) any document is required to be delivered or given to or served on him for registration; or

(ii) any certificate is issued by him on the registration or change of name or conversion or amalgamation or division of a commercial partnership, or the name of a commercial partnership is struck off the register,

to cause without delay, normally within twenty one days from receipt of the complete documentation including any legality checks as may be required for entry in the register, a statement to be published in the Gazette or on a website maintained by the Registrar showing the date at which the registration, delivery or service was made, or at which the certificate was issued or at which the name of the commercial partnership was struck off the register, and the general nature of the document or certificate, and giving such particulars as are necessary to distinguish the commercial partnership to which the statement related:

Provided that the twenty one day period referred to in this sub-paragraph shall not apply to annual accounts delivered to the Registrar for registration in accordance with this Act:

Provided further that the Registrar shall additionally be required to publish without delay in a daily newspaper circulating wholly or mainly in Malta a notice showing substantially the same information contained in the statement published in the Gazette or on a website maintained by the Registrar, consequent to the registration referred to in the following articles of this Act:

Sub-article (2) of article 19;

Sub-article (1) of article 36;

Sub-article (3) of article 88;

Sub-article (6) of article 88;

Sub-article (8) of article 88;

Sub-article (1) of article 224;

Sub-article (1) of article 265;

Sub-article (5) of article 320;

Sub-article (1) of article 331;

Sub-article (1) of article 338;

Article 350;

Paragraph (*a*) of sub-article (3) of article 358;

Paragraph (*a*) of sub-article (1) of article 359;

Article 367; and

Sub-article (4) of article 428.

In the event of any reduction, dissolution or assignment as are referred to in article 21, or of any reduction referred to in article 83, the Registrar shall proceed with the publication of a statement in the Gazette or on a website maintained by the Registrar and in a daily newspaper in accordance with the requirements of this paragraph.

The publication of the notice referred to in this proviso shall be subject to the following provisions:

(i) The publication of the notice shall be made by the Registrar at the expense of the commercial partnership concerned, with the exception of the publication of a disqualification order made in accordance with article 320, in which case the publication shall be made at the expense of the person disqualified;

(ii) A commercial partnership, liable for the expense of the publication of a notice in accordance with this proviso, shall effect payment without delay, and in the event that such commercial

partnership is or has been dissolved, the Registrar shall, in regard to the said expense, enjoy the same preferential ranking as expenses properly incurred by a liquidator in accordance with this Act;

(iii) The expense incurred by the Registrar in publishing a notice pursuant to this proviso shall be notified in writing to the commercial partnership or person liable for the expense in accordance with this proviso. Such notification shall be deemed equivalent to a notice given in terms of sub-article (3), and the expense incurred by the Registrar shall, in so far as applicable, be considered equivalent to a penalty referred to in the same sub-article. The provisions of sub-articles (3) to (17) shall *mutatis mutandis* apply to such expense;

(*f*) to supply copies or certified copies of documents registered pursuant to this article against payment of the prescribed fee to any person who requests them and such copies may also be supplied by electronic means;

(*g*) to deliver to the Director of the Public Registry for registration at the Public Registry Office a notice containing the particulars of any conversion, amalgamation or division which has taken effect in accordance with Parts VII, VIII and IX respectively of this Act, or of the striking off of the name of a company, under the provisions of article 325. Such notice shall show substantially the same particulars as the statement published in the Gazette or on a website maintained by the Registrar pursuant to the proviso to paragraph (*e*); and it shall be the duty of the Director of the Public Registry to register the notice or a note thereof in like manner as notes of reference, in so far as applicable, as the Director may consider appropriate;

(*h*) when processing personal data to do so in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(*i*) to exercise the functions of Registrar for other legal persons as listed and specified in the Second Schedule of the Civil Code and the subsidiary legislation made as authorised by the said Second Schedule;

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

S.L. 373.01

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

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

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

(*n*) to carry out on-site inspections on commercial partnerships to verify that the shareholders and, or beneficial owners are those disclosed to the Registrar;

(*o*) to establish, administer and maintain a central data repository;

(*p*) to establish, administer and maintain a register of foreign body corporates and undertakings having a significant business activity in Malta; and

(*q*) to establish, administer and maintain any other register, and matters ancillary or incidental thereto, which may be required from time to time, after consultation with the Minister.

(2) Any document, certificate, or other particular required to be delivered, given to or served on the Registrar for registration may be relied on by the commercial partnership as against third parties only after it has been duly published in accordance with sub-article (1)(*e*), unless the commercial partnership proves that third parties had knowledge thereof in which case the commercial partnership may rely on any such document, certificate or other particular notwithstanding that it has not yet been so published. Any transactions taking place before the sixteenth day following the publication of any such document, certificate or other particular shall not be relied on as against third parties who prove that it was not possible for them to have had knowledge thereof:

Provided that at any time third parties may always rely on any such document, certificate or other particular, even if the publication formalities in relation thereto have not at that time been complied with:

Provided further that where this Act requires that any provision shall not take effect until the lapse of a particular period, the provisions of this sub-article shall only come into effect on the lapse of the later period.

The Registrar shall make available on a website maintained by him up to date information explaining the provisions of this article according to which third parties can rely on documents and

particulars which are registered in terms of any of the provisions of this Act, or any other Act requiring such registration. Such information shall also be made available by the Registrar on the European e-Justice portal in accordance with the portal's rules and technical requirements as stipulated in Article 3a(2) of Directive 2009/101/EC.

(3) Where the Registrar gives notice in writing to any person that such person has become liable to a penalty under this Act specifying the nature of the infringement, and indicating an amount as due by way of penalty in respect of such infringement, the person to whom the notice is given shall, without prejudice to the provisions of sub-articles (4) to (17), be deemed to have incurred a penalty under this Act, and the amount indicated as aforesaid as due by way of penalty including any penalty due for each day during which the default continues shall be deemed to be the penalty due under this Act in respect of the infringement specified in the notice.

(4) A notice as is referred to in sub-article (3) shall, upon the service of a copy thereof by means of a judicif329al act on the person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure unless such person shall within thirty days from the date of such service institute proceedings before the court objecting to the penalty so fixed. Cap. 12.

(5) Where any person desires to institute proceedings objecting to a penalty referred to in sub-article (3), such proceedings shall be instituted by application against the Registrar.

(6) The application shall, under pain of nullity, state clearly and concisely the nature of the complaint, the facts out of which the complaint arises, the reasons why such complaint should be upheld, and the claim that the penalty is not due at law or is due at law only in a smaller amount.

(7) The court shall not annul or reduce a penalty as aforesaid unless such penalty cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount fixed by the Registrar.

(8) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce, and shall indicate in his application the names of all witnesses he intends to produce stating, in respect of each, the proof which he intends to make.

(9) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(10) The application, and the notice of the date fixed for hearing, shall be served on the Registrar without delay, and the said Registrar shall file his reply thereto within fourteen days after the date of the service of the application.

(11) The Registrar shall, in his reply, state clearly and concisely whether he agrees to the facts set out in the application, and the

reasons why he objects to the claim; he shall moreover state in his reply the names of the witnesses in support of his reasons and shall attach thereto all the documents in support thereof.

(12) On the day fixed for the hearing of the application, the court shall consider only the issues of fact and of law as are ascertainable from the application, reply or documents filed, by either of the parties, or from the evidence indicated by either of the parties in the application or reply, as the case may be, or from the oral pleading of either of the parties.

(13) The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties, or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

Cap. 12.

(14) Saving the preceding provisions of this article, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the First Hall of the Civil Court shall apply in relation to any such application.

Cap. 12.

(15) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in sub-article (4) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to.

(16) The decision of the court upon an application referred to in sub-article (5), confirming the imposition of a penalty fixed by the Registrar or reducing any such penalty, shall upon becoming *res judicata* be deemed to be a judgment of the court ordering the payment by the applicant of the penalty as confirmed or reduced.

(17) An appeal from a decision of the court upon an application referred to in sub-article (5), shall be made by means of an application to the Court of Appeal to be filed within six working days of the date of the decision; the person against whom the appeal is entered shall within six working days from the service upon him of the application file a reply to the appeal.

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

Protection of shareholders against unfair prejudice. *Amended by: IV. 2003.156; XIII. 2004.104.*

402. (1) Any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or that any act or omission of the company have been or are or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole, may make an application to the court for an order under this article.

(2) Where the Registrar has received a report on a company under article 410 and it appears to him that the company's affairs are being or have been conducted in a manner falling within the meaning of sub-article (1), he may make an application to the court for the issue of an order under this article.

(3) If on an application made in terms of sub-article (1) or (2), the court is of the opinion that the complaint is well-founded and that it is just and equitable to do so, the court may make such order under such terms as it thinks fit -

(*a*) regulating the conduct of the company's affairs in the future; or

(*b*) restricting or forbidding the carrying out of any proposed act; or

(*c*) requiring the company to do an act which the applicant has complained it has omitted to do; or

(*d*) providing for the purchase of the shares of any members of the company by other members of the company or by the company itself and, in the case of a purchase by the company, for the reduction accordingly of the company's issued share capital; or

(*e*) directing the company to institute, defend, continue or discontinue court proceedings, or authorising a member or members of the company to institute, defend, continue or discontinue court proceedings in the name and on behalf of the company; or

(*f*) providing for the payment of compensation by such person as may have been found by the court responsible for loss or damage suffered as a result of the act or omission complained of, to the person suffering the said loss or damage; or

(*g*) dissolving the company and providing for its consequential winding up.

(4) When an order is made for the dissolution of a company in terms of sub-article (3)(*g*), the company shall be deemed to have been dissolved on the date when the order is made and the provisions of Sub-Titles I and III of Title II of Part V of this Act regulating the winding up of companies shall apply.

(5) An order made under this article may require a company not to make any amendment, or to make such amendment as may be required, in its memorandum or articles.

(6) In this article, the term "member" includes a person entitled

at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or intestate succession, and a trustee, as defined in article 127, who holds shares in the company.

Investigation of commercial partnerships and oversea companies.

403. (1) The provisions of articles 404 to 413 and of articles 418 to 423 which regulate the investigation of the affairs of companies, shall also apply to other commercial partnerships as though references to "companies" include references to "commercial partnerships", references to "shares" and to "issued share capital" include references to " interests in the partnership", and references to "directors" include references to "partners other than limited partners."

(2) The provisions of articles 405 to 410, 412, 413 and 423(1) shall apply to all bodies corporate constituted or incorporated outside Malta which are carrying on business in or have at any time carried on business in Malta, as if they were companies under this Act, but subject to any adaptations and modifications as may be prescribed.

(3) Where the Registrar appoints one or more inspectors for any of the purposes specified in the following articles of this Part, such inspectors shall produce their letter of authority when so required in the exercise of their powers.

(4) Where any of the powers arising in terms of this article or in terms of articles 404 to 407, 410, 411, 414 and 416 to 419 are exercised or are to be exercised in respect of a company which is licensed or supervised by a competent authority as defined in article 420(3), such powers shall be exercised after consultation with the relevant competent authority.

(5) An inspector appointed under this Part shall be a person selected by the Registrar from a list, approved by the Minister from time to time, of persons deemed competent to act as inspectors under this Part.

Investigation of a company on its own application or that of its members.
Amended by: IV. 2003.157.

404. (1) The Registrar may by letter of authority appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct.

(2) The appointment may be made at the request of at least two hundred members or of members holding at least one-tenth of the issued share capital, or at the request of the company.

(3) The request shall be supported by such evidence as the Registrar may require for the purpose of showing that the person or persons making the request have good reason for requiring the investigation.

(4) The Registrar may, before appointing inspectors, require the person or persons making the request to give such security as he may require for payment of the expenses of the investigation.

(5) The Registrar may exercise the powers conferred by this article with respect to a company notwithstanding that it is in the course of being wound up voluntarily.

(6) The Registrar shall exercise the powers conferred by this article where it appears to him that it is expedient and in the public interest to do so.

Other company investigations.

405. (1) Where the court, in the course of proceedings before it under this Act, by order declares that the affairs of a company are to be investigated, the Registrar shall by letter of authority appoint one or more inspectors to investigate the affairs of that company and to report thereon in such manner as he directs.

(2) The court shall make an order as specified in sub-article (1) if it appears to it that there are circumstances suggesting -

(*a*) that the company's affairs are being or have been conducted with intent to defraud its creditors or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members; or

(*b*) that any actual or proposed act or omission of the company is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or

(*c*) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud or other misconduct towards it or towards its members; or

(*d*) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) The provisions of sub-articles (1) and (2) shall apply without prejudice to the powers of the Registrar under article 404.

(4) The power conferred by sub-article (2) shall be exercisable with respect to a company notwithstanding that it is in the course of being wound up voluntarily.

Inspectors' powers during investigation. *Amended by: IV. 2003.158.*

406. (1) If inspectors appointed under article 404 or article 405 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or parent company, or a subsidiary of its parent company or a parent company of its subsidiary, they shall have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the first mentioned company.

(2) Inspectors appointed under article 404 or article 405 may at any time in the course of their investigation, without the necessity of making an interim report, inform the Registrar of matters coming to their knowledge as a result of the investigation tending to show the existence of a default or the commission of an offence.

Production of documents and evidence to inspectors.

407. (1) When inspectors are appointed under article 404 or article 405, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under article 406(1) -

(*a*) to produce to the inspectors all accounts, accounting records and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power, when required to do so;

(*b*) to attend before the inspectors when required to do so; and

(*c*) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, they may require that person to produce to them any accounts, accounting records or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give, and it shall be the duty of that person to comply with that requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in sub-article (2), in relation to the affairs of the company or other body corporate, and may administer an oath accordingly.

(4) In this article a reference to officers or to agents includes past, as well as present, officers or agents, as the case may be; and "agents", in relation to a company or other body corporate, includes its bankers and persons appointed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

Power of inspector to call for directors' bank accounts.

408. If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate as referred to in article 406(1) whose affairs he is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Malta or elsewhere, into or out of which there has been paid -

(*a*) the emoluments or part of the emoluments of his office as director as aforesaid, whether or not disclosed in the accounting records of the company; or

(*b*) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or

(*c*) any money which has been in any way connected with an act or omission, or series of acts or omissions which on the part of that director constituted misconduct, whether fraudulent or not, towards the company or

body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

Obstruction of inspectors during investigation of company's affairs. *Amended by: L.N. 425 of 2007; XVIII.2025.48.*

409. If any person referred to in article 407 -

(*a*) refuses to produce any book or document which it is his duty under article 407 or article 408 to produce to the inspectors; or

(*b*) refuses to attend before the inspectors when required to do so; or

(*c*) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate, as referred to in article 406(1), as the case may be,

he shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro (€4,658), or to imprisonment for a term not exceeding six months, or to both such fine (*multa*) and imprisonment.

Inspectors' reports.

410. (1) The inspectors shall make interim reports to the Registrar and on the conclusion of their investigation shall make a final report to him.

(2) If the inspectors were appointed under article 405 in pursuance of an order of the court, the Registrar shall furnish a copy of all their reports to the court.

(3) The Registrar may, if he thinks fit -

(*a*) forward a copy of any report made by the inspectors to the company's registered office;

(*b*) furnish a copy on request and on payment of the prescribed fee to -

(i) any member of the company or other body corporate which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of that company or body corporate;

(iv) the applicants for the investigation;

(v) any other person whose financial interests appear to the Registrar to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise; and

(*c*) cause any such report to be published.

Power to bring civil proceedings on company's behalf.

411. (1) If, from any report made under article 410 or from information or documents obtained under article 418 or article 419, it appears to the Registrar that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself with the consent of the Attorney General bring such proceedings in the name and on behalf of that body corporate.

(2) The Registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this article.

Expenses of investigating a company's affairs.

412. (1) The expenses of and incidental to an investigation by inspectors appointed by the Registrar shall be defrayed by him; provided that the persons mentioned in sub-articles (2) to (5) shall be, to the extent there specified, liable to make repayment to the Registrar.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under article 411 may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under article 411 shall be liable to the amount or value of any sums or assets recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this sub-article shall be paid, in priority to all other claims, from the sums or assets recovered.

(4) A body corporate dealt with by the inspectors' report shall be liable for the expenses of and incidental to the investigation unless that body corporate was the applicant for the investigation, and unless the Registrar otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under article 404, shall be liable to such extent, if any, as the Registrar may direct.

(6) The report of the inspectors may include a recommendation as to the directions which they think appropriate, in the light of their investigation, to be given under sub-article (4) or sub-article (5).

(7) For the purposes of this article, any costs or expenses incurred by the Registrar in or in connection with proceedings brought under article 411 are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay the Registrar arising from sub-articles (2) and (3) shall, subject to satisfaction of the right of the Registrar to repayment, be a liability also to indemnify all persons against liability under sub-articles (4) and (5); and any such liability imposed by sub-article (2) shall, subject as mentioned above, be a liability also to indemnify all persons against liability under sub-article (3).

(9) A person liable under any one of the sub-articles referred to in sub-article (8) is entitled to contribution from any other person liable by virtue of the same sub-article, according to the amount of their respective liabilities by virtue of that sub-article.

(10) Expenses to be defrayed by the Registrar under this article shall, insofar as not recovered by virtue of its provisions, be paid out of public funds.

Inspectors' report to be admissible as evidence.

413. A copy of any report of inspectors appointed under article 404 or article 405 certified by the Registrar to be a true copy, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in that report.

Power to investigate company ownership.

414. (1) Where it appears to the Registrar that there is good reason to appoint one or more inspectors to investigate and report on the membership of any company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially influence its policy, he may by letter of authority appoint one or more inspectors for such purpose.

(2) The appointment of inspectors made by virtue of this article may establish the scope of their investigation, whether as respects the matter or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If a request for an investigation under this article with respect to particular shares or debentures of a company is made to the Registrar by members of the company, and the number of persons making the request or the amount of the shares held by them is not less than that required for a request for the appointment of inspectors made by virtue of article 404(2) -

(*a*) the Registrar shall appoint inspectors to conduct the investigation, unless he is satisfied that the request is vexatious; and

(*b*) the Registrar may exclude from the scope of the investigation any matter in respect of which he is satisfied that it would be unreasonable to investigate.

(4) Subject to the terms of their appointment, the inspectors' powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was adhered to or likely to be adhered to in practice and which is relevant to the purposes of the investigation.

(5) The Registrar may, before appointing inspectors, require the person or persons making the request to give such security as he may require for payment of expenses of the investigation.

Provisions applicable on investigation under article 414.

415. (1) For the purposes of an investigation made by virtue of article 414, the provisions of articles 406(1), 407, 408 and 409 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the provisions of sub-articles (2) to (4).

(2) The provisions of the articles referred to in sub-article (1) shall apply to -

(*a*) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure of the company or any other body corporate whose membership is investigated with that of the company,

or able to control or materially influence its policy, including persons concerned in the affairs of the company only on behalf of others; and

(*b*) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or any other body corporate whose membership is investigated, as the case may be. "officers" and "agents" shall have the meaning assigned to them by article 407(4).

(3) If the Registrar is of the opinion that there is good reason for not divulging any part of a report made by virtue of article 414 and of this article, he may forward or furnish a copy of the report in accordance with the provisions of article 410(3) with the omission of that part.

(4) The applicant or applicants for the investigation shall be liable to such extent, if any, as the Registrar may direct; and subject as aforesaid, the expenses of an investigation made by virtue of article 414 shall be paid out of public funds.

Power to obtain information as to those interested in shares, etc.
Amended by: L.N. 425 of 2007 XVIII.2025.49.

416. (1) If it appears to the Registrar that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person, whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures, to give any such information to the Registrar.

(2) For the purpose of this article a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him by virtue of this article, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or to imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment.

Power to impose restrictions on shares or debentures.
Amended by: L.N. 425 of 2007; XVIII.2025.50.

417. (1) Where in connection with an investigation made by virtue of article 414 or article 416, it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of any of the persons referred to in

the said two articles to assist the investigation as required by this Act, the Registrar may by order direct that the shares shall until further notice be subject to the restrictions imposed by sub-articles (2) to (7).

(2) An order made by virtue of sub-article (1) shall have the following effects:

(*a*) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued with them and any issue of them, shall be void;

(*b*) no voting rights shall be exercisable in respect of those shares;

(*c*) no further shares shall be issued in lieu of those shares or in pursuance of any offer made to their holder;

(*d*) except in a winding up, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Registrar makes an order directing that shares shall be subject to the restrictions mentioned in sub-article (2), any person aggrieved thereby may apply to the court and the court may, if it deems fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any notice of the Registrar or order of the court may direct that shares shall cease to be subject to the restrictions mentioned in sub-article (2)(*a*) and (*b*), with a view to permitting a transfer of those shares, and may retain the restrictions mentioned in the said sub-article (2)(*c*) and (*d*), either in whole or in part, insofar as they relate to any right acquired or offer made before the transfer.

(5) Any person who -

(*a*) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions mentioned in sub-article (2), or of any right to be issued with any such shares; or

(*b*) votes in respect of any such shares, whether as holder or as proxy, or appoints a proxy to vote in respect thereof,

shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro (€4,658), or imprisonment for a term not exceeding six months, or to both such fine (*multa*) and imprisonment.

(6) Where shares in any company are issued in contravention of the restrictions mentioned in sub-article (2), every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro (€11,646).

(7) This article shall apply in relation to debentures as it applies in relation to shares.

Registrar's powers to require production of documents.
Amended by: IV. 2003.159; L.N. 425 of 2007; XVIII.2025.51.

418. (1) The powers arising under this article shall be exercisable in relation to the following persons with regard to the respective entity as follows:

(*a*) (i) the officers of a company;

(ii) the partners having the administration or representation of any other commercial partnership; and

(*b*) the persons having the administration or control in Malta of, or any individuals authorised to represent in Malta a body corporate constituted or incorporated outside Malta which is carrying on business in Malta or has at any time carried on business in Malta.

(2) The Registrar may at any time, if he thinks there is good reason to do so, in the exercise of the duties and powers vested in him under this Part, give directions to any person referred to in sub-article (1) requiring him, at such time and place as may be specified in the directions, to produce such accounts, accounting records or documents as may be so specified.

(3) Where by virtue of sub-article (2) the Registrar has power to require the production of accounts, accounting records or documents from any person referred to in sub-article (1), he shall have the like power to require production of those accounts, accounting records or documents from any person who appears to him to be in possession of them; provided that where any such person claims a privilege or other charge on accounts, accounting records or documents produced by him, the production shall be without prejudice to that privilege or charge.

(4) The power under this article to require a person referred to in sub-article (1) or other person to produce accounts, accounting records or documents shall include the power -

(*a*) if the accounts, accounting records or documents are produced -

(i) to take copies of or extracts from them; and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by the entity in question, to provide an explanation of any of them;

(*b*) if the accounts, accounting records or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If the requirement to produce accounts, accounting records or documents or to provide an explanation or to make a statement is not complied with, the person on whom the requirement was so imposed shall be guilty of an offenceand liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro (€11,646).

(6) Where a person is charged with an offence under sub-article (5) in respect of a requirement to produce any accounts, accounting

records or documents, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

Entry and search of premises.
Amended by: L.N. 425 of 2007; XVIII.2025.52.

419. (1) If the Registrar is satisfied that reasonable grounds exist for suspecting that there are on any premises any accounts, accounting records or documents of which production has been required under article 418 and which have not been produced in compliance with that requirement, he shall have the right to enter and search any such premises in accordance with the provisions of sub-articles (2) and (3).

(2) The Registrar, in exercising his right to enter and search the premises as specified in sub-article (1), shall have the right to take possession of any accounts, accounting records or documents appearing to be such accounts, accounting records or documents as referred to in the said sub-article, or to take in relation to any accounts, accounting records or documents so appearing, any other steps which he shall consider to be necessary for preserving them and preventing interference with them.

(3) The right conferred upon the Registrar by virtue of sub-article (1) shall only be exercisable during working days, between seven in the morning and seven in the evening, and in all cases the Registrar shall be accompanied by an officer of the Police of a rank not below that of inspector and the Registrar shall, if required, produce evidence of his authority.

(4) Any accounts, accounting records or documents of which possession is taken under this article may be retained -

(*a*) for a period of ninety days; or

(*b*) if within that period any such criminal proceedings as are mentioned in article 420(1)(*a*) or (*b*), being proceedings to which the accounts, accounting records or documents are relevant, shall commence,

until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by virtue of this article, or who obstructs the exercise of a right so conferred to take possession of any accounts, accounting records or documents, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro (€4,658), or to imprisonment for a term not exceeding six months, or to both such fine (*multa*) and imprisonment.

Provision for security of information obtained.
Amended by: L.N. 425 of 2007; X. 2011.70; XVIII.2025.53.

420. (1) No information or document relating to an entity as is referred to in article 418(1) which has been obtained under the said article 418 or article 419 shall, without the previous consent in writing of that entity, be published or disclosed, unless the publication or disclosure is required -

(*a*) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, this Act or any other law;

(*b*) for the purposes of the examination of any person by inspectors appointed under this Part in the course of their investigation;

(*c*) for the purpose of enabling the responsible Minister, the Registrar or the competent authority to exercise, in relation to the entity or any other entity, any of their functions under this Act, the Insurance Business Act, the Malta Financial Services Authority Act, the Financial Markets Act, the Prevention of Financial Markets Abuse Act, the Investment Services Act, the Banking Act and the Financial Institutions Act;

Cap. 403.
Cap. 330.
Cap. 345.
Cap. 476.
Cap. 370.
Cap. 371.
Cap. 376.

(*d*) for the purposes of proceedings under article 419.

(2) A person who publishes or discloses any information or document in contravention of this article shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or to imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment.

(3) For the purposes of this article "competent authority" shall mean -

(*a*) the Central Bank of Malta;

(*b*) the competent authority under the Investment Services Act;

Cap. 370.

(*c*) an inspector appointed under the Insurance Business Act;

Cap. 403.

(*d*) an inspector appointed under the Banking Act;

Cap. 371.

(*e*) the Malta Financial Services Authority carrying out its functions under the Malta Financial Services Authority Act;

Cap. 330.

(*f*) the regulated market carrying out its functions under the Financial Markets Act; and

Cap. 345.

(*g*) the competent authority under the Financial Institutions Act.

Cap. 376.

Punishment for destroying, mutilating, etc., company documents.
Amended by: L.N. 425 of 2007; XVIII.2025.54.

421. (1) A person, being an officer of any such entity as is referred to in article 418(1), who -

(*a*) destroys, mutilates or falsifies, or permits, assists or participates in the destruction, mutilation or falsification of a document affecting or relating to the entity's assets or affairs; or

(b) makes, or permits, assists or participates in the making of, a false entry in such a document,

shall be guilty of an offence.

(2) Any person as referred to in sub-article (1) who fraudulently either disposes of, alters or makes an omission in any such document as is referred to in that sub-article or permits, assists or participates in a fraudulent disposal, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this article shall be liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or to imprisonment for a term not exceeding three years, or to both such fine (*multa*) and imprisonment.

Punishment for furnishing false information. *Amended by: L.N. 425 of 2007; XVIII.2025.55.*

422. A person who, in responding to a requirement imposed under article 418 to provide an explanation or make a statement, knowingly or recklessly provides or makes an explanation or statement which is false in a material particular shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than forty-six thousand and five hundred and eighty-seven euro (€46,587), or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Privileged information.

423. (1) Nothing contained in articles 404 to 417 shall require the disclosure to the Registrar or to an inspector appointed by him -

(*a*) of communications which are privileged by virtue of the provisions of article 588 of the Code of Organization and Civil Procedure; Cap. 12.

(*b*) by a company's bankers of information on the affairs of any of their customers other than the company itself.

(2) Nothing contained in articles 418 to 422 shall be deemed to compel the production by any person as is referred to in article 588 of the Code of Organization and Civil Procedure of any document containing a communication which is privileged in accordance with that article, or shall authorise the taking of possession of any such document which is in that person's possession.

(3) Notwithstanding the provisions of article 418, the Registrar shall not require the production by a person carrying on the business of banking of a document relating to the affairs of a customer, unless it appears to the Registrar that it is necessary to do so for the purpose of investigating the affairs of that person carrying on the business of banking or of the customer, being an entity in terms of article 418.

(4) Subject to the provisions of sub-article (3), nothing contained in the Professional Secrecy Act shall be construed as precluding or otherwise restricting - Cap. 377.

(*a*) the powers and functions assigned to the Registrar or to an inspector appointed by him under the provisions of this Part; and

(*b*) the disclosure by any person of information, documentation or other communication to the Registrar or to an inspector appointed by him, or the doing of anything required to be done, by virtue of any of the provisions of this Part.

Right to inspect and obtain copies of documents, etc., kept by Registrar.

424. Any person may -

(*a*) inspect the documents kept by the Registrar other than documents obtained by him or coming to his

knowledge in the course of the exercise of his powers arising under articles 403 to 423;

(*b*) obtain a copy of the certificate of the registration of any commercial partnership or a copy or extract of any other document, and require it to be certified by the Registrar as a true copy.

Power to make regulations.
Amended by:
XVII. 2002.234;
IV. 2003.160;
XIII. 2004.105;
L.N. 391 of 2005;
XV. 2007.14;
L.N. 425 of 2007;
IX. 2008.40;
X. 2011.71;
XX. 2013.95;
XXII. 2014.22;
XXXI. 2015.22;
XI.2017.16;
XXXI. 2017.81;
XXXI.2020.5;
XVIII.2024.19;
XVIII.2025.56.

425. (1) The Minister may make regulations for the purpose of carrying into effect the provisions of this Act, and may, without prejudice to the generality of the foregoing, by such regulations -

(*a*) prescribe the fees to be levied in relation to the registration, publication, inspection or issue of documents, certificates, copies or extracts, required or allowed under this Act, and different fees may be levied for different kinds or categories of commercial partnerships, and may further prescribe different fees for companies on the basis of their status;

(*b*) prescribe forms to be used under this Act;

(*c*) amend, revoke or substitute the minimum share capital requirement established by article 72, the criteria set out in article 185 and the formulae for determining the average number of employees set out in sub-article (12) of the last mentioned article;

(*d*) amend any Schedule to this Act other than the Ninth, Eleventh and Twelfth Schedule and for this purpose may distinguish between different categories of companies;

(*e*) prescribe the qualifications necessary to act as company secretary, including any residence qualification, as he may deem fit;

(*f*) prescribe regulations, not inconsistent with the provisions of this Act, for the conduct of winding up proceedings under Title II of Part V of this Act, and prescribe criteria for establishing who may be considered as a fit and proper person to act as liquidator for the purposes of article 305(1);

(*g*) prescribe requirements in relation to the allotment and the transfer of shares or debentures, their numbering, their registration with the company and with the Registrar, the keeping of the register of members and of debentures, and the issue of the relevant share and debenture certificates in respect of any allotment or transfer of shares or debentures, in relation to companies listed on any regulated market or any equivalent market in a non-Member State or non-EEA State and to investment companies with variable share capital, and such requirements that are prescribed may also be in substitution of those of the relevant provisions contained in Chapters IV and VI of Title I of Part V of this Act;

(*h*) *Deleted by Act XI. 2017.16.*

(*i*) provide for the exemption of companies, or any kind or category thereof, from any of the provisions of articles 105 to 111, or for the application to any such companies of the said provision subject to such variations and conditions as may be prescribed;

(*j*) *Deleted by Act XVIII.2025.56.*

(*k*) provide for the exemption of oversea companies, which establish a branch or place of business within Malta under Part XI of this Act, from any of the provisions of Part XI of this Act, or for the application to any such oversea companies of the said provisions with such qualifications and subject to such variations and conditions as may be prescribed, including the prescription of additional or different rules and requirements regulating such oversea companies;

(*l*) (*Deleted by Act V. 2020.237*)

(*m*) prescribe requirements in relation to the system of interconnection of registers and the interoperability of registers within the system of interconnection of registers through the European e-Justice portal, and such requirements may stipulate any further conditions necessary to implement Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;

(*n*) require undertakings other than small undertakings to disclose information in their annual financial statements which is additional to that required pursuant to this Act;

(*o*) transpose and implement Community Company Law Directives; such regulations may provide for such exemptions, modifications, adaptations and variations of any of the provisions of this Act and may introduce conditions or qualifications thereto as may be specified and as may be necessary for the transposition and implementation of such Directives;

(*oa*) provide for the exemption of certain small undertakings from the provisions of Chapter IX of Title I of Part V of this Act and from the requirements imposed by article 179, subject to such conditions and requirements as may be prescribed;

(*p*) prescribe anything that may be prescribed and generally do any other matter incidental or supplementary to any of the foregoing matters; and

(*q*) prescribe and provide the necessary regulations, requirements and guidelines in relation to the

establishment, administration and upkeep of the central data repository and any other register which the Registrar may be required to keep in fulfilment of his duties, including any access qualification, and may further prescribe fees for such access, as the Registrar may deem fit;

(*r*) prescribe regulations for the better carrying out of any of the provisions relating to the registered office in Malta and the electronic mail address of the company;

(*s*) prescribe regulations and requirements for the formation, registration and governance of limited liability companies consistent with this Act that are intended to operate in specific economic sectors, in consultation with other Ministers, as may be necessary.

(2) The Minister may by regulations provide for the obligation and for the form and manner of disclosure and notification of interests, including ownership, in shares in public companies, and may in particular:

(*a*) prescribe by and to whom, when, under what circumstances and conditions and how such disclosure or notification shall be made; and different obligations and duties may be prescribed for different types of companies;

(*b*) establish the particulars to be contained in any notification of interests in shares and the circumstances when investigations may be carried out by a company in respect of the holding of any shares, or other interest therein, and further establish when, to whom and in what manner the company shall be obliged to report on the findings of any such investigation;

(*c*) provide for the keeping of registers of interests in shares, for the notification and registration of share acquisitions and disposals, and for the manner in which such notification and registration shall be recorded, and provide for the investigation of share acquisitions and disposals;

(*d*) establish -

(i) offences, providing for a fine (*multa*) of not more than two hundred and thirty thousand euro (€230,000) or a term of imprisonment not exceeding five years, or for both such fine and imprisonment;

(ii) administrative penalties not exceeding two thousand and three hundred euro (€2,300), or daily default penalties not exceeding fifty euro (€50) for every day during which the default continues, or both such penalties and daily default penalties;

for failure to effect a prescribed disclosure or to make a notification or for any other contravention of the

provisions of any regulation made in terms of this sub-article;

(*e*) provide for any matter incidental to or connected with any of the above.

(3) (*a*) The Minister may by regulations provide for the formation, constitution and regulation of economic interest groupings to be endowed with such legal personality and capacity as may be established. In this sub-article, "economic interest groupings" refers to groups or associations consisting of two or more persons and whose objects are to facilitate or develop the economic activities of their members, or to improve or increase the profits or benefits of such activities.

(*b*) Regulations made by the Minister in virtue of paragraph (*a*), shall, in particular and without prejudice to the authority vested in the Minister by the said paragraph, prescribe:

(i) the contents and particulars that are to be stated in the deed or instrument of constitution of an economic interest grouping, including its name, objects and purposes, capital structure, duration, membership, the location of its principal or registered office, and the requirements relating to the form, registration and publication of such deed or instrument, and the particulars to be stated in the business letters of an economic interest grouping;

(ii) requirements relating to the keeping of records with respect to the transactions and financial position of the grouping, and other accounting, auditing, reporting and disclosure obligations;

(iii) rules in respect of the administration and management of the grouping and of the administrative and management organs of the grouping, including the powers and responsibilities of the directors, and holding of meetings of the members, the keeping of registers of members and such other records as may be prescribed;

(iv) rules governing the rights and obligations of the members, the admission, cessation or expulsion of members, the rights of members to share in the profits of the grouping and in its residual assets on liquidation and their liability to contribute to losses;

(v) rules governing the conversion, dissolution and winding up of an economic interest grouping, including the appointment of a liquidator, and his powers and responsibilities;

(vi) rules providing for the possibility of cross-

border and transnational economic interest groupings, including European Economic Interest Groupings, enjoying the same capacity in two or more states by virtue of their registration in one state; for the regulation of the formation, constitution and recognition of such groupings; and providing for the application of any regulations made by virtue of this sub-article to such groupings with such exemptions, variations or modifications as may be established;

(vii) the fees that may be levied in relation to the registration of groupings referred to in this sub-article, or categories of such groupings;

(viii) the articles of this Act which shall apply to economic interest groupings, or to particular categories thereof, subject to such conditions and with such exemptions, modifications and variations as may be deemed appropriate.

(4) The Minister may make detailed regulations -

(*a*) for the purpose of allowing a body corporate, formed and incorporated or registered in a country other than Malta, to be continued as or be converted into a body corporate in accordance with this Act and under the applicable laws of Malta,

(*b*) for the purpose of allowing the continuance or conversion of a body corporate registered under this Act as a body corporate incorporated or registered under the laws of a country other than Malta, and

(*c*) for the purpose of allowing one or more bodies corporate, formed and incorporated or registered in a country other than Malta, to carry out a cross-border merger or cross-border division with or otherwise involving a body corporate established or to be established in accordance with this Act and under the applicable laws of Malta.

Such regulations may establish requirements in relation to the procedures to be followed and the documentation, undertakings and information to be supplied to the Registrar for the purpose of carrying out any such continuance, cross-border conversion, cross-border merger or cross-border division and the rules may further authorise the Registrar to issue guidelines stipulating such further conditions and requirements as the Minister may deem appropriate, and different regulations and guidelines may be issued for different categories or classes of cases.

(5) The Minister may by regulations provide for the formation, constitution and regulation of European Companies (SE). In this sub-article, a European Company (Societas Europea or SE) refers to a company set up within the territory of the European Union on the conditions and in the manner laid down in Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).

(6) The Minister may make regulations to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.

(7) Regulations made under any of the provisions of this Act may be made in the English language only.

(8) Where in respect of any of the services or other acts to be performed by the Registrar a fee is prescribed under sub-article (1), the regulations may prescribe that the Registrar may decline to perform such service or other act until the appropriate fee is paid; and that any instrument, notice, return or other document delivered, given or forwarded to the Registrar under this Act shall, if a fee is prescribed as aforesaid in respect of the registration or publication thereof, be deemed not to have been delivered, given or forwarded as required by this Act until the appropriate fee is paid.

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

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

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

(12) The Minister may make regulations for the better carrying out of any of the provisions of article 316, and may, without prejudice to the generality of the foregoing, by such regulations suspend even retrospectively the application of the provisions of the said article 316.

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

Breach of regulations.
Amended by: L.N. 425 of 2007; X. 2011.72.

426. (1) The power to make regulations under article 425 includes the power to prescribe that any person in breach of any provision of any such regulation shall be guilty of an offence and sshall on conviction be liable to a fine (*multa*) of not more than two hundred and thirty thousand euro (€230,000) or imprisonment for a term not exceeding six months or to both such fine and imprisonment, as may be prescribed.

(2) The power to make regulations under article 425 includes the power to prescribe that any person who acts in breach of any such regulation shall be liable to a penalty of not more than two thousand and three hundred euro (€2,300) and, where applicable, to a further penalty of fifty euro (€50) for every day during which the default continues, to be imposed by the Registrar in terms of article 401.

Administrative penalties under this Act.
Amended by: IV. 2003.161.

427. (1) Where any provision of this Act provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to the Eleventh Schedule, which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of this Act.

(2) In the Eleventh Schedule, the first column indicates the article and sub-article of this Act which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of this Act, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty, if any. The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue from the day following that on which the default occurs.

(3) Action by the Registrar for the recovery of a penalty under this Act shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) A company shall be jointly and severally liable with its officers for the payment of any administrative penalties imposed under this Act.

PART XIII - TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions.
Amended by: XXX. 1997.2; IV. 2003.162; XII. 2006.73; L.N. 425 of 2007.

428. (1) As from the appointed day a commercial partnership shall not be formed and registered unless it complies with the provisions of this Act, and a commercial partnership formed and registered as aforesaid shall be regulated by this Act.

(2) Subject to the provisions of this Part, as from the appointed day all commercial partnerships formed and registered under the Ordinance shall be deemed to be formed and registered under this Act, and shall retain the same legal personality and maintain all existing rights and obligations.

(3) Investment companies with variable share capital formed and registered before the appointed day shall comply with the provisions of this Act within one month from the appointed day and the provisions of sub-articles (4) to (13), other than sub-article (8), shall not apply to them.

(4) Unless otherwise provided in this article, and notwithstanding anything contained in the Memorandum or Articles or in the deed of partnership, as the case may be, as from the 1st March, 1998, the provisions of this Act shall apply to commercial partnerships formed and registered under the Ordinance. Such commercial partnerships shall, before the 1st March, 1998, comply with the provisions of this Act and shall, until such time, continue to be regulated by the Ordinance:

Provided that a commercial partnership may, by complying with the provisions of this Act before such date, elect to be regulated by the provisions of this Act and for this purpose the company shall additionally deliver a notice in writing to the Registrar for registration; and such election shall not take effect unless and until such notice is registered.

(5) The provisions of Chapters IX and X of Part V of this Act shall, in regard to companies formed and registered under the Ordinance, apply to accounting periods commencing after 30th June 1996.

(6) A private company formed and registered under the Ordinance shall, by complying with the provisions of this Act relating to private companies within the period specified in sub-article (4), continue as a private company under this Act unless it changes its status to one of a public company in accordance with the provisions of article 213.

(7) A public company formed and registered under the Ordinance shall, by complying with the provisions of this Act relating to public companies within the period specified in sub-article (4), continue as a public company under this Act unless it changes its status to one of a private company in accordance with the provisions of article 213.

(8) If an investment company as is referred to in sub-article (3), fails to comply with the provisions of the said sub-article within the period therein specified, that company shall be considered dissolved and the Registrar may, at any time, apply to the court in accordance with the provisions of Title II of Part V of this Act:

Provided that the court may, if it thinks fit, grant a further period not exceeding one year from the date of its decision in which the commercial partnership may remedy the failure.

(9) A commercial partnership as is referred to in sub-article (4) shall make the changes necessary in order to comply with the provisions of this Act by the 28th February, 1998.

(10) Any changes necessitated by virtue of sub-article (9) shall be made:

(*a*) in the case of a partnership *en nom collectif*, with the

consent of a partner or partners having contributed at least fifty per cent of the contributions made to the partnership;

(*b*) in the case of a partnership *en commandite*, with the consent of a general partner or partners having contributed at least fifty per cent of the contributions made by the general partners to the partnership, or holding at least fifty per cent of the nominal value of the shares of the partnership held by the general partners as the case may be, together with the consent of a limited partner or partners having contributed at least fifty per cent of the contributions made by the limited partners to the partnership or holding at least fifty per cent of the nominal value of the shares held by the limited partners as the case may be;

(*c*) in the case of a company, notwithstanding anything contained in the Memorandum or Articles, by means of a resolution, passed by a general meeting of the company called for the purpose, by -

(i) fifty per cent of the members represented at the meeting and voting; or

(ii) a number of members having between them not less than fifty per cent of the nominal value of the shares represented at that meeting, and voting thereat;

and any provision relating to the quorum of members at that meeting shall not apply.

The provisions of this sub-article shall not apply to any changes to the deed of partnership or to the Memorandum or Articles, as the case may be, which are not strictly necessary in order to comply with the provisions of this Act.

(11) An association *en participation* constituted before the appointed day shall comply with the provisions of this Act within a period of two years from the appointed day.

(12) Notwithstanding the other provisions of this article, article 127 shall come into effect on the appointed day.

(13) The provisions of Parts VII, VIII and IX of this Act shall, in regard to companies formed and registered under the Ordinance, come into effect as from the appointed day; and a commercial partnership resulting from a conversion within the meaning of Part VII, a new commercial partnership or an acquiring commercial partnership within the meaning of Title I of Part VIII, a new company or an acquiring company within the meaning of Title II of Part VIII and recipient companies or new companies resulting from a division within the meaning of Part IX, shall comply with and shall be regulated by this Act as from the date when the conversion, amalgamation or the division becomes effective in terms of this Act, according to the case.

(14) A commercial partnership as is referred to in sub-article (4) which fails to effect the changes necessary in order to comply with

the provisions of this Act before the 1st March 1998 shall become liable to a penalty of one hundred and sixteen euro and forty-seven cents (116.47), and for every day thereafter during which the default continues, to a further penalty of four euro and sixty-six cents (4.66). The provisions of article 427(1) and (2) shall not apply to the penalties imposed under this sub-article.

(15) Notwithstanding the provisions of article 401(1)(*d*), until such time as the instrument or resolution, or a copy thereof, giving effect to the changes necessitated by virtue of sub-article (4) is delivered to the Registrar for registration, and until such time as any penalties that may be incurred by virtue of sub-article (14) are paid, the Registrar shall not retain and register:

- in the case of a company, any resolution, notice or return required to be registered under this Act, other than any resolution, notice, return or other document required to be delivered to the Registrar in terms of the provisions of Title II of Part V and of articles 122, 146, 183 and 184 of this Act; and

- in the case of any other commercial partnership any instrument giving effect to any alteration or addition to the deed of partnership.

(16) The Minister may by order in the Gazette, establish a date, being a date after the 31st December 1998, on which any company which fails to comply with the provisions of sub-article (4) shall be deemed to be a company which is not carrying on business or is not in operation for the purposes of article 325.

Transitional provisions as to winding up of commercial partnerships.

429. (1) The dissolution of a commercial partnership occurring before, on or within six months from the appointed day shall, after the appointed day, continue to be in accordance with the provisions of the Ordinance and the consequential winding up of such a commercial partnership shall be regulated accordingly:

Provided that, where, after the lapse of the two year period referred to in article 428(4), the name of any commercial partnership to which this sub-article applies has not already been struck off the register, the Registrar may, at any time thereafter, apply to the court for it to order that the winding up of the affairs of that commercial partnership shall, from then onwards, be in accordance with the provisions of this Act relating to winding up by the court, and to appoint, where necessary, a liquidator or liquidators or substitute any existing liquidator or liquidators to carry out that winding up.

(2) Any dissolution of a commercial partnership occurring after the expiry of six months from the appointed day, shall be in accordance with the provisions of this Act and the consequential winding up of such a commercial partnership shall be regulated accordingly.

(3) The provisions of article 304 shall, in relation to companies formed and registered under the Ordinance, commence to apply on the expiry of six months from the appointed day.

(4) The provisions of article 326 shall come into force on the

expiry of six months from the appointed day.

(5) In relation to a company, bankruptcy proceedings commenced before, on or within six months from the appointed day shall, after the appointed day, continue to be governed by the provisions of Part III of the Commercial Code relating to bankruptcy.

Cap. 13.

(6) The provisions of this article shall apply notwithstanding anything contained in article 428.

Periods for the exercise of rights.

430. Where for the exercise of a right this Act establishes a period shorter than that established by any other law, the period established by this Act shall apply even to such rights as may have arisen before the appointed day but shall commence to run as from such day:

Provided that where, on the appointed day, the period which is still to run under such other law is shorter than that established by this Act, reckoned as aforesaid, the period established by such other law shall continue to apply.

Savings.
Amended by: XXX. 1997.3; XXII. 2000. 104; IV. 2003.163; XIII. 2004.106; XVIII.2025.57.

431. (1) Notwithstanding anything to the contrary contained in articles 428 and 429 -

(*a*) *Deleted by Act XVIII.2025.57.*

(*b*) private companies whose objects and activities are limited to the sole purposes of owning, managing, administering or operating ships and to transactions ancillary thereto, whether formed and registered before, on or after the appointed day, shall be regulated by the Ordinance and shall continue to be so regulated until such date, as the Minister may by order in the Gazette establish, from when the provisions of this Act or of any other law shall commence to apply to them. In this paragraph "ships" shall have the meaning assigned to it by the Merchant Shipping Act:

Cap. 234.

Provided that the Minister may establish different dates on which the different provisions of this Act shall commence to apply with respect to such companies:

Provided further that, in his order, the Minister may exempt such companies from any one or more of the provisions of this Act, with such qualifications and under such conditions as may be specified in the order;

(*c*) the deed of partnership of a partnership *en nom collectif,* or of a partnership *en commandite,* formed and registered under the Ordinance, shall not be required to be amended so as to specify the value of the respective contribution of every partner in terms of article 14(1)(*e*):

Provided that where all the partners in a partnership *en nom collectif* and where all the partners,

both general and limited, in a partnership *en commandite*, so agree, they may specify in the deed of partnership the value of their respective contribution to the partnership; and

(*d*) a commercial partnership which on the 1st March, 1998, is a controlled asset as defined in the Controlled Companies (Procedure for Liquidation) Act, shall continue to be regulated by the Ordinance until six months after such commercial partnership shall have ceased to be a controlled asset in accordance with that Act; and the provisions of article 428 shall apply to such controlled company as if reference therein to the 28th February 1998 were a reference to the last day of the period of six moths after the commercial partnership shall have ceased to be a controlled asset, and a reference to the 1st March 1998 were a reference to the first day immediately following such period, and the provisions of sub-article (16) of the said article 428 shall only be applicable after the 31st December of the year in which the said period of six months would have lapsed.

Cap. 383.

(2) Save as otherwise provided in sub-article (1), in article 428 and 429 or in any other provision of this Act, the Ordinance and the Commercial Partnerships (Special Provisions) Act, 1994, are hereby repealed:

Provided that notwithstanding their repeal -

(*a*) anything that has lawfully been done by virtue of the Ordinance and the Commercial Partnerships (Special Provisions) Act, 1994, shall remain in force, except insofar as it is inconsistent with any of the provisions of this Act;

(*b*) all regulations made under the Ordinance and under the Commercial Partnerships (Special Provisions) Act, 1994, shall remain in force and continue to have effect as if made under this Act, except insofar as any such regulation is inconsistent with any of the provisions of this Act, until such time as they are repealed; and

(*c*) any liability to any penalty under any of the provisions of the Ordinance shall continue to subsist notwithstanding the repeal of the Ordinance. The provisions of article 401 shall apply also to penalties fixed by the Registrar under the Ordinance unless proceedings for the recovery of such penalties have already been instituted in accordance with the provisions of the Ordinance before the appointed day.

FIRST SCHEDULE

(Article 75)

MODEL REGULATIONS FOR A LIMITED LIABILITY COMPANY

PART I REGULATIONS FOR THE MANAGEMENT OF A LIMITED LIABILITY COMPANY

Share capital and variation of rights

1. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

2. Subject to the provisions of article 115 of the Companies Act, (hereinafter referred to as "the Act"), any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed on such terms and in such manner as the company before the issue of the shares may by extraordinary resolution determine.

3. If at any time the share capital is divided into different classes of shares, the change of any shares from one class into another or the variation of the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class which is to be changed or the rights attached to which are to be varied, according to the case) may, whether or not the company is being wound up, be made with the consent in writing of the holders of three-fourths of the issued shares of that class, and the holders of three-fourths of the issued shares of any other class affected thereby. Such change or variation may also be made with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of that class and of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of any other class affected thereby. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply.

4. The company may exercise the power of paying commissions or of making discounts or allowances provided it complies with the requirements of article 113 of the Act. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive one certificate for all his shares or several certificates each for one or more of his shares upon payment of 20c for every certificate after the first or such less sum as the directors shall from time to time determine. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 20c or such less sum and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses of the company on investigating evidence as the directors think fit.

Calls on shares

6. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided no call shall exceed one-fourth of the nominal

value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company, at the time or times and place so specified, the amount called on his shares. A call may be revoked or postponed as the directors may determine.

7. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

8. If a sum called in respect of a share is not paid before or on the date appointed for payment thereof, the person from whom the sum is due shall pay annual interest thereon from the day appointed for payment thereof to the time of actual payment at such rate not exceeding two percentage points over the Central Bank of Malta minimum discount rate as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

9. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

10. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

11. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay annual interest at such rate not exceeding two percentage points over the Central Bank of Malta minimum discount rate, as may be agreed upon between the directors and the members paying such sum in advance.

Transfer and transmission of shares

12. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

13. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

14. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve.

15. The directors may also decline to recognise any instrument of transfer unless -

(*a*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

(*b*) the instrument of transfer is in respect of only one class of share.

16. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such

registration shall not be suspended for more than thirty days in any year.

17. Any person becoming entitled to a share in consequence of the death of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death.

18. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share.

19. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that member.

20. A person becoming entitled to a share by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

21. Notwithstanding the provisions of regulation 20, the directors may at any time give notice requiring any person referred to in that regulation to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture or surrender of shares

22. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, require payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued, by means of a notice which shall also name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment, at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

23. If the requirements specified in any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect, or otherwise be surrendered in favour of the company by the member to whom the said notice is addressed, if the directors of the company accept such surrender.

24. A forfeited or a surrendered share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and the company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, who shall thereupon be registered as the holder of the share. At any time before a sale or disposition the forfeiture or surrender may be cancelled on such terms as the directors think fit.

25. A person whose shares have been forfeited or who has surrendered his shares to the company shall cease to be a member in respect of the forfeited or surrendered shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of the forfeiture or surrender, were payable by him to the company in respect of the shares; but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Conversion of shares into stock

26. The company may by ordinary resolution convert any paid up shares into stock, and re-convert any stock into paid up shares of any denomination.

27. The holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances permit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

28. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by any amount of stock which would not, if existing in share, have conferred that privilege or advantage.

29. Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

General meetings

30. Subject to the provisions of the Act the annual general meetings shall be held at such time and place as the directors shall appoint.

31. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by article 129 of the Act.

32. If at any time there are not in Malta sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the directors.

Notice of general meetings

33. A general meeting of the company shall be called by fourteen days' notice in writing at least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, by the Act and under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly

called if it is so agreed by all the members entitled to attend and vote thereat.

34. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at general meetings

35. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

36. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, a member or members present in person or by proxy holding in aggregate not less than one tenth of the paid up share capital of the company carrying the right to attend and vote at general meetings of the company at the date of the holding of the meeting, shall be a quorum.

37. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present shall be a quorum.

38. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

39. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

40. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at such meeting.

41. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded -

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a

right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution:

Provided that where a resolution requires a particular majority in value, the resolution shall not be deemed to have been carried on a show of hands by the required majority unless there be present at that meeting, whether in person or by proxy, a number of members holding in the aggregate the required majority as aforesaid.

The demand for a poll may be withdrawn

42. Except as provided in regulation 44, if a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

43. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

44. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of members

45. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder. On a poll votes may be given either personally or by proxy.

46. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

47. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

48. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place in Malta as is specified for that purpose in the notice convening the meeting, not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

49. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit:.....(name of the company)

"I/We.....

of ..... residing at ..... being a member/members of the above-named company, hereby appoint ..... of ..... or failing him..... of ..... as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held on the ..... day of ..... 19 ....., and at any adjournment thereof.

Signed this ..... day of ..... 19.....

This form is to be used in favour of/against* the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.".

---

*Strike out whichever is not desired.

Directors

50. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

51. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

Powers and duties of directors

52. The directors shall exercise their powers subject to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

53. The directors shall have power to appoint any person to be the attorney of the company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

54. A director shall not vote at a meeting of the directors in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to -

(*a*) any arrangement for giving any director any security or indemnity in

respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(*b*) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(*c*) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(*d*) any contract or arrangement with any other company in which he is interested only as an officer of the company or as a holder of shares or other securities,

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

55. The directors shall cause minutes to be made in books provided for the purpose -

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

56. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Rotation of Directors

57. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

58. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

59. A retiring director shall be eligible for re-election.

60. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto.

61. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than fourteen days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

Proceedings of directors

62. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the company secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Malta.

63. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

64. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

65. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

66. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Delegation of directors' powers

67. The directors may from time to time appoint a managing director or a director or directors holding any other executive office or offices from amongst themselves delegating to him or them any of the powers provided in regulation 70.

68. Each such appointment shall be for such period and on such terms as the directors think fit, and, subject to the terms of any agreement entered into in any particular case, the directors may revoke such appointment. Any director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation or retirement of directors, but his appointment shall be automatically determined if he ceases for any reason to be a director.

69. A managing director or director holding any other executive office shall receive such remuneration as the directors, subject to the approval of the company in general meeting, may from time to time determine.

70. The directors may delegate to any managing director, or to any director holding any other executive office, any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw or vary any of such powers.

71. The directors may also appoint a committee consisting of one of more persons selected from among themselves delegating to it any of their powers. Any such delegation may be made subject to any condition or requirement as the directors may impose and may be made either collaterally with or to the exclusion of their own powers, and the directors may from time to time revoke, withdraw, alter or vary all or any of such powers. Any such committee shall, subject to any of the said

conditions or requirements, regulate its own proceedings, in so far as possible in like manner as if its meetings were meetings of the directors.

Company Secretary

72. Without prejudice to the provisions of the Act regulating the appointment and functions of the company secretary, the appointment or replacement of the company secretary and the conditions of holding office shall be determined by the directors. The company secretary shall be responsible for keeping:

- the minute book of general meetings of the company;
- the minute book of meetings of the board of directors;
- the register of members;
- the register of debentures; and
- such other registers and records as the company secretary may be required to keep by the board of directors.

The company secretary shall:

- ensure that proper notices are given of all meetings; and
- ensure that all returns and other documents of the company are prepared and delivered in accordance with the requirements of the Act.

Dividends and reserve

73. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

74. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

75. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments, other than shares of the company, as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

76. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

77. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

78. No dividend shall bear interest against the company.

Accounts

79. Subject to the provisions of article 180 of the Act, the directors shall from

time to time determine whether and to what extent and at what times and places and under what conditions or regulations the annual accounts and accounting records of the company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any such account or record or other document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Capitalisation of profits

80. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares:

Provided further that the directors may in giving effect to such resolution make such provision by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions.

Notice

81. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or, if he has no registered address in Malta, to the address, if any, in Malta supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of forty-eight hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

82. Notice of every general meeting shall be given in the manner hereinbefore authorised to -

(*a*) every registered member except those members who, having no registered address in Malta, have not supplied to the company an address in Malta for the giving of notices to them; and

(*b*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Indemnity

83. Every managing director, director holding any other executive office or other director, and every agent, auditor or company secretary and in general any officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

PART II - REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY

Amended by: XI.2017.17

1. The regulations contained in Part I of this Schedule (with the exception of regulation 14) shall apply.

2. The company is a private company and accordingly -

(*a*) the right to transfer shares is restricted in a manner hereinafter prescribed;

(*b*) the number of members of the company is limited to fifty; and

(*c*) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported, if the directors so require, by an affidavit, which they may consider necessary for the purposes of determining whether or not the company satisfies the conditions of qualification as an exempt company mentioned in sub-article (2) of article 211 of the Act.

SECOND SCHEDULE

PART A

(Article 90)

Amended by:
IV. 2003.164;
L.N. 390 of 2005;
IX. 2008.41;
L.N. 171 of 2012;
L.N. 337 of 2012;
Deleted by;
V. 2020.38.

THIRD SCHEDULE

(Articles 167 and 171)

Substituted by:
XXXI. 2015.23.

PART I

ADDITIONAL PROVISIONS APPLICABLE TO THE ANNUAL FINANCIAL ACCOUNTS OF LARGE UNDERTAKINGS, MEDIUM-SIZED UNDERTAKINGS AND CERTAIN OTHER UNDERTAKINGS, WHERE APPLICABLE

1. For the purpose of Chapter X of Title I of Part V and this Schedule, the following definitions shall apply:

"large groups" means groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:

(i) balance sheet total: EUR 20 000 000 computed net, or €24,000,000 computed gross;

(ii) net turnover: EUR 40 000 000 computed net, or €48,000,000 computed gross;

(iii) average number of employees during the financial year: 250;

"large undertakings" means undertakings which on their balance sheet dates exceed at least two of the three following criteria:

(i) balance sheet total: EUR 20 000 000;

(ii) net turnover: EUR 40 000 000;

(iii) average number of employees during the financial year: 250;

"medium-sized groups" means groups which are not small groups, which consist of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, do not exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:

(i) balance sheet total: EUR 20 000 000 computed net, or €24,000,000 computed gross;

(ii) net turnover: EUR 40 000 000 computed net, or €48,000,000 computed gross;

(iii) average number of employees during the financial year: 250;

"medium-sized undertakings" means undertakings which are not small companies,

as defined in article 185(1), and which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

(i) balance sheet total: EUR 20 000 000;

(ii) net turnover: EUR 40 000 000;

(iii) average number of employees during the financial year: 250.

Matters applicable to medium-sized and large undertakings

2. (1) Intangible assets shall be written off over the useful economic life of the intangible asset.

In exceptional cases where the useful life of goodwill and development costs cannot be reliably estimated, such assets shall be written off within a maximum period of 10 years. An explanation of the period over which goodwill is written off shall be provided within the notes to the financial statements.

(2) Where an asset or liability relates to more than one layout item, its relationship to the other item or items shall be disclosed either under the item where it appears or in the notes to the accounts, if such disclosure is essential to the comprehension of the individual accounts.

Additional disclosures for medium-sized and large undertakings and public-interest entities

3. In the notes to the financial statements public-interest entities, large undertakings and medium-sized undertakings shall, in addition to the information required under other provisions of this Act and generally accepted accounting principles and practice, disclose information in respect of:

(i) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;

(ii) the average number of employees during the financial year broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the accounting period broken down between wages and salaries, social security costs and pension costs.

4. In the notes to the financial statements, medium-sized and large undertakings and public-interest entities shall, in addition to the information required under this Schedule and any other provisions of this Act, disclose information in respect of the following matters:

(*a*) the existence of any participation certificates, convertible debentures, warrants, options or similar securities or rights, with an indication of their number and the rights they confer;

(*b*) the name and registered office of each of the undertakings in which the undertaking, either itself or through a person acting in his own name but on the undertaking's behalf, holds a participating interest, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which financial statements have been adopted; the information concerning capital and reserve and the profit or loss may be omitted where the undertaking concerned does not publish its balance sheet and is not controlled by the undertaking;

(*c*) the name, the head or registered office and the legal form of each of the undertakings of which the undertaking is a member having unlimited liability;

(*d*) the name and registered office of the undertaking which draws up the consolidated financial statements of the largest body of undertakings of which the undertaking forms part as a subsidiary undertaking;

(*e*) the name and registered office of the undertaking which draws up the consolidated statements of the smallest body of undertakings of which the undertaking forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in sub-paragraph (*d*);

(*f*) the place where copies of the consolidated financial statements referred to in sub-paragraphs (*c*) and (*d*) may be obtained, provided that they are available;

(*g*) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet and the financial impact on the undertaking of those arrangements, provided that the risks or benefits arising from such arrangements are material and insofar as the disclosure of such risks or benefits is necessary for the purposes of assessing the financial position of the undertaking.

Additional disclosures applicable to large undertakings and public-interest entities

5. In the notes to the financial statements, large undertakings and public-interest entities shall, in addition to the information required under this Schedule and any other provisions of this Act, disclose information in respect of the total fees for the financial year charged by each auditor or audit firm for the statutory audit of the annual financial statements, and the total fees charged by each auditor or audit firm for other assurance services, for tax advisory services and for other non-audit services:

Provided that this requirement shall not apply to the annual financial statements of an undertaking where that undertaking is included within the consolidated financial statements required to be drawn up under article 170, provided, however, that such information shall be given in the notes to the consolidated financial statements.

PART II

ADDITIONAL PROVISIONS APPLICABLE TO CONSOLIDATED ACCOUNTS

The preparation of consolidated financial statements

1. An undertaking which draws up consolidated financial statements shall apply the same measurement bases as are applied in its annual financial statements. However, other measurement bases in accordance with generally accepted accounting principles and practice may be used in consolidated financial statements. Where an undertaking uses such other measurement bases, that fact shall be disclosed in the notes to the consolidated financial statements and reasons given.

The notes to the consolidated financial statements

2. The notes to the consolidated financial statements of large groups and medium-sized groups shall set out the information required by Part 1 of this Third Schedule, in addition to any other information required under other provisions of this Act, in a way which facilitates the assessment of the financial position of the undertakings included in the consolidation taken as a whole, taking account of the essential adjustments resulting from the particular characteristics of consolidated

statements as compared to annual financial statements, including the following:

in disclosing the amounts of emoluments and advances and credits granted to members of the administrative, managerial and supervisory bodies, only amounts granted by the parent undertakings to members of the administrative, managerial and supervisory bodies of the parent undertaking shall be disclosed.

3. The notes to the consolidated financial statements shall, in addition to the information required under this Act, set out the following information:

(*a*) in relation to undertakings included in the consolidation:

(i) the names and registered offices of those undertakings;

(ii) the proportion of the capital held in those undertakings, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings, and

(iii) information as to which of the conditions referred to in sub-articles (2), (3) and (8) of article 2 of this Act following the application of sub-articles (4), (5) and (6) of the said article 2 has formed the basis on which the consolidation has been carried out. This disclosure may, however, be omitted where consolidation has been carried out on the basis of paragraph (*a*) of sub-article (2)(*a*)(i) of article 2 of this Act and where the proportion of the capital and the proportion of the voting rights held are the same;

(*b*) The information set out in sub-paragraph (*a*) of this paragraph shall be given insofar as it is applicable in respect of undertakings excluded from a consolidation on the basis that the effect of their inclusion in the consolidation would be immaterial pursuant to the provisions of sub-article (3) of article 170, and an explanation must be given for the exclusion of the undertakings referred to in sub-article (4) of that article;

(*c*) the names and registered offices of associated undertakings included in the consolidation and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; and

(*d*) in relation to each of the undertakings, other than those referred to in sub-paragraphs (*a*) and (*b*), in which undertakings included in the consolidation, either themselves or through persons acting in their own names but on behalf of those undertakings, hold a participating interest:

(i) the name and registered offices of those undertakings;

(ii) the proportion of the capital held;

(iii) the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which financial statements have been adopted.

The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet.

4. The information required by paragraph 3(a) to (d) may take the form of a statement filed with the Registrar. The filing of such a statement shall be disclosed in the notes to the consolidated financial statements. Such information may be omitted when its nature is such that its disclosure would be seriously prejudicial to any of the undertakings to which it relates and the Registrar agrees that the information need

not be disclosed. Any such omission shall be disclosed in the notes to the consolidated financial statements.

Substituted by: XXXI. 2015.24. Amended by: XVIII.2024.20; XVIII.2025.59.

FOURTH SCHEDULE

(Articles 213A - 213D)

REPORTS ON PAYMENTS TO GOVERNMENTS AND ON INCOME TAX INFORMATION

Part I

Report on Payments to Governments

1. For the purpose of this Part of this Schedule, the following definitions shall apply:

"undertaking active in the extractive industry" means an undertaking with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex 1 to Regulation (EC) No. 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2;

"undertaking active in the logging of primary forests" means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No. 1893/2006, in primary forests;

"government" means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority;

"project" means the operational activities that are governed by a single contract, licence, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project;

"payment" means an amount paid, whether in money or in kind, for activities, as described in the definitions "undertaking active in the extractive industry" and "undertaking active in the logging of primary forests", of the following types:

(*a*) production entitlements;

(*b*) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;

(*c*) royalties;

(*d*) dividends;

(*e*) signature, discovery and production bonuses;

(*f*) licence fees, rental fees, entry fees and other considerations for licences and, or concessions; and

(*g*) payments for infrastructure improvements;

"large undertakings" and "public-interest entities" shall have the same meaning as defined in the Third Schedule and article 2 of this Act respectively.

Contents of the report

2. (1) Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year.

(2) The report shall disclose the following information in relation to activities as described in the definitions "undertaking active in the extractive industry" and "undertaking active in the logging of primary forests" in respect of the relevant financial year:

(*a*) the total amount of payments made to each government;

(*b*) the total amount per type of payment as specified in paragraphs (*a*) to (*g*) of the definition "payment" in paragraph 1 of this Schedule made to each government;

(*c*) where those payments have been attributed to a specific project, the total amount per type of payment as specified in paragraphs (*a*) to (*g*) of the definition "payment" in paragraph 1 of this Schedule, made for each such project and the total amount of payments for each such project.

Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

(3) Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

The disclosure of the payments referred to in this Schedule shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this requirement.

Consolidated report on payments to governments

3. (1) Any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests shall draw up a consolidated report on payments to governments in accordance with this Schedule if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in article 170 of the Act.

A parent undertaking is considered to be active in the extractive industry or the logging of primary forests if any of its subsidiary undertakings are active in the extractive industry or the logging of primary forests.

The consolidated report shall only include payments resulting from extractive operations and, or operations relating to the logging of primary forests.

(2) The obligation to draw up the consolidated report referred to in sub-paragraph (1) shall not apply to:

(*a*) a parent undertaking of a small group, as defined in article 185(5), except where any affiliated undertaking is a public-interest entity;

(*b*) a parent undertaking of a medium-sized group, as defined in the Third Schedule, except where any group undertaking is a public-interest entity; and

(*c*) a parent undertaking governed by the law of a Member State which is

also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.

(3) An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments where at least one of the following conditions is fulfilled:

(*a*) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;

(*b*) extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Schedule cannot be obtained without disproportionate expense or undue delay; and

(*c*) the shares of that undertaking are held exclusively with a view to their subsequent resale.

The above exemptions shall apply only if they are also used for the purposes of the consolidated financial statements.

Publication

4. (1) The report referred to in article 213A and this Schedule and the consolidated report referred to in paragraph 3 of this Schedule on payments to governments shall be delivered to the Registrar for registration within the period allowed by article 183.

(2) The directors shall have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is drawn up and published in accordance with the requirements of this Schedule.

Equivalence criteria

5. Undertakings referred to in article 213A and paragraph 3 of this Schedule that prepare and make public a report complying with third-country reporting requirements assessed, as equivalent to the requirements of this Schedule are exempt from the requirements of this Schedule except for the obligation to publish this report as laid down in paragraph 4(1) of this Schedule.

Part II

REPORT ON PAYMENTS ON INCOME TAX INFORMATION

Definitions relating to reporting on income tax information

1. For the purposes of this Part of this Schedule, the following definitions shall apply:

"consolidated financial statements" means the financial statements prepared by a parent undertaking of a group, in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;

"standalone undertaking" means an undertaking which is not part of a group as defined in article 2;

"tax jurisdiction" means a State or non-State jurisdiction which has fiscal

autonomy in respect of corporate income tax;

"ultimate parent undertaking" means an undertaking which draws up the consolidated financial statements of the largest body of undertakings.

2. For the purposes of article 213B "revenue" shall have the same meaning as:

"net turnover" for undertakings governed by the law of a Member State or by the law of a state which is a member of the European Economic Area that do not apply international accounting standards adopted on the basis of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; or

"revenue" as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements are prepared, for other undertakings.

Content of the report on income tax information

3. The report on income tax information required under article 213B shall include information relating to all the activities of the standalone undertaking or ultimate parent undertaking, including those of all the affiliated undertakings consolidated in the financial statements in respect of the relevant financial year.

4. The information referred to in paragraph 3 shall consist of:

(*a*) the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used for the presentation of the report, and where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, in respect of the relevant financial year, established in the Union or in tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes;

(*b*) a brief description of the nature of their activities;

(*c*) the number of employees on a full-time equivalent basis;

(*d*) revenues, which are to be calculated as:

(i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income as listed in Annexes V and VI to the Accounting Directive;

(ii) the income as defined by the financial reporting framework on the basis of which the financial statements are prepared, excluding value adjustments and dividends received from affiliated undertakings; or

(iii) for the purposes of this paragraph, the revenues shall include transactions with related parties;

(*e*) the amount of profit or loss before income tax;

(*f*) the amount of income tax accrued during the relevant financial year, which shall be calculated as the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction. For the purposes of this paragraph, the current tax expense shall relate only to the activities of an undertaking in the relevant financial year and shall not include deferred taxes or provisions for uncertain tax liabilities;

(*g*) the amount of income tax paid on a cash basis, which shall be calculated as the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction. For the purposes of this paragraph, taxes paid shall include withholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group; and

(*h*) the amount of accumulated earnings at the end of the relevant financial year. For the purposes of this paragraph, the accumulated earnings shall mean the sum of the profits from past financial years and the relevant financial year, the distribution of which has not yet been decided upon. With regard to branches, accumulated earnings shall be those of the undertaking which opened the branch.

5. The information listed in paragraph 3 shall be reported on the basis of the reporting instructions referred to in Section III, Parts B and C, of Annex III to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

6. The information referred to in paragraphs 4 and 5 shall be presented using a common template and electronic reporting formats which are machine-readable, as may be adopted by the European Commission from time to time.

7. (1) The report on income tax information shall present the information referred to in paragraphs 4 or 5 separately for each Member State and for each state which is a member of the European Economic Area. Where a Member State comprises several tax jurisdictions, the information shall be aggregated at Member State level. Where a state which is a member of the European Economic Area comprises several tax jurisdictions, the information shall be aggregated at the level of the state which is a member of the European Economic Area.

(2) The report on income tax information shall also present the information referred to in paragraphs 4 or 5 separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up, is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, and shall provide such information separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up and on 1 March of the preceding financial year, was listed in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.

(3) The report on income tax information shall also present the information referred to in paragraphs 4 or 5 on an aggregated basis for other tax jurisdictions.

(4) The information shall be attributed to each relevant tax jurisdiction on the basis of establishment, the existence of a fixed place of business or of a permanent business activity which, given the activities of the group or standalone undertaking, may be subject to income tax in that tax jurisdiction.

(5) Where the activities of several affiliated undertakings may be subject to income tax within a single tax jurisdiction, the information attributed to that tax jurisdiction shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

(6) Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.

8. (1) One or more specific items of information otherwise required to be disclosed in accordance with paragraphs 4 or 5 may be temporarily omitted from the report where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates. Any omission shall be clearly indicated in the report together with a duly reasoned explanation regarding the reasons therefor.

(2) All information omitted pursuant to the first sub-paragraph shall be made public in a later report on income tax information, within no more than five (5) years from the date of its original omission.

(3) Information pertaining to tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, as referred to in paragraph 5, shall never be omitted.

9. The report on income tax information may include, where applicable at group level, an overall narrative providing explanations for any material discrepancies between the amounts disclosed pursuant to paragraphs 4(f) and (g), taking into account, if appropriate, corresponding amounts concerning the previous financial years.

10. (1) The currency used in the report on income tax information shall be the currency in which the consolidated financial statements of the ultimate parent undertaking or the annual financial statements of the standalone undertaking are presented. This report need not be published in a currency other than the currency used in the financial statements.

(2) Notwithstanding, in the case mentioned in the first proviso of sub-article (5) of article 213B, the currency used in the report on income tax information shall be the currency in which the subsidiary undertaking publishes its annual financial statements.

11. The report on income tax information shall specify whether it was prepared in accordance with paragraphs 4 or 5.

Publication and accessibility

12. The report on income tax information and the statement mentioned in article 213B shall be published within twelve (12) months of the balance sheet date of the financial year for which the report is drawn up as provided for by each Member State or by the law of a state which is a member of the European Economic Area in accordance

with Articles 14 to 28 of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, and where relevant, in accordance with Article 36 of the same Directive.

13. The report on income tax information and the statement published by the undertakings in accordance with paragraph 12 shall be made accessible to the public in at least one of the official languages of the Union, free of charge, not later than twelve (12) months after the balance sheet date of the financial year for which the report is drawn up, on the website of:

(*a*) the undertaking, where article 213B(1) or (2) apply;

(*b*) the subsidiary undertaking or an affiliated undertaking, where article 213B(5) applies; or

(*c*) the branch or the undertaking which opened the branch, or an affiliated undertaking, where article 213B(6) applies.

14. Undertakings shall deliver the report on income tax information and the statement published by them in accordance with paragraph 12 to the Registrar for registration within fourteen (14) days from such publication, which report and statement are to be made accessible to the public in an electronic reporting format which is machine-readable, on the website of the register, and free of charge to any third party located within the Union.

15. The report referred to in the provisions of article 213B(1), (2), (5), (6), (7) and (8) and, where applicable, the statement referred to in the provisions of article 213B(5) and (6), shall remain accessible on the relevant website for a minimum of five (5) consecutive years.

FIFTH SCHEDULE

(Article 169)

Amended by:
IV. 2003.165;
IX. 2008.42;
XVI. 2011.59.

INDIVIDUAL ACCOUNTS AND DIRECTORS' REPORT OF AN INVESTMENT COMPANY WITH VARIABLE SHARE CAPITAL

Without prejudice to any requirements laid down by the competent authority under the Investment Services Act or the Retirement Pensions Act, the individual accounts of an investment company with variable share capital shall disclose at least the information specified in the following provisions of this Schedule.

1. A statement of assets and liabilities showing:

- securities;
- debt instruments;
- bank balances;

- other assets;
- total assets;
- liabilities;
- net asset value;
- details of accounting and valuation policies.

2. The number of units in circulation.

3. The net asset value per unit or share.

4. The composition of the portfolio, distinguishing at least between:

(*a*) transferable securities admitted to listing on a Maltese regulated market;

(*b*) transferable securities dealt in on any other regulated market or on any equivalent market in a non-Member State or non-EEA State;

(*c*) recently issued transferable securities;

(*d*) transferable securities not included in the above;

(*e*) debt instruments not included in the above;

(*f*) other investments as applicable.

References in sub-paragraph (*c*) of this paragraph to recently issued transferable securities are to securities the terms of issue of which include an undertaking that an application will be made for admission to listing on a Maltese regulated market or for admission on any other regulated market or on any equivalent market in a non-Member State or non-EEA State.

The portfolio shall be analysed on the basis of economic, geographic, currency or other appropriate criteria, having regard to the investment policy of the company. Such analysis shall show the value of each category of investment as a percentage of net assets and as a percentage of total assets of the company.

Any material changes in the composition of the investment portfolio made during the accounting period shall be stated.

5. A statement or statements of the developments concerning the assets of the company during the accounting period and including the following:

- income from investments;
- other income;
- management charges;
- depositary's charges;
- other charges and taxes;
- net income;
- distributions and income reinvested;
- changes in capital account;
- appreciation or depreciation in value of investments;
- other changes affecting the value of the assets and liabilities of the company.

6. A comparative table covering the last three accounting periods and including, for each accounting period, at the end of such period, the total net asset

value of the company and the net asset value per unit or share.

During its first, second and third accounting periods, a company shall show the above information for all accounting periods since its registration.

7. Details, by category of transaction, of the resulting amount of commitments.

References in this paragraph to commitments are to the commitments resulting from the use of techniques and instruments for the purposes of efficient portfolio management, including protection against exchange, interest rates and market risks.

SIXTH SCHEDULE

(Article 177)

Amended by: *IV. 2003.166; XXXI. 2015.25; LIV. 2016.5; XVIII.2025.60.*

CONTENTS OF DIRECTORS' REPORT

1. The directors' report shall contain -

(*a*) particulars of any important events affecting the company or any of its subsidiary undertakings which have occurred since the end of the accounting period;

(*b*) an indication of likely future developments in the business of the company and of its subsidiary undertakings;

(*c*) an indication of the activities, if any, of the company and of its subsidiary undertakings in the field of research and development;

(*d*) the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves; and

(*e*) the existence of branches of the company;

(*f*) in relation to the undertaking's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss:

(i) the undertaking's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used; and

(ii) the undertaking's exposure to price risk, credit risk, liquidity risk and cash flow risk.

2. The directors' report shall disclose the information specified in paragraph 3 of this Schedule where in an accounting period shares in a company -

(*a*) are purchased by the company or are acquired by it by forfeiture or surrender or the company otherwise acquires its own shares; or

(*b*) are acquired by another person in circumstances where the acquisition is by company's nominee, or by another with the company financial assistance, the company itself having a beneficial interest; or

(*c*) are made subject to pledge or other privileges, to a hypothec or to any

other charge in favour of the company.

3. The information required to be disclosed in the directors' report in accordance with the provisions of paragraph 2 of this Schedule shall consist of the following:

(*a*) the reasons for such transactions or occurrences;

(*b*) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

(*c*) in the case of acquisition or disposal for a value, the consideration of the shares;

(*d*) the number and nominal value of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent;

(*e*) *Deleted by Act XVIII.2025.60.*

4. Small undertakings shall be exempted from the obligation to prepare directors' reports, provided that they shall provide the information referred to in paragraph 2 and paragraph 3(*a*) to (*c*) of this Schedule concerning the acquisition by an undertaking of its own shares to be given in the notes to the financial statements.

5. Medium-sized undertakings shall be exempted from the obligation set out in the third paragraph of sub-article (2) of article 177 insofar as it relates to non-financial information.

6. Where a consolidated directors' report is required in terms of article 177, the following adjustment to the information required by that article and this Schedule shall apply namely that in reporting details of own shares acquired, the consolidated directors' report shall indicate the number and nominal value of all the parent undertaking's shares held by that parent undertaking, by subsidiary undertakings of that parent undertaking or by a person acting in his own name but on behalf of any of those undertakings. The disclosure of these particulars is required in the notes to the consolidated financial statements.

7. Where a consolidated directors' report is required in addition to the directors' report, the two reports may be presented as a single report.

Additional disclosures of non-financial information applicable to certain large undertakings and groups

8. Large undertakings, as referred to in paragraph 1 of the Third Schedule, which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall, in addition to the other requirements of this Schedule, include in the directors' report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(*a*) a brief description of the undertaking's business model;

(*b*) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;

(*c*) the outcome of those policies;

(*d*) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;

(*e*) non-financial key performance indicators relevant to the particular business.

Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.

The non-financial statement referred to in this paragraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the directors, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

In requiring the disclosure of the information referred to in this paragraph, undertakings may rely on existing national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon.

9. Undertakings fulfilling the obligation set out in paragraph 8 of this Schedule shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in sub-article (2) of article 177.

10. An undertaking which is a subsidiary undertaking shall be exempted from the obligation set out in paragraph 8 if that undertaking and its subsidiary undertakings are included in the consolidated directors' report.

11. Public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year shall include in the consolidated directors' report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(*a*) a brief description of the group's business model;

(*b*) a description of the policies pursued by the group in relation to those matters, including due diligence processes implemented;

(*c*) the outcome of those policies;

(*d*) the principal risks related to those matters linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the group manages those risks;

(*e*) non-financial key performance indicators relevant to the particular business.

Where the group does not pursue policies in relation to one or more of those matters, the consolidated non-financial statement shall provide a clear and reasoned explanation for not doing so.

The consolidated non-financial statement referred to in this paragraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the consolidated financial statements.

Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the directors, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity.

In requiring the disclosure of the information referred to in this paragraph the parent undertaking may rely on existing national, Union-based or international frameworks, and if it does so, the parent undertaking shall specify which frameworks it has relied upon.

12. A parent undertaking fulfilling the obligation set out in paragraph 11 of this Schedule shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in sub-articles (2), (5) and (6) of article 177.

13. A parent undertaking which is also a subsidiary undertaking shall be exempted from the obligation set out in paragraph 11 if that exempted parent undertaking and its subsidiaries are included in the consolidated directors' report, drawn up in accordance with sub-articles (5) and (6) of article 177 and this Schedule.

SEVENTH SCHEDULE

(Article 184)

Substituted by:
IV. 2003.167;
L.N. 425 of 2007.

Company No: .....

CONTENTS AND FORM OF ANNUAL RETURN

ANNUAL RETURN of .....
..... (name of the company)

Date to which this return is made up: .....
(*being the anniversary of the company's date of registration*)

---

1. *Address*

(*Address of the registered office of the company*)

This form must be completed in BOLD TYPE FORM

2. *Summary of Share Capital*

All euro amounts are to be preceded by the symbol €. Symbols used for other currencies are to be indicated (where applicable).

Currency	Symbol
.....	.....
.....	.....
.....	.....
.....	.....

(a) *Nominal Share Capital*

Nominal Share Capital ..... divided into:

(Insert number and class)		shares of	..... each
.....	.....	shares of	..... each
.....	.....	shares of	..... each
.....	.....	shares of	..... each

(b) *Issued Share Capital*

	Number	Class
Number of shares of each class taken up to the date of this return (which number must agree with the total shown on the list as held by existing members).	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares

Number of shares of each class issued as partly paid up and extent to which each such share is so paid up.	issued as paid up to the extent of ..... per share .... shares
	issued as paid up to the extent of ..... per share .... shares
	issued as paid up to the extent of ..... per share .... shares
	issued as paid up to the extent of ..... per share .... shares

	Number	Class
Total number of shares of each class forfeited.	.....	..... shares
	.....	..... shares
	.....	..... shares
	.....	..... shares

Total amount paid, if any, on
shares forfeited. ....

3. List of Past and Present Members

List of persons holding shares or stock in the company on the date to which this return is made up, and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the registration of the company.

Folio in register ledger containing particulars	Names Addresses (in the case of a body corporate, its registered office)	Account of Shares			Remarks
		Number of shares held by existing members at the date of return*§	Particulars of shares transferred or transmitted *causa mortis* since the date of the last return, or, in the case of the first return, of the registration of the company by (a) persons who are still members and (b) persons who have ceased to be members**		
			Number §	Date of registration or transfer	
			(*a*)	(*b*)	

3. List of Past and Present Members (*cont. sheet*)

* The aggregate number of shares held by each member shall be stated, and the aggregates shall be added up so as to agree with the number of the shares stated in the Summary of Share Capital and Debentures to have been taken up.

§ When the shares are divided into different classes these columns should be sub-divided so that the number of each class held, transferred or transmitted *causa mortis*, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member shall be shown.

** The date of registration of each transfer or transmission *causa mortis* shall be given as well as the number of shares transferred or transmitted *causa mortis* on each date. The particulars shall be placed opposite the name of the transferor and not opposite that of

the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer. (The word "transferor" shall mean the deceased and the word "transferee" shall mean the heir or legatee, in the case of transmission *causa mortis*).

4. *Particulars of Directors*

Particulars of the persons who are directors of the company at the date of this return.

Name (in the case of an individual, name or names and surname. In the case of a body corporate, the corporate name)	Nationality	Usual residential address (in the case of a body corporate, the registered office)

5. *Particulars of Company Secretary*

Particulars of the person who is company secretary of the company at the date of this return.

Name (in the case of an individual, name or names and surname. In the case of a body corporate, the corporate name)	Nationality	Usual residential address (in the case of a body corporate, the registered or principal office)

Signed .....
Director / Company Secretary

Amended by:
XV. 2007.15;
IX. 2008.43.

EIGHTH SCHEDULE

(Article 186)

CONVERSION RULES APPLICABLE ON A CHANGE IN THE CURRENCY IN WHICH THE SHARE CAPITAL OF A COMPANY IS EXPRESSED AND THE CORRESPONDING PRESENTATION CURRENCY

Interpretation

1. In this Schedule, unless the context otherwise requires -

"Presentation currency" shall mean the currency used in presenting the annual accounts in accordance with the provisions of article 187. On a change in the presentation currency consequent to a change in the currency in which the share capital of a company is expressed which is effected in accordance with the provisions of article 186, the term "original presentation currency" shall refer to the presentation currency in operation before the change; and the term "new presentation currency" shall refer to the presentation currency applicable following the change, and in the case of the change taking place in the first accounting period, to the presentation currency which would have been used had such change not taken place.

"Exchange rate" means the ratio at which the currencies of two countries are exchanged at a particular point in time.

"Spot rate" means the middle exchange rate on a particular day for the exchange of currencies on that day.

"Closing rate" means the spot rate that exists at the balance sheet date which immediately precedes the accounting period to which the change in presentation currency applies.

General rule

2. (1) The company's share capital, its share premium account when applicable, and its reserves shall be converted from the original presentation currency to the new presentation currency in accordance with the rules set out in paragraphs 3 and 4 of this Schedule.

(2) All other items in the company's annual accounts, including comparative figures where applicable, shall be presented in the new presentation currency in accordance with generally accepted accounting principles and practice.

Conversion rules for share capital and share premium

3. (1) The called-up share capital and the balance on the share premium account shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued by the company.

(2) The amount which is still uncalled on any shares issued by the company shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued by the company.

(3) The nominal value per share in the new presentation currency shall be

calculated by taking the aggregate of the called-up share capital converted as set out in sub-paragraph (1) of this paragraph and the uncalled amount, if any, on any shares issued by the company converted in accordance with sub-paragraph (2) of this paragraph, and dividing this aggregate amount (the issued share capital) by the number of shares in issue:

Provided that where there exists -

(*a*) preference shares or different classes of preference shares; or

(*b*) different classes of ordinary shares and where the nominal value per share varies between one class and the other,

the conversion of the nominal value per share to the new presentation currency shall be carried out separately for the ordinary shares and the preference shares, or for each class of ordinary and preference shares in so far as the nominal value per share varies between one class and the other, as the case may be.

(4) The authorised share capital of the company shall be converted by taking the aggregate of -

(*a*) the aggregate amount referred to in sub-paragraph (3) of this paragraph (the converted issued share capital); and

(*b*) the amount of the authorised share capital, which has not yet been issued, converted from the original share capital at the closing rate.

Conversion rules for reserves

4. (1) Reserves created out of profits, including retained profits, and accumulated losses shall be converted at the average annual exchange rate or rates pertaining to the accounting period or periods during which the profits and losses from which such reserves or accumulated losses originated were earned or incurred.

(2) Reserves which were not created out of profits shall be converted at the exchange rate or rates applicable on the date or dates when such reserves were created.

Presentation currency conversion difference

5. Where following conversion to the new presentation currency a presentation currency conversion difference arises, this is not to be recognised in the company's profit and loss account but is to be recognised as a separate component of equity, and is to be considered as an unrealised gain or as a realised loss as applicable.

Disclosure

6. In the first annual accounts following the conversion, the notes shall include full details of the method of conversion and the exchange rates used for the company's share capital, its share premium account when applicable, and its reserves.

Amended by:
IV. 2003.168.

NINTH SCHEDULE

(Article 2)

EXPLANATION OF EXPRESSIONS USED IN SUB-ARTICLE (2) OF ARTICLE 2 OF THIS ACT AND PROVISIONS SUPPLEMENTARY THERETO

Voting rights in an undertaking

1. (*a*) References to voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(*b*) References to directors shall be taken to include references to persons entrusted with the administration of undertakings not having directors and references to the board of directors shall be taken to include the equivalent body in such undertakings.

2. In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct overall policy of the undertaking or to alter the terms of its constitution.

Rights to appoint or remove a majority of the directors

3. Reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

4. An undertaking shall be treated as having the right to appoint to a directorship if -

(*a*) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(*b*) the directorship is held by the undertaking itself.

5. The right to appoint or remove which is exercisable only with the consent or concurrence of another person shall not be taken into account unless no other person has a right to appoint or, as the case may be, to remove in relation to that directorship.

Right to exercise dominant influence

6. An undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with, whether or not those directions are for the benefit of that other undertaking.

Rights exercisable only in certain circumstances

7. Rights which are exercisable only in certain circumstances shall be taken into account only -

(*a*) when the circumstances have arisen, and for so long as they continue to

exist; or

(*b*) when the circumstances are within the control of the person having the rights.

8. Rights which are normally exercisable but which are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another

9. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

10. Rights held by a person as nominee for another shall be treated as held by the other.

11. Rights shall be regarded as held by a person as nominee for another if they are exercisable on that other's instructions or with his consent or concurrence.

Rights attributed to parent undertaking

12. Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

Disregard of certain rights

13. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

14. The voting rights in an undertaking shall be reduced by any rights attaching to shares -

(*a*) held by way of security, provided that the rights in question are exercised in accordance with the instructions received; or

(*b*) held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

Added by:
IV. 2003.171.
Amended by:
XIII. 2004.107;
XII. 2006.74;
L.N. 425 of 2007;
IX. 2008.44;
L.N. 561 of 2010.
Substituted by:
L.N. 478 of 2014.

TENTH SCHEDULE

(Article 66A)

Partnerships *en commandite* or Limited Partnerships

PART I - REGULATIONS FOR PARTNERSHIPS *EN COMMANDITE* OR LIMITED PARTNERSHIPS

Interpretation.

1. (1) In this Schedule, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

"the Act" means the Companies Act;

"base currency" means the currency in which a class of shares of a Share Capital Limited Partnership is denominated;

"competent authority" means the competent authority within the meaning of and appointed for the purposes of the Investment Services Act;

"currency" means, in addition to the euro, any convertible currency in terms of article 186 of this Act;

"fractional share" means a fraction of a whole share in any class of shares issued by a Share Capital Limited Partnership;

"insolvent" and cognate expressions, in respect of the Limited Partnership, shall be construed in accordance with paragraph 25(6);

"Limited Partnership" means a partnership en commandite or limited partnership falling within the scope of application of this Schedule as per paragraph 2 below and, unless otherwise expressly stated or the context otherwise requires, it includes both a Share Capital Limited Partnership and a Non-Share Capital Limited Partnership;

"Multi-Class Limited Partnership" means a Share Capital Limited Partnership within the terms of paragraph 36;

"Multi-Fund Limited Partnership" means a Limited Partnership within the terms of paragraph 37;

"Non-Share Capital Limited Partnership" means a Limited Partnership the capital of which is not divided into shares;

"Partnership Deed" means the agreement/s in writing of the partners as to the affairs of the Limited Partnership and the conduct of its business, as the same may be amended from time to time as provided in paragraph 10;

"Partnership Registration Document" means the document delivered to the Registrar for registration as referred to in paragraph 7(3);

"partnership interest" or "interest of a partner in the Limited Partnership" and cognate expressions, means the totality of the rights, duties and obligations of a partner in a Limited Partnership, including a partner's capital contribution, the right to share in the profits and losses of the Limited Partnership and the right to receive

distributions of assets of the Limited Partnership;

"Share Capital Limited Partnership" means a Limited Partnership the capital of which is divided into shares;

"solvent" and cognate expressions, in respect of the Limited Partnership, shall be construed in accordance with paragraph 25(6);

"sub-fund" means the distinct class or classes of shares constituting that sub-fund in a Multi-Fund Limited Partnership to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other sub-funds in the same Multi-Fund Limited Partnership;

"Variable Capital Limited Partnership" means a Share Capital Limited Partnership with variable share capital within the meaning of paragraph 35.

(2) Unless otherwise defined herein or the context otherwise requires, words and expressions used in this Schedule shall have the same meaning as is assigned to them in article 2(1) of the Act.

(3) Furthermore, the provisions of article 2(2) of the Act, with the exception of paragraph (*d*) thereof, and the provisions of article 2(3) and article 3 of the Act shall, to the extent they are stated to be applicable to a partnership en commandite or limited partnership or to commercial partnerships in general, apply to a Limited Partnership within the meaning of this Schedule.

Scope of application.

2. (1) The provisions of this Schedule shall apply only to partnerships en commandite or limited partnerships within the meaning of article 66A(1) of this Act, and in particular it shall apply to -

(*a*) a partnership *en commandite* or limited partnership the capital of which may or may not be divided into shares, which in the Partnership Deed expressly limits its object to the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of giving the partners the benefit of the results of the management of its funds, and to matters ancillary or incidental thereto, and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act:

Provided that the term "unit" as defined in article 2(1) of the Investment Services Act shall, for the purposes of this Schedule, be interpreted broadly to encompass all forms of partnership interest, and shall not be limited to interests in partnerships *en commandite* or limited partnerships that are structured as unitised funds;

(*b*) a partnership *en commandite* or limited partnership, the capital of which may or may not be divided into shares, which in the Partnership Deed expressly limits its objects to any other purpose as may be prescribed in this Schedule or as the Minister may from time to time prescribe by regulations.

(2) Notwithstanding what is provided in sub-paragraph (1) above, one or more particular provisions of this Schedule may be expressly stated by this Schedule or by regulations made by the Minister not to apply to one or more categories of Limited Partnerships set out in sub-paragraph (1)(a) or (b) above, and in such case the said provisions shall not apply to such category or categories of Limited Partnerships.

Application of Part II of the Act.

3. (1) The provisions of Part II of the Act shall, to the extent applicable to a partnership *en commandite* or limited partnership, also apply to a Limited Partnership under this Schedule, save as otherwise provided below -

(*a*) the provisions of article 4(2) thereof shall be read and construed and shall apply as if the reference therein to "one or more acts of trade" were, in respect of such Limited Partnership, a reference to "the objects specified in the deed of partnership in terms of and as permitted by article 66A, the Tenth Schedule and, or regulations issued by the Minister from time to time"; and

(*b*) the provisions of article 6(4) shall not apply to such Limited Partnership.

Formation of Limited Partnership.

4. (1) A Limited Partnership may be formed by two or more partners, at least one of which shall be a general partner and at least one of which shall be a limited partner, shall have a separate legal personality, shall operate under a partnership name, shall have a capital which may or may not be divided into shares, and shall additionally be constituted and be registered as provided in this Schedule.

(2) A Limited Partnership shall have a legal personality separate and distinct from that of its partners, and shall accordingly be the subject of rights and obligations, be capable of owning and holding property under any title at law and of suing and being sued, in its own name, and such legal personality shall continue until such time as the name of the Limited Partnership shall be struck off the register, whereupon the Limited Partnership shall cease to exist.

Constitution of Limited Partnership.

5. (1) A Limited Partnership shall consist of:

(*a*) one or more general partners who -

(i) are admitted to the Limited Partnership as general partners in accordance with the Partnership Deed;

(ii) shall be jointly and severally liable for all debts of the Limited Partnership without limitation, provided that no action shall lie against any of the general partners unless the property of the partnership has first been discussed; and

(iii) each of whom shall satisfy such eligibility and other criteria and requirements as are applicable to it, if any, in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act and, or in terms of the Partnership Deed; and

(*b*) one or more limited partners who -

(i) are admitted to the Limited Partnership as limited partners in accordance with the Partnership Deed;

(ii) upon entering the Limited Partnership, contribute, or agree to contribute to the capital thereof a specified sum;

(iii) subject to paragraphs 6(5), 15(2), 16(1) and 25(2), shall not be liable for any debts of the Limited Partnership beyond the amount so contributed or agreed to be contributed and not yet paid; and

(iv) satisfy such eligibility and other criteria and requirements as are respectively applicable to them, if any, in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act and, or in terms of the Partnership Deed.

(2) Any person (including, without limitation, a limited liability company) may be a partner (whether general or limited) in a Limited Partnership.

(3) The contribution of a limited partner may be satisfied by the provision of cash or other property capable of economic assessment but may not consist of future services or undertakings to perform work or supply services; and where property other than cash is so provided, the value of the property shall be deemed to be its fair market value at the time of its transfer to the Limited Partnership.

(4) An agreement to pay a share of the profits of a Limited Partnership to a person in total or partial remuneration for his services shall not, of itself, make him a partner.

Partnership name.

6. (1) Subject to the provisions of sub-paragraphs (3) and (4), a Limited Partnership may be designated by any name, but such name shall end with the words "Limited Partnership" or its abbreviation "LP" or "L.P.".

(2) No person carrying on any business in Malta, other than a Limited Partnership registered under this Schedule or a partner therein, shall in any way or manner describe itself or himself or so hold itself or himself out or reasonably be understood to indicate, or use any name which indicates or may reasonably be understood to indicate that it or he is, or is carrying on business as, a Limited Partnership registered under this Schedule or, as the case may be, a partner therein. Without prejudice to the aforesaid, an undertaking which is validly registered under the laws of a country other than Malta with a name which includes "Limited Partnership" or its abbreviation "LP" or “L.P.”, or a partner therein, who lawfully carries on business in Malta, shall not be deemed to be in breach of this sub-paragraph (2) simply by reason of the fact that it uses and carries on such business under the name by which such undertaking is so validly registered in its country of registration or, as the case may be, describes himself as a partner in such undertaking with such name.

(3) A Limited Partnership shall not be registered by a name which -

(*a*) is the same as the name of another commercial partnership or so nearly similar as in the opinion of the Registrar it could create confusion; or

(*b*) is in the opinion of the Registrar offensive or otherwise undesirable; or

(*c*) has been reserved for registration for another commercial partnership by notice in writing to the Registrar given not more than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this sub-paragraph without delay to the person requesting the registration.

Provided further that in applying sub-paragraph (3)(*b*), the Registrar shall have regard to the business or proposed business of the Limited Partnership and to the protection of the names of individuals who are not connected in any way with the Limited Partnership.

(4) The name of a limited partner or a distinctive part thereof may not form part

of the name of the Limited Partnership.

(5) A limited partner who knowingly allows his name or a distinctive part thereof to be used in the name of a Limited Partnership shall be liable as a general partner to any person who extends credit to the Limited Partnership without knowledge that the limited partner is not a general partner.

(6) A person who contravenes the provisions of sub-paragraph (2) shall be liable to a penalty.

(7) Any person who makes use of a name falsely implying the existence of a Limited Partnership shall be liable to a penalty.

Partnership Deed and Partnership Registration Document.

7. (1) A Limited Partnership shall not be validly constituted unless a Partnership Deed is entered into and signed as provided in this Schedule and unless a Partnership Registration Document is duly delivered to the Registrar and a certificate of registration is issued by the Registrar under this Schedule in respect thereof.

(2) The Partnership Deed shall be in writing and shall be signed by at least the first general partner and the first limited partner.

(3) A Partnership Registration Document signed by the first general partner or (if more than one) by the first general partners shall be delivered to the Registrar for registration, which shall state the following matters, as provided in the Partnership Deed, and for the avoidance of doubt the matters indicated in sub-paragraph (3)(*a*) to (*g*) below shall also be expressly stated in the Partnership Deed:

(*a*) the name and residence of the general partner or (if more than one) of each of the general partners;

(*b*) the name of the Limited Partnership;

(*c*) the registered office in Malta of the Limited Partnership;

(*d*) the objects of the Limited Partnership;

(*e*) whether the capital of the Limited Partnership is or is not divided into shares, and

(i) in the case of a Share Capital Limited Partnership with fixed share capital, a statement of the fact that the Limited Partnership has a fixed share capital, the nominal (authorized) share capital of the Limited Partnership, and where applicable an indication that the capital is or is capable of being divided into different classes of shares;

(ii) in the case of a Variable Capital Limited Partnership, a statement of the fact that the Limited Partnership has a variable share capital, and where applicable an indication that the capital is or is capable of being divided into different classes of shares, and the matters indicated in paragraph 35(2) and, or where applicable paragraph 38(4);

(iii) in the case of a Multi-Class Limited Partnership, a statement that the different classes of shares into which the capital is or is capable of being divided shall not constitute distinct sub-funds of the Limited Partnership; and

(iv) in the case of a Multi-Fund Limited Partnership, a statement that

the different classes or groups of classes of shares into which the capital is or is capable of being divided shall constitute distinct sub-funds of the Limited Partnership as may be provided for in the Partnership Deed, without prejudice to the proviso to paragraph 37(1);

(*f*) where applicable, in the case of a Multi-Fund Limited Partnership, the election referred to in paragraph 38(1);

(*g*) the period, if any, fixed for the duration of the Limited Partnership, and where no such period is fixed, a statement to that effect; and

(*h*) a declaration that the Partnership Deed has been entered into and signed as provided in this Schedule.

The Partnership Deed may (optionally) also provide for any of the following matters, in which case such matters shall also be stated in the Partnership Registration Document to be delivered to the Registrar for registration:

(i) it may specify whether the administration and representation of the Limited Partnership is to be exercised by the general partners jointly or severally, and unless so specified, such administration and representation shall be exercised severally as provided in paragraph 11(1); and, or

(ii) it may expressly provide for the extension of the period, if any, fixed for the duration of the Limited Partnership.

(4) Upon receipt of the Partnership Registration Document, the Registrar, upon being satisfied that it complies with the requirements of this Schedule, shall register it.

(5) To the extent so provided in the Partnership Deed, the Partnership Deed shall be binding upon the partners and their assigns and upon subsequent partners in the same manner as if those persons had themselves executed the same.

Duty of Registrar and effects of registration.

8. (1) On the registration of the Partnership Registration Document and the payment of the fees prescribed under article 66A(3)(d) of this Act, the Registrar shall certify under his hand that the Limited Partnership is registered and the Limited Partnership shall come into existence and shall be authorised to commence business under its name as from the date of the certificate.

(2) A certificate of registration given in respect of a Limited Partnership is conclusive evidence that the requirements of this Schedule in respect of registration have been complied with and that the Limited Partnership has come into existence and is duly registered under this Act.

(3) The registration of a Limited Partnership by the Registrar under this paragraph 8 shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the Limited Partnership under any other law.

Where certificate of registration is not issued.

9. (1) All persons carrying on business under a name falsely implying the existence of a Limited Partnership or carrying on business or entering into agreements in the name of or on behalf of a Limited Partnership in respect of which a certificate of registration has not been issued under this Schedule, shall, unless otherwise agreed, be personally and jointly and severally liable for their dealings

with third parties so entered into by them.

(2) Failing agreement to the contrary, the persons referred to in sub-paragraph (1) shall have, as against one another and in respect of the assets and liabilities arising out of the business carried on as provided in the said sub-paragraph (1), the rights and obligations of joint owners.

Changes in Partnership Deed and notification of changes.

10. (1) Unless otherwise provided in the Partnership Deed, any alteration or addition to the Partnership Deed may only be made with the unanimous consent of the partners, provided that, unless otherwise provided in the Partnership Deed, an alteration consisting in a change of the registered office in Malta of the Limited Partnership, shall require only the consent of the general partners vested with the administration or representation of the Limited Partnership.

(2) The Limited Partnership shall deliver to the Registrar for registration a return of any change in any of the matters contained in the Partnership Registration Document set out in paragraph 7(3) within fourteen days from the happening thereof, specifying the date of the change and details of the change.

(3) Where the change in the Partnership Deed consists of the replacement of a general partner by a new general partner or the appointment of any additional general partner, the return to be delivered to the Registrar under sub-paragraph (2) shall specify the name and residence of the new general partner.

(4) Any alteration or addition to the Partnership Deed in respect of any of the matters set out in paragraph 7(3) shall not take effect with respect to third parties, unless and until it is registered as provided in sub-paragraph (2).

(5) Where the extension of the period, if any, fixed for the duration of a Limited Partnership is expressly provided for in the Partnership Deed and stated in the Partnership Registration Document, the Limited Partnership shall, notwithstanding that provision in the Partnership Deed, deliver a notice of extension of the period of duration to the Registrar for registration, and any such extension, whether expressly provided for in the Partnership Deed or otherwise, shall not take effect unless and until the said notice is delivered to the Registrar and is registered by him, and unless such delivery takes place at least fifteen days before the date so fixed.

(6) If default is made in complying with the provisions of sub-paragraph (2) or sub-paragraph (5), every general partner who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) Where a Limited Partnership changes its name under the provisions of sub-paragraph (2), the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case:

Provided that the provisions of paragraph 6 shall apply to the registration of such new name.

Administration and representation.

11. (1) The administration and representation of a Limited Partnership shall vest in the general partners, and unless the Partnership Deed and the Partnership Registration Document otherwise provide, such administration and representation shall vest in each of the general partners severally:

Provided that, without prejudice to sub-paragraphs (3) to (6) of paragraph 12,

the Partnership Deed may contain provisions relating to the manner in which the representation of the Limited Partnership is to be exercised by the general partners, including restrictions on the powers of representation of any general partner, and the Partnership Deed may also provide that the limited partners shall have the right to participate in decisions relating to the vesting or removal of powers of administration and representation of the Limited Partnership in or from the general partners:

Provided further that, without prejudice to the joint or several powers of administration and representation of the general partners as provided above in sub-paragraph (1), the said general partners vested with the administration and representation of the Limited Partnership may by power of attorney authorise any one of the general partners or any other person, including a limited partner, to represent the Limited Partnership in any particular case or cases and, or for any particular purpose or purposes.

(2) Legal proceedings by or against a Limited Partnership (including proceedings to enforce a foreign judgment or arbitral award by or against the Limited Partnership) may only be instituted by or against, and generally the judicial representation of the Limited Partnership shall vest in, the general partners vested with the administration and representation of the Limited Partnership; and, subject to the provisions of sub-paragraphs (3) and (4), no limited partner shall be a party to or named in such proceedings or exercise such judicial representation; in all cases without prejudice to the provisos to sub-paragraph (1).

(3) The provisions of sub-paragraph (2) are without prejudice to the right of any person to join or otherwise institute proceedings against a limited partner -

(*a*) who is liable for any debt of the Limited Partnership pursuant to paragraphs 6(5), 15(2) or 16(1); or

(*b*) to obtain payment of his contribution or repayment of any amount pursuant to paragraph 25(2).

(4) A limited partner may, with leave of the court applied by means of an application, institute proceedings on behalf of a Limited Partnership if -

(*a*) the general partners have, without good cause, failed or refused to do so; and

(*b*) the failure or refusal is oppressive to the limited partner or is prejudicial to his interests as a limited partner.

How Limited Partnership may be bound.

12. (1) A Limited Partnership may not be bound in favour of third parties except by a partner acting under the name of the Limited Partnership and having the representation of the Limited Partnership either by virtue of the Partnership Deed and as stated in the Partnership Registration Document or by operation of law, including by virtue of a power of attorney as referred to in the second proviso to sub-paragraph (1) of paragraph 11.

(2) Where any such partner has acted as aforesaid, the Limited Partnership shall be bound even though it derives no benefit.

(3) Notwithstanding anything contained in the Partnership Deed relating to the manner in which the representation of the Limited Partnership is to be exercised, anything done by the partners vested with the administration and representation of a

Limited Partnership which exceeds the limits of their authority or by any partner vested with such administration and representation which is beyond his powers, shall be binding on the Limited Partnership unless that act exceeds the powers granted to the partners vested with the administration and representation or to such partner so vested, as the case may be, by virtue of this Schedule.

(4) Any limitation on the powers of the partners vested with the administration and representation of a Limited Partnership or of any such partner shall not be relied on as against third parties independently of whether that limitation, published or not, arises from the Partnership Deed or from a decision of the partners.

(5) Where an act of the Limited Partnership falls outside the Limited Partnership's objects, the Limited Partnership shall not be bound if it proves that, when the act was done, the third party knew that it was outside the Limited Partnership's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the Partnership Registration Document and of any subsequent changes to the matters stated therein shall not in itself be sufficient to prove that the third party knew, or could not have been unaware, that the act was outside the Limited Partnership's objects.

(6) Notwithstanding the provisions of this Schedule or of the Partnership Deed relating to the formalities of the appointment of a partner vested with the administration and representation of a Limited Partnership and to his qualification, any irregularity concerning the appointment of such a partner raised after the completion of the publication of his appointment shall not be relied upon by the Limited Partnership as against third parties unless the Limited Partnership proves that such parties were aware of the irregularity at the relevant time. Third parties who were not aware of such irregularities at the relevant time may rely on that irregularity as against the Limited Partnership.

Acts required to be done by the Limited Partnership.

13. Any return, notice or other communication to the Registrar required to be delivered or made by a Limited Partnership under any provision of this Schedule shall be deemed to be required to be done by the partners vested with the administration and representation of the Limited Partnership, and where and for so long as there are no general partners in the Limited Partnership capable or willing to act within the prescribed time for delivery or making of such return, notice or other communication, the same may also be delivered or made by any limited partner.

General Partners.

14. (1) Unless otherwise provided in the Partnership Deed, a general partner of a Limited Partnership (hereinafter in this paragraph 14 referred to as the "Relevant Limited Partnership") shall not, without the express consent of the other partners or as otherwise expressly provided in the Partnership Deed:

(*a*) carry on business on his own account or on account of others in competition with the Relevant Limited Partnership;

(*b*) be a partner with unlimited liability in another commercial partnership or a director in a company which is in competition with the Relevant Limited Partnership;

(*c*) deal in any manner with any property of the Relevant Limited Partnership or with rights of the Relevant Limited Partnership in any such property, for any purpose other than a purpose of the Relevant

Limited Partnership; or

(*d*) admit a person as a partner in the Relevant Limited Partnership otherwise than in accordance with the Partnership Deed.

(2) If a partner acts in contravention of the provisions of sub-paragraph (1)(*a*), (*b*) or (*c*), the Relevant Limited Partnership may, at its option, either take action for damages and interest against the offending partner or demand payment of any profit made by him in violation of the relevant prohibition.

(3) The provisions of this paragraph 14 shall be without prejudice to any other remedy which a Limited Partnership may have against a general partner for breach of duty.

(4) The provisions of this paragraph 14 or any other provisions of this Schedule shall also be without prejudice to any other duties, fiduciary or otherwise, which may be incumbent upon a general partner or to which a general partner may be subject by virtue of the Partnership Deed or by virtue of any laws, regulations, rules of the competent authority or any condition of any licence or other authorisation, which may be applicable to such general partner.

(5) Save as otherwise expressly provided in this Schedule or in the Partnership Deed, decisions of the general partners related to the business of the Limited Partnership shall be taken by a simple majority of the general partners entitled to participate in the decision.

Limited partners.

15. (1) A limited partner shall not perform any act of administration nor transact business on behalf of the Limited Partnership, and shall not transact the business of, sign or execute documents for or otherwise bind the Limited Partnership, except by virtue of a power of attorney given for specified acts or transactions or otherwise as provided and in the circumstances contemplated in sub-paragraph (2) of paragraph 28.

(2) A limited partner who acts or purports to act in contravention of the provisions of sub-paragraph (1), shall be liable as if he were a general partner in respect of all debts incurred as a result of his so acting.

(3) A limited partner shall not be deemed to have acted in contravention of the provisions of sub-paragraph (1) by reason only of any one or more of the following circumstances:

(*a*) he is an employee, agent or contractor of the Limited Partnership or of a general partner thereof;

(*b*) he acts as an officer, employee or shareholder of a corporate general partner of the Limited Partnership, or acts as a partner of a general partner of the Limited Partnership;

(*c*) he consults with and advises a general partner of the Limited Partnership as to the business of the Limited Partnership;

(*d*) he investigates, reviews, approves or is advised as to the accounts or affairs of the Limited Partnership;

(*e*) he exercises any right or power conferred on limited partners by this Schedule or any right or power conferred on limited partners by the Partnership Deed;

(*f*) he approves or disapproves an amendment to the Partnership Deed;

(*g*) he participates in or requests the appointment or removal of an auditor

of the Limited Partnership;

(*h*) he calls, convenes, requests, attends or participates in, or votes as a limited partner in, any meeting of the partners;

(*i*) he participates in the appointment or removal of any person to serve or serving on any board or committee of the Limited Partnership or of a general partner thereof;

(*j*) without prejudice to the generality of sub-paragraph (i), he appoints or removes a representative to any advisory committee of the Limited Partnership and, or undertakes such representative's actions in that capacity;

(*k*) he acts as surety or guarantor of, or provides security for the obligations undertaken by, the Limited Partnership;

(*l*) he lends money to, borrows money from or enters into transactions with the Limited Partnership;

(*m*) he approves or vetoes a type of investment or particular investment to be made by the Limited Partnership;

(*n*) he exercises a right to opt into or out of any investment to be made by the Limited Partnership;

(*o*) he approves or vetoes any valuation of the Limited Partnership's investments;

(*p*) he approves or vetoes any conflict of interest relating to the Limited Partnership or its business or any partner in the Limited Partnership.

(4) The provisions of the immediately preceding sub-paragraph shall not be construed as meaning that, if a limited partner exercises any other right, power or function, he has necessarily, by reason of that fact alone, acted in contravention of the provisions of sub-paragraph (1).

(5) A limited partner may, subject to the provisions of the Partnership Deed and as and to the extent provided therein, but without prejudice to any rights granted to him by virtue of this Schedule -

(*a*) inspect the books of the Limited Partnership;

(*b*) with such assistance as may reasonably be required of the general partners, examine and inquire into the state and prospects of the business of the Limited Partnership, and advise the partners thereon;

(*c*) request and obtain true and full information of all things affecting the Limited Partnership; and

(*d*) request and obtain a formal account of the affairs of the Limited Partnership whenever circumstances render it just and reasonable.

Person holding himself out to be a general partner.

16. (1) A person, including a limited partner, who holds himself out as being a general partner shall be held liable unlimitedly and jointly and severally with the general partners for all the obligations contracted by the Limited Partnership while he so holds himself out.

(2) Without prejudice to sub-paragraph (5) of paragraph 6, the inclusion in the name of a Limited Partnership of the name of a person who is not a general partner shall be taken into account by the court in determining whether such person is holding himself out as being a general partner.

When limited partner ceases to be a partner.

17. (1) A person shall cease to be limited partner of a Limited Partnership:

(*a*) upon the valid and absolute assignment of the whole of his interest in the Limited Partnership; or

(*b*) at such time and, or upon the occurrence of such event as may be so specified in the Partnership Deed.

Such cessation shall be evidenced by means of an entry to that effect in the register of partners.

(2) The fact that a person has ceased to be a limited partner shall not relieve him of any liability arising under paragraphs 6(5), 15(2), 16(1) and 25(2).

(3) The fact only that a person ceases to be a limited partner shall not constitute a change or amendment to the Partnership Deed.

(4) Unless the Partnership Deed otherwise provides and subject to the provisions thereof and to the provisions of paragraph 19 of this Schedule, in the event of death or dissolution or other cessation of existence of a limited partner, the Limited Partnership shall continue with the heirs or other relevant successors in title to the respective interests of such limited partner in the Limited Partnership.

(5) When a person ceases to be a limited partner in a Limited Partnership in the cases referred to in sub-paragraph (1)(*b*), such person shall have such rights as to liquidation of his interests in the Limited Partnership and other rights to assets of the Limited Partnership, and at such time or times, and shall be subject to such obligations, as may be provided for in the Partnership Deed.

When general partner ceases to be a partner.

18. (1) A person shall, subject to the provisions of the Partnership Deed, cease to be a general partner of a Limited Partnership, upon the occurrence of any of the following events:

(*a*) his resignation, retirement, removal or expulsion in accordance with the requirements, if any, of the Partnership Deed;

(*b*) in the case of a natural person his bankruptcy, death or legal incapacity or interdiction; or

(*c*) in the case of a general partner which is a body corporate, the dissolution thereof.

Such cessation shall be evidenced by means of an entry to that effect in the register of partners.

(2) In the cases referred in sub-paragraphs (1)(*b*) and (*c*), the curator or other person having similar functions with respect to the estate of the bankrupt general partner, the heirs or other relevant successors to the estate of the deceased general partner, the guardian, tutor or other person having similar functions with respect to the estate of the incapacitated or interdicted general partner, or the liquidator, directors, general partners or equivalent body or persons charged with the responsibility of the administration of the affairs of the dissolved general partner after its dissolution, as the case may be, shall have a duty to inform the Limited Partnership of the respective event mentioned in such sub-paragraphs (1)(*b*) and (*c*) as soon as possible and in no case later than ten days following the happening thereof.

(3) In the event of the cessation of a person as a general partner of a Limited

Partnership, howsoever such cessation has occurred, it shall be the duty of the Limited Partnership to deliver to the Registrar for registration a notice of such fact within fourteen days of such cessation or from the date that the Limited Partnership became aware thereof, whichever is the later, and in default the Limited Partnership and every general partner shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(4) In the cases referred in sub-paragraph (1)(*a*), it shall also be the duty of the person ceasing to be a general partner to deliver to the Registrar for registration a notice of such cessation within fourteen days of such cessation, and in default the said person who ceased to be a general partner shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(5) The Registrar shall cause such notice as referred to in sub-paragraph (3) or (4) to be registered.

(6) A general partner shall not be relieved of any obligation under this Schedule until such time as the notice of cessation is registered by the Registrar. Nothing in the foregoing shall affect the continued liability of a general partner in terms of law for his obligations arising whilst he was a general partner and until the registration of the notice of cessation as aforesaid.

Admission of additional limited partners.

19. (1) Subject to the provisions of the Partnership Deed, a Limited Partnership shall allow any number of partners to become limited partners in the Limited Partnership. A person shall not be admitted as a limited partner in a Limited Partnership except -

(*a*) in accordance with the provisions of the Partnership Deed and subject to any prior approval by the Limited Partnership required for such admission in terms of the Partnership Deed and, or pursuant to paragraph 5(1)(*b*)(iv) above;

(*b*) by the execution of an agreement in writing with the Limited Partnership and, or with such other partners as required by the Partnership Deed.

Such admission shall be evidenced by the entry of the particulars of the new limited partners in the register of partners.

Assignment of interest of limited partner.

20. (1) Subject to the provisions of the Partnership Deed -

(*a*) the interest of a limited partner is assignable in whole or in part;

(*b*) an assignment by a limited partner of his interest in the Limited Partnership or any part thereof:

(i) shall not dissolve the Limited Partnership;

(ii) shall not be valid unless made in writing and in accordance with other requirements, if any, of the Partnership Deed and this Schedule, including (without limitation) any prior approval by the Limited Partnership required for such assignment in terms of the Partnership Deed and paragraph 5(1)(*b*)(iv) above;

(iii) shall not, unless and until the assignee is admitted to the Limited Partnership as a limited partner in accordance with the provisions of paragraph 19, entitle the assignee to become or to exercise any right or power of a limited partner;

(iv) shall, upon the assignee being admitted to the Limited Partnership as a limited partner in accordance with the provisions of paragraph 19, entitle the assignee to the rights and powers and, subject to item (v), render him subject to the restrictions and obligations (including any obligation to make contributions to the capital of the Limited Partnership) to which the assignor was entitled or subject in respect of the interest assigned immediately before the assignment, and simultaneously the assignor shall no longer be entitled to exercise those rights and powers and, shall be discharged from those restrictions and obligations;

(v) shall not relieve the assignor of any liability arising under paragraphs 6(5), 15(2), 16(1) or 25(2).

(*c*) a limited partner, upon the valid and absolute assignment of the whole of his interest in the Limited Partnership and the admission of the assignee as a limited partner in accordance with the provisions of paragraph 19, shall cease to be a limited partner and to be entitled to exercise any right or power of a limited partner.

(2) The agreement or instrument of assignment in writing referred to in sub-paragraph (1)(*b*)(ii) or an authentic copy thereof shall be delivered by the assignor or the assignee to the Limited Partnership simultaneously with or as soon as possible after the execution thereof, unless the Limited Partnership is also party to it.

(3) The admission of the assignee as a limited partner and the assignment of an interest in the Limited Partnership between an assignee and an assignor shall be effective on the date when the requirements and conditions for the admission of the assignee as a limited partner referred to in paragraph 19 and the requirements of sub-paragraph (1)(*b*)(ii) and (2) of this paragraph 20 have been satisfied or, if later, the date agreed to between the assignor and the assignee in the agreement or instrument of assignment, and in such latter case the assignee shall be admitted to the Limited Partnership with effect from such later date.

Indemnification by the Limited Partnership.

21. (1) Subject to the provisions of the Partnership Deed and of sub-paragraph (2), a Limited Partnership may indemnify any partner from and against all or any claims, demands, debts and other liabilities whatsoever, and may also purchase and maintain for any partner insurance against any such liability as aforesaid.

(2) The Limited Partnership may not however indemnify any general partner against any liability which by virtue of any rule of law would attach to him in respect of negligence, default or breach of duty or otherwise of which he may be guilty in relation to the Limited Partnership:

Provided that a Limited Partnership may indemnify any such general partner against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted:

Provided further that nothing in this sub-paragraph (2) shall be construed as preventing or restricting a Limited Partnership from purchasing and maintaining for any general partner insurance against any such liability as is referred to above in this sub-paragraph (2), or as preventing or restricting any such general partner from personally purchasing and maintaining any such insurance.

Records.

22. (1) A Limited Partnership shall maintain the following or a copy thereof at

the registered office:

(*a*) the Partnership Deed and every amendment thereof;

(*b*) a register of partners showing their full names and addresses together with an indication of who is a general and who is a limited partner;

(*c*) in the case of a Non-Share Capital Limited Partnership, the capital account of each limited partner showing whichever of the following is applicable in relation to such limited partner -

(i) the amounts and dates of his contributions;

(ii) the amounts agreed to be contributed and the times at which or events upon which the contributions are to be made;

(iii) the amounts and dates of any payments representing a return of his contributions or any part thereof;

(iv) where an agreement or obligation to make a contribution is released in whole or in part, the amount and the date of such release;

(*d*) in the case of a Share Capital Limited Partnership, the capital account of each limited partner showing whichever of the following is applicable in relation to such limited partner -

(i) the number and class or classes (where applicable) of shares, including fractions (where applicable), subscribed by such limited partner and the dates of subscription;

(ii) the amount paid by such limited partner in respect of each share;

(iii) where applicable, the amounts agreed to be contributed by way of subscription of further shares or by way of payment of the unpaid part on shares already subscribed, and the times at which or events upon which the contributions are to be made;

(iv) where applicable, the number and class or classes (where applicable) of shares, including fractions (where applicable), of such limited partner which have been redeemed or repurchased by the Limited Partnership or otherwise reduced, and the dates of such redemption, repurchase or reduction;

(v) where an agreement or obligation to pay amounts agreed to be contributed by way of subscription of further shares or by way of payment of the unpaid part on shares already subscribed is released in whole or in part, the amount and the date of such release;

(*e*) any report on any non-cash contribution as referred to in paragraph 41;

(*f*) a register of debentures (where the Limited Partnership has issued any debentures) showing the full names and addresses of the registered holders of such debentures and particulars of the debentures held by them respectively;

(*g*) its accounting records;

(*h*) the minutes of all meetings of the general partners;

(*i*) all documents from time to time filed with the Registrar.

(2) All documents or copies of documents required by sub-paragraph (1) to be kept at the registered office shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner, and in the case of the register of debentures also by any person, during normal business hours.

(3) The documents mentioned in sub-paragraph (1)(*b*), (*c*) and (*d*) shall constitute *prima facie* evidence of the matters specified therein.

(4) Notwithstanding the foregoing provisions of this paragraph the documents described in sub-paragraph (1) may, provided that the Partnership Deed so permits, instead of being maintained at the registered office, be maintained at such other place as the general partners consider appropriate, where they shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner (and in the case of the register of debentures also by any person) during normal business hours.

(5) In the event that such other place as is mentioned in sub-paragraph (4) is outside Malta, copies of accounts and of returns in respect of the business dealt with in them and copies of minutes of meetings of general partners shall be sent to, and kept at, a place in Malta, where they shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner (and in the case of the register of debentures also by any holder of debentures) during normal business hours.

(6) The copies of accounts and returns mentioned in sub-paragraph (5) which are to be sent to and kept in Malta shall be such as to disclose with reasonable accuracy the financial position of the business of the Limited Partnership at intervals not exceeding six months.

(7) Any accounting records which a Limited Partnership is required by this paragraph to keep shall be preserved by it for a period of ten years from the date on which they are made and, if default is made in complying with this sub-paragraph, the Limited Partnership and each general partner shall be liable to a penalty.

(8) Any account, record or other document required by this Schedule to be kept by a Limited Partnership may be kept either by making entries in books or in any other manner, including without prejudice to the generality of the foregoing, computer or other electronic forms.

(9) If any such account, record or other document is kept by making entries other than in a book -

(*a*) it shall be deemed for the purposes of this Schedule to be kept at a place if access to it and written copies of it can be obtained at that place; and

(*b*) if the matters in question are recorded in non-legible form, the recording thereof shall be capable of being reproduced in legible form.

(10) If in respect of a Limited Partnership there is a contravention of any of the provisions of sub-paragraphs (1), (2), (5) or (6), the Limited Partnership and each general partner shall be liable to a penalty and for any day during which the default continues, to a further penalty.

(11) Any duty imposed by this Schedule to allow inspection, or to furnish a copy, of documents to be kept by the Limited Partnership shall, irrespective of the medium in which such documents are maintained, be construed as a duty to allow inspection, or to furnish a copy, of such documents in legible form.

Accounts of a Limited Partnership.

23. (1) Every Limited Partnership shall maintain proper accounting records which shall be:

(*a*) sufficient to show and explain the Limited Partnership's transactions;

(*b*) such as to disclose with reasonable accuracy, at any time, the Limited

Partnership's financial position at that time;

(*c*) such as to enable the general partners to ensure that the Limited Partnership's balance sheet and profit and loss account are prepared properly and in accordance with generally accepted accounting principles and practice and in accordance with any relevant enactment or regulations for the time being in force in Malta;

(*d*) such as to contain day to day entries of all sums of money received and expended by the Limited Partnership and the matters in respect of which the receipt and expenditure takes place; and

(*e*) such as to contain a record of the assets and liabilities of the Limited Partnership.

(2) The general partners of every Limited Partnership shall prepare for each accounting period individual accounts comprising the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for that period, the notes to the accounts and any other financial statements which may be required by generally accepted accounting principles and practice. These documents shall constitute a composite whole.

(3) The individual accounts of a Limited Partnership shall give a true and fair view of the Limited Partnership's assets, liabilities, financial position and profit or loss.

(4) The individual accounts of a Limited Partnership shall be drawn up in accordance with generally accepted accounting principles and practice applicable to the type of Limited Partnership in question in terms of this Schedule or of the provisions of this Act in so far as such provisions are applicable to the Limited Partnership by virtue of this Schedule, or of regulations made by the Minister under Article 66A(3)(c) or other provisions of this Act or under the Accountancy Profession Act, and shall comply with the requirements of such generally accepted accounting principles and practice and with the requirements of this Schedule, and of the applicable provisions of this Act and of applicable regulations referred to above, as to the form and content of the balance sheet and profit and loss account and as to additional information to be provided by way of notes to the accounts.

(5) Where the application of the provisions of this Schedule, and the applicable provisions of the Act or regulations referred to in sub-paragraph (4), would not be sufficient to give a true and fair view within the meaning of sub-paragraph (3), additional information shall be given.

(6) Where in exceptional cases the application of a provision of this Schedule, or of an applicable provision of the Act or of regulations referred to in sub-paragraph (4), is incompatible with the obligation for the individual accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

(7)* Articles 13 to 18 and 21 of the Commercial Code shall not apply to Limited Partnerships.

(8) At the end of each accounting period of the Limited Partnership, the balance sheet and profit and loss account of the Limited Partnership together with the report of the general partners and the report of the auditors (where applicable) shall be

* This-sub-paragraph is not yet in force.

made available to the limited partners:

(*a*) in the case of a Limited Partnership within the meaning of paragraph 24(2), within ten months after the end of the relevant accounting reference period, or such shorter period as may be prescribed in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act; and

(*b*) in the case of other Limited Partnerships, within such period as may be stipulated in the respective Partnership Deed, or such shorter period as may be prescribed in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act or in terms of regulations made by the Minister under Article 66A(3)(*c*) or other provisions of this Act.

Application of Chapters IX and X of Part V of this Act.

24. (1) Save for what is stated in this Schedule or in regulations made by the Minister under Article 66A(3)(c) or other provisions of this Act or under the Accountancy Profession Act, the provisions of Chapter IX and Chapter X of Part V of this Act other than article 184 shall, so far as applicable and so far as they are not inconsistent with the provisions of this Schedule or of regulations referred to above, apply to a Limited Partnership within the meaning of paragraph 24(2), with references to "company" therein being construed as a reference to a Limited Partnership within the meaning of paragraph 24(2), references to "directors" being construed as a reference to general partners, reference to "members" being construed as a reference to "partners", references to "general meeting" being construed as a reference to a meeting of the partners.

(2) A Limited Partnership referred to in sub-paragraph (1) shall be:

(*a*) a Limited Partnership which is a Share Capital Limited Partnership; or

(b) a Non-Share Capital Limited Partnership where:

(i) all the partners thereof with unlimited liability are limited liability companies or partnerships *en commandite* or limited partnerships with the capital divided into shares; and

(ii) where all of the direct or indirect partners of such Non-Share Capital Limited Partnership having otherwise unlimited liability in fact have limited liability by reason of those partners being:

(*aa*) a limited liability company (whether public or private); or

(*bb*) a partnerships en commandite or limited partnership with its capital divided into shares; or

(*cc*) an undertaking not governed by the laws of Malta but which has a legal form comparable to that listed in sub-paragraph (b)(ii)(*aa*) or (b)(ii)(*cc*) above.

(3) The provisions of Chapter IX of Part V of this Act, shall apply as aforesaid to a Limited Partnership within the meaning of paragraph 24(2), subject to the provisions of the Partnership Deed dealing with the manner, and with the rights of partners or any of them in respect, of the appointment, re-appointment, removal, replacement and fixing the remuneration of auditors of the Limited Partnership.

(4) The provisions of article 169 of the Act and of the Fifth Schedule to the Act shall apply *mutatis mutandis* to a Limited Partnership within the meaning of paragraph 24(2) which is a Variable Capital Limited Partnership as provided in

paragraph 35.

(5) Save as otherwise expressly provided in this Schedule or in any enactment or in regulations made by the Minister as referred to in sub-paragraph (1), the provisions of Chapter IX and Chapter X of Part V of this Act shall not apply to a Limited Partnership which is not a Limited Partnership within the meaning of paragraph 24(2), and the manner, the rights of partners or any of them in respect of, and other matters relating to, the appointment, re-appointment, removal, replacement and fixing the remuneration of auditors of such Limited Partnership, or the preparation, form and content and approval of the accounts of such Limited Partnership and their submission to the partners or any other partners, shall be regulated by the relevant provisions of this Schedule, by regulations made from time to time by the Minister as referred to in sub-paragraph (1) for this purpose, by any other provisions of the Act (other than Chapter IX and Chapter X of Part V of the Act) or any other enactment so far as applicable and so far as they are not inconsistent with the provisions of this Schedule or of regulations referred to above or which specifically relate or apply to such Limited Partnerships, and by the provisions of the Partnership Deed.

Return of limited partner's contribution.

25. (1) A Limited Partnership shall not, on dissolution or otherwise, make any payment from its capital to any limited partner representing a return of any part of his contribution to the Limited Partnership unless, at the time of and immediately following the making of the payment, the Limited Partnership is solvent.

(2) Where the Limited Partnership is insolvent at the time of or immediately following the making of any such payment, or in the event of insolvency of the Limited Partnership within a period of six months immediately following the time of making such payment, the payment shall, for a period of one year from the date of its receipt by the limited partner, be repayable by him to the extent necessary to discharge any debt of the Limited Partnership incurred at a time when his contribution formed part of the assets of the Limited Partnership.

(3) Subject to the provisions of sub-paragraphs (1) and (2) and paragraph 30(11) and (12), a limited partner may demand the return of his contribution -

(*a*) on the dissolution of the Limited Partnership; or

(*b*) at such time or upon the occurrence of such event or events as may be specified in the Partnership Deed.

(4) A limited partner may, notwithstanding the nature of his contribution, demand and receive only money in return, unless -

(*a*) the Partnership Deed provides otherwise; or

(*b*) all partners agree otherwise.

(5) Any reference in this paragraph, however expressed, to the receipt by a partner of a payment shall include a reference to the release of any debt owed by him and forming part of the assets of the Limited Partnership (including any obligation on his part to make a contribution to the capital of the Limited Partnership, including, in case of a Share Capital Limited Partnership, by way of subscribing for further shares or paying up the unpaid part on shares already subscribed by him); and accordingly any reference in sub-paragraph (2) to the making of a repayment by a partner shall be deemed to include a reference to the due performance by him of the debt or obligation.

(6) For the purposes of this Schedule the expression "solvent" means that the

Limited Partnership is able to pay its debts (other than debts described in paragraph 31(1)(c)(ii) to (v)) in full, as they fall due, out of the assets of the Limited Partnership without recourse to the separate assets of the general partners not contributed to the Limited Partnership; and the expression "insolvent" shall be construed accordingly.

(7) A distribution of any assets of a Limited Partnership to a limited partner shall be deemed to be a return of contribution for the purposes of the provisions of sub-paragraph (1), to the extent that the distribution reduces the value of his share in the assets of the Partnership, calculated on the basis of the value of the net assets of the Limited Partnership, below the value of the amount contributed or agreed to be contributed by him. In the case of a Share Capital Limited Partnership, there shall also be deemed to be such a return of contribution where the shares held by a limited partner are redeemed or repurchased by the Limited Partnership or are otherwise reduced or, in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, where the nominal value of the shares held by a limited partner is reduced.

(8) The provisions of this paragraph are subject to those of paragraph 31.

Distributions by Limited Partnership.

26. Without prejudice to paragraphs 25 and 31, no distributions of capital or profits shall be made to the partners if at the time or as a result of such distributions the Limited Partnership would be insolvent.

Acts in fraud of creditors

27. (1) Without prejudice to paragraphs 25 and 26, every act transferring property, whether corporeal or incorporeal, including any rights of action and any renunciation of an acquired prescription, and every obligation incurred or other act made by a Limited Partnership which is insolvent or which becomes insolvent as a result of such act or obligation, and which is made under a gratuitous title for the purpose of defrauding the creditors of the Limited Partnership, shall be null and void as regards the body of creditors, of whatever kind they may be, even though the parties interested be in good faith.

(2) Every act of the same kind and every obligation made or incurred under an onerous title can be annulled if there be fraud also on the part of the party interested.

(3) Any such act or obligation shall be deemed to be fraudulent as regards the party interested, if it is proved that such party knew of the insolvency of the Limited Partnership (whether already existing at the time of the act or obligation or resulting from such act or obligation) or of the existence of circumstances giving rise to such insolvency.

Causes of dissolution of Limited Partnerships.

28. (1) A Limited Partnership shall be dissolved upon the occurrence of any of the following events:

(*a*) upon the happening of any event specified in the Partnership Deed;

(*b*) upon the date fixed for its duration in the Partnership Deed and stated in the Partnership Registration Document, if any, unless a return or notice of its extension is delivered to the Registrar for registration in terms of paragraph 10(2) or (5) not less than fifteen days before the date so fixed;

(*c*) upon the written agreement of all partners that the Limited Partnership

shall be dissolved;

(*d*) if there is no general partner for a period of six months;

(*e*) if there is no limited partner for a period of six months.

(2) Where no general partner remains, the limited partners may, for the said period of six months, appoint one of their number or any other person for the performance of acts of ordinary administration and any limited partner or other person appointed pursuant to the provisions of this sub-paragraph shall not incur any liability which would otherwise be incurred under this Schedule for performing acts of ordinary administration during the said six month period.

(3) Subject to the provisions of the Partnership Deed and paragraph 28(1)(a), (d) and (e) and without prejudice to paragraph 28(1)(c), a Limited Partnership shall not be dissolved by any change in the limited partners or general partners, or by the bankruptcy, insolvency, death, retirement, removal, resignation, legal incapacity or interdiction or dissolution of any limited partner or general partner whether an individual, partnership, company or other body corporate.

Dissolution by the Court.

29. (1) The Court may order the dissolution of a Limited Partnership on the application of any partner or creditor or on the application of the Registrar if in its opinion:

(*a*) the Limited Partnership is insolvent;

(*b*) the business of the Limited Partnership has been suspended for an uninterrupted period of twelve months: provided, for the avoidance of doubt, that there will not be deemed to be a suspension of business for the purposes hereof by reason only of the fact that the business of the Limited Partnership is of its nature passive;

(*c*) the affairs of the Limited Partnership are being conducted in a manner which is oppressive to any of the limited partners or prejudicial to their interests as limited partners or is calculated to affect adversely the carrying on of the business of the Limited Partnership;

(*d*) the affairs of the Limited Partnership are being conducted in such manner as to defraud creditors or in an unlawful manner;

(*e*) there has been persistent default by the Limited Partnership or by any general partner thereof in complying with the requirements of this Schedule or any applicable regulations made under Article 66A(3) or under this Act;

(*f*) there are grounds of sufficient gravity to warrant the dissolution.

(2) Upon the making of an order under sub-paragraph (1) for the dissolution of the Limited Partnership or at any time thereafter, the Court may make such other orders in relation to the dissolution as it thinks fit and proper in the circumstances, including an order for the appointment of one or more liquidators to wind up the Limited Partnership's affairs and distribute its assets.

General provisions applicable to winding up.

30. (1) Upon the dissolution of a Limited Partnership its affairs shall, unless a liquidator has been appointed by the Court under paragraph 29(2) or under sub-paragraph (2) of this paragraph or by the partners under sub-paragraph (3) of this paragraph, be wound up by the general partners.

(2) Upon the dissolution of a Limited Partnership or at any time thereafter, the Court may, on application of any partner (including an assignee thereof) or any creditor or the Registrar or any liquidator, make such orders in relation to the dissolution as it thinks fit and proper, including:

(*a*) an order for the appointment of one or more liquidators to wind up the affairs of the Limited Partnership and distribute its assets, and the fixing of his remuneration;

(**b**) an order for the stay of judicial proceedings pending against the Limited Partnership on such terms as the Court thinks fit.

The Court may also, on any such application, remove any liquidator from office (whether appointed by the Court or by the partners) if the court is satisfied that there exist sufficient grounds to warrant his removal.

(3) One or more liquidators may, upon the dissolution of a Limited Partnership or at any time thereafter and before the appointment thereof by the Court as provided herein, be appointed by the partners in the manner provided in the Partnership Deed or as determined by agreement between them, and his remuneration may be fixed in like manner. Where the partners fail to agree on the appointment of a liquidator, the provisions of sub-paragraphs (1) shall apply, unless and until one or more liquidators are appointed by the Court under sub-paragraph (2).

(4) A liquidator appointed by the partners (but not a liquidator appointed by the Court) may be removed by a decision of the partners in the manner provided in the Partnership Deed or as determined by agreement between them, and if as a result of such decision there are no liquidators, the provisions of sub-paragraphs (1) shall apply, unless and until one or more liquidators are appointed by the partners under sub-paragraph (3) or by the Court under sub-paragraph (2).

(5) A liquidator, howsoever appointed, shall within fourteen days after his appointment, deliver to the Registrar for registration a notice of his appointment stating his name and residence, and in default he shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(6) Where more than one liquidator is appointed, they shall act jointly and shall be jointly and severally liable for their acts, unless the Court or the partners who appointed them have otherwise provided. Unless already fixed by the Court, the remuneration of a liquidator (whether appointed by the Court or by the partners) may be fixed by agreement between the partners and the liquidator, failing which it shall be fixed by the Court on application made under sub-paragraph (2) or an application by the liquidator.

(7) On the appointment of a liquidator, whether under this paragraph or under paragraph 29, all powers of the general partners and, where applicable, any power of ordinary administration vested in any limited partner or other person pursuant to paragraph 28(2), shall cease; and any person who purports to exercise any power of a general partner or any power of administration or representation of the Limited Partnership at a time when, pursuant to this sub-paragraph those powers have ceased, shall be liable to a penalty, without prejudice to the provisions of paragraph 15(2) or 16(1) or any other applicable consequences prescribed by this Schedule. The provisions of this sub-paragraph shall be without prejudice to the provisions of sub-paragraph (8).

(8) Where a liquidator is appointed, the partner or partners vested with the administration of the Limited Partnership shall -

(*a*) deliver to the liquidator all the assets and all the accounting records and

other documents of the Limited Partnership and shall draw up accounts relating to their administration for the period since the preceding accounts, and for the avoidance of doubt the liquidator shall take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the Limited Partnership to be entitled; and

(*b*) together with the liquidator, draw up a balance sheet showing the state of affairs of the Limited Partnership as at the date of the dissolution.

(9) Upon the dissolution of a Limited Partnership the Limited Partnership shall cease to carry on business except to the extent necessary for its beneficial winding up. Where a liquidator is appointed, such liquidator shall have power to perform all acts conducive and ancillary to the winding up of the affairs of the Limited Partnership, but such liquidator shall not undertake any new transaction, except to the extent necessary for its beneficial winding up. Where in relation to a Limited Partnership there is a contravention of the provisions of this sub-paragraph, each general partner or other partner responsible for the contravention or, as the case may be, the liquidator shall be liable to a penalty.

(10) Upon the dissolution of a Limited Partnership, the persons winding up the Limited Partnership's affairs, in the name of and on behalf of the Limited Partnership -

(*a*) may, to the extent necessary for the beneficial winding up of the Limited Partnership, prosecute, defend or settle any civil or criminal action or other legal proceedings and refer disputes or matters to arbitration;

(*b*) shall receive and collect all sums and debts due to the Limited Partnership;

(*c*) shall take every necessary step for the preservation of the rights of the Limited Partnership and for the recovery of any sums or debts due to the Limited Partnership;

(*d*) shall carry on the business of the Limited Partnership so far as may be necessary for its beneficial winding up, and for this purpose they shall have the power to do all acts, and to execute, in the name and on behalf of the Limited Partnership, all deeds, receipts and other documents and to represent the Limited Partnership in all matters and to do all things as may be necessary for the winding up of the affairs of the Limited Partnership and distributing its assets, to raise any money requisite even on the security of the assets of the Limited Partnership and to appoint a mandatory to act for them (in their capacity as the persons responsible for the winding up) for particular purposes;

(*e*) shall dispose of the Limited Partnership's property and realise its assets;

(*f*) shall, in accordance with the provisions of paragraph 31 discharge the Limited Partnership's debts and distribute to the partners any remaining assets of the Limited Partnership;

(*g*) may make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the Limited Partnership or whereby the Limited Partnership may be rendered liable, and to refer any such matter to arbitration;

(*h*) may make calls on partners for payment of unpaid contributions and calls on partners with unlimited liability for payment of sums to cover remaining liabilities of the Limited Partnership as referred to in sub-paragraph (12) and shall draw up a list of partners who are liable to pay such calls; and

(*i*) may summon meetings of partners or of creditors of the Limited Partnership for the purposes of ascertaining their wishes, or to give them an account of or otherwise update them on the process of the winding up or any matter relating thereto or for any other purpose in connection with the winding up as they may think fit:

Provided that the above shall be without prejudice to the personal liability of the partners.

(11) Upon the dissolution of a Limited Partnership no limited partner may, except in accordance with the provisions of paragraphs 25 and 31, withdraw any part of his contribution, or otherwise claim as a creditor of the Limited Partnership.

(12) The persons conducting the winding up of a Limited Partnership (whether a liquidator or the general partner or general partners pursuant to sub-paragraph (1)) shall not distribute any assets of the Limited Partnership among the partners unless either the debts and liabilities of the Limited Partnership under paragraph 31(1) (*a*) and (*b*) have been paid or sufficient funds have been set aside for the payment thereof. Where the assets of the Limited Partnership are insufficient to meet its aforesaid liabilities, the persons conducting the winding up of a Limited Partnership may demand from the partners payment of the contribution, if any, due by them, irrespective of the date when it falls due, and, if necessary, they may demand from the partners with unlimited liability the sums required for the payment of the aforesaid liabilities which are not covered by the contributions so demanded as aforesaid and paid. The persons conducting the winding up of a Limited Partnership may furthermore demand from the partners payment of the contribution, if any, due by them or any part of it, irrespective of the date when it falls due, for the purpose of adjusting the rights of the partners among themselves in accordance with paragraph 31 or otherwise in accordance with the Partnership Deed.

(13) Upon dissolution of a Limited Partnership, notice of the fact shall, within a period of fourteen days from the date of dissolution, be filed by the general partners or, where applicable, by the limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2), with the Registrar who shall cause a notice of that fact to be published in the Gazette or on a website maintained by the Registrar:

Provided that, where the Limited Partnership is dissolved by order of the Court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts:

Provided further that, in cases of dissolution other than dissolution by order of the Court, and where there is no general partner and no limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2), such notice may be given by any limited partner and, where a liquidator has been appointed (whether by the Court or by the partners) such notice shall be given by such liquidator within fourteen days after his appointment.

(14) Where the general partners or the limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2) or the liquidator fail to give the notice of dissolution as required by the provisions of sub-paragraph (13), they shall be liable to a penalty, and for every day during which the default continues, to

a further penalty and, in the case of general partners, they shall continue to incur liability as if they were the general partners of a Limited Partnership which had not been dissolved.

(15) The dissolution of a Limited Partnership shall be deemed to have occurred upon the earlier of the following:

(*a*) the date of the occurrence of the event upon which, under the provisions of this Schedule, the Limited Partnership is dissolved; or

(*b*) the date of the order by the Court under paragraph 29(1) for its dissolution.

(16) All expenses properly incurred in the dissolution of a Limited Partnership, including the liquidator's remuneration, are payable from the assets of the Limited Partnership in priority to all other debts.

(17) The persons conducting the winding up shall, at the request of any of the partners, inform them as to the state and progress of the liquidation.

(18) The persons conducting the winding up of a Limited Partnership may, by application, seek the Court's directions as to any matter in relation to the winding up, and upon such application the Court may make such order as it thinks fit and proper.

(19) The persons conducting the winding up, any partner or creditor may apply to the Court to determine any question arising in the course of winding up of a Limited Partnership, or to exercise any power as respects the enforcement of calls or any other matter and the Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it so determines.

(20) Without prejudice to the generality of sub-paragraph (19):

(*a*) if any person is aggrieved by any act or decision of the persons conducting the winding up, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order on the matter as it thinks just;

(*b*) without prejudice to sub-paragraph (20)(*a*), if an application is made to the Court by any creditor or partner complaining on the conduct of the persons conducting the winding up, the Court shall inquire into the matter and take such action thereon as it may think expedient;

(*c*) the Registrar may, if he thinks fit, apply to the Court to examine the liquidator or any other person on oath concerning the winding up;

(*d*) the Court may at any time after the dissolution of a Limited Partnership, on the application either of the liquidator or other person conducting the winding up or any creditor or partner or the Registrar, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, for such duration and on such terms and conditions as the Court thinks fit: provided that any such stay of proceedings shall not affect the continuing validity and operation of the dissolution; and on an application as aforesaid the Court may, before making an order, require the persons conducting the winding up to furnish to the Court a report with respect to any facts or matters which are in its opinion relevant to the application;

(*e*) the Court, on the application either of the liquidator or other person

conducting the winding up or any creditor or partner:

(i) may require any partner liable to make any payments or calls as referred to in sub-paragraph (12) and any person who holds any money, property or accounting records and documents in his hands to which the Limited Partnership is *prima facie* entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, accounting records or documents to the persons conducting the winding up forthwith or within such time as the Court directs;

(ii) may summon before it any general partner of the Limited Partnership or any officer of such general partner or any other person known or suspected to have in his possession any property of the Limited Partnership or supposed to be indebted to the Limited Partnership, and any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the Limited Partnership, and the Court may require any such general partner, officer or person to produce any accounting records and documents in his custody relating to the Limited Partnership; and

(iii) on proof of probable cause for believing that any such person as aforesaid is about to abscond or to remove or conceal any of his property for the purpose of evading payments due by him or of avoiding examination respecting the affairs of the Limited Partnership, may make such orders as it thinks fit to secure payments by such person or the preservation and availability of information relating to the Limited Partnership, including seizure and, or the safekeeping of his accounting records, documents and movable property until such time as the Court thinks fit;

(*f*) the Court may, on the application either of the liquidator or other person conducting the winding up, fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved, and may make such orders regarding the publication of such time or times as it thinks fit; and

(*g*) the Court may, with respect to all matters relating to the dissolution and winding up of a Limited Partnership and in exercising any of its powers, have regard to the wishes of the creditors or partners of the Limited Partnership, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes direct that meetings of the creditors or partners be called, held and conducted in such manner as the Court considers appropriate and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

A copy of every order made under this sub-paragraph (20)(*d*) above shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

(21) Subject to the provisions of paragraph 31 and subject to any provision of this Schedule or any other law as to preferential debts or payments, the property of a Limited Partnership shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*. In a winding up of a Limited Partnership, all debts payable on a contingency, and all claims against the Limited Partnership, present or future, certain or contingent, ascertained or which may be due in damages, shall be

admissible as proof against the Limited Partnership, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

(22) As soon as a Limited Partnership's affairs are fully wound up, the persons who conducted the winding up shall:

(*a*) prepare an account of the winding up, giving details of the conduct thereof, and the disposal of the Limited Partnership's property, and of their receipts and payments, and shall draw up a scheme of distribution and they shall cause the account to be audited by one or more auditors appointed by a decision of the partners or in default by the Court; and

(*b*) provide all partners with a copy of the said account and scheme of distribution together with the auditors' report thereon, which shall be served on such partners by judicial act or by registered mail with confirmation of receipt.

(23) The provisions of article 153 of the Act shall apply to an auditor appointed in terms of sub-paragraph (22)(*a*). Such auditor shall not be a person who has held the office of auditor of the Limited Partnership at any time during the last three years immediately preceding the date of dissolution.

(24) (*a*) The persons who conducted the winding up shall, after ensuring that the provisions of sub-paragraph (22)(*b*) have been complied with, deliver to the Registrar a copy of the said account and scheme of distribution and the auditor's report thereon: provided that such account and scheme of distribution so delivered to the Registrar need not contain the names of limited partners, and it shall be sufficient to show the total amounts distributed to such partners pursuant to the scheme of distribution.

(*b*) The Registrar, on receiving the account and the scheme of distribution together with the auditors' report, shall forthwith register them, and on the expiration of three months from the publication of the notice referred to in article 401(1)(e) of the Act, the Registrar shall strike the name of the Limited Partnership off the register, whereupon the Limited Partnership's certificate of registration shall cease to be valid:

Provided that the Court may, on the application filed within the said period of three months by the liquidator or by any other person who appears to the Court to have an interest, make an order deferring the date at which the name of the Limited Partnership shall be struck off the register for such time and subject to such conditions as the Court may provide, and any partner or creditor may also, during the said period of three months, by application to the Court object to any matter relating to the winding up as shown in the winding up account, the scheme of distribution and the auditors' report, and the Court shall then make such order as it thinks fit and proper.

(25) When an order by the Court is made under the proviso to sub-paragraph (24)(b), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of sub-paragraph (24)(*b*) in accordance with the order given by the Court referred to in that sub-paragraph.

(26)* Part III of the Commercial Code relating to bankruptcy shall not apply to a Limited Partnership. References in other laws other than Part III of the Commercial

* This sub-paragraph is not yet in force.

Code to a bankrupt shall, when the context requires, be interpreted as including references to a Limited Partnership being wound up in circumstances of insolvency under the provisions of this Schedule, and references to bankrupt shall be construed accordingly.

Distribution of assets upon dissolution.

31. (1) Upon the dissolution of a Limited Partnership, the assets shall be distributed in the following order -

(*a*) firstly, to creditors other than partners, to the extent otherwise permitted by law, in satisfaction of debts of the Limited Partnership, according to their priority and ranking as regulated by law;

(*b*) secondly to limited partners who are creditors and who are not also general partners, to the extent otherwise permitted by law, in satisfaction of debts of the Limited Partnership other than debts described in sub-paragraph (*c*), according to their priority and ranking as regulated by law;

(*c*) finally, subject to the provisions of the Partnership Deed, to partners as follows -

(i) firstly, to limited partners for the return of their contributions or, where appropriate, for the release of their obligations to make contributions;

(ii) secondly, to limited partners for their share of the profits on their contribution;

(iii) thirdly, to general partners other than for capital and profits;

(iv) fourthly, to general partners in respect of capital;

(v) finally, to general partners in respect of profits.

Preservation of accounting records and documents after liquidation.

32. (1) The accounting records and the documents of the Limited Partnership shall be kept by the liquidator, if any, or by the person elected for that purpose by the majority of the general partners, and shall be so kept for a period of ten years from the date at which the name of the Limited Partnership was struck off the register. The election of such person shall take place within fourteen days from the registration of the notice referred to in paragraph 30(23) and shall not be effected until such person has signified his acceptance in writing to the general partners within fourteen days from his election:

Provided that where there is no liquidator and the general partners fail to elect such person or where such person refuses to accept his election, the accounting records and documents shall be delivered to the Registrar within fourteen days of the non-acceptance or failure to elect as the case may be, and the Registrar shall keep such records for the said period of ten years.

(2) Where a person has been elected to keep the accounting records and the documents of the Limited Partnership, or where the general partners have failed to elect such a person, the general partners shall inform the Registrar accordingly within fourteen days of the date when the election becomes effective or from the failure to elect within the prescribed period, as the case may be, and in default, the general partners shall be liable to a penalty.

(3) If the liquidator or the person elected by the general partners and who has accepted to keep the accounting records and documents of the Limited Partnership

fails to keep them for the period prescribed by sub-paragraph (1), he shall be liable to a penalty.

(4) If the liquidator or the person elected by the general partners to keep the accounting records and documents of the Limited Partnership dies, his heirs shall be obliged to deliver the said accounting records and documents to the Registrar within six months and the Registrar shall keep them for the remainder of the period prescribed by sub-paragraph (1), and in default such heirs shall be liable to a penalty.

Capital of Limited Partnerships and conversion of status.

33. (1) Without prejudice to the foregoing provisions of this Schedule, the capital of a Limited Partnership, may be divided into shares or may not be so divided.

(2) A Non-Share Capital Limited Partnership may change its status to a Share Capital Limited Partnership, by a decision taken in accordance with the provisions of the Partnership Deed, or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-fourth of the total contributions of the limited partners, have not given their consent the Limited Partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to liquidate and reimburse to every such partner who has not given his consent, if he so requests, his interest in the Limited Partnership on such terms as may be agreed, or as the Court, on a demand of either the Limited Partnership or the limited partner, may deem fit to order.

(3) A Share Capital Limited Partnership may change its status to a Non-Share Capital Limited Partnership, by a decision taken in accordance with the provisions of the Partnership Deed or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-tenth of the share capital of the Limited Partnership, have not given their consent, the Limited Partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to redeem the shares held by every such partner in the Limited Partnership who has not given his consent, if he so requests, on such terms as may be agreed, or as the Court, on a demand of either the Limited Partnership or of the limited partner, may deem fit to order.

(4) The Limited Partnership which has decided to change its status in accordance with sub-paragraph (2) or sub-paragraph (3) shall deliver to the Registrar for registration the return of the resultant change in the Partnership Deed in accordance with the provisions of paragraph 10(2).

(5) The change of status referred to in sub-paragraph (2) or in sub-paragraph (3) shall not take effect unless and until it is registered as required by sub-paragraph (4).

Application of provisions relating to shares in the Act.

34. (1) Without prejudice to the proviso to article 89 of the Act (in particular, but without limitation, the provisions of paragraph (*c*) of such proviso), the provisions of articles 89 to 96 and 99 to 102 of the Act shall apply *mutatis mutandis* to a Limited Partnership whose securities are offered to the public, with references to "public company" therein being construed as a reference to such a Limited Partnership and references to "directors" being construed as a reference to general

partners, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership as aforesaid.

(2) The provisions of article 116(1), (2) and (5) and of article 117 of the Act shall, in so far as they are not inconsistent with the foregoing provisions of this Schedule, apply *mutatis mutandis* to a Share Capital Limited Partnership, with references to "company" therein being construed as a reference to such a Limited Partnership, references to "memorandum or articles" being construed as a reference to the Partnership Deed, and references to "resolution passed at a separate meeting" being construed as a reference to a decision taken as provided in the Partnership Deed, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership as aforesaid.

(3) The provisions of article 127(1) and (3) to (6) of the Act shall, in so far as they are not inconsistent with the foregoing provisions of this Schedule, apply *mutatis mutandis* to a Limited Partnership, with references to "company" therein being construed as a reference to the Limited Partnership, references to "memorandum of association" or "articles of association" being construed as a reference to the Partnership Deed, and references to "members" being construed as a reference to partners, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership.

Limited Partnerships with variable share capital.

35. (1) A Partnership Deed of a Share Capital Limited Partnership within the meaning of paragraph 2 (1) (a) above may provide for the constitution of the Limited Partnership as a Limited Partnership with variable share capital and the following provisions of this paragraph shall apply thereto.

(2) In addition to the matters indicated in paragraph 7(3), the Partnership Deed of a Variable Capital Limited Partnership as well as the Partnership Registration Document to be delivered to the Registrar in terms of the said paragraph 7(3) shall state:

(*a*) that the share capital of the Limited Partnership shall be equal to the value for the time being of the issued share capital of the Limited Partnership;

(*b*) that such share capital shall be divided into a specified number of shares without assigning any nominal value thereto;

(*c*) that the actual value of the paid up share capital of the Limited Partnership shall be at all times equal to the value of the assets of any kind of the Limited Partnership after the deduction of its liabilities, without prejudice to paragraph 38(4).

(3) Without prejudice to the provisions of paragraph 6, the name of a Variable Capital Limited Partnership shall at the end, after the words "Limited Partnership" or its abbreviation "LP" or "L.P." as required by paragraph 6(1), be followed by the words "with variable share capital" or by "VC" or "V.C.".

(4) No person carrying on any business in Malta, other than a Variable Capital Limited Partnership registered under this Schedule or a partner therein, shall in any way or manner describe itself or himself or so hold itself or himself out or reasonably be understood to indicate, or use any name which indicates or may reasonably be understood to indicate that it or he is, or is carrying on business as, a Variable Capital Limited Partnership registered under this Schedule or, as the case may be, a partner therein. Without prejudice to the aforesaid, an undertaking which

is validly registered under the laws of a country other than Malta with a name which includes "Limited Partnership" or its abbreviation "LP" or "L.P." followed by the words "with variable share capital" or by "VC" or "V.C.", or a partner therein, who lawfully carries on business in Malta, shall not be deemed to be in breach of this sub-paragraph (4) simply by reason of the fact that it uses and carries on such business under the name by which it is so validly registered in its country of registration or, as the case may be, describes himself as a partner in such undertaking with such name. A person who contravenes the provisions of this sub-paragraph shall be liable to a penalty.

(5) A Variable Capital Limited Partnership shall not issue partly paid up shares.

(6) Without prejudice to the provisions of paragraphs 25 and 35, a Variable Capital Limited Partnership may purchase or redeem its own shares, directly or indirectly out of the assets of the Limited Partnership, on such terms and in such manner as may be provided by the Partnership Deed.

(7) Shares of a Variable Capital Limited Partnership which have been purchased or redeemed by such Limited Partnership itself shall be cancelled and the amount of the Limited Partnership's issued share capital shall be reduced by the amount of the consideration paid by the Limited Partnership for the purchase of the shares, and nothing in this Act shall require a Variable Capital Limited Partnership to create any reserve.

(8) Any reference in any provision of this Act, which and to the extent that it applies to a Variable Capital Limited Partnership, to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall be construed, in the case of a Variable Capital Limited Partnership, as a reference to the net asset value.

Multi-Class Limited Partnership.

36. (1) A Share Capital Limited Partnership may be constituted as a multi-class partnership where in terms of its Partnership Deed its capital is, or is capable of being, divided into different classes of shares, not constituting any distinct sub-fund.

(2) A Multi-Class Limited Partnership may from time to time create and offer or issue a new class or classes of shares, in accordance with the provisions of the Partnership Deed, and subject to any approval of the competent authority or any other requirements or conditions as may be applicable to such Limited Partnership under or in terms of the Investment Services Act or regulations issued thereunder or in terms of Investment Services Rules issued by the competent authority under and within the meaning of the Investment Services Act. Such class or classes of shares shall not constitute a distinct sub-fund or sub-funds of the Limited Partnership.

(3) Each class of shares in a Multi-Class Limited Partnership may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) A Multi-Class Limited Partnership may not elect for the segregation of any of its assets and liabilities.

(5) A Multi-Class Limited Partnership having its capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(6) The provisions of sub-paragraph (5) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under this Act or by the competent authority.

(7) For the purposes of sub-paragraphs (5) and (6), the conversion from the base

currency of a class of shares into the currency in which the annual accounts of the Multi-Class Limited Partnership are to be drawn up shall be in accordance with generally accepted accounting principles.

Multi-Fund Limited Partnership.

37. (1) A Share Capital Limited Partnership may be constituted as a multi-fund partnership where in terms of its Partnership Deed its capital is, or is capable of being, divided into different classes of shares, where one class or a group of classes of shares constitute a distinct sub-fund of the Limited Partnership, as may be provided for in the Partnership Deed:

Provided that the initial capital may or may not be organized in one or more sub-funds in terms of this paragraph.

(2) A Multi-Fund Limited Partnership may from time to time create and offer or issue a new class or classes of shares which may constitute a new sub-fund or be comprised in an existing sub-fund or sub-funds of the Limited Partnership, in accordance with the provisions of the Partnership Deed, and subject to any approval of the competent authority or any other requirements or conditions as may be applicable to such Limited Partnership under or in terms of the Investment Services Act or regulations issued thereunder or in terms of Investment Services Rules issued by the competent authority under and within the meaning of the Investment Services Act.

(3) A class or classes of shares constituting a sub-fund in a Multi-Fund Limited Partnership may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) A Multi-Fund Limited Partnership having its capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(5) The general partner or general partners of a Multi-Fund Limited Partnership shall maintain proper accounting records of the assets and liabilities of each sub-fund in the base currency of any class of shares constituting that sub-fund.

(6) The provisions of sub-paragraph (4) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under this Act or by the competent authority.

(7) For the purposes of sub-paragraphs (4) and (6), the conversion from the base currency of a class of shares into the currency in which the annual accounts of the Multi-Fund Limited Partnership are to be drawn up shall be in accordance with generally accepted accounting principles.

Segregation of assets and liabilities of Multi-Fund Limited Partnerships.

38. (1) A Multi-Fund Limited Partnership may in its Partnership Deed elect to have the assets and liabilities of each sub-fund comprised in that Limited Partnership treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-fund of such Limited Partnership. Where a Multi-Fund Limited Partnership makes the election aforementioned the assets and liabilities of each sub-fund of that Multi-Fund Limited Partnership shall, for all intents and purposes of law, be deemed to constitute a patrimony separate from the assets and liabilities of each other sub-fund of such a Limited Partnership.

(2) Save for such proportion of the liabilities of a Multi-Fund Limited Partnership which by virtue of the Partnership Deed or by virtue of the terms of the offer or of the issue of the shares constituting a sub-fund are, or are to be attributable

to, one or more sub-funds in the proportion established therein, the liabilities incurred in respect of each sub-fund shall be paid out of the assets forming part of its patrimony and the creditors in respect thereof shall have no claim or right of action against the other assets of the Limited Partnership, and the following rules shall apply:

(*a*) proceedings in relation to the Multi-Fund Limited Partnership shall respect the legal status of each sub-fund as a patrimony separate from the assets and liabilities of each other sub-fund of the Limited Partnership in terms of this Schedule;

(*b*) proceedings shall apply *mutatis mutandis* to the sub-fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-fund is not a Limited Partnership; and any Proceedings in relation to one sub-fund shall not have any effect on the assets of any other sub-fund of the Limited Partnership or of the Limited Partnership itself; and

(*c*) where, for the avoidance of doubt, a sub-fund which comprises a separate patrimony in terms of this Schedule is being wound up, and where a liquidator of such sub-fund is appointed, the provisions of paragraph 30(7) shall apply solely with respect to such sub-fund; and accordingly all the powers of the general partners shall cease solely in respect of that sub-fund.

"Proceedings" in this sub-paragraph refers to any proceedings in terms of paragraphs 28 to 32 of this Schedule.

(3) The general partner or general partners of a Multi-Fund Limited Partnership shall hold or cause to be held such separate records, accounts, statements and other documents as may be necessary to evidence the liabilities and assets of each sub-fund as distinct and separate from the assets and liabilities of other sub-funds in the same Limited Partnership.

(4) When a Variable Capital Limited Partnership is established as a Multi-Fund Limited Partnership and elects to have the assets and liabilities of its sub-funds treated as distinct patrimonies, the Partnership Deed as well as the Partnership Registration Document to be delivered to the Registrar in terms of paragraph 7(3) shall provide that the actual value of any sub-fund shall be at all times equal to the value of the assets of any kind of the particular sub-fund after the deduction of such sub-fund's liabilities, and this in lieu of what is stated in paragraph 35(2)(*c*).

Non-applicability of articles 186 and 187(1) of the Act.

39. To the extent that they would otherwise (but for the provisions of this paragraph) apply, the provisions of articles 186 and 187(1) of the Act shall not apply to a Multi-Class Limited Partnership and to a Multi-Fund Limited Partnership.

Fractional Shares.

40. (1) A Share Capital Limited Partnership may, subject to the provisions of the Partnership Deed, issue fractional shares up to such number of decimal places as shall be specified in the Partnership Deed, and under such terms and conditions as may be stipulated therein.

(2) Fractional shares shall be automatically consolidated into a whole share of the same class when the fractional shares held by one partner become equal to a whole share.

Contributions other than in cash.

41. (1) Without prejudice to paragraph 5(3), the contribution of a partner in a Limited Partnership may only consist of cash or assets capable of economic assessment, and such contributions shall be paid or transferred by the partner to the Limited Partnership within such time or times as specified in the Partnership Deed, and the following provisions of this paragraph shall apply to any such contributions which are non-cash assets contributions.

(2) A report on any contribution other than in cash shall be drawn up before the transfer of the contribution to the Limited Partnership and:

(*a*) in the case of a Share Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the acquisition of shares therein on original subscription, such report shall be drawn up before the Limited Partnership is registered; or

(*b*) in the case of a Share Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the acquisition of shares on a subsequent issue, such report shall be drawn up before the relevant shares are issued; or

(*c*) in the case of a Share Capital Limited Partnership which is not a Variable Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the payment of any unpaid part on shares already subscribed at any previous time, such report shall be drawn up before the transfer of the contribution to the Limited Partnership,

by one or more experts who are independent of the Limited Partnership and approved as provided in the Partnership Deed (who may also be the auditors of the Limited Partnership) or, in case of a Limited Partnership within the meaning of paragraph 2(1)(a) above which is licensed by the competent authority as a collective investment scheme in terms of the Investment Services Act, by such person as provided in and in accordance with Investment Services Rules issued for that purpose by the competent authority from time to time.

(3) The report referred to in sub-paragraph (2) shall, in the case of a Limited Partnership within the meaning of paragraph 2(1)(*a*) above which is licensed by the competent authority as a collective investment scheme in terms of the Investment Services Act, shall be drawn up in such manner and shall contain such particulars as may be required by Investment Services Rules issued for that purpose by the competent authority from time to time

(4) The report referred to in sub-paragraph (2) shall, in the case of a Limited Partnership other than a Limited Partnership referred to in sub-paragraph (3), shall contain at least a description of each of the assets comprising the non-cash contribution as well as the methods of valuation which have been used and:

(*a*) in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value, and, where applicable, to the premium on the shares to be issued for such assets; or

(*b*) in the case of a Variable Capital Limited Partnership, shall state whether the values arrived at by the application of these methods at least correspond to the net asset value of the shares to be issued for such assets.

(5) In both cases referred to in sub-paragraphs (3) and (4), the value of the assets comprising the non-cash contribution shall be deemed to be their fair market value at the time of the transfer thereof to the Limited Partnership as provided in paragraph 5(3) and shall be valued accordingly.

(6) In all cases, the report referred to in the foregoing provisions of this paragraph or a copy thereof shall be kept amongst the records of the Limited Partnership as provided in paragraph 22 and shall be subject to the provisions of such paragraph 22.

(7) The provisions of this paragraph shall be without prejudice to the provisions of paragraph 42.

Issue of shares at a discount.

42. (1) It shall be lawful for a Share Capital Limited Partnership to make a discount to an existing partner who has committed by written agreement with the Limited Partnership to subscribe for any shares in the Limited Partnership, which discount shall be in consideration for such commitment, provided that:

(*a*) such discount shall apply exclusively to any outstanding commitment arising under the above-mentioned agreement;

(*b*) authority therefor is given by the Partnership Deed;

(*c*) the nature of the discount shall be disclosed in the manner required by sub-paragraph (2);

(*d*) in the case of a Variable Capital Limited Partnership, in no event shall the value of such shares, issued at a discount, be reduced as a result of such discount to below the net asset value at the time the partner, to whom the discount is being granted, first subscribed for the shares in terms of the aforementioned agreement; and

(*e*) in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, in no event shall the value of such shares, issued at a discount, be reduced as a result of such discount to below the nominal value of such shares.

(2) If shares are issued at a discount which is in excess of that permitted by this paragraph, the holder thereof shall be bound to pay the Limited Partnership an amount equal to such excess, with annual interest at the rate of two percentage points over the minimum bid rate set by the European Central Bank for the main re-financing operations of the Eurosystem.

(3) The conditions specified in sub-paragraph (1) shall be clearly disclosed in the Partnership Deed, and where the shares of the Limited Partnership are offered through a prospectus or other offering document issued by the Limited Partnership, they shall at least be disclosed in such prospectus or other offering document.

Pledging of securities of Limited Partnerships.

43. (1) The pledge of shares in a Share Capital Limited Partnership or of other securities in a Limited Partnership shall be subject to the provisions of this paragraph.

(2) Securities may, if the Partnership Deed so provides or if permitted under the conditions of the offer or the issue of those securities, be pledged by their holder in favour of any person as security for an obligation. The pledge of securities shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee.

(3) Notice of the pledge shall be delivered by the pledgor or the pledgee to the Limited Partnership within fourteen days of the granting of the pledge. The pledge of securities shall be recorded in the register of the holders of the respective securities.

(4) The pledge of securities shall be effective in relation to a third party only from the date of the recording of the pledge in the register of the holders of the respective securities referred to in sub-paragraph (3):

Provided that the Limited Partnership shall, upon a request in writing made by a third party who may show an interest therein, disclose whether a pledge of securities has been recorded in the register of the holders of the respective securities, including the name of the pledgor and the pledgee, the amount of securities pledged and the date of the recording of the pledge.

(5) Saving the provisions of sub-paragraph (4), during the existence of a pledge of securities, any transfer or other assignment of the pledged securities made by the pledgor, whether by onerous or gratuitous title, shall be null and void:

Provided that any such transfer or other assignment made with the consent of the pledgee shall be valid and the securities to be transferred or assigned shall continue to be subject to the pledge.

(6) Without prejudice to the right of the pledgee to apply for the judicial sale of the securities and notwithstanding the provisions of the Civil Code or of the Partnership Deed, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the Limited Partnership, the pledgee shall be entitled to -

(*a*) dispose of the securities which are pledged in his favour; or

(*b*) appropriate and acquire the securities himself; or

(*c*) request the Limited Partnership to purchase or redeem the pledged securities in settlement of the debt due to him or of part thereof:

Provided that the remedy of the pledgee in sub-paragraph 6(*c*) above shall only apply if and to the extent that the relevant securities would, in terms of the Partnership Deed or the conditions of the offer or the issue of such securities, entitle the holder thereof to request the repurchase or redemption thereof by the Limited Partnership, and such request by the pledgee shall be made in accordance with the procedure, and shall be subject to the same terms and conditions, for such repurchase or redemption as set out in the Partnership Deed or the conditions of the offer or the issue of the relevant securities:

Provided further that the exercise of any remedies of the pledgee in sub-paragraph 6(*a*) to (*c*) shall be subject to any securities holding eligibility criteria and minimum holding requirements as may be applicable in respect of the relevant securities in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act, in terms of the Partnership Deed and, or in terms of the conditions of the offer or the issue of such securities.

(7) For the purposes of sub-paragraph (6):

(*a*) in the case where the relevant pledged securities consist of shares in a Variable Capital Limited Partnership, the value of such securities shall be their current net asset value; and

(*b*) in the case of other pledged securities, the value of such securities:

(i) shall be such value specified, or such value arrived at by the application of such valuation method specified, in the pledge

agreement between the pledgor and the pledgee; or

(ii) failing such specification in the pledge agreement as referred to in sub-paragraph (7)(*b*)(i), shall be such value as may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgee to the pledgor in terms of the sub-paragraph (6); or

(iii) failing such specification in the pledge agreement as referred to in sub-paragraph (7)(*b*)(i) and failing agreement between the pledgor and the pledgee as referred to in sub-paragraph (7)(*b*)(ii), shall be the fair value of the securities obtaining on the date of the notice of default referred to in sub-paragraph (6) determined by a certified public accountant or a certified public accountant and auditor appointed by agreement between the pledger and the pledgee at the relevant time or, failing such agreement, appointed by the Civil Court, First Hall, on the application of the pledgee:

Provided that, notwithstanding what is provided above in this sub-paragraph, when the pledgee exercises his remedy under sub-paragraph 6(*c*) above (where applicable), the value of the pledged securities for the purposes of such remedy shall be, and the Limited Partnership shall repurchase or redeem the relevant securities at, such value which is specified or otherwise calculated in terms of the Partnership Deed or the conditions of the offer or the issue of such securities.

(8) Where the Partnership Deed or the conditions of the offer or the issue of the pledged securities requires any holder thereof wishing to transfer such securities to offer them on a pre-emptive basis to other holders of such securities, the pledgee shall be obliged, prior to the exercise of the rights granted by this sub-paragraph (6), to offer any such securities to those other holders at the price determined in accordance with sub-paragraph (7), which offer shall be kept open for at least ten working days.

(9) In the exercise of his rights under this paragraph, the pledgee shall only dispose of, appropriate or request the repurchase or redemption of such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining securities shall be released to the pledgor.

(10) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities, including voting rights and the right to receive income, dividends, profits, interest or any other payments due on such securities:

Provided that, should the agreement between the parties not make provision for such matters, all rights belonging to a holder of securities shall, for the duration of the pledge, be exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the Limited Partnership, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee:

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the Limited Partnership, income, dividends, profits, interests or any other payments due on securities which are pledged shall, during such time as the pledge is registered in the register of the holders of the respective securities, be paid by the Limited Partnership to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(11) Notice of termination of the pledge shall be delivered by the pledgee to the Limited Partnership within fourteen days of the termination of the pledge. The termination of the pledge shall be recorded in the register of the holders of the respective securities.

(12) (*a*) In the case of a pledge of securities in a Limited Partnership which securities are listed and traded on a Maltese regulated market and in respect of which arrangements have been made for the maintenance by such regulated market of the relevant register of the holders thereof, the provisions of sub-paragraphs (3) to (8) and (11) shall not apply to such listed and traded securities. The following provisions shall apply instead:

(i) the pledgor or the pledgee shall deliver within fourteen days of the granting of the pledge of a listed and traded security a notice of the pledge to the Maltese regulated market, which shall also be served with a notice of termination of the pledge by the pledgee within fourteen days of the termination of the pledge;

(ii) the Limited Partnership whose listed and traded securities have been pledged shall also be notified of the pledge and of its termination within the said periods and the Limited Partnership shall record that fact in the register of the holders of the respective securities;

(iii) such pledge of securities shall be effective in relation to a third party only from the date of delivery of the notice of the pledge to the Maltese regulated market and any transfer or other assignment made therefrom by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void; and

(iv) the pledgee shall, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor, the Maltese regulated market and the Limited Partnership, have the securities sold through a person duly licensed under the Investment Services Act.

(*b*) In the case of a pledge of securities in a Limited Partnership which are listed and traded on a regulated market other than a Maltese regulated market, or on an equivalent market in a non-Member State or non-EEA State, the provisions of sub-paragraphs (3) to (8) and (11) shall not apply and in the event of a default under the agreement of pledge, the pledgee shall, upon notice in writing to the pledgor and the Limited Partnership have the securities sold through a person duly authorised for this purpose.

(*c*) References in this paragraph to the maintenance by a regulated market of the register of the holders of the respective securities shall be deemed to include a reference to the maintenance of the said register by a duly authorised central securities depositary and the delivery of the notices referred to in this paragraph shall be construed accordingly.

Matters subject to Partnership Deed.

44. (1) Without prejudice to the provisions of this Schedule, matters relating to the issue and repurchase or redemption of shares by a Share Capital Limited Partnership, the manner and timing and other matters relating to payment of contributions (including payment on shares in a Share Capital Limited Partnership) by partners in a Limited Partnership, the manner and timing and other matters

relating to payments (whether of profits, return of contributions or otherwise) to partners by a Limited Partnership, matters relating to meetings and decisions of partners or any of them, and in general any matters relating to the Limited Partnership, shall be regulated by and shall be made in accordance with and subject to the terms and conditions of the Partnership Deed.

(2) Without prejudice to the generality of sub-paragraph (1) and without prejudice to the provisions of paragraphs 25 and 35, a Share Capital Limited Partnership may, if and to the extent permitted by the Partnership Deed, purchase or redeem its own shares, directly or indirectly out of the assets of the Limited Partnership, on such terms and in such manner as may be provided by the Partnership Deed.

Investment Services Rules.

45. Without prejudice to the provisions of article 66A(3) of the Act, the competent authority may issue Investment Services Rules in terms of article 6(2)(*b*) of the Investment Services Act for the better carrying out of the provisions of this Schedule.

Administrative penalties in respect of Limited Partnerships.

46. (1) Where any provision of this Schedule provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to Part II of this Schedule, which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of this Schedule.

(2) In Part II of this Schedule, the first column indicates the paragraph and sub-paragraph of this Schedule which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of this Schedule, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty, if any. The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue from the day following that on which the default occurs.

(3) Action by the Registrar for the recovery of a penalty under this Schedule shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) In relation to penalties raised under this Schedule, the provisions of article 401 of this Act shall apply *mutatis mutandis*.

PART II - PENALTIES

Paragraph	Default	Penalty	Daily Penalty
6(6)	Person other than a Limited Partnership or a partner therein falsely indicating existence of Limited Partnership	€500	None
6(7)	Person using name falsely indicating existence of Limited Partnership	€500	None
10(6)	Failure of any general partner, vested with administration and representation, to deliver to the Registrar for registration the return of changes in the Partnership Deed, within fourteen days from the change	€500	€25

Paragraph	Default	Penalty	Daily Penalty
18(3) & (4)	Failure of Limited Partnership and any general partner, or failure by person who ceased to be a general partner, as applicable, to notify the Registrar of the cessation of a person as a general partner, within fourteen days as mentioned in paragraph 18(3) or paragraph 18(4), as applicable	€500	€25
22(7)	Failure by Limited Partnership and any general partner to keep any of the accounting records mentioned for a period of ten years from the date when they were made	€1,200	None
22(10)	Failure by the Limited Partnership or any general partner to maintain the documents mentioned and as provided, make them available for inspection, and failure in respect of documents which are to be sent and kept in Malta	€500	€25
39(5)	Failure by liquidator to notify the Registrar of his appointment, within fourteen days of such appointment	€500	€25
30(7)	Exercise by any person of the powers pertaining to the general partners or any power of administration or representation of the Limited Partnership after the appointment of the liquidator	€1,200	None
30(9)	Exercise by any person of the business of the Limited Partnership following its dissolution	€1,200	None
30(14)	Failure of the general partners, or the limited partner or other person vested with the ordinary administration or the liquidator to give notice of dissolution as required by paragraph 30(13)	€500	€25
32(2)	Failure of general partners to inform Registrar of election of a person for custody of records/documents after liquidation, within fourteen days of such election, or of failure to elect such a person, within fourteen days from the failure to elect within the prescribed period for election	€500	None
32(3)	Failure of liquidator or elected person to keep records/ documents of the Limited Partnership for prescribed period	€1,200	None
32(4)	Failure of heirs of liquidator or elected person to deliver records/documents of the Limited Partnership within 6 months after death of liquidator or elected person	€500	None
35(4)	Person other than a Variable Capital Limited Partnership or a partner therein falsely indicating existence of Variable Capital Limited Partnership	€500	None

Amended by:
IV. 2003.170, 172.
Substituted by:
L.N. 425 of 2007.
Amended by:
IX. 2008.45;
XXII. 2014.23;
V.2020.39;
XVIII.2024.21.

ELEVENTH SCHEDULE

(Article 427)

PENALTIES

Article	Default	Penalty	Daily Penalty
6(8)	Failure to indicate particulars concerning commercial partnership on business letters, etc.; and officer of commercial partnership failing to state capacity in which he signs a document on behalf of the commercial partnership	€465.87	None
6(9)	Liquidator failing to include statement on business letters, etc., that commercial partnership is being wound up or failing to include names of liquidators of company being wound up	€465.87	None
7A(4)	Failure of partner of partnership *en nom collectif* to comply with article 7A(2) and (3)	€465.87	€23.29
10	Any person including name of a non-partner or fictitious person in partnership-name	€2,329.37	None
19(4)	Partners failing to give notice that a person has begun or ceased to be a partner of a partnership	€465.87	€23.29
26(2)	Partners failing to keep accounting records for ten years	€1,164.69	None
41	Failure of partners to give notice of dissolution of partnership or failure of liquidator to give notice of his appointment	€465.87	€23.29
50(2)	Failure of partners to provide for custody of records/ documents after liquidation	€465.87	None
50(3)	Failure of liquidator or elected person to keep records/ documents of partnership for prescribed period	€1,164.69	None
50(5)	Failure of heirs of elected person to deliver records/ documents of partnership	€465.87	None
51A(4)	Failure of partner of partnership *en nom commandite* or limited partnership to comply with article 51A(2) and (3)	€465.87	€23.29

Article	Default	Penalty	Daily Penalty
66(6)	Failure of partner vested with administration or representation to deliver a copy of any instrument altering or adding to the deed of partnership of a partnership *en commandite* or limited partnership the capital of which is divided into shares to the Registrar or failure to deliver amended deed of partnership	€465.87	€23.29
70(6)	Trading or carrying on business under certain prohibited names	€465.87	€23.29
74(2)	Failure of company to deliver to Registrar report of proposed acquisition of non-cash asset from subscriber or member	€1,164.69	None
79(4)	Failure of officer to deliver a copy of any resolution altering or adding to a company's memorandum or articles to the Registrar or failure to deliver amended memorandum and articles	€465.87	€23.29
83(12)	Failure of officer to deliver a copy of the notice of reduction of the issued share capital to the Registrar, when applicable	€465.87	€23.29
85(4)	Failure of officer to file copy of resolution increasing share capital	€465.87	€23.29
88(11)	Failure of officer of company to deliver to the Registrar copy of resolution to restrict or withdraw right of pre-emption	€465.87	€23.29
91	Contravention of articles 89 in respect of the obligation to issue a prospectus	€2,329.37	None
93(2)	Issue of a prospectus before registration thereof	€2,329.37	€46.59
96A(2)	Failure of officers to provide Registrar with notice that the company issued an offer of securities to the public in a third country	€500	€25
97(5)	Failure of company and its officers to keep in a separate account money received from applicants in pursuance of a prospectus	€2,329.37	€46.59
101(5)	Failure of company and its officers to keep in a separate account money received from applicants in pursuance of a prospectus for listing	€2,329.37	€46.59
103(2)	Failure to make return as to allotments	€465.87	€23.29
104(3)	Failure of directors to convene general meeting in case of serious loss of capital	€465.87	€23.29
106(2)	Failure of officers of company to provide Registrar with copy of resolution for company to acquire its own shares otherwise than by subscription	€465.87	€23.29
106(8)	Failure of officers of company to deliver to the Registrar for registration a copy of the notice within fourteen days after the cancellation of shares becomes effective	€465.87	€23.29

Article	Default	Penalty	Daily Penalty
113(4)	Failure of officer to disclose commissions, discounts, etc, on issue of shares	€465.87	€23.29
115(6)	Failure of officers to provide Registrar with notice of redemption of preference shares	€465.87	€23.29
119(6)	Failure of company to send notice to transferee of refusal to register transfer of shares and debentures	€465.87	€23.29
120(4)	Failure of officers of company to comply with provisions as to issue of share certificates	€465.87	€23.29
123(4)	Failure of officers of company to comply with provisions as to register of members	€465.87	€23.29
124(4)	Failure of officers of company to keep proper register of debentures	€465.87	€23.29
128(3)	Failure of officers of company to hold annual general meeting	€2,329.37	€46.59
133(3)	Failure of officers of company to give notice to members of right to vote by proxy at a meeting of the company	€465.87	None
133(5)	Officer of company contravening further provisions as to votes by proxy at meetings of the company	€465.87	None
138(8)	Failure to appoint a company secretary	€465.87	€23.29
145(2)	Director failing to disclose interest in contract	€2,329.37	None
146(2)	Officers of company failing to make return as to change in directors or secretary	€465.87	€23.29
149(4)	Officers of company failing to make minutes of general meetings and to keep minute book at registered office	€1,164.69	None
151(6)	Officers of company failing to give notice to Registrar of default in appointment of auditors	€465.87	€23.29
154(3)	Officer and auditors of subsidiary undertaking failing to give information to auditors of parent company	€465.87	None
154(4)	Officers of parent company failing to provide auditors with information concerning oversea subsidiary	€465.87	None
157(2)	Officers of company failing to give notice to Registrar of resolution removing an auditor	€465.87	€23.29
159(3)	Officers of company failing to give notice to Registrar or failing to give statement to Accountancy Board of resignation of an auditor	€2,329.37	€46.59
160(5)	Directors failing to take reasonable steps to convene a meeting requisitioned by a resigning auditor	€2,329.37	None
162(1)	Auditor failing to comply with requirements of article 161 upon ceasing to hold office	€1,164.69	€34.94
162(3)	Officers of company failing to comply with article 161 upon an auditor's ceasing to hold office	€1,164.69	€34.94
163(7)	Officers failing to keep accounting records for ten years	€1,164.69	None
176(4)	Directors approving defective accounts	€2,329.37	None

Article	Default	Penalty	Daily Penalty
176(5)	Officers of company issuing or delivering to Registrar accounts not duly signed	€465.87	None
177(4)	Directors failing to comply with requirements as to Directors' report	€1,164.69	None
178(4)	Officer circulating or filing unsigned directors' report	€1,164.69	None
179(7)	Officers of company failing to state names of auditors on auditors' report	€465.87	None
180(4)	Company and its officers failing to send copies of annual accounts to persons entitled	€1,164.69	None
180(6)	Officers of company failing to provide document on demand by person entitled to it	€465.87	€23.29
181(3)	Directors failing to lay annual accounts or laying defective annual accounts before general meeting	€2,329.37	€46.59
183(6)	Directors failing to deliver, or delivering defective annual accounts to Registrar	€2,329.37	€46.59
184(3)	Officers of company failing to file annual return	€2,329.37	€46.59
209(3)	Officers of private company offering shares or debentures for sale to the public	€2,329.37	None
212(6)	Officers of company failing to deliver notice to Registrar of becoming a single member company	€465.87	€23.29
212(9)	Sole member failing to record in writing all agreements between him and the company	€1,164.69	None
213C(4)	Failure of directors or persons to comply with provisions relating to reporting obligations under articles 213B, 213C, 213D and Part II of the Fourth Schedule	€2,329.37	€46.59
226(6)	Persons infringing article 226 on preparation of statement to official receiver as to affairs of company in liquidation	€2,329.37	€46.59
265(2)	Officers of company failing to give to Registrar notice of resolution for dissolution and voluntary winding up	€465.87	€23.29
270(4)	Directors failing to summon general meeting or failing to apply to the court for appointment of liquidator	€2,329.37	€46.59
272(2)	Liquidator failing to summon meeting of creditors where company unable to pay debts	€2,329.37	None
273(2)	Liquidator failing to hold general meeting where winding up continues for more than twelve months	€1,164.69	None
274(2)	Liquidator failing to provide Registrar with copy of the winding up account or a return of the general meeting on members' voluntary winding up	€465.87	€23.29
274(3)	Liquidator failing to call final meeting in members' voluntary winding up	€465.87	None
278(6)	Directors failing to comply with requirements as to creditors meeting following resolution for dissolution and voluntary winding up	€2,329.37	None

Article	Default	Penalty	Daily Penalty
279(3)	Failure of directors to apply to the court to appoint liquidator	€2,329.37	€46.59
283(2)	Liquidator failing to convene meetings of company and of creditors where winding up continues for more than twelve months	€465.87	None
284(2)	Liquidator failing to provide Registrar with copy of winding up account or a return of the company and creditors' meetings on a creditors' voluntary winding up	€465.87	€23.29
284(3)	Liquidator failing to call general meeting or creditors' meeting on creditors' voluntary winding up	€1,164.69	None
290(2)	Liquidator failing to notify Registrar of appointment	€465.87	€23.29
322(2)	Liquidator failing to comply with periodic reporting requirements	€1,164.69	€34.94
324(3)	Liquidator failing to keep books for specified period	€1,164.69	None
327(4)	Officer failing to annex to memorandum copy of court order as to compromise with creditors	€465.87	€23.29
328(6)	Company and officers failing to comply with the requirements of article 328	€2,329.37	None
328(7)	Director failing to give notice to company and debenture holders of interests in relation to compromise with creditors	€2,329.37	None
329(5)	Failure to deliver copy of court order for the sanctioning of a compromise or arrangement to the Registrar	€465.87	€23.29
389	Officer or agent of oversea company failing to comply with provisions as to registration or returns of oversea company	€465.87	€23.29
399A(1)	Liquidator, officer or agent of oversea company failing to give notice to Registrar of winding-up of oversea company or closure of branch or place of business	€465.87	€23.29
399A(2)	Liquidator of oversea company failing to notify Registrar of appointment	€465.87	€23.29

.

TWELFTH SCHEDULE

(Article 3)

Amended by: IV. 2003.169.

TABLE OF CONCORDANCE

Articles of Ordinance	Marginal note for the article in the Ordinance	Articles of Act
1.	Short title.	1
2.	Interpretation.	2 to the extent that the definitions are contained therein
3.	Law governing commercial partnerships.	5
4.	Formation of partnership.	4
5.	Different kinds of partnerships.	4 (1)
6.	Indication of particulars concerning partnerships in business letters, etc.	6
7.	Definition.	7
8.	Agreement to pay share of profits.	8
9.	Partnership-name.	9, 18
10.	Penalties for use of partnership-name including name of fictitious person, etc.	10
11.	Contributions deemed to be made in ownership.	11
12.	Contribution of a debt owing to a partner.	12
13.	Valuation of contribution.	14 (*e*)
14.	How partnership is constituted.	13

15.	Contents of deed of partnership.	14
16.	Registration of deeds of partnership.	15
17.	Duty of Registrar and effect of registration.	16
18.	Where certificate of registration is not issued.	17
19.	Changes in deed of partnership.	19
20.	Where alteration consists in change of partnership-name.	20
21.	Reductions in contribution of a partner and dissolution of a partnership before period fixed for its duration.	21
22.	Right of creditors of a partner to oppose enlargement of duration of a partnership.	22
23.	Duties of Registrar of Courts.	23
24.	How deed of partnership may be altered.	24
25.	Administration and representation of a partnership.	25 (1)
26.	How partnership may be bound.	25 (2), (3)
27.	New partners.	27
28.	Distribution of profits.	28
29.	How rights of creditors of a partner are enforceable.	29
30.	A partner may not compete with partnership.	30
31.	Death of a partner.	31
32.	Expulsion of a partner.	32
33.	Cessation of membership.	33
34.	Rights of persons ceasing to be partners.	34
35.	Dissolution of partnerships *en nom collectif*.	35
36.	Notice of dissolution.	36
37.	How a partnership *en nom collectif* may be wound up.	37
38.	Power to remove liquidator.	38
39.	Remuneration of liquidator.	39
40.	Costs of winding up payable in priority to other claims.	40
41.	Penalty.	41
42.	Powers until provision is made for winding up.	42
43.	Duties of partners vested with administration.	43
44.	Powers of liquidators.	44
45.	Liquidator not to distribute assets before paying debts.	45
46.	Duty of liquidator to give information, to render account and prepare scheme of	

	distribution.	46
47.	Rules applicable to distribution of assets.	47
48.	Approval of accounts and scheme of distribution.	48
49.	Striking of name of partnership off register.	49
50.	Preservation of books of accounts, etc., after dissolution.	50
51.	Definition.	51
52.	Applicability of provisions governing partnerships *en nom collectif*.	52
53.	Partnership-name.	53
54.	Contribution of limited partner not to include personal services.	54
55.	Contents of deed of partnership.	55
56.	Rights of general partners.	56
57.	Administration and representation.	57
58.	Appointment of partners to administer and represent partnership.	58
59.	Limited partner cannot take part in management of partnerships.	59
60.	Communication of yearly accounts to limited partners.	60
61.	Article 30 not to apply to limited partners.	61
62.	Limited partner not bound to restore profits received in good faith.	62
63.	Assignment of interest by limited partner.	63
64.	Death of limited partner.	64
65.	Dissolution of partnership *en commandite*.	65
66.	Division of capital into shares.	66
67.	Definition.	67
68.	How company is constituted.	68
69.	Contents of memorandum.	69
70.	Name of company.	70
71.	Objects of company.	71
72.	Minimum share capital.	72
73.	Articles of association.	75
74.	Registration of memorandum and articles.	76
75.	Duty of Registrar and effects of registration.	77
76.	Where certificate of registration is not issued.	78
77.	Alterations and additions to memorandum and articles.	79
78.	Reduction of share capital.	83

79.	Change of name of company.	80
80.	Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.	81
81.	Authentication of documents.	82
82.	Issue of applications for shares in or debentures of a company to be made with a prospectus.	89
83.	Dating of prospectus and matters to be stated therein.	90
84.	Penalty.	91
85.	Prospectus including a statement by experts.	92
86.	Registration of prospectus.	93
87.	Restriction on alteration of terms mentioned in prospectus.	-
88.	Civil liability for mis-statements in prospectus.	94
89.	Document containing offer of shares or debentures for sale to be deemed prospectus.	95
90.	Interpretation of provisions relating to prospectus.	96
91.	No allotment of share capital unless seventy-five per cent subscribed.	97
92.	No allotment after lapse of three months from issue of prospectus.	-
93.	Time of the opening of the subscription lists.	99
94.	Revocability of applications for shares or debentures.	100
95.	Return as to allotments.	103
96.	Company may not hold its own shares.	105, 106, 107, 108, 109,112
97.	Company may not hold shares in its holding company nor provide financial assistance for purchase of or subscription for its own, or its holding company's shares.	110
98.	Conditions for payment of commissions, discounts, etc.	113
99.	Application of premium received on issue of shares.	114
100.	Redeemable preference shares.	115
101.	Rights of holders of special classes of shares and variations thereof.	116
102.	Numbering of shares.	117
103.	Transfer of shares.	118
104.	Registration of transfer at request of transferor.	119
105.	Issue of certificates.	120

106.	Share warrants.	121
107.	Register of members.	123
108.	Register of debentures.	124
109.	Inspection of registers.	125
110.	Power to close registers.	126
111.	Statutory meeting.	-
112.	Holding of annual general meeting.	128
113.	Penalty.	128(3)
114.	Convening of extraordinary general meeting on requisition.	129
115.	Length of notice for calling meetings.	130
116.	General provisions as to meetings and votes.	131
117.	Power of court to order meeting.	132 (1)
118.	Proxies.	133
119.	Right to demand a poll.	134
120.	Extraordinary resolutions.	135
121.	Directors.	137
122.	Restrictions on appointment of director.	139
123.	Removal of directors.	140 (1) to (5)
124.	Casual vacancy.	140 (6)
125.	Disqualification for appointment as director.	142
126.	Director may not compete with company.	143
127.	Prohibition of loans, etc., to directors.	144
128.	Duty of director to disclose interest in a contract with company.	145
129.	Return as to changes among directors.	146
130.	Joint and several liability of directors.	147
131.	Provisions as to liability of officers and auditors.	148
132.	Minutes of proceedings.	149
133.	Keeping of books of account.	163
134.	Profit and loss account and balance sheet.	181, 182
135.	General provisions as to contents and form of accounts.	167
136.	Signing of balance sheet.	176
137.	Directors' report to be attached to balance sheet.	177, 181
138.	Inspection of accounts.	180
139.	Penalty.	Incorporated in relevant articles
140.	Appointment and remuneration of auditors.	151, 152, 156
141.	Disqualification for appointment as auditor.	153

142.	Auditor's report.	179,181
143.	Right of access to books and to attend at general meetings.	154, 155
144.	Annual return.	184
145.	Documents to be annexed to annual return.	183
146.	Penalty.	Incorporated in relevant articles
147.	Definition.	209
148.	Provisions not applicable to private companies.	Incorporated in relevant articles
149.	Exemption of private company from requirements of article 145, etc.	211
150.	Dissolution of companies.	214
151.	Notice of dissolution and calling of meeting for appointment of liquidator.	265, 279
152.	Appointment, removal and remuneration of liquidator.	270, 278, 279, 281, 289, 293
153.	Notice of appointment of liquidator.	290
154.	Penalty.	Incorporated in relevant articles
155.	Powers of directors and convening of general meetings.	267, 295
156.	Applicability of articles 43, 44 and sub-article (1) of article 45.	287, 288
157.	Calls for payment of unpaid share capital.	288
158.	Duties of liquidator where winding up continues for more than one year.	273, 283
159.	Duties of liquidator when affairs have been completely wound up.	274, 284
160.	Approval of accounts and scheme of distribution.	275, 285
161.	Name of company to be struck off the register.	275, 285, 324
162.	Conversion of partnerships.	330
163.	Amalgamation of partnerships.	337, 343, 357
164.	Registration of the conversion or amalgamation of partnerships.	331, 338, 350
165.	Where partnership ceases to exist on conversion or amalgamation.	332, 339, 343 (4)
166.	Partners with unlimited liability to remain bound unless creditors consent to conversion.	333, 340
167.	Rights of creditors to oppose conversion or amalgamation.	334, 341, 351
168.	Continuing or new partnership succeeds partnership ceasing to exist.	335, 342, 354 (1)

169.	Definition.	376
170.	Consent of associates required for admission of other associates.	377
171.	Relations of parties *vis-à-vis* third parties and among themselves.	378
172.	Only associating party acquires rights and assumes obligations.	379
173.	Rights of associating party and of associates.	380
174.	Liability of associate.	381
175.	Agreements allowed between parties.	382
176.	No formalities required for association *en participation*.	383
177.	Application of articles 178 to 182.	384
178.	Documents, etc., to be delivered by oversea companies carrying on business in Malta.	385
179.	Return to be delivered by oversea company where documents, etc., altered.	386
180.	Accounts of oversea company.	387
181.	Other obligations of oversea company.	388
182.	Penalties.	389
183.	Application of articles 184 to 187.	384
184.	Documents, etc., to be delivered by oversea partnerships carrying on business in Malta.	385
185.	Return to be delivered by oversea partnerships where documents, etc., altered.	386
186.	Other obligations of oversea partnerships.	388
187.	Penalties.	389
188.	Dating of prospectus and particulars to be contained therein.	391
189.	Application of articles 85, 86 and 88.	393, 396, 397
190.	Interpretation of provisions as to prospectuses.	398
191.	Power of Prime Minister to appoint Registrar.	400
192.	Additional duties of Registrar.	401
193.	Powers of Registrar to investigate affairs of partnership.	403 to 423
194.	Inspection, etc., of documents kept by Registrar.	424
195.	Power of Minister to make regulations	425
First Schedule	Regulations for management of a limited liability company	First Schedule
Second Schedule	Matters to be set out in a prospectus and reports to be set out therein	Second Schedule
Third Schedule	General provisions as to balance sheet and profit and loss account	168, Third Schedule

Fourth Schedule Contents and form of annual return Seventh Schedule

Articles of Commercial Partnerships (Special Provisions) Act, 1994	Marginal note for the article in the Commercial Partnerships (Special Provisions) Act, 1994	Articles of Act
1	Short title	-
2	Other enactments	-
3	Interpretation	2
4	Investment Companies with variable share capital	84
5	Name of company	70 (3) and (6)
6	Accounts of investment company with variable share capital	169
7	Trustees and nominees	127
8	Share Capital in a convertible currency	186, 187
9	Power to make regulations	-
	Schedule - Accounts and Director's report of an investment company with variable share capital	Fifth Schedule