

## User Guidelines

Proposed amendments to the Companies Act - Cap. 386 of the Laws of Malta

### Purpose

The aim of these amendments is to:

- upgrade the commercial partnerships' regulatory framework with the objective to provide legal certainty;
- improve the quality of reporting standards to the Registrar;
- increase the Registrar's duties, particularly in relation to the upkeep and accuracy of information held and recorded;
- transpose 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 referred to as "Directive (EU) 2021/2101").

### Companies Act – Provisions

- Definitions - **article 2(1) and (3) of the principal Act**

The terms 'beneficial owner', 'offer of securities to the public' and 'Prospectus Regulation' are clearly defined for enhanced legal certainty and the qualifications as to which type of offers shall not be considered as constituting offers of securities made to the public are amended.

- Transpositions of EU laws – Article 3A

This Article is being amended to reflect the latest transpositions as a result of EU Directives in the company law framework.

- Submission of Updated Memorandum and Articles of Association - **article 79(2) of the principal Act**

An updated memorandum and articles of association may be submitted to the Registrar electronically if signatures contained therein are of the type duly recognised by the Registrar (Qualified Electronic Signatures in terms of Regulation (EU) No. 910/2014). Reference to the term 'printed' is being deleted.

- Reduction of share capital – **article 83 of the principal Act**

This article is being substituted to cater for an updated scenario of those instances whereby the issued share capital of a company is reduced which shall be widened to include instances of non-distributable reserves, and the applicable procedures.

- Formation of an investment company with variable share capital – **article 84(1) of the principal Act**

This type of formation is being amended to include the possibility of a company formed as an investment company following a conversion.

- Acquisition of company's own shares – **article 106 of the principal Act**

A company may now cancel the shares acquired in accordance with article 106 of the principal Act, without having to follow the provisions of article 83. A notice of such cancellation needs to be delivered to the Registrar for registration within fourteen (14) days. A penalty shall apply in case of default, with a further daily penalty up until the default continues.

- Acquisition of company's own shares without the application of article 106 – **article 107 of the principal Act**

The instances whereby a company may acquire any of its won shares (otherwise than by subscription) without complying with the provisions of article 106 are being amended to include instances following a conversion, amalgamation or division (under the Companies

Act); any cross-border conversion, merger or division made pursuant to the relevant regulations under the Act; or acquired from dissenting shareholders as provided in article 107(1)(f).

- Conditions for company in acquiring its own shares as permitted by law – **article 109 of the principal Act**

Any reserve referred to in paragraph (b) of this article 109, shall be come distributable following a cancellation made pursuant to articles 106(6) or 107(2).

- Convening of extraordinary general meeting on requisition – **article 129 of the principal Act**

Apart from the duty of the directors in proceeding to convene a meeting, a new requirement is introduced for the same directors to hold the meeting within a two-month period from the date of the deposit of the requisition.

- Disqualification of Directors - **Article 142(1)(b) of the principal Act**

A widening of the circumstances when a person is considered disqualified from being appointed or to hold the office of director of a company. When a person is convicted of an offence of money laundering within the meaning of the Prevention of Money Laundering Act, associate predicate offences to money laundering and financing of terrorism, shall also be grounds for disqualification.

- Appointment of an Administrator of a Company - **Article 146(1) of the principal Act**

Upon being appointed by the court or competent authority, a notification is required to be sent to the Registrar by the administrator, legal representative, or any person being responsible for the management and administration of a company.

This notification applies also for resignations or removals.

The notification is to be sent to the Registrar of Companies by a prescribed form within 14 days from the appointment, resignation, or removal, which shall be made available upon an amendment to the Companies Act (Forms) Regulations.

The Registrar of Companies shall make this information available to the public on the MBR's portal.

- Auditor - **Articles 151(6) and 151(9) of the principal Act**

The company is to inform the Registrar of Companies about the appointment of an auditor through the newly created statutory form and which is to be delivered to the same Registrar for registration within 14 days from the said appointment. The prescribed Form will be made available under the Companies Act (Forms) Regulations.

The information supplied in this Form will be available to the public on the MBR's website. A penalty shall be applied in case that the company fails to inform the Registrar of the auditor's appointment and a further daily penalty shall accrue for each day that the failure of notification continues.

- Filing of Winding Up Application by the Registrar - **Article 218(4) of the principal Act**

The amendment gives the discretion to the Registrar in being able to file a winding up application in court concerning a particular company, in cases where it is either practical to do so or else where it is in the public interest.

- Language discrepancy – **Article 224(2) of the principal Act**

The Maltese version is being amended to reflect the wording of the English version. This would eliminate any linguistic discrepancy between the two texts.

- Registrar's personal liability – **Article 400(3) of the principal Act**

The addition of this sub-article seeks to introduce the exclusion of personal liability of the Registrar in the discharge of the respective duties, unless the act or omission to act arises from bad faith.

- Additional Duties of the Registrar - **Article 401(1)(n), (o), (p) and (q) of the principal Act**

The first amendment adds a duty to the Registrar of carrying on-site inspections at the registered offices of companies to confirm that the shareholders and beneficial owners are

those as disclosed to the Registrar. The Registrar is also under the duty to verify that the registered office of commercial partnerships is existent and valid.

Secondly, there is being added the duty for the Registrar to administer and maintain a central data repository.

- Power to make regulations – **Article 425(1) and (4) of the principal Act**

The Minister is being given the legislative capacity to make regulations concerning:

- the central data repository, including access qualifications thereto and fees which may be prescribed for the access to data contained therein and matters ancillary thereto

- body corporates registered or formed in a country other than Malta to be continued or converted into a company under the laws of Malta, and for body corporates formed or registered in a country other than Malta to carry out a cross-border merger or cross-border division with or involving a company incorporated or to be incorporated in Malta.

- Transposition of Directive (EU) 2021/2101 – **Articles 213B, 213C, 213D and Fourth Schedule**

The specific objective is to increase corporate tax transparency, that is, to make information on corporate income tax accessible to the public.

The public should be able to scrutinise all the activities of a group of undertakings if the group has certain types of entities established within the Union. For groups which carry out activities within the Union only through subsidiary undertakings or branches, those subsidiary undertakings and branches should publish and make accessible the report of the ultimate parent undertaking. If that information or report is not available or the ultimate parent undertaking does not provide the subsidiary undertakings or branches with all the required information, the subsidiary undertakings and branches should draw up, publish, and make accessible a report on income tax information containing all information in their possession, obtained or acquired, and a statement indicating that their ultimate parent undertaking did not make the necessary information available.

For reasons of proportionality and effectiveness, the obligation to publish and make accessible the report on income tax information should be limited to medium-sized and large subsidiary undertakings.

The report on income tax information is to include:

(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;

(b) a brief description of the nature of their activities;

(c) the number of employees on a full-time equivalent basis;

(d) revenues, which should have the same meaning as “net turnover” or the income as defined by the financial reporting framework on the basis of which the financial statements are prepared;

(e) the amount of profit or loss before income tax;

(f) the amount of income tax accrued during the relevant financial year;

(g) the amount of income tax paid on a cash basis; and

(h) the amount of accumulated earnings at the end of the relevant financial year.

The report on income tax information should include, where applicable, a list of all the subsidiary undertakings, in respect of the relevant financial year, established in the Union or in tax jurisdictions.

To avoid creating an administrative burden, the ultimate parent undertaking should be able to rely on the list of subsidiary undertakings included in the consolidated financial statements of the ultimate parent undertaking.

- Penalties - **Eleventh Schedule**

Administrative penalties shall be introduced and are to apply in the following cases:

- When a company officer fails to deliver a copy of the notice of reduction of the issued share capital to the Registrar;
- When a company officer fails to deliver to the Registrar a copy of the notice of cancellation of shares within fourteen (14) days from such cancellation becoming effective;
- When the director or person responsible to file the respective information as required by articles 213B, 213C, 213D and the Fourth Schedule, fails to submit such information to the Registrar. A further daily administrative penalty shall be applicable for each day the default continues.

## Conclusion

Officers of companies are to be fully aware of the amending Act. It is advisable that when they are unsure about their obligations, they consult a lawyer, accountant, or auditor. Prescribed forms will be issued under the respective legislative regulations through a Legal Notice. Failure to make the necessary filings or take the necessary action within the requested time frames will result in penalties being imposed on the company and officers of the company. Penalties can be avoided if the company officers are familiar with the Maltese company law and regulations thereto.

*N.B. The User Guidelines contained within this document is solely intended to serve as guidelines and should not be construed as legislation. This document should not be considered as an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. The Guidelines do not purport to be an authoritative ruling on the interpretation of the legislation. Please refer to the related legislation for a more comprehensive understanding.*

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