

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 and XXX of 1997, XVII of 1998, XXII of 2000, XVII of 2002, IV and IX of 2003, and II and XIII of 2004; Legal Notices 390 and 391 of 2005, and 181 and 186 of 2006; Acts V and XII of 2006, and XV of 2007; Legal Notice 425 of 2007; and Acts IX of 2008 and III of 2009.

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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.

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

"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 Registrar or the regulatory authority of the Member State or EEA State, as the case may be, including the consistency of the information given and its comprehensibility, within the meaning of the Prospectus Directive;

Cap. 281.

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

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

"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 being an individual 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, First Hall;

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

"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;

"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, and the term 'non-equity securities' shall be construed as referring to all securities that are not equity securities;

"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 subarticle (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;

"financial holding company" shall mean a company the sole purpose of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profits, without involving itself directly or indirectly in the management of those undertakings, and this without prejudice to its rights as shareholder;

"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;

"home Member State" in relation to a prospectus means:

- (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 and one euro and sixty-three cents (1,001.63), 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 and one euro and sixty-three cents (1,001.63);

- (iii) for all issuers of securities incorporated in a third country, which are not mentioned in paragraph (ii) hereof, the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of this provision, subject to a subsequent election by issuers incorporated in a third country if the home Member State was not determined by their choice;

"host Member State" in relation to a prospectus means the State where an offer to the public is made, when different from the home Member State;

"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;

"offering programme" means a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and, or class, in a continuous or repeated

manner during a specified issuing period;

"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 incorporated outside Malta;

"participating interest" shall mean 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 those undertakings' activities. The holding of twenty per cent of the capital of another undertaking shall be presumed to constitute a participating interest unless the contrary is shown. 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;

"person making an offer", or "offeror", means a legal entity or individual which offers securities to the public;

"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;

"the Prospectus Directive" means 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, as may be amended from time to time and includes any implementing measures that have been issued or may be issued thereunder;

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

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

^{*}Repealed by this Act.

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

"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 subarticle (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;

"securities issued in a continuous or repeated manner" means issues on an 'as required' basis (on tap) or at least two separate issues of securities of a similar type and, or class over a period of 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 or the *bona fide* holder of a share warrant referred to in article 121;

"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);

"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) of which it is a member, 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 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.
- (b) For the purposes of the definition in paragraph (a), the provisions of the Ninth Schedule shall apply.
 - (c) The term "subsidiary undertakings" shall be construed in accordance with paragraph (a) and shall include a subsidiary undertaking or undertakings of a subsidiary 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) For the purposes of this Act, "offer of securities to the public" means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries.
- (b) The following shall not constitute offers made to the public:
 - (i) an offer of securities made only to qualified investors; or

-
- (ii) an offer made to less than one hundred 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 fifty thousand euro (50,000.00), for each separate offer; or
 - (iv) an offer of securities where the nominal value of each security amounts to at least fifty thousand euro (50,000.00), or the total consideration of which shall not exceed one hundred thousand euro (100,000.00), which limit shall be calculated over a period of twelve months; or
 - (v) an offer where the total consideration of the securities offered does not exceed two million and five hundred thousand euro (2,500,000.00), which limit shall be calculated over a period of twelve months; or
 - (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 over a period of twelve months is less than fifty million euro (50,000,000.00), 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 respect of offers mentioned in sub-paragraphs (v) and (vi), an offeror may draw up a prospectus in accordance with the provisions of Part A of the Second Schedule;

- (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.

- (e) For the purposes of this Act "qualified investors" means:
- (i) legal entities which are authorised or regulated to operate in financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;
 - (ii) national and regional governments, central banks, international and supranational institutions such as the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;
 - (iii) other legal entities which do not meet two of the three criteria set out in the definition of "small and medium-sized enterprises";
 - (iv) subject to mutual recognition, natural persons who are resident in Malta and who expressly ask to be considered as qualified investors if these persons meet at least two of the criteria set out below;
 - (v) subject to mutual recognition, small and medium-sized enterprises which are registered in Malta and which expressly ask to be considered as qualified investors.

For the purposes of sub-paragraph (iv), the criteria are as follows:

- (i) the investor has carried out financial transactions of a significant size on securities markets at an average frequency of, at least, ten per quarter over the previous four quarters;
- (ii) the size of the investor's securities portfolio exceeds five hundred thousand euro (500,000.00);
- (iii) the investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment.

For the purposes of sub-paragraphs (iv) and (v), the Registrar shall keep a register of natural persons and small and medium-sized enterprises considered as qualified investors. The register shall be available to all issuers. Each natural person or small and medium-sized enterprises wishing to be considered as a

qualified investor shall request to be included in such register and each registered investor may decide to opt out at any moment.

Cap. 281.

(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.

(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.

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

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.

(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 subarticle (1).

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.

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.

Law governing commercial partnerships.

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.

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

(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 subarticle (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 subarticle (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 subarticles 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 subarticles, 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 subarticles (1) to (6) and of subarticle (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 subarticle (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.

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 furthermore that at least one of the partners shall be 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.

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 subarticles (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 subarticle without delay to the person requesting the registration.

(3) For the purposes of subarticle (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.

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

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

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. Contribution of a debt owing to a partner.

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. How a partnership is constituted.

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

- (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.

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 subarticle (2), shall register it. Registration of deed of partnership.

(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 subarticle (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.

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:

Where alteration consists in change of partnership-name.

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

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.

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.

(2) Any creditor of the partnership whose debt existed prior to the publication referred to in subarticle (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 subarticle (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 subarticle (1).

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

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.

How deed of partnership may be altered.

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.

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

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.

(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.

Keeping of accounting records.
Cap. 13.

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:

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

subarticle (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.

(2) If a partner acts in contravention of the provisions of subarticle (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.

(3) The exercise of the rights conferred by subarticle (2) shall be barred by the lapse of two years from the date of the contravention.

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:

Death of a partner.

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 subarticle (1) shall apply as though references to heirs were references to the legatees of such interest.

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 -

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

(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.

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.

How a partnership
en nom collectif
may be wound up.

(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.

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.

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

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

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.

Remuneration of
liquidator.

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.

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

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.

Penalty.

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.

Powers until
provision is made
for winding up.

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

Duties of partners
vested with
administration.

(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 subarticle (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.

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).

Approval of accounts and scheme of distribution.

Amended by:
L.N. 181 of 2006;
L.N. 186 of 2006.

(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 subarticle (1).

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 subarticle (1) thereof and to the rights of creditors under subarticle (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.

Striking of name of partnership off register.

Amended by:
IV. 2003.34;
XV. 2007.4.

(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 subarticle (1) thereof and to the rights of creditors under subarticle (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.

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:

Preservation of accounting records and documents after dissolution.

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 subarticle (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 subarticle (1).

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

Amended by:
IV. 2003.35.

PART IV - PARTNERSHIP *EN COMMANDITE* OR LIMITED PARTNERSHIP

Definition.
Amended by:
IV. 2003.35, 36.

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 at least one of the general partners shall be 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.

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.

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

Contribution of limited partner not to include personal services.

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*.

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

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*.

Rights and duties of partners.

(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:

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

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.

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.

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

(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 subarticle (1) shall not be expelled from the partnership if he proves that he had been acting on the instructions of the general partners.

Communication of yearly accounts to limited partners.
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.

Non-applicability of certain articles to limited partners.

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

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

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

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

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.

(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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (4) shall thereafter no longer apply to the partnership.

(11) The change of status referred to in subarticle (7) or in subarticle (8) shall not take effect unless and until it is registered as required by subarticle (9) or by subarticle (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.

66A. (1) This article shall apply to a partnership *en commandite* or limited partnership the capital of which is divided into shares which in the deed of partnership expressly limits its objects 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 spreading investment risk and 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 for any other purpose as the Minister may from time to time prescribe by regulations.

Partnership *en commandite* or limited partnership.
 Added by:
 IV. 2003.40.
 Amended by:
 XV. 2007.5.

Cap. 370.

(2) A partnership *en commandite* or limited partnership within the meaning of subarticle (1) shall be regulated by the provisions contained in the Tenth Schedule and, unless otherwise provided in the said Schedule, by the provisions of this Part of this Act but only in so far as such provisions are not inconsistent with the said Schedule:

Provided that where any particular matter arises in relation to a partnership *en commandite* or limited partnership within the meaning of subarticle (1) which is not specifically regulated by any provision of the Tenth Schedule or this Part of this Act, reference shall be made, where applicable and to the extent possible, to any relevant provision of this Act, including any regulations made thereunder.

(3) The Minister may make regulations for the better carrying out of any of the provisions of the Tenth Schedule and of this Part of this Act as applicable to partnerships *en commandite* or limited partnerships within the meaning of subarticle (1), 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 to be used for the purposes of this Act in respect of such partnerships *en commandite* or limited partnerships;

- (b) the registration of such partnerships *en commandite* or limited partnerships under this Act and any matters incidental thereto;
 - (c) any matter to be prescribed under this Act in respect of partnerships *en commandite* or limited partnerships within the meaning of subarticle (1);
 - (d) the amendment of any provision -
 - (i) relating to matters to be filed with the Registrar in connection with registration of such partnerships *en commandite* or limited partnerships;
 - (ii) relating to the records to be kept by such partnerships *en commandite* or limited partnerships;
 - (e) to prescribe fees payable under this Act in respect of such partnerships *en commandite* or limited partnerships;
 - (f) the exemption of partnerships *en commandite* or limited partnerships within the meaning of subarticle (1) or any category thereof from any of the provisions of the Tenth Schedule or of this Act, as the case may be, subject to such modifications, variations and conditions as may be specified.
- (4) Regulations made under this article may make different provisions for different cases or classes of cases.

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. **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, 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. **69.** (1) The memorandum of every company shall state:
- (a) whether the company is a public company or a private company;

*Amended by:
IV. 2003.41.*

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- (b) the name and residence of each of the subscribers thereto;
 - (c) the name of the company;
 - (d) the registered office in Malta 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;
 - (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 subarticle shall comply with the provisions of subarticle (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 subarticle:

Provided that companies formed and registered before the coming into force of this subarticle shall be deemed to satisfy the

requirements of subarticle (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.

70. (1) Subject to the provisions of subarticles (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."

(2) Subject to the provisions of subarticles (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 words "investment company" or with "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 subarticle without delay to the person requesting the registration:

Provided further that in applying paragraph (b), the Registrar shall have regard to the business or proposed business of the company, to the protection of the names of individuals 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 subarticle (5); or
- (c) under a name or title which ends with the words "investment company with fixed share capital", "investment company" 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 ends with 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.

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

Objects of company.

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.

Minimum share capital.

*Amended by:
XV. 2007.6;
L.N. 425 of 2007.*

(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 bearer of a share warrant issued in accordance with article 121 shall not be taken into account for the purpose of determining the number of persons specified in subarticle (1).

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

(6) 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.

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.

(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.

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:

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

- (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 subarticle (1)(b) shall be delivered to the Registrar for registration at the same time as it is circulated in accordance with subarticle (1)(d). If the company fails to comply with this subarticle, 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 subarticle (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.

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.

Where certificate of registration is not issued.

(2) Failing agreement to the contrary, the persons referred to in subarticle (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 subarticle (1), the dealings referred to in that subarticle 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 subarticle (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 subarticle towards the said third party.

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

Alterations and additions to memorandum and articles.
*Amended by:
IV. 2003.45.*

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 printed 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. 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 subarticle (2) shall prevail.

Notwithstanding the provisions of subarticle (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 subarticle (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 subarticle (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.

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, in addition to the manner of authentication laid down in subarticle (1), be authenticated 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

83. (1) Notwithstanding the provisions of article 79(3), where the alteration consists in the reduction of the issued share capital, any such reduction 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 resolution effecting such alteration:

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.

Provided that if a creditor of the company whose debt existed prior to the publication of the statement mentioned in this subarticle objects thereto by sworn application filed within the period of three months reckoned as aforesaid and satisfies the Court that due to the proposed reduction in the issued share capital the satisfaction of 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:

Provided further that 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) The Registrar of Courts shall without delay cause a copy of any application filed under subarticle (1) and of any judgment given thereon to be served on the Registrar for registration.

(3) 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.

(4) 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.

(5) An alteration consisting in the reduction of the issued share capital whose purpose is to offset losses incurred or to include sums of money in a reserve shall take effect immediately on the registration of the resolution concerning such a reduction and the

provisions of subarticle (1) relating to the rights granted to creditors of the company shall not apply:

Provided that, following this operation, the amount of such 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.

(6) In the cases referred to in subarticle (5) the amounts deriving from the reduction of the issued share capital may not be used for making payments or distributions to shareholders or to discharge shareholders from the obligation to pay calls on their shares:

Provided that if the provisions of subarticles (1) and (2) relating to the rights granted to the creditors of the company are followed for the purpose of reducing any sum of money contained in any such reserve, as is referred to in subarticle (5), the amounts deriving therefrom may be used for making payments or distributions to shareholders.

(7) The notice convening the general meeting at which the extraordinary resolution for the reduction of issued share capital 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.

Investment
companies with
variable share
capital.
Amended by:
IV. 2003.47;
IX. 2003.84;
IX. 2008.8.

84. (1) A company may, by complying with the provisions of this article, be formed as 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 Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act; and Cap. 450.
- (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 subarticle (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.
- (10) The Minister, in consultation with the Minister responsible under the Investment Services Act, acting on the advice of the Cap. 370.

competent authority under the said Act, 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:

- (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; 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;
- (d) 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;
- (e) provide for any matter incidental to or connected with the above.

Cap. 370.

Cap. 450.

(11) The Minister, in consultation with the Minister responsible under the Special Funds (Regulation) Act, acting on the advice of the Malta Financial Services Authority, may 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 Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act; and without prejudice to the generality of the foregoing may, by such regulations, provide for any matter referred to in the immediately preceding subarticle.

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

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 -

- (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;
 - (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.
- (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 of affiliated insurance as prescribed by regulations issued thereunder, the business of an insurance manager and the business of insurance broking under the Insurance Intermediaries Act; Cap. 403.
 - (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.
 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 section, 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;
- (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.

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

Cap. 484.

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).

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

(2) The memorandum or articles of a company may permit the general meeting to authorise by ordinary resolution the Board of directors to issue shares up to a maximum amount as may be specified in the same memorandum and articles, which authorisation shall be for a maximum period of five years, renewable for further periods of five years each; and where that permission is not contained in the company's memorandum or articles, the same authority may be given to the Board of directors by an extraordinary resolution.

(3) Where there are several classes of shares, the resolution of the general meeting concerning the increase in the issued share capital referred to in subarticle (1) or the authorisation referred to in subarticle (2) shall be subject to a separate vote for each class of shareholders whose rights are affected by that resolution or authorisation, and the provisions relating to the majority required for the resolution by virtue of subarticle (1) and (2) shall apply for each class.

(4) A copy of any such ordinary or extraordinary resolution referred to in subarticles (1), (2) and (3) 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.

(5) The provisions of subarticles (1) to (4) 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.

(6) Where an increase in the issued share capital is not fully taken up, the issued share capital shall be increased by the amount of subscriptions received only if the conditions of the issue so provide.

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.

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 subarticle (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 where the public company has not issued share warrants, 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 subarticle (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 subarticle.

(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 subarticle (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 subarticle (7) shall be delivered to the Registrar for registration.

(9) The provisions of subarticles (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 subarticles (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 subarticle (1).

(11) If default is made in complying with subarticles (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

89. It shall not be lawful for a public company to issue any form of application for its shares or debentures unless the company is registered and the form is issued with a prospectus which complies with the requirements of article 90:

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
- (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) an offer where the shares are offered for no consideration and is made exclusively to existing shareholders, and dividends paid out 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) an offer where shares are allotted to existing or former directors or employees by their employer which has shares already admitted to trading on a regulated market or by an affiliated undertaking, 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
- (f) 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

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.

Cap. 370.

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

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

90. (1) Every prospectus shall be dated and shall state the matters specified in Part A of the Second Schedule.

(2) A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this article or purporting to effect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

Penalty.
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 any of the provisions of article 89 or of article 90(1) shall be liable to a penalty:

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. (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless -

- (a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of the provisions of this article, every person who is knowingly a party to the issue thereof shall be liable to a penalty.

Registration of prospectus.
Amended by:
L.N. 391 of 2005.

93. (1) No prospectus shall be issued unless, on or before the date of its publication as specified in article 99, a copy thereof, signed by every person named therein as a director of the company or his agent authorised in writing, has been delivered to the Registrar. Upon being satisfied that the requirements of this Chapter and Part A of the Second Schedule have been complied

with, the Registrar shall register it. Such prospectus must have endorsed thereon or attached thereto any consent to the issue of the prospectus required by article 92 from any person as an expert.

(2) If a prospectus is issued in contravention of this article, every person who is knowingly a party to the issue of the prospectus shall be liable to a penalty, and, for every day from the date of the issue of the prospectus until a copy thereof is delivered as aforesaid with the required documents endorsed thereon or attached thereto, to a further penalty.

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:

Civil liability for misstatements in prospectus.
Amended by:
L.N. 391 of 2005.

Provided that a person who has given the consent required by article 92 shall not be liable as a person who has authorised the issue of a prospectus except in respect of an untrue statement made by him as an expert.

(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 to this Act, including the translation thereof, except when such statements are untrue when read together with the other parts of the prospectus.

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.

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

(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.

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 subarticle (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 subarticle (2); and if default is made in complying with this subarticle, 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.

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:

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

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.

99. (1) No allotment shall be made of any shares in or debentures of a public company in pursuance of a prospectus and no proceedings shall be taken on applications made in pursuance of a prospectus until at least the beginning of the sixth working day or such later time, if any, as may be specified in the prospectus, after the publication in a daily newspaper circulating wholly or mainly in Malta of a notice stating that a prospectus has been issued, indicating therein where the issuer or offeror has made available, free of charge, a paper copy of the full prospectus.

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

(2) The beginning of the said sixth working day or such later time as aforesaid is hereinafter in this Act referred to as "the time for the opening of the subscription lists".

(3) In the application of this article to a prospectus offering shares or debentures for sale, subarticles (1) and (2) shall have effect with the substitution of references to sale for references to allotment.

Revocability of application for shares or debentures.

100. An application for shares in or debentures of a public company which is in pursuance of a prospectus shall not be revocable until after the expiration of the third working day after the time of the opening of the subscription lists, or the giving, before the expiration of the said third working day, by some person responsible under article 94 for the prospectus, of a public notice having the effect under that article of excluding the responsibility of the person giving it.

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

101. (1) The following provisions of this article shall apply where a prospectus issued by or on behalf of a public company states that application has been or will be made for permission for the shares or debentures offered by it to be listed on a regulated market or on an equivalent market in a non-Member State or non-EEA State.

(2) An allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third working day after the first issue of the prospectus or if the permission has been refused before the expiration of twenty-one days from the date of the closing of the subscription lists or such longer period, not exceeding forty-two days, as may be notified by or on behalf of the regulated market or the equivalent market in a non-Member State or non-EEA State to the applicant for permission, within those twenty-one days.

(3) Where permission has not been applied for as required by subarticles (1) and (2), or has been refused, the company shall forthwith repay, without interest, all money received from applicants in pursuance of the prospectus.

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

(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 subarticle (3); and if default is made in complying with this subarticle, 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.

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

(7) For the purposes of this article, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(8) The provisions of this article shall have effect in relation to shares or debentures agreed to be taken by a person underwriting an offer of them by a prospectus as if he had applied for them in pursuance of the prospectus.

102. (1) The provisions of article 101, other than subarticle (4) thereof, shall apply to a prospectus offering shares for sale, otherwise than by allotment, subject to the following provisions of this article. Operation of article 101 where prospectus offers shares for sale.

(2) Subarticles (1) and (2) of article 101 shall apply, as though the reference in the said subarticle (2) of article 101 to allotment were a reference to sale.

(3) Subarticle (3) of article 101 shall apply as though the reference therein to company were a reference to the offeror.

(4) If any of the money is not repaid within eight days after the offeror becomes liable to repay it, he shall become liable to pay annual interest on the money due, at the rate of two percentage points over the Central Bank of Malta minimum discount rate from the end of the eighth day.

(5) Subarticles (5) to (8) of article 101 shall apply, except that in subarticle (5) thereof -

- (a) the first reference to the company shall be construed as a reference to the offeror; and
- (b) the reference to the company and every officer of the company who is in default shall be construed as a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

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

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

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

(3) If a general meeting as required by subarticle (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 subarticle (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 subarticle (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.
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 ten 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 subarticle (1). If default is made in complying with the provisions of this subarticle, 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 subarticle (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 subarticle (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.

Acquisition of own shares by a company without application of article 106.
Amended by:
IV. 2003.55.

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 subarticle (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) the subject of an application which is revoked in accordance with the provisions of article 100; or
- (c) forfeited or surrendered in accordance with the provisions of article 112; or
- (d) acquired in any procedure for the conversion, the amalgamation or the division of companies pursuant to the provisions contained in Part VII, Part VIII and Part IX, respectively, of this Act; 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 pursuant to an order of the court made under the provisions of this Act for the repurchase 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 subarticle (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 subarticle (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.

(4) If the company fails to comply with subarticle (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 subarticle (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 subarticles (2) to (4) shall not apply.

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.

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

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

(3) If the company fails to comply with subarticle (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.

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

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

- (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.

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.

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.

(2) The provisions of subarticle (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) Subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (3)(a), every officer of the company who is in default shall be liable to a penalty.

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.

Application of premium received on issue of shares.

(2) The share premium account may, notwithstanding anything contained in the foregoing subarticle, 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).

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:

Takeover relief.
Added by:
XV. 2007.8.

- (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 subarticle (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.

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

Relief may be reflected in company's balance sheet.
Added by:
XV. 2007.8.

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 subarticle (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 subarticle (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 subarticle (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 subarticles 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 subarticle (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.

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

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.

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 subarticle (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 subarticle (1).

(5) Where no provision is made by the memorandum or articles for authorising the change or variation referred to in subarticle (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.

Transfer of shares or debentures.

118. (1) Notwithstanding any provisions contained in any other law, a transfer of shares in or debentures of a company may be made by private 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:

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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*.

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.

Registration of transfer or transmission of shares or debentures.

(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 subarticle (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 subarticles (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.

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.

Issue of certificates.

(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.

(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.

Share warrants.

121. (1) A public company, if so authorised by its memorandum or articles, may, with respect to any fully paid up shares, issue a warrant to bearer, in this Act referred to as a "share warrant", stating that the bearer of the warrant is entitled to the shares therein specified and may provide, by coupons or otherwise, for the payment of the future dividends on shares included in the warrant.

(2) The shares specified in a share warrant may be transferred by the delivery of the warrant.

Pledging of securities.
Amended by:
XXIV.1995.362;
IX. 1997.7;
IV. 2003.60;
IX. 2008.14.

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 the pledge of share warrants or debenture warrants shall be constituted by delivery of the warrant to the pledgee, and the provisions of subarticles (2) to (5), (10) to (12), (14) and (15) shall not apply thereto:

Provided further 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 subarticle (10), be deemed not to apply to transfers by the pledgee in terms of subarticle (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 subarticle (2).

(4) Saving the provisions of subarticle (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 subarticle (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 -

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- (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 subarticle (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 subarticle (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 subarticle (7), the fair value of the securities shall be that obtaining on the date of the notice referred to in subarticle (6).

(9) The pledgee shall, in selling the securities in accordance with the provisions of subarticle (6), be obliged to seek the best price being not less than their fair value as determined in accordance with subarticle (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 subarticle (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 subarticle (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

subarticle (6), to offer the shares to those shareholders, who shall be entitled to purchase the shares at the price determined in accordance with subarticle (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 public company which are quoted 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 subarticles (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 quoted 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 quoted 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 subarticles (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 subarticle (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 subarticles (6) to (9) and (13), the terms and conditions of the pledge of a share warrant or of a debenture warrant shall be determined by agreement between the pledgor and the pledgee. The pledge of a share warrant or of 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.

123. (1) Every company shall keep a register of its members and shall enter therein the following particulars:

Register of
members.

- (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:

Provided that on the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant and shall enter in place of the aforesaid requirements the following

particulars:

- (i) the fact of the issue of the warrant;
- (ii) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
- (iii) the date of the issue of the warrant:

Provided further that where the company has converted any of its shares into stock and has registered the conversion with the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(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.

(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.

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.

(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.

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.

Power to close registers.

(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 subarticles (1) and (2), no new particulars may be entered therein.

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.

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 subarticle (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.

129. (1) The directors of a company shall, on the requisition of a member or members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up share capital of the company as at the date of the deposit carried the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

Convening of extraordinary general meeting on requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitioner or requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by the requisitioner, or if there is more than one requisitioner in any one document by all of them.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitioner or requisitionists may convene a meeting in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors, but a meeting so convened shall not be held after the expiration of three months from the date of the deposit of the requisition.

(4) Any reasonable expense incurred by the requisitioner or requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitioner or requisitionists by the company, and any sum so paid shall be due personally by the directors who were in default and may be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

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:

Length of notice for calling general meetings.

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 subarticle (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 subarticle, 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 subarticle, 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.

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-

Right to demand a poll.

- (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 subarticle (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 subarticle (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.
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Chapter VIII - Management and Administration

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.

Power of company to borrow money, hypothecate or charge its undertaking, etc.
Amended by:
IV: 2003.62.

136A. (1) A director of a company shall be bound to act honestly and in good faith in the best interests of the company.

General duties of directors.
Added by:
IV: 2003.63.

(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.

137. (1) Every public company shall have at least two directors.

Directors.
Amended by:
IV: 2003.64.

(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 subarticle (7) shall hold office until the next annual general meeting although he shall be eligible for re-election.

(9) The provisions of subarticle (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.

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.

(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.

(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 to fill the post.

(5) The directors of a company shall have the power to remove the company secretary and they shall appoint another individual in his stead within fourteen days from the date of his 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 subarticle (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.

139. (1) A person shall not be capable of being appointed director of a public company unless he has personally, or by his agent authorised in writing, 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.

Company
secretary.
Amended by:
IV. 2003.65.

Appointment of
directors.

(2) Without prejudice to the provisions of subarticle (1), where a director is by the memorandum or articles of a private or of a public 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 reappointed director of the company

until he has obtained his qualification.

(3) For the purposes of any provision in the memorandum or articles of a public company requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(4) 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.

(5) 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.

Removal of
directors and
casual vacancies.
*Amended by:
IV. 2003.66.*

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 subarticle (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.

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.

Representation of the company.

(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.

142. (1) A person shall not be qualified for appointment or to hold office as director of a company or company secretary if -

Disqualification for appointment as director or company secretary.
Amended by: IV. 2003.67.

- (a) he is interdicted or incapacitated or is an undischarged bankrupt;
- (b) he has been convicted 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; or
- (d) he is subject to a disqualification order under article 320.

(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 subarticle (2) at the relevant time may rely on that irregularity as against the company.

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.

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 of any new director or company secretary, within fourteen days from the happening thereof:

Return as to changes among directors, company secretary and in representation of company.

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.

(2) If default is made in complying with the provisions of subarticle (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.

147. (1) The personal liability of the directors in damages for any breach of duty shall be joint and several:

Joint and several liability of directors for breach of duty.

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.

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:

Provisions as to liability of officers and auditors.

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 subarticle (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 subarticles (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.

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 subarticle (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 subarticles 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 subarticle (4), the company shall within two weeks of the general meeting at which an auditor or auditors should have been appointed by virtue of subarticle (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 subarticle (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.

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:

Filling of casual vacancies.

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 subarticle (1) shall be liable to the same penalty as that provided for in article 151(6).

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.

Rules on auditor independence and professional ethics. Substituted by: IX. 2008.15. Cap. 281.

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.

Right to information. Amended by: L.N. 425 of 2007.

(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 and seventy-five cents (4,658.75) 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 subarticle, 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 subarticle 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 subarticle, 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 subarticle (5) shall not apply:

- (a) where an undertaking is included within the consolidated accounts of another undertaking and the information required by subarticle (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 subarticle (5) to be delivered to it within such period as it may establish for that purpose.

(7) The provisions of subarticle (6) shall not apply to a public interest entity as defined in the Accountancy Profession Act.

Cap. 281.

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):

Removal of auditors.
Amended by:
IX. 2008.17.

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 subarticle, 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.

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:
XI. 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 subarticle, 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.

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.

Rights of resigning
auditor.

(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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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.

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.

Failure to comply with article 161.

(2) In proceedings for a default under subarticle (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

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 -

Keeping of accounting records.
Amended by:
L.N. 425 of 2007.
Cap. 13.

- (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 subparagraph (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 subarticle (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.

Cap. 13.

(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:

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 subarticles (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 and eighty-seven cents (11,646.87), 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 subarticle (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.

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.

Alteration of
accounting
reference period.
Amended by:
IV: 2003.70.

(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 subarticle (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 subarticle (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 subarticle (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 subarticle (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.

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 which may be required by generally accepted accounting principles and practice. These documents shall constitute a composite whole.

General provisions as to content and form of individual accounts.
Amended by:
IV. 2003.71;
IX. 2008.19.

(2) The individual accounts shall be drawn up in accordance with generally accepted accounting principles and practice:

Provided that the disclosures prescribed in indents (m), (o) and (p) of paragraph 31 of Part III of the Third Schedule shall be complied with.

(3) The individual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

(4) Where the application of the provisions of this Act would not be sufficient to give a true and fair view within the meaning of subarticle (3), additional information shall be given.

(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.

168. (1) Banks governed by the Banking Act, financial institutions governed by the Financial Institutions Act, and insurance companies governed by the Insurance Business Act need not apply the provisions of the Third and Fourth Schedules.

Annual accounts of banks and financial institutions.
Amended by:
XVII. 1998.70;
IV. 2003.72;
IX. 2008.20.
Cap. 371.
Cap. 376.
Cap. 403.

(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

Cap. 371.
Cap. 376.

authority in this regard.

Cap. 403.

(3) Insurance companies shall comply with regulations made under the Insurance Business Act in respect of the form and content of their annual accounts and any rules as may be issued by the competent authority from time to time.

(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 and of financial holding companies in lieu of the provisions of the Third and Fourth Schedules.

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 subarticles of this article and the Fifth Schedule.

Duty to prepare consolidated accounts.

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.

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 the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation. This subarticle shall not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involving different products or because they provide different services.

(6) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no consolidated accounts shall be required.

(7) Where the undertaking excluded from the consolidation pursuant to subarticle (5) is an undertaking not established in Malta its individual accounts shall be attached to the consolidated accounts of the parent company translated into English or Maltese, where the original is not in one of these languages.

(8) The requirements specified in subarticle (7) shall be subject to the following qualifications -

- (a) an undertaking is not required to prepare for the purposes of this article accounts which would not otherwise be prepared, and if no accounts satisfying the said requirements are prepared, none need be attached;
- (b) a document need not be appended if it would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not attaching it shall be stated in the notes to the accounts of the company.

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.

Form and content
of consolidated
accounts.
Amended by:
IV. 2003.74;
IX. 2008.22.

(2) Without prejudice to articles 170 and 172 to 174, and to the provisions of article 2(2) and the Ninth Schedule in so far as may be relevant to articles 170 and 172 to 174, the consolidated accounts shall be drawn up in accordance with generally accepted accounting principles and practice:

Provided that the disclosure prescribed in indent (m) of paragraph 31 of Part III 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 prescribed in sub-paragraphs (7) and (8) of paragraph 22 of the Fourth 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.

(4) Where the application of the provisions of this Act would not be sufficient to give a true and fair view within the meaning of subarticle (3), additional information shall be given.

(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.

Financial holding
company
exemption.

172. (1) A parent company which is a financial holding company shall be exempt from the requirement to prepare consolidated accounts if it meets the following conditions -

- (a) it has not intervened during the accounting period, directly or indirectly, in the management of a subsidiary undertaking;
- (b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of the board of directors of the subsidiary undertaking during the accounting period and the five preceding accounting periods; or, where the exercise of voting rights was necessary for the operation of the board of directors of the subsidiary undertaking, such voting rights were exercised without any interference or influence on the part of the parent company or of any of its subsidiary undertakings, and:
 - (i) no member with majority voting rights in that parent company; or
 - (ii) no member of the board of directors of that parent company; or
 - (iii) no member of the board of directors of a member with majority voting rights in that parent company,
 - is a member of the board of directors of the subsidiary undertaking;
- (c) it has made loans only to undertakings in which it holds participating interests provided that where such loans have been made to other parties, they shall have been repaid by the end of the previous accounting period; and
- (d) the exemption has been granted by the Registrar after he has verified that the conditions set out in this subarticle have been fulfilled.

(2) A financial holding company which is exempted from the requirement to prepare consolidated accounts pursuant to the

provisions of subarticle (1), shall also be exempted from the requirement to provide the information laid out in paragraph 32 of the Third Schedule in the case of a holding other than a majority holding:

Provided that the exemption from the requirement to provide the information laid out in paragraph 32 of the Third Schedule shall also extend to majority holdings where in the opinion of the directors the disclosures required thereby are such that they would be seriously prejudicial to the company, to its members or to one of its subsidiaries. When any information is omitted following the application of the provisions of this proviso, such omission shall be disclosed in the notes to the accounts.

(3) For the purposes of this article, the term "board of directors" includes the management or administrative organ of an undertaking, by whatever name called, formed in Malta or elsewhere, not being a company formed and registered in Malta.

173. (1) 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(1)(a):

Consolidated
accounts - size
exemption.
Amended by:
IV. 2003.75;
IX. 2008.23.

Provided that none of the undertakings to be consolidated is a company the securities of which have been admitted to official listing on a regulated market or on an equivalent market in a non-Member State or non-EEA State.

(2) For the purposes of this article "securities" includes -

- (a) shares and stock;
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness;
- (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b); and
- (d) certificates or other instruments which confer -
 - (i) property rights in respect of a security falling within paragraph (a), (b) or (c);
 - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates; or
 - (iii) a contractual right, other than an option, to acquire any such security otherwise than by subscription.

Exemption for
parent companies
included in
accounts of larger
groups.
Amended by:
IV. 2003.76;
IX. 2008.24.

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 subarticle (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 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 securities have been admitted to official listing 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 subarticle (1)(a) whether the company is a wholly-owned subsidiary company.

(5) For the purposes of subarticle (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.

(6) For the purposes of subarticle (3) "securities" shall have the same meaning as laid down in article 173(2).

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.

Disclosure required in notes to accounts.
Substituted by:
III. 2009.23.

(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.

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.

Approval and signing of annual accounts.

(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 subarticle (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.

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.

(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 subarticle, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements of this article.

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.

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.

Auditors' report.
Amended by:
IV. 2003.77;
IX. 2008.25.

(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.

(4) The auditors' report shall state the names of the auditors and shall be signed and dated by them.

(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) If the requirements of article 31(o) of the Third Schedule are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(13) 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.

Persons to whom a copy of the accounts of a company are to be sent.
Amended by:
IV. 2003.78.

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 subarticle (1), copies of the annual accounts shall, unless otherwise provided in the memorandum or articles, not be required to be sent to a debenture holder who is not entitled to receive notices of general meetings.

(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 subarticle (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.

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.

Directors to lay accounts before the general meeting.

(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 subarticle (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 subarticle (3) to prove that he took all reasonable steps for securing that the requirements of subarticle (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.

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.

Period for laying and approval of accounts.
Amended by:
XV. 2007.10.

(2) Subject to the following subarticles 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) If a company carries on business or has business interests to

the extent of more than ninety percent outside Malta and in respect of an accounting period, the directors, before the end of the period allowed by subarticle (2), give to the Registrar for registration notice in the prescribed form -

- (a) stating that the company so carries on business or has such interests; and
- (b) claiming an extension of the period so allowed;

the period allowed in relation to that accounting period shall be eighteen months:

Provided that for the purpose of this subarticle, interests or holdings held in companies formed and registered in Malta or in companies referred to in article 384, and income derived therefrom, shall be ignored for the purpose of determining whether a company carries on business or has business interest outside Malta as aforesaid:

Provided further that for the purpose of article 387 the provisions of this subarticle shall apply only by reference to the oversea company's operations in Malta as if such operations had been conducted by a separate company formed and registered in Malta under this Act.

(4) 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.

(5) 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 subarticles (2) to (4); 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.

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.

(2) Where, in accordance with article 185, a company qualifies to draw up abridged annual accounts relating to an accounting period, the directors of the company may deliver to the Registrar abridged annual accounts in respect of that accounting period and

such delivery shall satisfy the company's obligation under subarticle (1):

Provided that where the company which qualifies to draw up abridged annual accounts is an exempt company, it may deliver to the Registrar only its abridged balance sheet, all the notes to the accounts relevant for the purposes of that balance sheet and the auditors' report, and without the directors' report:

Provided further that where the exempt company which qualifies to draw up abridged accounts is a company referred to in article 185(1)(b), it may deliver to the Registrar only its abridged balance sheet and all the notes to the accounts relevant for the purposes of that balance sheet, and without a directors' report and an auditors' report.

(3) The statements referred to in article 185(10), shall also be required where, notwithstanding that the annual accounts have not been drawn up in abridged form, the directors take advantage of exemptions conferred by subarticle (2) regarding the delivery of the annual accounts in abridged form.

(4) Where the directors of a company propose to take advantage of the exemptions conferred by subarticle (2), the auditors shall have the duty to provide the directors with a special auditors' report stating whether in their opinion the company is entitled to those exemptions as claimed in the directors' statements and whether the documents to be proposed to be delivered in accordance with this article are properly prepared:

Provided that the special auditors' report shall not be required where the annual accounts of the company, in respect of which the auditors' report referred to in article 179 has been made, are to be published as drawn up:

Provided further that the provisions of this subarticle shall not apply to companies referred to in article 185(1)(b).

(5) The annual accounts delivered shall be accompanied by the special auditors' report referred to in subarticle (4), where required to be drawn up in pursuance of the same subarticle.

(6) In the case provided for in subarticle (5) a copy of the auditors' report prepared under article 179 need not be delivered separately but the full text of it shall be reproduced in the special auditors' report; and if the auditors' report prepared under article 179 is qualified, there shall be included in the special auditors' report any further material necessary to understand the qualification.

(7) Article 179(4) shall apply to a special auditors' report under this article as it applies to a report under article 179.

(8) 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 subarticle (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.

(9) 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.

(10) 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 subarticle 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.

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, in addition to the manner of signing laid down in this subarticle, such annual return may be signed 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.

185. (1) (a) Companies which on their balance sheet dates do not exceed the limits of two of the three following criteria -

- balance sheet total: two million and five hundred and sixty-two thousand and three hundred and ten euro and seventy-four cents (2,562,310.74);
- turnover: five million and one hundred and twenty-four thousand and six hundred and twenty-one euro and forty-eight cents (5,124,621.48);
- average number of employees during the accounting period: fifty;

Exemptions for small companies.
Amended by:
IV. 2003.81;
L.N. 391 of 2005;
L.N. 425 of 2007;
IX. 2008.27.

shall in this Chapter be designated as "small companies" and may, for all purposes of this Act, draw up abridged balance sheets and abridged layouts of profit and loss account as specified in subarticle (2) and abridged notes to the accounts as specified in subarticle (3).

(b) Private companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

- balance sheet total: forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47);
- turnover: ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94);
- average number of employees during the accounting period: two;

shall be exempted from the provisions of Chapter IX of Part V and from the requirement imposed by article 179 and such companies may, for all purposes of this Act, draw up abridged balance sheets and abridged layouts of profit and loss account as specified in subarticle (2) and abridged notes to the accounts as specified in subarticle (3).

(2) For the purposes of this article, the word "abridged" -

- (a) when used therein in relation to a balance sheet shall mean an abbreviated version of the balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet formats shown under Part I of the Third Schedule to this Act, immediately following paragraph 13, under the heading "Balance Sheet Formats", but such version shall, in all other respects, correspond to the full balance sheet:

Provided that a company may instead choose to present its resulting abridged balance sheet as determined in accordance with the aforesaid provisions of this subarticle using the terminology and

layouts in accordance with generally accepted accounting principles and practice, and in such case the aforesaid provisions of this subarticle shall apply *mutatis mutandis*;

- (b) when used therein in relation to profit and loss account layouts shall mean the full profit and loss account with the exception that the following items can be combined as one item under the heading "gross profit or loss" -
- (i) items 1, 2, 3 and 6 in Format 1;
 - (ii) items 1 to 5 in Format 2;
 - (iii) items A.1, B.1 and B.2 in Format 3; and
 - (iv) items A.1, A.2 and B.1 to B.4 in Format 4.

The formats herein stated are those shown in Part I of the Third Schedule, immediately following paragraph 13, under the heading "Profit and Loss Account Formats":

Provided that a company may instead choose to present its resulting abridged profit and loss account as determined in accordance with the aforesaid provisions of this subarticle using the terminology and layouts in accordance with generally accepted accounting principles and practice, and in such case the aforesaid provisions of this subarticle shall apply *mutatis mutandis*.

(3) Companies referred to in subarticle (1) may draw up abridged notes to the accounts omitting the disclosures prescribed by indents (d) and (g) to (o) of paragraph 31 of Part III of the Third Schedule. The notes to the accounts shall however disclose the information specified in indent (j) of the said paragraph 31 in total for all the items concerned:

Provided that companies referred to in subarticle (1) may instead draw up abridged notes to the accounts in accordance with generally accepted accounting principles and practice by:

- (i) omitting, where relevant, any corresponding disclosures resulting from compliance with generally accepted accounting principles and practice equivalent to those set out in indents (d) and (g) to (o) of paragraph 31 of Part III of the Third Schedule; and
- (ii) if generally accepted accounting principles and practice require the disclosure of the information specified in indent (j) of paragraph 31 of Part III of the Third Schedule, disclosing in the notes to the accounts such information as specified in indent (j) of the said paragraph 31 as a total for all the items concerned.

(4) 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 subarticle (1), that fact shall affect the application of the derogation provided for in that subarticle

only if it occurs in two consecutive accounting periods.

(5) The balance sheet total referred to in this article shall consist of the assets in A to E in the layout in Format 1 of the Balance Sheet Formats contained in Part 1 of the Third Schedule, immediately following paragraph 13, or those in A to E in the layout in Format 2 of the Balance Sheet Formats contained in the said Part of the same Schedule.

(6) 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 does not exceed the limits of two of the three following criteria:

- aggregate balance sheet total: two million and five hundred and sixty-two thousand and three hundred and ten euro and seventy-four cents (2,562,310.74) net or three million and seventy-four thousand and seven hundred and seventy-two euro and eighty-nine cents (3,074,772.89) gross;
- aggregate turnover: five million and one hundred and twenty-four thousand and six hundred and twenty-one euro and forty-eight cents (5,124,621.48) net or six million and one hundred and forty-nine thousand and five hundred and forty-five euro and seventy-seven cents (6,149,545.77) gross;
- aggregate number of employees: fifty:

Provided that the provisions of this subarticle shall not apply to a parent company which is exempted from the requirement to prepare consolidated accounts in accordance with article 174.

(7) The provisions of subarticle (4) shall apply to parent companies as though the reference to company were a reference to parent company.

(8) The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with subarticles (1) and (6). 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.

(9) 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.

(10) Where the directors of a company take advantage of the exemptions conferred by this article, the company's abridged balance sheet shall contain:

- (a) a statement that advantage is taken of the exemptions conferred by this article, and
- (b) a statement of the grounds on which, in the directors' opinion, the company is entitled to those exemptions.

(11) The statements referred to in subarticle (10) shall appear in the abridged balance sheet immediately above the signature required by article 176(1).

(12) 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 subarticle (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 subarticle (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 subarticle (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.

187. (1) A company shall present its annual accounts in the same currency as that of its share capital.

Accounts in any convertible currency.
Amended by:
IV. 2003.83;
L.N. 425 of 2007;
IX. 2008.28.

(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 closing middle rate issued by the Central Bank of Malta 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 subarticle (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 closing middle rate issued by the Central Bank of Malta. This rate shall be disclosed in the notes to the accounts.

188. For the purposes of this Chapter, the Minister may by order make regulations which -

Power of Minister to make regulations altering accounting requirements.
Amended by:
IV. 2003.84;
IX. 2008.29.

- (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.

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 subarticle (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 subarticle (1) or subarticle (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.

Chapter XI - Distribution of Profits and Assets

192. (1) A company shall not make a distribution except out of profits available for the purpose.

Certain distributions prohibited.

(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 subarticle 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
public companies.

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 subarticle shall be subject to the provisions of articles 194 and 195.

(2) In subarticle (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; and
- (d) 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.

(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.

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 subarticle (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 subarticle (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 subarticle (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 either of -
- (i) 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; or
 - (ii) acting and operating as a Retirement Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act;
- (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.

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 subarticle (1) shall not apply -

- (a) to any part of that amount representing an unrealised profit made on revaluation of those costs; and
- (b) where -
 - (i) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subarticle (1), and
 - (ii) the provision in the notes to the accounts required by paragraph 18 of the Third Schedule states that the amount is not to be so treated and explains the circumstances relied upon to justify the decision of the directors to that effect.

Distribution to be justified by reference to company's accounts.

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 of any of the kinds mentioned in the Third Schedule to this Act in paragraphs 7, 16 and 17 and these paragraphs as applied by paragraph 28 of the said Third Schedule; 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 subarticle (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.

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.

Requirements for last annual 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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (4) and of the auditors' statement, if any, under subarticle (5) shall have been delivered to the Registrar.

(7) If the accounts are, or the auditors' report under subarticle (4) or their statement, if any, under subarticle (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.

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.

Method of applying article 197 to successive distributions.

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.

Treatment of assets in the relevant accounts.

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 -

Distributions in kind.

- (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.

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

Consequence of unlawful distribution.

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.

Saving for other restraints on distribution.

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.

Chapter XII - Private Company

Definition.
Amended by:
IV. 2003.88.

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 -

- (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 made to the public" in article 2(3).

(3) Where a private company contravenes the provisions of subarticle (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.

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 granted to them by virtue of the provisions of article 155.

211. (1) A private company shall have the status of an exempt company if the conditions mentioned in subarticle (2) are contained in its memorandum or articles.

Exempt company.

(2) The conditions required by subarticle (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 the holder of, or has any interest in, any shares or debentures of the company or 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) For the purposes of this article -

- (a) shares held by an exempt company shall not disqualify a company from being also exempt if, taking all the following companies together, that is to say -
 - (i) the exempt company in question (hereinafter referred to as the "relevant company");
 - (ii) any company holding shares to which this paragraph has to be applied in determining the relevant company's right to be exempt as aforesaid; and
 - (iii) any further company taken into account for the purposes of this paragraph in determining the right to be so exempted of any company holding any such shares as aforesaid,

the total number of persons holding shares in those companies is not more than fifty, the companies

themselves being disregarded; and

(b) any interest of the relevant company itself in any of its shares or debentures shall be disregarded.

(4) Companies referred to in subarticle (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.

(5) A sole director of an exempt company shall be entitled to hold office as a company secretary thereof during his directorship.

(6) 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.

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 trading 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 subarticle (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 subarticle (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 subarticle (4) and such notice shall be deemed to satisfy the requirements of article 120(3).

(6) If default is made in complying with subarticles (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 subarticle 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 subarticle 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 subarticle (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.

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.

Change of status of company.

(2) The alteration referred to in subarticle (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 subarticle (2), enter in the register the fact of such change as referred to in subarticle (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 subarticle (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 subarticle (5), enter in the register the fact of such change as referred to in subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle (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 subarticle, "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 subarticle (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.

TITLE II - DISSOLUTION AND CONSEQUENTIAL WINDING UP OF COMPANIES

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.

Causes of dissolution and consequential winding up.
Amended by: IV. 2003.91.

(2) In addition to the modes of dissolution referred to in subarticle (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 subarticle (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 subparagraphs (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 subarticle (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 subarticle (3).

(5) For the purposes of subarticle (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 Organisation and Civil Procedure; or
- (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.

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(6) Where a company has passed a resolution in accordance with subarticle (1)(a), it shall be required to give the notice specified in article 265(1) and subarticle (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.

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 -

Liability as contributories of present and past members.

- (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.

217. (1) The provisions of subarticles (2) and (3) shall only apply following the dissolution of a company where a company before its dissolution -

Liability of past directors and shareholders.
Amended by:
IV. 2003.92.

- (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 subarticle (1)(b) to be met, be liable to contribute to the company's assets to

the extent referred to in subarticle (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.*

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 subarticle (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 subarticle (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 and 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 subarticle (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.

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.

Powers of the court.
Amended by:
IV: 2003.94.

(2) Notwithstanding the provisions of subarticle (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.

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.

Power to stay proceedings against company.

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.

Dispositions of property etc., after date of deemed dissolution.

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.

Warrants not to be carried into effect against company.
Amended by:
IV: 2003.95.

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:

Deemed date of dissolution.
Amended by:
IV: 2003.96.

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 subarticle (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.

225. (1) The Minister shall appoint an individual to be the official receiver for the purposes of this Act and may at any time terminate any such appointment or designation.

(2) The Minister may authorise in writing any individual to assist the official receiver, conferring on any such person all or any of the powers of the official receiver under this Act or any regulations made thereunder.

(3) The Minister may prescribe regulations specifying the fees payable out of a company's assets for the performance by the official receiver of his general duties as official receiver.

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 subarticle 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 subarticle (1) or (2); or
- (b) either when giving the period mentioned in subarticle (3) or subsequently, extend the period so mentioned,

and where the official receiver has refused to exercise a power conferred by this subarticle, 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 subarticle (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.

229. (1) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Title.

(2) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(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 subarticle (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 subarticles (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 subarticle (3).

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.

Choice of liquidator at meetings of creditors and contributories.
Amended by: IV. 2003.98.

(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.

231. (1) The dates of meetings of creditors and contributories shall be fixed and the meetings shall be summoned by the liquidator.

Meetings of creditors and contributories.

(2) The notices of meetings of creditors and contributories shall state the time and place appointed for the respective meetings.

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.

Creditors entitled to vote.

(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 subarticle (1)(a) register it.

(3) Until the person appointed to act as liquidator is capable of acting within the meaning of subarticle (1)(a), the official receiver shall continue to act as liquidator.

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.

General provisions
as to liquidators.

(2) Where a person other than the official receiver is appointed liquidator, he shall be remunerated 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.

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.

Custody and
control of
company's
property.

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 -

Powers of
liquidator.
Amended by:
IV. 2003.99.

- (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.

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.

Books to be kept by liquidator.

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.

Payments of liquidator into bank.
*Amended by:
L.N. 425 of 2007.*

(2) If any such liquidator retains for more than ten days a sum exceeding four hundred and sixty-five euro and eighty-seven cents (465.87) 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.

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.

Audit of liquidator's accounts.

(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 subarticle (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 subarticle (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.

246. (1) The liquidation committee shall consist of not more than five creditors of the company elected by the meeting of creditors.

Constitution and
proceedings of
liquidation
committee.
*Amended by:
IV: 2003.100.*

(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.

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.

Debts due by contributory and extent of set-off.

(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.

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.

Power to make calls.

(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.

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.

Order of court to be conclusive evidence.

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.

Appointment of special manager.

(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.

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) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;
- (e) the remuneration of the special manager, if any;
- (f) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;
- (g) 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;
- (h) 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;

- (i) 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;
- (j) the remuneration of the liquidator.

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.

Summoning of persons suspected of having property of the company, etc.

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.

Power to order examination of promoters and officers.
Amended by:
XVII. 2002.233.

(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 subarticle (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.

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.

Striking of name of the company off the register.
Amended by:
XXIV.1995.362.

(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

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.

Notice of resolution for dissolution and consequential voluntary winding up.
Amended by:
IV. 2003.103.

(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.

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:

Date of dissolution in a voluntary winding up.
Amended by:
IV. 2003.104.

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.

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.

Effects of voluntary winding up.

(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.

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.

Declaration of solvency.
Amended by:
IV. 2003.105;
L.N. 425 of 2007.

(2) A declaration made in accordance with subarticle (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 subarticle (1) within such time as it may establish and the provisions of subarticle (1) and of subarticle (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 and forty-seven cents (46,587.47) or to imprisonment for a term not exceeding three years or to both such fine 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.

Appointment, remuneration and removal of liquidators.
Amended by:
IV. 2003.106.

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.

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 subarticle (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 subarticle shall be made within fourteen days from the date for which the general meeting referred to in subarticle (2) was summoned.

(4) If default is made by the directors in complying with the provisions of subarticles (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 subarticles 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.

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.

Vacancy in office
of liquidator.
Amended by:
IV: 2003.107.

(2) For the purposes of subarticle (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 subarticle (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 subarticle (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.

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

Duty of liquidator
in case of
insolvency.

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 subarticle (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 subarticle 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 subarticle, 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 subarticle 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 subarticle (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.

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:

Striking company's name off the register.
Amended by: XXIV. 1995.362.

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 subarticle (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 subarticle (1) in accordance with the order given by the court referred to in that subarticle.

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.

Alternative provisions in case of insolvency.

Chapter III - Provisions applicable to a creditors' voluntary winding up

277. The provisions of articles 278 to 285 shall apply in relation to a creditors' voluntary winding up.

Provisions applicable to creditors' voluntary winding up.

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.

Meeting of creditors.

(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 subarticles (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 subarticle (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.

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:

Liquidation committee.
Amended by:
IV: 2003.110.

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 subarticle 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 subarticle (1) or as may be otherwise prescribed, the provisions of article 246, other than subarticles (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.

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.

Remuneration of liquidator.

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):

Vacancy in office of liquidator.
Amended by:
IV: 2003.111.

Provided that if a liquidator is not appointed in accordance with the provisions of the said subarticle, 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.

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.

Liquidator to hold meeting of company and creditors where winding up continues for more than twelve months.
Amended by:
IV: 2003.112.

(2) If the liquidator fails to comply with the provisions of subarticle (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 subarticle 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 subarticle, 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 subarticle 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 subarticle (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 subarticle (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 subarticle (1) in accordance with the order given by the court referred to in that subarticle.

Chapter IV - 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.

Provisions applicable to every voluntary winding up.

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.

Distribution of property of company.

288. (1) The liquidator may -

Powers and duties of liquidator.

- (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 subarticle (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 subarticles (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.

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.

Costs of voluntary winding up.

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.

Savings for rights of creditors and contributories.

SUB-TITLE III - PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Chapter I - Effect of appointment of liquidator and convening of meetings

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.

Powers of directors and company secretary to cease.

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.

Summoning of meetings.

(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.

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

Proof of notice and chairman of meeting.

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.

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.

Notice of
resignation or
removal of
liquidator.
Amended by:
XXIV.1995.362.

(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.

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.

Rectification of
scheme of
distribution.
Added by:
IV. 2003.117.

(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 subarticle (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

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.

Fraudulent preference.
Substituted by:
IV. 2003.118.

(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.

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.

Liabilities and rights with respect to fraudulent preferences.

(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 subarticle (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 subarticle (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 subarticle (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 subarticle, 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.

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 subarticle (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 and eighty-seven cents (11,646.87).

Chapter V - Offences antecedent to dissolution or in course of winding up

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 -

Fraud in anticipation of dissolution.
Amended by:
L.N. 425 of 2007.

- (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 subarticle (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 subarticle, or is party to the doing by others of any of the things mentioned in paragraphs (c) to (e) of that subarticle.

(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 subarticle (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 and thirty-four cents (232,937.34) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Fraud by officers of companies being wound up.
Amended by:
L.N. 425 of 2007.

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 subarticle (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 and thirty-four cents (232,937.34) or imprisonment for a term not exceeding five years or to both such fine 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.

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 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 and thirty-four cents (232,937.34) or to imprisonment for a term not exceeding five years or to both such fine 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 and thirty-four cents (232,937.34) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Fraud by contributory.
Amended by:
L.N. 425 of 2007.

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 subarticle (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.

Fraud by officers of companies subsequently dissolved.
Amended by:
L.N. 425 of 2007.

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 -

- (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 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 and thirty-four cents (232,937.34) or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person shall not be guilty of an offence under subarticle (1) by reason of conduct constituting an offence under paragraph (b) of the said subarticle 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.

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 and forty-seven cents (46,587.47), or imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

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.

Responsibility for
fraudulent trading.
Amended by:
L.N. 425 of 2007.

(2) Where the business of a company is carried on with such intent or for such purposes as is mentioned in subarticle (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 and thirty-four cents (232,937.34) or imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

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.

Wrongful trading.

(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 subarticle (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 subarticles (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.

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 subarticle (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 subarticle (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 subarticle (2), a name is a prohibited name in relation to any person referred to in subarticle (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 and eighty-seven cents (11,646.87). Such person shall also be personally responsible for the debts of any company referred to in subarticle (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.

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.

Report by liquidator for prosecution of delinquent officers, etc.

320. (1) The court, upon the application of the Attorney General 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.

Disqualification orders.
Amended by:
XXIV. 1995.362;
L.N. 425 of 2007.

(2) The court, upon the application of the Attorney General or the Registrar, may also make a disqualification order against any person if it is satisfied -

- (a) 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
- (b) 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 and forty-seven cents (46,587.47) or imprisonment for a term not exceeding three years or to both such fine 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.

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, until the winding up is concluded, 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.

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.

Publication of striking off and disposal of accounting records of company.
Amended by: XIII. 2004.100.

(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 subarticle (2) he shall be liable to a penalty.

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.

Defunct companies.
Substituted by: IV. 2003.121.
Amended by: XIII. 2004.101.

(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 subarticles (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.

(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.

Cap. 13.

326. (1) Part III of the Commercial Code relating to bankruptcy shall not apply to a company.

(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.*

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, 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 class of 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.

(2) If a majority in number representing three-fourths 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, 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.

(3) The court's order under subarticle (2) shall have no effect until a copy of it has been delivered to the Registrar for registration in accordance with article 329(5); and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made.

(4) If a company makes default in complying with subarticle (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.

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 under article 327.

Information as to
compromise to be
circulated.

(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 subarticle 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 subarticle 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 subarticle (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 subarticle, 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.

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.

Duties of directors where company unable to pay debts.
Added by:
IV: 2003.123.

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

Company recovery procedure.
Added by:
IV: 2003.123.
Amended by:
L.N. 425 of 2007;
IX: 2008.32.

- imposed by paragraph (c).
- (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; or
 - (iii) by creditors of the company representing more than half in value of the company's creditors.
- (c) The appointment of a special controller shall be made for a period not exceeding twelve 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 such additional period or periods which in aggregate do not exceed a further twelve months.
- (d) The provisions of this article shall apply to:
- (i) all companies other than companies which qualify as "small companies" in terms of article 185; and
 - (ii) to "small companies" having more than €465,874.68 in value owed to creditors.
- (e) The Minister may, by regulations, amend or substitute the criteria set out in paragraph (d) 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 of the creditors together with an indication of the amount due to each such creditor and the security, if any, of the respective creditors.

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- (c) Where the application is made by the creditors, it shall be accompanied by appropriate supporting documentation and statements.
- (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. Power of the Court.
- (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, 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 twenty working days from the filing of the application.
- (4) Upon the submission of an application and unless it is dismissed, or during the period during which the company recovery procedure is in force: Effect of the company recovery order.

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- (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 against the company or any property of the company except with leave of the Court and subject to such terms as the Court may deem fit to impose; and
- (g) 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 and to 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;
 - (iii) determine the period, not exceeding ten working days from the making of the company recovery order, within which the company shall deposit a sum of money in Court or offer other suitable guarantee or other appropriate arrangement, which, in the opinion of the Court, is sufficient to cover the remuneration, and charges of the special controller connected to his appointment.

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- (b) The Court shall appoint as the special controller an individual who the Court has ascertained to its satisfaction enjoys proven competence and experience in the management of business enterprises, is qualified and willing to accept the appointment, and has 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.
- (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. Powers and duties 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 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.
- (7) (a) Within one month from his appointment, the special controller shall convene a meeting or meetings of creditors and members, 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; and
 - (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

Meeting of
creditors and
members.

affairs, business and property of the company and its recovery as a viable going concern.

- (b) Not less than fourteen days notice shall be given of the holding of any such meeting or meetings, 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 meetings of creditors and members in a daily newspaper circulating wholly or mainly in Malta, not later than fourteen 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.
- (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. Fraudulent trading.
- (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 and thirty-four cents (232,937.34) or imprisonment for a term not exceeding five years, or to both such fine and imprisonment.
- (9) (a) The provisions of this subarticle 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. Wrongful trading.
- (b) The Court, on the application of the special controller of a company to which this subarticle 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 subarticle 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 subarticle, 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) At the end of every period of four months commencing from the date of the making of the order until the termination of his appointment, 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.
- (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.

- (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.

Termination of
company recovery
order.

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, 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, 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.
- (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.

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.

(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.

Winding up by the Court.

(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 subarticle (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 subarticle (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 subarticle (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 subarticle (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.

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.

Commercial partnership formed succeeds commercial partnership ceasing to exist.
Amended by: IV. 2003.125.

(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.

(3) The succession to all assets, rights, liabilities and obligations of the commercial partnership that has been converted, by the commercial partnership resulting from the conversion referred to in subarticle (1), shall not give rise to any liability to the payment of any duty or tax under the Duty on Documents and Transfers Act or the Income Tax Act:

Cap. 364.
Cap. 123.

Provided that this subarticle shall not apply to such duty and any other fees that may be payable upon the registration of the commercial partnership resulting from the conversion.

**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 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 subarticle (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).

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.

Partners with unlimited liability to remain bound unless creditors consent to amalgamation.

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.

Right of creditors to oppose amalgamation.
Amended by:
L.N. 181 of 2006;
L.N. 186 of 2006.

(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 subarticle (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 subarticle (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 subarticle (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

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. Draft terms of merger.

(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 subarticle (2) have been complied with, shall register them.

Approval by
extraordinary
resolution of
amalgamation.
*Amended by:
IV. 2003.129.*

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 subarticle (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 subarticle (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, at the registered office of the acquiring company:

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.

346. The directors of each of the amalgamating companies shall 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.

Drawing up of detailed written report on draft terms of merger by directors.

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.

Non applicability of article 73(4), (5) and (6) in certain cases of amalgamation.

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.

Written report to shareholders to be drawn up by one or more experts.
Amended by:
IX. 2008.33.

(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.

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 -

Documents which shareholders of amalgamating companies are entitled to inspect.
Amended by:
IX. 2008.34.

- (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) 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) the reports of the directors of the amalgamating companies relating to the amalgamation; and
- (e) where required, the reports of the experts relating to the amalgamation.

(2) The accounting statement provided for in paragraph (c) of subarticle (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 subarticle (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 subarticles (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.

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 -

Protection of holders of securities in an amalgamation.

- (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.

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.

Duties of Registrar in respect of amalgamations.

(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 subarticle (1).

354. (1) An amalgamation shall have the following consequences:

Consequences of amalgamation.
Amended by:
IV: 2003.130;
II: 2004.60.

- (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.

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

Liability of director or expert for misconduct.

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

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:

Application of articles 344 to 356 to merger by formation of a new company.
Amended by:
IV. 2003.131;
II. 2004.62.

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.

(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

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 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, article 349(1)(d) and (e), article 354(1)(b) and article 355.

Acquisition of one company by another which holds all its shares.
Amended by:
IV. 2003.132.

(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 subarticle (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 (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) and (3) 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.

359. (1) Where one or more companies are acquired by another company which holds ninety per cent or more, but not all of the shares of each of those companies, having the right to vote at general meetings, 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

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.

Division of a company by acquisition or by formation of new companies.
*Amended by:
IV: 2003.134.*

(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 subarticle (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 subarticle (2) combined with the operation as described in subarticle (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.

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.

Approval by
extraordinary
resolution of
division.
*Amended by:
IV. 2003.136.*

(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) at the registered office of that company; 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.

Drawing up of detailed written report on draft terms of division by directors.
Amended by: IV. 2003.137.

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) 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 subarticle (3).

Written report to shareholders to be drawn up by one or more experts.

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 subarticle (1) shall be drawn up by the expert or experts approved under subarticle (1).

Documents which shareholders of companies involved in a division are entitled to inspect.

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.

(2) The accounting statement provided for in subarticle (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 subarticle (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 subarticle 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 subarticles (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.

Protection of holders of securities in a division.

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 -

- (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 subarticle (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.

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,

Liability of
director or expert
for wilful or
negligent
misconduct.
*Amended by:
IV. 2003.141.*

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.

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:

Appeal from
decisions of
Registrar.
*Amended by:
IV. 2003.142.*

(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.

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) The report on the consideration other than in cash as referred to in article 73(4) and the report on the draft terms of division of the company to be divided as referred to in article 364(1) shall be drawn up by the same expert or experts.

(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.

Chapter III - Division by a combination of a division by acquisition with a division by the formation of one or more new companies

*Added by:
IV. 2003.145.*

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.

Division by a combination of division by acquisition and division by formation of 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.

*Added by:
IV. 2003.145.
Amended by:
II. 2004.64.*

(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.

*Amended by:
IV. 2003.144.*

Application to
court to supervise
division and
powers of the court
in relation thereto.

*Amended by:
IV. 2003.146.*

Chapter IV - Division under the supervision of the court

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 subarticle (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*

- 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. Definition.
- 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. Consent of associates required for admission of other associates.
- 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. Relations of parties *vis-à-vis* third parties and among themselves.
- (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 Formalities required for association *en participation*.

that of its members.

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.*

Application of articles 385 to 389.
*Amended by:
IV. 2003.147.*

Documents, etc., to be delivered by overseas companies carrying on business in Malta.
*Amended by:
IV. 2003.147, 148.*

384. Articles 385 to 389 shall apply to all bodies corporate, whatever their type, 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.

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 -

- (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 overseas 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 subparagraph (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 overseas company:
- (i) the legal form of the overseas company; and
 - (ii) the identity of the register in which the overseas company is registered and the number with which it is so registered.

(2) Overseas 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 overseas 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 subarticle (1)(a), (b) and (c) within six months of the appointed day, unless they have already registered such documents and particulars under the Ordinance.

386. If any alteration is made in -

- (a) the charter, statutes or memorandum and articles of an overseas 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 overseas company, or in the particulars specified under article 385(1)(b); or
- (c) the names or addresses of the individuals authorised to represent an overseas 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.

Return to be delivered by overseas company where documents, etc., altered.
Amended by:
IV: 2003.149.

Accounts of
oversea company.
Amended by:
XV. 2007.12.

387. (1) Every oversea company shall, within forty-two days from the end of the period referred to in article 182(2) and (3), 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 subarticle (1); but in that event, subject as provided by subarticle (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 the Third Schedule 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 the Third Schedule, 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 the Third Schedule 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 subarticle 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 subarticle 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 subarticle (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 subarticle (2) he may waive compliance with paragraphs (a), (b), (c) and (d) of that subarticle 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 subarticles (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.

388. Every oversea company shall in every prospectus inviting subscriptions for its shares or debentures in Malta state the country in which the company is constituted or incorporated.

Other obligations of oversea company.

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.

Penalties.

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.*

390. (1) The provisions of articles 391 to 399 shall apply to companies constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State:

Application of articles 391 to 399.
*Amended by:
IV. 2003.150;
L.N. 391 of 2005.*

Cap. 370.

Provided that the said provisions shall not apply to a prospectus issued by a holder of a collective investment scheme licence within the meaning of the Investment Services Act and provided further that the issue of such a prospectus complies with the rules and regulations made under that Act.

(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.

Prospectus of
oversea company.
Amended by:
IV. 2003.147, 151;
L.N. 391 of 2005;
IX. 2008.36.

391. (1) It shall not be lawful for a person to issue, circulate or distribute in Malta any prospectus offering for subscription shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether the company has or has not established, or when formed will or will not establish, a branch or place of business in Malta, unless the prospectus complies with the requirements of subarticles (2) and (3).

(2) The prospectus shall be dated and shall contain particulars with respect to the following matters:

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactments, or provisions having the force of an enactment, by or under which the constitution or incorporation of the company was effected;
- (c) an address in Malta where that instrument, and those enactments or provisions, or copies of them, and, if they are not in the Maltese or English language, a translation thereof into either of such languages, certified to be a correct translation in such manner as may be prescribed, can be inspected;
- (d) the date on which, and the country in which, the company was constituted or incorporated; and
- (e) whether the company has established a place of business in Malta and, if so, the address of that place where the business is principally carried out in Malta.

(3) Subject to the following provisions of this article, the prospectus shall comply -

- (a) with Part I of Part B of the Second Schedule, as respects the matters to be specified in the prospectus; and
- (b) with Part II of Part B of that Schedule as respects the reports to be set out.

(4) Subarticle (2)(a) to (c) shall not apply in the case of a prospectus issued more than two years after the company is entitled to commence business, and, in the application of Part I of Part B of the Second Schedule for the purposes of this subarticle, references to the articles of a company shall be interpreted as references to the constitution or incorporation of the company.

(5) It shall not be lawful for a person to issue to any person in

Malta a form of application for shares in or debentures of such a company or intended company as is mentioned in subarticle (1) unless the form is issued with a prospectus which complies with this Chapter and the issue of which in Malta does not contravene the provisions of articles 393 and 394:

Provided that this subarticle shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

- (6) The provisions of this article -
- (a) shall not apply to the issue to a company's existing members or debenture holders of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
 - (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a regulated market or on any equivalent market in a non-Member State or non-EEA State; but subject as aforesaid the provisions of this article shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

392. A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed -

- (a) by article 391(2), as regards the particulars to be contained in the prospectus; or
- (b) by article 391(3), as regards compliance with Part B of the Second Schedule,

Attempted evasion of article 391 to be void.

Amended by:
L.N. 391 of 2005.

or purporting to affect an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

393. (1) The provisions of this article shall apply in the case of a prospectus offering for subscription shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether it has or has not established, or when formed will or will not establish, a branch or place of business in Malta, if the prospectus includes a statement purporting to be made by an expert.

Prospectus containing statement by expert.

Amended by:
IV: 2003.147;
L.N. 391 of 2005.

(2) It shall not be lawful for any person to issue, circulate or distribute in Malta such a prospectus if -

- (a) the expert has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the

statement included in the form and context in which it is included; or

- (b) there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as above mentioned.

(3) For the purposes of this article, a statement shall be deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

Restrictions on allotment to be secured in prospectus.
Amended by:
IV. 2003.147;
L.N. 391 of 2005.

394. (1) It shall not be lawful for a person to issue, circulate or distribute in Malta a prospectus offering for subscription shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether the company has or has not established, or when formed will or will not establish, a branch or place of business in Malta unless the prospectus complies with the condition set out in subarticle (2).

(2) The prospectus shall have the effect, where an application is made in pursuance of it, of rendering all persons concerned bound by all the provisions of articles 99, 101 and 102 so far as applicable.

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) The provisions of this article shall apply where -

- (a) it is proposed to offer to the public by a prospectus any shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether the company has or has not established, or when formed will or will not establish, a branch or place of business in Malta; and
- (b) application is made to the Listing Authority for the admissibility to listing of its shares or debentures on a Maltese regulated market.

(2) There may, on the applicant's request, be given by or on behalf of the Listing Authority a certificate that compliance with Part B of the Second Schedule would be unduly burdensome, having regard to the proposals, as stated in the request, as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made.

(3) If a certificate is given under subarticle (2), and if the proposals above mentioned are adhered to and the particulars and information required to be published in connection with the application for admissibility to listing on a Maltese regulated market are so published -

- (a) a prospectus giving the particulars and information in the form in which they are so required to be published shall be deemed to comply with Part B of the Second Schedule; and

- (b) except as respects the requirement for the prospectus to be dated, article 391 shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

396. (1) It shall not be lawful for a person to issue, circulate or distribute in Malta a prospectus offering for subscription shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether the company has or has not established, or when formed will or will not establish, a branch or place of business in Malta, unless before the issue, circulation or distribution the requirements of this article have been complied with.

Registration of
oversea prospectus
before issue.
Amended by:
IV, 2003.147, 153;
L.N. 391 of 2005;
IX, 2008.38.

(2) A copy of the prospectus, certified by two directors, or persons holding or occupying equivalent posts, of the company as having been approved by resolution of the board of directors or equivalent body, shall have been delivered for registration to the Registrar.

(3) The prospectus shall state on the face of it that a copy has been so delivered to the Registrar and the following shall be endorsed or attached to that copy of the prospectus -

- (a) any consent to the issue of the prospectus which is required by article 393;
- (b) a copy of any contract required by paragraph 23 of Part B of the Second Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.

(4) Where, in the case of a prospectus deemed by virtue of a certificate under article 395 to comply with Part B of the Second Schedule, a contract or a copy of it, or a memorandum of a contract, is required to be available for inspection in connection with an application under that article to a Maltese regulated market, a copy or, as the case may be, a memorandum of the contract shall be endorsed on or attached to the copy of the prospectus delivered to the Registrar for registration.

(5) References in subarticle (3)(b) and in subarticle (4) to the copy of a contract shall be, in the case of a contract wholly or partly in a foreign language, to a copy of a translation of the contract into Maltese or English, or a copy embodying a translation into Maltese or English of the parts in a foreign language, as the case may be, and -

- (a) the translation shall in either case be certified to be a correct translation in such manner as may be prescribed; and
- (b) the reference in subarticle (4) to a copy of a contract required to be available for inspection includes a copy of a translation of it or a copy embodying a translation of parts of it, certified as aforesaid.

Consequences of non-compliance with articles 391 to 396.

Amended by:
IV. 2003.147;
L.N. 391 of 2005.

397. (1) A person who is knowingly 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 any of the provisions of articles 391 to 396 shall be liable to a penalty.

(2) The provisions of article 94 shall extend to every prospectus offering for subscription shares in or debentures of a company constituted or incorporated or to be constituted or incorporated outside Malta in a non-Member State or non-EEA State, whether the company has or has not established, or when formed will or will not establish, a branch or place of business in Malta, substituting for any reference to article 92 a reference to article 393.

(3) In the event of non-compliance with or contravention of any of the requirements of article 391(2) as regards the particulars to be contained in the prospectus, or article 391(3) as regards compliance with Part B of the Second Schedule, a director or other person responsible for the prospectus shall incur no liability by reason of the non-compliance or contravention if -

- (a) as regards any matter not disclosed, he proves that he was not cognisant of it; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court, were immaterial or were otherwise such as ought, in the opinion of the court, having regard to all the circumstances of the case, reasonably to be excused.

(4) In the event of failure to include in a prospectus to which this Part applies a statement with respect to the matters contained in paragraph 24 of Part B of the Second Schedule, no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(5) Nothing contained in articles 391 or 392 or in this article, shall limit or diminish any liability which a person may incur under this Act or under any other law in force in Malta apart from those provisions.

Supplementary.
Amended by:
L.N. 391 of 2005.

398. (1) Where a document by which the shares or debentures of a company constituted or incorporated outside Malta in a non-Member State or non-EEA State are offered for sale to the public would, if the company had been a company formed and registered under this Act, have been deemed by virtue of article 95 to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part a prospectus so issued.

(2) An offer of shares or debentures for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for those purposes.

(3) In this Part "shares" and "debentures" have the same meaning as when these expressions are used, elsewhere in this Act,

in relation to a company formed and registered under this Act.

**Chapter III - Provisions as to the winding up of the affairs in
Malta of an overseas company**

399. (1) The court may wind up the affairs in Malta of an overseas 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.

Affairs in Malta of an overseas company may be wound up by the court.

(2) The court may exercise its power under subarticle (1) irrespective of whether the overseas 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 overseas 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 overseas company's assets all sums due from him in respect of such liability as is mentioned in subarticle (3).

(5) Subject to the provisions of subarticles (1) to (4), the winding up of the overseas 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 overseas company, the affairs of which are being wound up, is a company constituted or incorporated outside Malta.

399A. (1) (a) An overseas 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.

Closure by overseas company of its branch or place of business in Malta.
*Added by:
IV. 2003.154.*

(b) Where an overseas 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 overseas 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 overseas 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 subarticle, 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.

400. (1) The Minister shall appoint a person 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 subarticle (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.

401. (1) In addition to the other duties prescribed by this Act, it shall be the duty of the Registrar -

Additional duties
of Registrar.
Amended by:
IV. 2003.155;
XIII. 2004.103;
XV. 2007.13;
IX. 2008.39.

(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 subarticles (3) to (17);

(c) to exercise any powers of investigation conferred upon him by this Act;

(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 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 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:

Subarticle (2) of article 19;
Subarticle (1) of article 36;
Subarticle (3) of article 88;
Subarticle (6) of article 88;
Subarticle (8) of article 88;
Subarticle (1) of article 224;
Subarticle (1) of article 265;
Subarticle (5) of article 320;
Subarticle (1) of article 331;
Subarticle (1) of article 338;
Article 350;
Paragraph (a) of subarticle (3) of article 358;
Paragraph (a) of subarticle (1) of article 359;
Article 367; and
Subarticle (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:

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- (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 subarticle (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 subarticle. The provisions of subarticles (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.
- (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 subarticle

(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 subarticle shall only come into effect on the lapse of the later period.

(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 subarticles (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.

Cap. 12.

(4) A notice as is referred to in subarticle (3) shall, upon the service of a copy thereof by means of a judicial 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.

(5) Where any person desires to institute proceedings objecting to a penalty referred to in subarticle (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.

(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 subarticle (4) shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to. Cap. 12.

(16) The decision of the court upon an application referred to in subarticle (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 subarticle (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.

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 subarticle (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 subarticle (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 subarticle (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.

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."

Investigation of commercial partnerships and oversea companies.

(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.

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.

Investigation of a company on its own application or that of its members.
*Amended by:
IV: 2003.157.*

(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 subarticle (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 subarticles (1) and (2) shall apply without prejudice to the powers of the Registrar under article 404.

(4) The power conferred by subarticle (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.

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) -

Production of documents and evidence to inspectors.

- (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 subarticle (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.

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 -

Power of inspector to call for directors' bank accounts.

- (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.

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 and seventy-five cents (4,658.75) or imprisonment for a term not exceeding six months or to both such fine 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.

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 subarticles (2) to (5) shall be, to the extent there specified, liable to make repayment to the Registrar.

Expenses of
investigating a
company's affairs.

(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 subarticle 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 subarticle (4) or subarticle (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 subarticles (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 subarticles (4) and (5); and any such liability imposed by subarticle (2) shall, subject as mentioned above, be a liability also to indemnify all persons against liability under subarticle (3).

(9) A person liable under any one of the subarticles referred to in subarticle (8) is entitled to contribution from any other person liable by virtue of the same subarticle, according to the amount of their respective liabilities by virtue of that subarticle.

(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 subarticles (2) to (4).

(2) The provisions of the articles referred to in subarticle (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.

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.

Power to obtain information as to those interested in shares, etc.
Amended by:
L.N. 425 of 2007.

(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 and forty-seven cents (46,587.47) or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

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

Power to impose restrictions on shares or debentures.
Amended by:
L.N. 425 of 2007.

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 subarticles (2) to (7).

(2) An order made by virtue of subarticle (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 subarticle (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 subarticle (2)(a) and (b), with a view to permitting a transfer of those shares, and may retain the restrictions mentioned in the said subarticle (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 subarticle (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 and seventy-five cents (4,658.75) or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(6) Where shares in any company are issued in contravention of the restrictions mentioned in subarticle (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 and eighty-seven cents (11,646.87).

(7) This article shall apply in relation to debentures as it

applies in relation to shares.

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.

Registrar's powers to require production of documents.
Amended by:
IV. 2003.159;
L.N. 425 of 2007.

(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 subarticle (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 subarticle (2) the Registrar has power to require the production of accounts, accounting records or documents from any person referred to in subarticle (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 subarticle (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 offence and liable on conviction to a fine (*multa*) of not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87).

(6) Where a person is charged with an offence under subarticle (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.

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 subarticles (2) and (3).

(2) The Registrar, in exercising his right to enter and search the premises as specified in subarticle (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 subarticle, 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 subarticle (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 and seventy-five cents (4,658.75) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Provision for security of information obtained.
Amended by:
L.N. 425 of 2007.

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 Insider Dealing Act, the Investment Services Act, the Banking Act and the Financial Institutions Act;
- (d) for the purposes of proceedings under article 419.

Cap. 403.
Cap. 330.
Cap. 345.
Cap. 375.
Cap. 370.
Cap. 371.
Cap. 376.

(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 and forty-seven cents (46,587.47) or imprisonment for a term not exceeding three years or to both such fine 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 recognised stock exchange carrying out its functions under the Financial Markets Act; and Cap. 345.
- (g) the competent authority under the Financial Institutions Act. Cap. 376.

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,

Punishment for destroying, mutilating, etc., company documents.
Amended by:
L.N. 425 of 2007.

shall be guilty of an offence.

(2) Any person as referred to in subarticle (1) who fraudulently either disposes of, alters or makes an omission in any such

document as is referred to in that subarticle 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 and forty-seven cents (46,587.47) or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Punishment for
furnishing false
information.
Amended by:
L.N. 425 of 2007.

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 and forty-seven cents (46,587.47) or 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 -

Cap. 12.

- (a) of communications which are privileged by virtue of the provisions of article 588 of the Code of Organization and Civil Procedure;
- (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.

Cap. 377.

(4) Subject to the provisions of subarticle (3), nothing contained in the Professional Secrecy Act shall be construed as precluding or otherwise restricting -

- (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.

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.

Right to inspect and obtain copies of documents, etc., kept by Registrar.

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 subarticle (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

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.

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;

- Cap. 330.
- (h) specify the categories of public companies which may not issue share warrants by whatever designation described and prescribe rules further regulating and restricting the issue of share warrants;
 - (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) provide for the exemption of offshore companies formed and registered under the Malta Financial Services Authority Act from any of the provisions of this Act, or for the application to any such 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 companies;
 - (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) prescribe requirements in relation to the drawing-up, approval, publication and distribution of prospectuses relating to an offer to the public of securities and such requirements may stipulate any further conditions necessary to implement the Prospectus Directive;
 - (m) 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; and
 - (n) prescribe anything that may be prescribed and generally do any other matter incidental or supplementary to any of the foregoing matters.
- (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-two thousand and nine hundred and thirty-seven euro and thirty-four cents (232,937.34) 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 and twenty-nine euro and thirty-seven cents (2,329.37), or daily default penalties not exceeding forty-six euro and fifty-nine cents (46.59) 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 subarticle;
 - (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 subarticle, "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 subarticle 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 subarticle, 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, which is similar in nature to a company as known under the laws of Malta, to be continued as a company under this Act and under the applicable laws of Malta, and
 - (b) for the purpose of allowing the continuance of a company registered under this Act as a body corporate incorporated or registered under the laws of a country other than 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, 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 subarticle, 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) Regulations made under any of the provisions of this Act may be made in the English language only.

(7) Where in respect of any of the services or other acts to be performed by the Registrar a fee is prescribed under subarticle (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.

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 shall on conviction be liable to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) or imprisonment for a term not exceeding six months or to both such fine and imprisonment, as may be prescribed.

Breach of regulations.
Amended by:
L.N. 425 of 2007.

(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 and twenty-nine euro and thirty-seven cents (2,329.37) and, where applicable, to a further penalty of forty-six euro and fifty-nine cents (46.59) 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 subarticle 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 subarticles (4) to (13), other than subarticle (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 subarticle (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 subarticle (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 subarticle (3), fails to comply with the provisions of the said subarticle 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 subarticle (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 subarticle (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 subarticle 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 subarticle (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 subarticle.

(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 subarticle (4) is delivered to the Registrar for registration, and until such time as any penalties that may be incurred by virtue of subarticle (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 subarticle (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.

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:

Transitional provisions as to winding up of commercial partnerships.

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 subarticle 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.
Cap. 330.

431. (1) Notwithstanding anything to the contrary contained in articles 428 and 429 -

- (a) offshore companies formed and registered under the Malta Financial Services Authority Act shall, subject to the provisions of the said Act, continue to be regulated by the Ordinance, and the provisions of this Act shall not apply thereto, for such period or until such date as the Minister may, by order in the Gazette, establish and the provisions of this Act shall commence to apply to them from such date:

Provided that the Minister may, by regulations made under this Act, exempt such companies from any one or more of the provisions of this Act, with such qualifications and subject to such variations and conditions as may be specified therein;

- (b) private companies, other than offshore companies referred to in paragraph (a), 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:

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

Cap. 234.

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 months 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 subarticle (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 subarticle (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**

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;
 - (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited; and
 - (d) the company shall not have power to issue share warrants to bearer.
 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 subarticle (2) of article 211 of the Act.
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Amended by:
IV. 2003.164;
L.N. 390 of 2005;
IX. 2008.41.

SECOND SCHEDULE

PART A

(Article 90)

MATTERS TO BE SPECIFIED IN A PROSPECTUS OF A COMPANY CONSTITUTED IN A MEMBER STATE OR EEA STATE AND REQUIREMENTS FOR ITS APPROVAL AND PUBLICATION

(Chapter III of Title I of Part V of this Act)

General references

1. References herein to the issuing company are references to the company referred to in article 89.

References herein to the "base prospectus" are references to a prospectus containing all relevant information as specified in paragraphs 4, 5 and 26 in case there is a supplement, concerning the issuer and the securities to be offered to the public, and, at the choice of the issuer, the final terms of the offering.

References herein to the "securities note" are references to the document containing the information concerning the securities offered to the public.

References herein to the share registration document are to the document which contains the information relating to the issuer as laid down in Annex I of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive.

For the purposes of Part A of this Schedule, Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements shall also apply.

General principles

2. The issuer or offeror may draw up a prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into:

- (a) a registration document containing the information relating to the issuer as provided in paragraph 17;
- (b) a securities note containing information relating to the securities offered to the public as provided in paragraph 18; and
- (c) a summary note as provided in paragraph 19.

3. Certain information specified in this Schedule may be omitted from the prospectus if:

- (a) disclosure of such information would be contrary to the public interest; or
- (b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or
- (c) such information is of minor importance only for a specific offer and is not such as will influence the assessment of the financial position and

prospectus of the issuer, offeror or guarantor, if any; or

- (d) disclosure of such information is found to be inappropriate to the issuer's sphere of activity or its legal form or to the securities being offered, in which case the prospectus shall contain equivalent information when available.

PART I - PROSPECTUS

4. Without prejudice to paragraph 3, the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.

5. (1) The prospectus shall contain information concerning the issuer and the securities to be offered to the public. It shall also include a summary. The summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The summary shall also contain a warning that:

- (a) it should be read as an introduction to the prospectus;
 - (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
 - (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, if the prospectus is not drawn up in the English language, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
 - (d) without prejudice to article 94 of this Act, civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification.
- (2) (a) The following types of securities may be issued, at the choice of the issuer or offeror, by means of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public:
- (i) non-equity securities issued under an offering programme;
 - (ii) non-equity securities issued in a continuous or repeated manner by credit institutions where:
 - the sums deriving from the issue of the said securities are placed in assets which guarantee the settlement of the liability deriving from securities until their maturity date;
 - in the event of the insolvency of the related credit institution, the said sums are primarily intended to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.
- (b) The information given in the base prospectus shall be supplemented, in accordance with the provisions of paragraph 26, with updated information on the issuer and on the securities to be offered to the

public.

- (c) If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the Registrar in the case of an offer to the public.

Summary

6. Without prejudice to paragraph 5, the summary shall briefly provide the most important information included in the prospectus, covering at least the following items:

- (a) identity of directors, senior management, advisers and auditors;
- (b) offer statistics and expected timetable;
- (c) key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors;
- (d) information concerning the issuer -
 - history and development of the issuer
 - business overview;
- (e) operating and financial review and prospects -
 - research and development, patents and licences, etc.
 - trends;
- (f) directors, senior management and employees;
- (g) major shareholders and related-party transactions;
- (h) financial information -
 - consolidated statement and other financial information
 - significant changes;
- (i) details of the offer -
 - offer
 - plan for distribution
 - markets
 - selling shareholders
 - dilution (equity securities only)
 - expenses of the issue;
- (j) additional information -
 - share capital
 - memorandum and articles of association
 - documents on display.

Identity of directors, senior management, advisers and auditors

7. Information shall be given regarding names, functions and other information necessary to identify the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

Offer statistics and expected timetable

8. The following key information shall be provided regarding the conduct of any offer and the identification of important dates relating to that offer:

- (a) offer statistics;
- (b) method and expected timetable.

Key information

9. Summarised key information shall be provided about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated. Information shall be given on the following:

- (a) selected financial data;
- (b) capitalisation and indebtedness;
- (c) reasons for the offer and use of proceeds;
- (d) risk factors.

Information on the company

10. Information shall be provided about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases. Information shall be given on:

- (a) history and development of the company;
- (b) business overview;
- (c) organisational structure;
- (d) property, plant and equipment.

Operating and financial review and prospects

11. The management shall provide an explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods. Information shall be given on:

- (a) operating results;
- (b) liquidity and capital resources;
- (c) research and development, patents and licences, etc.;
- (d) trends.

Directors, senior management and employees

12. Information on the following shall be provided concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company:

- (a) directors and senior management;
- (b) remuneration;
- (c) board practices;
- (d) employees;
- (e) share ownership.

Major shareholders and related-party transactions

13. Information shall be provided regarding the major shareholders and others that may control or have an influence on the company as well as information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company, as follows:

- (a) major shareholders;
- (b) related-party transactions;
- (c) interests of experts and advisers.

Financial Information

14. Information on the following shall be provided specifying which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature:

- (a) consolidated statements and other financial information;
- (b) significant changes.

The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

Details of the offer

15. The following information shall be provided regarding the offer, the plan for distribution of the securities and related matters:

- (a) offer;
- (b) plan for distribution;
- (c) markets;
- (d) holders of securities who are selling;
- (e) dilution (for equity securities only);
- (f) expenses of the issue.

Additional information

16. Information concerning the following that is not covered elsewhere in the prospectus shall be provided:

- (a) share capital;
- (b) memorandum and articles of association;
- (c) material contracts;
- (d) exchange controls;
- (e) taxation;
- (f) dividends and paying agents;
- (g) statement by experts;
- (h) documents on display;
- (i) subsidiary information.

PART II - REGISTRATION DOCUMENT

17. (1) The registration document shall contain the information laid down in the following subparagraphs.

Identity of directors, senior management, advisers and auditors

(2) Information shall be given regarding names, functions and other information necessary to identify the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

Key information about the issuer

(3) Key information shall be provided about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or in accounting policies, the selected financial data must also be restated. Information shall be given on the following:

- (a) selected financial data;
- (b) capitalisation and indebtedness;
- (c) risk factors.

Information on the company

(4) Information shall be provided about the company's business operations, the products it makes or the services it provides and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future capacity increases or decreases. Information shall be given on:

- (a) history and development of the company;
- (b) business overview;
- (c) organisational structure;
- (d) property, plants and equipment.

Operating and financial review and prospects

(5) The management shall provide an explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods. Information shall be given on:

- (a) operating results;
- (b) liquidity and capital resources;
- (c) research and development, patents and licences, etc.;
- (d) trends.

Directors, senior management and employees

(6) Information on the following shall be provided concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company:

- (a) directors and senior management;
- (b) remuneration;

- (c) board practices;
- (d) employees;
- (e) share ownership.

Major shareholders and related-party transactions

(7) Information shall be provided regarding the major shareholders and others that may control or have an influence on the company as well as information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company, as follows:

- (a) major shareholders;
- (b) related-party transactions;
- (c) interests of experts and advisers.

Financial information

(8) Information on the following shall be provided specifying which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature:

- (a) consolidated statements and other financial information;
- (b) significant changes.

The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

Additional information

(9) Information concerning the following that is not covered elsewhere in the prospectus shall be provided:

- (a) share capital;
- (b) memorandum and articles of association;
- (c) material contracts;
- (d) statement by experts;
- (e) documents on display;
- (f) subsidiary information.

PART III - SECURITIES NOTE

18. (1) The securities note shall contain the information laid down in the following sub-paragraphs.

Identity of directors, senior management, advisers and auditors

(2) Information shall be given regarding names, functions and other information necessary to identify the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

Offer statistics and expected timetable

(3) The following key information shall be provided regarding the conduct of any offer and the identification of important dates relating to that offer:

- (a) offer statistics;

(b) method and expected timetable.

Key information about the issuer

(4) Summarised key information shall be provided about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated. Information shall be given on the following:

- (a) capitalisation and indebtedness;
- (b) reasons for the offer and use of proceeds;
- (c) risk factors.

Interests of experts

(5) Information shall be provided regarding transactions the company has entered into with experts or advisers employed on a contingent basis.

Details of the offer

(6) The following information shall be provided regarding the offer, the plan for distribution of the securities and related matters:

- (a) offer;
- (b) plan for distribution;
- (c) markets;
- (d) selling securities holders;
- (e) dilution (for equity securities only);
- (f) expenses of the issue.

Additional information

(7) Information concerning the following that is not covered elsewhere in the prospectus shall be provided:

- (a) exchange controls;
- (b) taxation;
- (c) dividends and paying agents;
- (d) statement by experts;
- (e) documents on display.

PART IV - SUMMARY NOTE

19. The summary note shall provide in a few pages the most important information included in the prospectus, covering at least the items laid down in the following:

- identity of directors, senior management, advisers and auditors
- offer statistics and expected timetable
- key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors
- information concerning the issuer
 - history and development of the issuer
 - business overview

-
- operating and financial review and prospects
 - research and development, patents and licences, etc.
 - trends
 - directors, senior management and employees
 - major shareholders and related-party transactions
 - financial information
 - consolidated statements and other financial information
 - significant changes
 - details on the offer
 - offer
 - plan for distribution
 - markets
 - selling shareholders
 - dilution (for equity securities only)
 - expenses of the issue
 - additional information
 - share capital
 - memorandum and articles of incorporation
 - documents available for inspection

**PART V - VALIDITY OF A PROSPECTUS, ARRANGEMENTS FOR
APPROVAL AND PUBLICATION OF A PROSPECTUS**

Where final offer price and amount of securities offered cannot be included in prospectus

20. (1) Where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus:

- (a) the criteria, and]or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, shall be disclosed in the prospectus; or, where there is no such disclosure,
- (b) the acceptance of the purchase or subscription of securities may be withdrawn at any time between the acceptance and the expiration of the third working day after the final offer price and amount of securities which will be offered to the public have been filed.

(2) The final offer price and amount of securities shall be filed with the Registrar and published.

Duration of validity of a prospectus

21. (1) A prospectus shall be valid for 12 months after its publication for offers to the public provided that the prospectus is completed by any supplements required pursuant to paragraph 26.

(2) In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to 12 months.

(3) In the case of non-equity securities referred to in paragraph 5(2)(a) of this Part, the prospectus shall be valid until such securities are no longer issued in a

continuous or repeated manner.

(4) A registration document, previously registered, shall be valid for a maximum period of 12 months. The registration document accompanied by the securities note, updated, if applicable, in accordance with paragraph 22 of this Part, shall be considered to constitute a valid prospectus.

Previous issue of a registration document

22. (1) An issuer which already has a registration document approved by the Registrar shall be required to draw up only the securities note and the summary note when securities are offered to the public.

(2) In this case, the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development which could affect investors' assessments since the latest updated registration document or any supplement as provided for in paragraph 26 was approved. The securities and summary notes shall be subject to a separate approval.

(3) Where an issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.

Approval by the Registrar

23. (1) The Registrar shall not approve a prospectus unless he is satisfied that:

- (a) Malta is the home Member State in relation to the issuer of the securities to which it relates;
- (b) the prospectus has been drawn up in accordance with the provisions of this Act and of Part A of this Schedule.

(2) The Registrar shall notify the issuer or the offeror, as the case may be, of his decision regarding the approval of the prospectus within ten working days of the submission of the draft prospectus.

(3) The time limit referred to in sub-paragraph (2) shall be extended to twenty working days if the public offer involves securities issued by an issuer who has not previously offered securities to the public.

(4) If the Registrar finds, on reasonable grounds, that the documents submitted to him are incomplete or that supplementary information is needed, the time limits referred to in sub-paragraphs (2) and (3) shall apply only from the date on which such information is provided by the issuer or the offeror.

In the case referred to in sub-paragraphs (2) the Registrar should notify the issuer if the documents are incomplete within ten (10) working days of the submission of the application.

(5) If the Registrar fails to give a decision on the prospectus within the time limits mentioned in sub-paragraphs (2) and (3) this shall not be deemed to constitute approval of the prospectus.

Transfer by Registrar of application for approval

24. (1) The Registrar may transfer an application for the approval of a prospectus or a supplementary prospectus to the regulatory authority of another Member State or EEA state, subject to the prior agreement of the regulatory authority of the other State being obtained.

(2) The Registrar must inform the applicant of the transfer within three working days beginning with the first working day after the date of the decision taken by the Registrar.

(3) On making a transfer under sub-paragraph (1), the Registrar ceases to have functions under Part A of this Schedule in relation to the application transferred.

Transfer to Registrar of application for approval

25. Where the Registrar agrees to the transfer to him of an application for the approval of a prospectus made to the regulatory authority of another Member State or EEA State -

- (a) Malta is to be treated for the purposes of this Act and of Part A of this Schedule as the home Member State in relation to the issuer of the securities to which the prospectus relates; and
- (b) the time-limits referred to in paragraph 23 apply as if the date of the transfer were the date on which the application was received by the Registrar.

Significant new factors, material mistakes or inaccuracies

26. (1) Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

(2) Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right to withdraw their acceptance before the expiration of the third working day after the publication of the supplement.

PART VI - EXERCISE OF PASSPORT RIGHTS

27. (1)(a) Where Malta is the home Member State and an offer to the public is provided for in one or more Member States, other than Malta or EEA States, the prospectus approved by the Registrar and any supplements thereto shall be valid for an offer to the public in any number of host Member States or EEA States, provided that the regulatory authority of each host Member State or EEA State is notified in accordance with sub-paragraph (1)(b).

- (b) The Registrar shall provide the regulatory authority of the host Member State or EEA State, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus, with a certificate of approval and a copy of the prospectus as approved. If applicable, this notification shall be accompanied by a translation of the summary of the prospectus produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus.

(2) A prospectus in relation to an offer to the public which has been approved by the regulatory authority of another Member State, or an EEA State is not deemed to be an approved prospectus unless that authority has provided the Registrar with a certificate of approval and a copy of the prospectus as approved; together with, where requested by the Registrar, a translation into English or Maltese of the summary of the prospectus.

(3) For the purposes of this paragraph, the certificate of approval shall consist of a statement -

- (a) that the prospectus has been drawn up in accordance with the Prospectus Directive;
- (b) that the prospectus has been approved, in accordance with the Prospectus Directive, by the Registrar or the regulatory authority of the Member State or EEA state, as the case may be, providing the certificate; and where applicable
- (c) of the reasons as to why the Registrar or the regulatory authority providing the certificate authorised, in accordance with the Prospectus Directive, the omission from the prospectus of information which would otherwise have been included.

Use of Languages

28. When an offer to the public is made in one or more Member States or EEA States excluding Malta, the prospectus shall be drawn up either in a language accepted by the regulatory authorities of those Member States or EEA States or in a language customary in the sphere of international finance, at the choice of the issuer or offeror:

Provided that for the purpose of scrutiny by the Registrar, the prospectus shall be drawn up in Maltese or English or in a language customary in the sphere of international finance, at the choice of the issuer or offeror.

29. Where an offer to the public is made in more than one Member States or EEA States, including Malta, the prospectus shall be drawn up in English or Maltese and shall also be made available either in a language accepted by the regulatory authorities of each host Member State or EEA State or in a language customary in the sphere of international finance, at the choice of issuer or offeror.

PART B

(Article 390)

MATTERS TO BE SPECIFIED IN A PROSPECTUS OF AN OVERSEA COMPANY CONSTITUTED OTHER THAN IN A MEMBER STATE OR IN AN EEA STATE AND REPORTS TO BE SET OUT THEREIN

(Chapter II of Part XI of this Act)

PART I - MATTERS TO BE SPECIFIED

General references

1. (a) References herein to the issuing company are to the company referred to in article 391;
- (b) References to debt securities shall include references to debentures and to other securities similar in substance to debentures.

2. Where the prospectus relates to debt securities guaranteed by one or more legal persons, the information required by this Schedule shall be produced both with respect to the issuing company and with respect to the guarantor or guarantors. Where the prospectus relates to convertible debt securities, exchangeable debt securities or debt securities with warrants or to the warrants themselves, information shall also be given with regard to the nature of the shares or debt securities to which they confer entitlement and the conditions of and procedures for conversion, exchange or subscription. Where the issuing company of the convertible securities or warrants is not the issuing company of the securities into which they can be converted, the information required by this Schedule shall be produced both with respect to the company which issues the convertible securities or warrants and the company which issues the securities into which they can be converted.

General principles

3. The prospectus shall contain the information which, according to the particular nature of the issuer and of the transferable securities offered to the public, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of the rights attaching to the transferable securities.

4. Where certain information specified in this Schedule is found to be inappropriate to the issuing company's sphere of activity or its legal form or to the transferable securities being offered, equivalent information shall be drawn up where certain information specified in this Schedule is found to be inapplicable to the specific issue or to the legal form or commercial nature of this issue, then the information required need not be provided so long as the prospectus makes specific reference to the particular issue, stating that the information is not being supplied and amplifying on the reasons for so doing as appropriate.

5. If the period of existence of the issuing company is less than any period for which information is required by this Schedule, the information need be provided only for the period of the company's existence.

Specific matters to be specified

6. Paragraphs 7 to 25 of this Part contain the specific matters to be specified in a prospectus.

The persons responsible for the prospectus

7. Names, functions and declarations by the persons responsible for the prospectus that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

The offer to the public

8. The following details of the offer, in so far as they are applicable to the type of instrument on offer:

- the nature of the securities being offered;
- the amount and purpose of the issue;
- the number of securities issued and the rights attaching to them;
- the income tax withheld at source;
- the period during which the offer is open;
- the time of the opening of the subscription lists;

-
- the date on which entitlement to dividends or interest arises;
 - the persons underwriting or guaranteeing the offer;
 - any restrictions on the free transferability of the securities being offered and the markets on which they may be traded;
 - the establishments serving as paying agents;
 - methods of payment;
 - the procedure for the exercise of any right of pre-emption;
 - the methods of and time-limits for delivery of the securities; and
 - the system and dates for closing of the register of members or of debentures, according to the case.

9. The amount or percentage value payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

10. The number, description and amount of any shares in or debentures of the company which any person has or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say:

- the period during which it is exercisable;
- the amount or percentage value to be paid for shares or debentures subscribed for under it;
- the consideration, if any, given or to be given for it or for the right to it;
- the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

Details of the issuing company

11. The following details of the issuing company:

- Name;
- Registered office and registration number;
- Date of registration or incorporation;
- The company's legal form;
- The company's objects;
- The company's share capital:
 - amount of the issued share capital;
 - the number and main particulars of the securities of which the share capital consists and any part of the share capital still to be paid up;
 - the amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants and the procedures for conversion, exchange or subscription;
 - the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company;

- the amount of the authorised share capital and the duration of the authorisation for the directors to allot such capital;
- Where appropriate, the group of undertakings to which the issuing company belongs;
- In so far as they are known, indication of the shareholders who directly or indirectly exercise or could exercise a determining role in the management of the company.

12. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

13. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of share capital and dividends attached to, the several classes of shares respectively.

The issuing company's principal activities

14. Description of the company's principal activities:
- where appropriate, any exceptional factors which have influenced the company's activities;
 - any dependence on patents, licences or contracts if these are of fundamental importance;
 - information regarding investments in progress where they are significant;
 - any legal proceedings having an important effect on the issuing company's financial position.

The issuing company's management

15. Names, addresses, functions and remuneration of directors.

16. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to remuneration of the directors.

The purpose of the offer and costs already incurred

17. Particulars as to:
- the amount which, in the opinion of the directors, is to be raised by the issue of the shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:
 - the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - working capital; and
 - the amounts to be provided in respect of the matters aforesaid otherwise than

out of the proceeds of the issue and the sources out of which those amounts are to be provided.

18. In regard to any property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, the following particulars, that is to say:

- the names and addresses of the vendors;
- the amount paid or payable in cash, shares or debentures to the vendor, specifying the amount, if any, in respect of goodwill, and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
- brief particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director of the company had any interest direct or indirect.

Every person shall for the purpose of this Schedule be deemed to be a vendor who has entered into a contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where:

- the purchase money is not fully paid at the date of the issue of the prospectus;
- the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- the contract depends for its validity or fulfilment on the result of that issue.

In this paragraph the expression "vendor" includes a grantor on emphyteusis and a lessor, the expression "sale" includes an emphyteutical grant and a lease, the expression "purchase money" includes the consideration for the emphyteutical grant or for the lease, and the expression "sub-purchaser" includes a sub-emphyteuta and a sub-lessee.

19. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Benefits for third parties and other expenditure

20. The amount, if any, paid within the two preceding years, or payable, as commission, but not including commission to sub-underwriters for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

21. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

22. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

23. The dates of, parties to, name of receiving notary, if any, and the general nature of every material contract, not being a contract entered into in the ordinary

course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

24. Full particulars of the nature and extent of the interests, if any, of any director in the promotion of, or in the property proposed to be acquired by, the company, or where the interest of such a director consists in being a partner in a partnership or a joint owner of a firm or other undertaking not being a company, the nature and extent of the interest of the partnership, firm or undertaking with a statement of all sums paid or agreed to be paid to him or partnership, firm or undertaking in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or partnership, firm or undertaking in connection with the promotion or formation of the company.

Other significant information

25. Other significant information to be provided includes:

- to the extent that such information would have a significant impact on any assessment that might be made of the company, recent developments in its business and prospects;
- the most significant recent trends concerning the development of the company's business since the end of the preceding accounting period;
- information on the company's prospects for at least the current accounting period.

PART II - REPORTS TO BE SET OUT

26. (1) The prospectus shall set out a report by the auditors of the company with respect to -

- (a) the profits and losses of the company in respect of each of the three accounting periods, or where the company has been carrying on business for less than three accounting periods, in respect of each of such periods, immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the company at the last date to which the annual accounts of the company were made up; and
- (c) the rates of the dividends, if any, paid up by the company in respect of each class of shares in respect of each of the three accounting periods, or such less number of periods as aforesaid, immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those periods,

and, if no annual accounts have been made up in respect of any part of the three accounting periods or of such lesser periods as aforesaid, ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has subsidiary undertakings, the reports shall -

- (a) deal separately with the company's profits or losses as provided by subparagraph (1) (a) of this paragraph, and in addition deal either -
 - (i) as a whole with the combined profits or losses of its subsidiary undertakings, so far as they concern members of the company, or

- (ii) individually with the profits or losses of each of its subsidiary undertakings, so far as they concern members of the company, or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits and losses of its subsidiary undertakings; and
- (b) deal separately with the company's assets and liabilities as provided by sub-paragraph (1) (b) of this paragraph, and in addition deal either -
 - (i) as a whole with the combined assets and liabilities of its subsidiary undertakings, with or without the company's assets and liabilities, or
 - (ii) individually with the assets and liabilities of each of its subsidiary undertakings,

indicating, as respects the assets and liabilities of its subsidiary undertakings, the allowance to be made for persons other than members of the company.

27. If the proceeds of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, or any part of the proceeds of the issue is to be so applied, there shall be set out in the prospectus a report made by an accountant upon -

- (a) the profits or losses of the business in respect of each of the three accounting periods, or where the business has been carried on for less than three accounting periods, in respect of each of such periods, immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the business at the last date to which the annual accounts of the business were made up.

28. (1) The provisions of sub-paragraphs (2) and (3) of this paragraph shall apply -

- (a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking, or any part of the proceeds is to be so applied, and
- (b) by reason of that acquisition or anything to be done in consequence of, or in connection with it, that undertaking will become a subsidiary undertaking of the company.

(2) There shall be set out in the prospectus a report made by an accountant upon -

- (a) the profits or losses of the other undertaking in respect of each of the three accounting periods or where such other undertaking has been carrying on business for less than three accounting periods, in respect of each of such periods, immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the other undertaking at the last date to which its annual accounts were made up.

(3) The report shall -

- (a) indicate how the profits or losses of the other undertaking would in respect of the shares to be acquired have concerned members of the company and what allowance would have fallen to be made, in relation

to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and

- (b) where the other undertaking is a parent undertaking, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiary undertakings in the manner provided by sub-paragraph (2) of paragraph 26 of this Part in relation to the company and its subsidiary undertakings.

29. The expression "accounting period" in this Part means the year in respect of which the annual accounts of the company, the undertaking or the business, as the case may be, are made up; and where by reason of any alteration of the date on which the accounting period of the company, undertaking or business terminates the annual accounts have been made up for a period greater or less than one year, that greater or less period is for the purpose of this Part deemed to be an accounting period.

30. Any report required by this Part shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.

31. (1) A report required by paragraph 27 or 28 of this Part shall be made by an accountant who is an individual who holds a warrant to act as accountant issued under the Accountancy Profession Act, or is "an accountancy firm duly registered under the said Act."

(2) The accountant making any report required for the purposes of paragraph 27 or 28 of this Part shall be named in the prospectus.

THIRD SCHEDULE

(Article 167)

FORM AND CONTENT OF INDIVIDUAL ACCOUNTS**PART I - GENERAL RULES AND FORMATS****General rules**

1. (1) Subject to the following provisions of this Schedule -
 - (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out immediately following paragraph 13 of this Schedule: and
 - (b) every profit and loss account of a company shall show the items listed in any one of the profit and loss account formats set out immediately following the balance sheet formats;

in either case in the order and under the headings and sub-headings given in the format adopted. For this purpose the words in brackets against the headings, the sub-headings and the items are explanatory and do not have to be reproduced in the individual accounts.

(2) Sub-paragraph (1) of this paragraph is not to be read as requiring any item, or the heading or sub-heading for any item, to be distinguished by any letter or number assigned thereto in the format adopted.

2. (1) Where in accordance with paragraph 1 of this Schedule a company's balance sheet or profit and loss account for any accounting period has been prepared by reference to one of the formats set out herein, the directors of the company shall adopt the same format in preparing the individual accounts for subsequent accounting periods of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company's balance sheet or profit and loss account in accordance with paragraph 1 of this Schedule shall be disclosed, and the reasons for the change shall be explained, in the notes to the accounts drawn up when the new format is first adopted.

3. (1) Any item required in accordance with paragraph 1 of this Schedule to be shown in a company's balance sheet or profit and loss account may be shown in greater detail than required by the format adopted.

(2) A company's balance sheet or profit and loss account may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in a company's balance sheet -

- (a) expenses of and commission on any issue of shares or debentures; and
- (b) costs of research.

Any additional items as aforesaid shall be included under either an existing heading or sub-heading or under a new heading or sub-heading as appropriate.

- (3) The layout, nomenclature and terminology of items in the balance sheet and

profit and loss account that are preceded by Arabic numerals shall be adapted where the special nature of an undertaking so requires.

(4) Items to which Arabic numbers are assigned in any of the formats set out herein may be combined in a company's individual accounts for any accounting period if either -

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that accounting period; or
- (b) the combination facilitates that assessment;

but where paragraph (b) of this sub-paragraph applies, the individual amounts of any items so combined shall be disclosed in the notes to the accounts.

(5) Save where there is a corresponding item for the preceding accounting period, a balance sheet or profit and loss account item for which there is no amount shall not be shown. In such case, the heading or subheading in respect of that item shall also not be shown if that item is the only one under such heading or sub-heading.

4. (1) In respect of every item shown in a company's balance sheet or profit and loss account or in the notes to the accounts, there shall also be shown the corresponding amount for the accounting period immediately preceding that to which the individual accounts relate.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the accounting period to which the individual accounts relate, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in the notes to the accounts. Such adjustments shall be made in accordance with generally accepted accounting principles and practice.

5. Save as otherwise provided in this Schedule, or as may be permitted by generally accepted accounting principles and practice, any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

6. (1) In determining whether particular assets are to be shown as fixed assets or current assets reference shall be made to the purpose for which they are intended.

(2) Fixed assets shall comprise those assets which are intended to be held on a continuing basis in connection with the undertaking's activities.

(3) 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.

(4) Own shares and shares in group undertakings may be shown only under the items prescribed for that purpose.

7. (1) "Provisions for liabilities or charges" are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

(2) "Provisions for liabilities or charges" may not be used to adjust the values of assets.

8. (1) "Associated undertaking" shall have the meaning assigned to it by

paragraph 21 of the Fourth Schedule to this Act.

(2) "Turnover" shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and taxes directly linked to the turnover.

9. (1) Income and charges that arise otherwise than in the course of the company's ordinary activities shall be shown under "Extraordinary Income" and "Extraordinary Charges".

(2) Unless the income and charges referred to in sub-paragraph (1) hereof are immaterial for the assessment of the results, explanations of their amount and nature shall be given in the notes to the accounts. The same shall apply to income and charges relating to another accounting period.

10. (1) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(2) Taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss may be shown in total as one item in the profit and loss account before "Other Taxes not shown under the above items". In such a case "Profit or Loss on Ordinary Activities after Taxation" shall be omitted from the profit and loss account layouts prescribed in this Schedule.

(3) Where this derogation is applied there shall be disclosed in the notes to the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the extraordinary profit or loss.

11. Every profit and loss account of a company shall show separately as additional items:

(a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and

(b) the aggregate amounts of -
(i) any dividends paid; and
(ii) any dividends proposed.

12. (1) The provisions of this Schedule shall be interpreted by reference to the application of generally accepted accounting principles and practice to give a true and fair view within the meaning of subarticle (3) of article 167.

(2) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

Required formats for accounts

13. References in this Schedule to the items listed in any of the formats set out below are to those items read together with any of the notes in the formats which apply to any of those items, and the requirement imposed by paragraph 1 to show the items listed in any such format in the order adopted in the format is subject to any provision in those notes for alternative positions for any particular items.

BALANCE SHEET FORMATS - FORMAT 1

A. Called Up issued share capital not paid (may be shown in either of the two positions herein)

B. Formation Expenses (may be shown as the first item under "Intangible

Assets")

C. Fixed Assets

I. Intangible Assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets

(if these were acquired for valuable consideration and are not to be shown under goodwill or these were created by the company itself)

3. Goodwill (only to the extent that this was acquired for valuable consideration)
4. Payments on account

II. Tangible Assets

1. Land and buildings (including all rights on immovable)
2. Plant and machinery
3. Other fixtures, fittings, tools and equipment
4. Payments on account and tangible assets in the course of construction

III. Financial Assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Shares in associated undertakings
4. Loans to associated undertakings
5. Other investments other than loans
6. Other loans
7. Own shares (the nominal value of the shares held shall be shown separately in the notes to the accounts)

D. Current Assets

I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

II. Debtors (The amount falling due after more than one year shall be shown separately for each item included under debtors)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by associated undertakings
4. Other debtors
5. Called up issued share capital not paid (may be shown in either of the two positions herein)
6. Prepayments and accrued income (may be shown in either of the two positions herein)

III. Investments

-
1. Shares in group undertakings
 2. Own shares (the nominal value of the shares held shall be shown separately in the notes to the accounts)
 3. Other investments
- IV. Cash at Bank and in Hand
- E. Prepayments and Accrued Income (may be shown in either of the two positions herein)
- F. Creditors: Amounts falling due within One Year
1. Debenture loans (the amount of any convertible loans shall be shown separately in the notes to the accounts)
 2. Bank loans and overdrafts
 3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
 4. Trade creditors
 5. Bills of exchange payable
 6. Amounts owed to group undertakings
 7. Amounts owed to associated undertakings
 8. Other creditors including taxation and social security (the amounts for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
 9. Accruals and deferred income
- G. Net Current Assets/Liabilities (in determining the amount to be shown for this item any amounts shown under "prepayments and accrued income" shall be taken into account wherever shown)
- H. Total Assets less Current Liabilities
- I. Creditors: Amounts Falling due after more than One Year
1. Debenture loans (the amount of any convertible loans shall be shown separately in the notes to the accounts)
 2. Bank loans and overdrafts
 3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
 4. Trade creditors
 5. Bills of exchange payable
 6. Amounts owed to group undertakings
 7. Amounts owed to associated undertakings
 8. Other creditors including taxation and social security (the amounts for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
 9. Accruals and deferred income
- J. Provisions for Liabilities and Charges
1. Pensions and similar obligations
 2. Taxation, including deferred taxation
 3. Other provisions

- K. Capital and Reserves
 - I. Called Up Issued Share Capital (in addition, the amount of the issued share capital and the amount of the called up issued share capital which has been paid up shall be shown separately in the notes to the accounts)
 - II. Share Premium Account
 - III. Revaluation Reserve
 - IV. Other Reserves
 - 1. Capital redemption reserve
 - 2. Reserve for own shares
 - 3. Reserves provided for by the articles of association
 - 4. Other reserves
 - V. Profit and Loss Account

BALANCE SHEET FORMATS - FORMAT 2

ASSETS

- A. Called Up Issued Share Capital not Paid (may be shown in either of the two positions herein)
- B. Formation Expenses (may be shown as the first item under "Intangible Assets")
- C. Fixed Assets
- I. Intangible Assets
 - 1. Development costs
 - 2. Concessions, patents, licences, trade marks and similar rights and assets (if these were acquired for valuable consideration and are not to be shown under goodwill or if these were created by the company itself)
 - 3. Goodwill (only to the extent that this was acquired for valuable consideration)
 - 4. Payments on account
- II. Tangible Assets
 - 1. Land and buildings (including all rights on immovables)
 - 2. Plant and machinery
 - 3. Other fixtures, fittings, tools and equipment
 - 4. Payments on account and tangible assets in the course of construction
- III. Financial Assets
 - 1. Shares in group undertakings
 - 2. Loans to group undertakings
 - 3. Shares in associated undertakings
 - 4. Loans to associated undertakings
 - 5. Other investments other than loans
 - 6. Other loans

-
7. Own shares (the nominal value of shares held shall be shown separately)
- D. Current Assets
 - I. Stocks
 1. Raw materials and consumables
 2. Work in progress
 3. Finished goods and goods for resale
 4. Payments on account
 - II. Debtors (the amount falling due after more than one year shall be shown separately for each item included under debtors)
 1. Trade debtors
 2. Amounts owed by group undertakings
 3. Amounts owed by associated undertakings
 4. Other debtors
 5. Called up issued share capital not paid (may be shown in either of the two positions herein)
 6. Prepayments and accrued income (may be shown in either of the two positions herein)
 - III. Investments
 1. Shares in group undertakings
 2. Own shares (the nominal value of the shares held shall be shown separately)
 3. Other investments
 - IV. Cash at Bank and in Hand
 - E. Prepayments and Accrued Income (may be shown in either of the two positions herein)
- LIABILITIES
- A. Capital and Reserves
 - I. Called Up Issued Share Capital (in addition, the amount of the issued share capital and the amount of the called up issued share capital which has been paid up shall be shown separately)
 - II. Share Premium Account
 - III. Revaluation Reserve
 - IV. Other Reserves
 1. Capital redemption reserve
 2. Reserve for own shares
 3. Reserves provided for by the articles of association
 4. Other reserves
 - V. Profit and Loss Account
 - B. Provisions for Liabilities and Charges
 1. Pensions and similar obligations
 2. Taxation, including deferred taxation

3. Other provisions

C. Creditors (amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items in the notes to the accounts)

1. Debenture loans (the amounts of any convertible loans shall be shown separately in the notes to the accounts)
2. Bank loans and overdrafts
3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to associated undertakings
8. Other creditors including taxation and social security (the amount for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
9. Accruals and deferred income (may be shown in either of the two positions herein)

D. Accruals and Deferred Income (may be shown in either of the two positions herein)

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 1

1. Turnover
2. Cost of sales (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
3. Gross profit or loss
4. Distribution costs (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
5. Administrative expenses (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
6. Other operating income
7. Income from shares in group undertakings
8. Income from shares in associated undertakings
9. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
10. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
11. Amounts written off in respect of financial fixed assets and investments held as current assets
12. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation

15. Extraordinary income
16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes not shown under the above items
20. Profit or loss for the accounting period

The amount of any provisions for depreciation and diminution in the value of tangible and intangible fixed assets, including formation expenses, falling to be shown under items 7(a) and A. 4(a) respectively in Formats 2 and 4 shall be disclosed in the notes to the accounts in any case where the profit and loss account is prepared by reference to this Format.

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 2

1. Turnover
2. Change in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. (a) Raw materials and consumables
(b) Other external charges
6. Staff costs:
(a) wages and salaries
(b) social security costs
(c) other pension costs
7. (a) Depreciation and other amounts written off tangible and intangible fixed assets, including formation expenses
(b) Exceptional amounts written off current assets
8. Other operating charges
9. Income from shares in group undertakings
10. Income from shares in associated undertakings
11. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
12. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
13. Amounts written off in respect of financial fixed assets and investments held as current assets
14. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss

21. Other taxes not shown under the above items
22. Profit or loss for the accounting period

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 3

A. Charges

1. Cost of sales (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
2. Distribution costs (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
3. Administrative expenses (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
4. Amounts written off in respect of financial fixed assets and investments held as current assets
5. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
6. Tax on profit or loss on ordinary activities
7. Profit or loss on ordinary activities after taxation
8. Extraordinary charges
9. Tax on extraordinary profit or loss
10. Other taxes not shown under the above items
11. Profit or loss for the accounting period

B. Income

1. Turnover
2. Other operating income
3. Income from shares in group undertakings
4. Income from shares in associated undertakings
5. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
6. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
7. Profit or loss on ordinary activities after taxation
8. Extraordinary income
9. Profit or loss for the accounting period

The amount of any provisions for depreciation and diminution in the value of tangible and intangible fixed assets, including formation expenses, falling to be shown under items 7 (a) and A. 4(a) respectively in Formats 2 and 4 shall be disclosed in the notes to the accounts in any case where the profit and loss account is prepared by reference to this Format.

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 4

A. Charges

1. Reduction in stocks of finished goods and in work in progress

-
2. (a) Raw materials and consumables
(b) Other external charges
 3. Staff costs:
 - (a) wages and salaries
 - (b) social security costs
 - (c) other pension costs
 4. (a) Depreciation and other amounts written off tangible and intangible fixed assets, including formation expenses
(b) Exceptional amounts written off current assets
 5. Other operating charges
 6. Amounts written off in respect of financial fixed assets and investments held as current assets
 7. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
 8. Tax on profit or loss on ordinary activities
 9. Profit or loss on ordinary activities after taxation
 10. Extraordinary charges
 11. Tax on extraordinary profit or loss
 12. Other taxes not shown under the above items
 13. Profit or loss for the accounting period

B. Income

1. Turnover
2. Increase in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. Income from shares in group undertakings
6. Income from shares in associated undertakings
7. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
8. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
9. Profit or loss on ordinary activities after taxation
10. Extraordinary income
11. Profit or loss for the accounting period

PART II - ACCOUNTING PRINCIPLES AND RULES

Accounting principles

14. Items shown in the individual accounts shall be valued in accordance with the following general principles -

- (a) the company must be presumed to be carrying on its business as a going concern;
- (b) the methods of valuation must be applied consistently from one

accounting period to another;

- (c) valuation must be made on a prudent basis, and in particular:
 - (i) only profits realised at the balance sheet date may be included in the profit and loss account,
 - (ii) account shall be taken of all foreseeable liabilities and potential losses arising in the course of the accounting period concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,
 - (iii) account must be taken of all depreciation whether the result of the accounting period is a loss or a profit;
- (d) account must be taken of income and charges relating to the accounting period, irrespective of the date of receipt or payment of such income or charges;
- (e) the components of asset and liability items must be valued separately;
- (f) the opening balance sheet for each accounting period must correspond to the closing balance sheet for the preceding accounting period.

Historical cost accounting rules

15. (1) Formation expenses shown as assets in the balance sheet shall be written off within a maximum period of five years.

(2) The amounts entered under "Formation Expenses" shall be explained in the notes to the accounts.

16. (1) In the case of any fixed asset which has a limited useful economic life, the amount of -

- (a) its purchase price or production cost; or
- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value,

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life. Such provisions shall be charged in the profit and loss account.

(2) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(3) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(4) In addition to the costs specified in sub-paragraph (3) of this paragraph there may be included in the production cost of an asset -

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
- (b) interest on capital borrowed to finance the production of that asset, to the extent that it relates to the period of production. The inclusion of such interest and the amount thereof shall be disclosed in the notes to

the accounts.

(5) Fixed asset investments shall be accounted for in accordance with the following rules:

- (a) such investments shall be included in the company's individual accounts by using the cost method:

Provided that in the case of participating interests the equity method may be used as embodied in paragraphs 20 and 21 of the Fourth Schedule to this Act;

- (b) the cost method referred to in sub-paragraph 5 (a) of this paragraph is a method of accounting whereby the investment is recorded at cost. The profit and loss account reflects income from the investment only to the extent that distributions are received or are receivable by the investor from accumulated net profits of the investment arising subsequent to the date of acquisition;
- (c) when the equity method of accounting is used in the case of participating interests the provisions of paragraph 21 of the Fourth Schedule to this Act shall apply *mutatis mutandis* and references to consolidated accounts, consolidated balance sheet, consolidated profit and loss account and notes to the consolidated accounts shall be construed accordingly;
- (d) where the proportion of the profit attributable to participating interests exceeds the amount of dividends which are already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which shall not be distributed to the shareholders.

17. (1) Where a financial fixed asset has diminished in value, provision for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly. Any such provisions shall be charged in the profit and loss account and if not shown separately in the profit and loss account, shall be disclosed (either separately or in aggregate) in the notes to the accounts:

Provided that an investment company may, subject to full disclosure in the notes to the accounts, set off such provisions for diminution in the value of investments directly against capital and reserves. The amounts in question shall be shown separately in the balance sheet:

Provided further that, in the case of an investment company with variable capital, separate disclosure in the balance sheet as prescribed in the previous proviso need not be made.

(2) Provision for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly. Any such provision shall be charged in the profit and loss account and if not shown separately in the profit and loss account, shall be disclosed (either separately or in aggregate) in the notes to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) of this paragraph have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary. Any amounts written back in accordance with this sub-paragraph which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in the notes to the accounts.

18. (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats contained in this Schedule, an amount may only be included in a company's balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in the company's balance sheet in respect of development costs the following information shall be given in the notes to the accounts:

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
- (b) the reasons for capitalising the development costs in question.

19. (1) Where goodwill is treated as an asset the following provisions of this paragraph shall apply.

(2) Subject to sub-paragraphs (3) and (4) of this paragraph, the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for amortisation calculated to write off that amount systematically over a period chosen by the directors of the company.

(3) The period chosen shall not exceed the useful economic life of the goodwill in question.

(4) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in the notes to the accounts.

20. (1) Subject to the following paragraph, assets which fall to be included -

- (a) amongst the fixed assets of a company under the item "tangible assets"; or
- (b) amongst the current assets of a company under the item "raw materials and consumables",

may be included at a fixed quantity and value.

(2) Sub-paragraph (1) of this paragraph applies to assets of a kind which are constantly being replaced, where -

- (a) their overall value is not material to assessing the company's state of affairs; and
- (b) their quantity, value and composition are not subject to material variation.

21. (1) Subject to sub-paragraphs (2) and (3) of this paragraph, the amount to be included in respect of any current asset shall, insofar as it is applicable, be its purchase price or production cost.

(2) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(3) Where the reasons for which any provision for diminution in value made in accordance with sub-paragraph (2) of this paragraph have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

22. The method of determination of purchase price and the method of determination of production cost given in paragraph 16 of this Schedule shall apply for the purposes of paragraph 21 of this Schedule. Furthermore, distribution costs may not be included in production costs.

23. (1) Subject to the qualification mentioned in sub-paragraph (3) of this paragraph, the purchase price or production cost of -

- (a) any assets which fall to be included under any item shown in a company's balance sheet under the sub-heading "stocks"; and
- (b) any assets which are fungible assets (including investments),

shall be determined by the application of one of the methods mentioned in sub-paragraph (2) of this paragraph in relation to any such assets of the same class.

(2) The methods referred to in sub-paragraph (1) of this paragraph are -

- (a) the method known as "first in, first out" (FIFO);
- (b) the weighted average price method; and
- (c) any other method similar to any of the methods mentioned above.

(3) The method actually chosen for the purposes of this paragraph shall be the one which appears to the directors to be appropriate in the circumstances of the company.

(4) Where in the case of any company -

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given in sub-paragraph (5) of this paragraph,

the amount of that difference shall be disclosed in the notes to the accounts.

(5) Subject to sub-paragraph (6) of this paragraph, for the purposes of sub-paragraph (4) (b) of this paragraph, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(6) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(7) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable one from another.

24. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any amount as referred to in sub-paragraph (1) of this paragraph is treated as an asset -

- (a) it shall be written off by reasonable amounts each year;
- (b) it shall be completely written off before repayment of the debt; and
- (c) if the current amount is not shown as a separate item in the company's balance sheet it shall be disclosed in the notes to the accounts.

25. (1) Provisions for liabilities and charges may not exceed in amount the sums which are reasonably necessary.

(2) Particulars shall be given of each provision included in the item "other provisions" in the company's balance sheet in any case where the amount of that provision is material.

Alternative accounting rules

26. (1) Subject to paragraphs 28, 29 and 30 of this Schedule, the amounts to be included in respect of assets of any description mentioned in paragraph 27 of this Schedule shall be determined on any basis mentioned in that paragraph.

(2) References in paragraphs 27 to 30 of this Schedule to "the depreciation rules" are to the rules embodied in paragraphs 16, 17, 18, 20, 21 and 24 of this Schedule.

27. (1) Tangible fixed assets may be included at a market value determined as at the date of their last valuation.

(2) Investments of any description falling to be included under either of the balance sheet formats contained in Part I of this Schedule may be included either -

- (a) at a market value determined as at the date of their last valuation; or
- (b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation, etc., adopted and of the reasons for adopting it shall be disclosed in the notes to the accounts.

(3) Notwithstanding any other provision of this Schedule investments in which investment companies have invested their funds shall be valued on the basis of their market value determined as at the balance sheet date.

28. (1) Where the value of any asset of a company is determined on the basis mentioned in paragraph 27 of this Schedule that value shall be the starting point for determining the amount to be included in respect of that asset in the company's individual accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost by a reference to the value most recently determined for that asset on any basis mentioned in paragraph 27 of this Schedule.

(2) The amount of any provision for depreciation required in the case of any fixed asset as it applies by virtue of sub-paragraph (1) of this paragraph is referred to in sub-paragraph (3) of this paragraph as the adjusted amount, and the amount of any provision which would be required in respect of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where sub-paragraph (1) of this paragraph applies in the case of any fixed

asset, the amount of any provision for depreciation in respect of that asset -

- (a) included in any item shown in the profit and loss account in respect of amounts written off against the assets of the description in question; or
- (b) taken into account in stating any item so shown which is required by the explanatory notes in the profit and loss account formats contained in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in the value of assets included under it,

may be the historical cost amount instead of the adjusted amount, provided that the amount of any difference between the two is accounted for in the profit and loss account and disclosed separately therein or in the notes to the accounts.

29. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's individual accounts have been determined on any basis mentioned in paragraph 27 of this Schedule.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each of such items shall be disclosed in the notes to the accounts.

(3) In the case of each balance sheet item which is affected -

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,

shall be shown separately in the balance sheet or in the notes to the accounts.

(4) In sub-paragraph (3) of this paragraph, references in relation to any item to the comparable amounts determined as mentioned thereto are references to -

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

30. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 27 of this Schedule the amount of any profit or loss arising from that determination shall be credited or, as the case may be, debited to a separate reserve to be called "the revaluation reserve", after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and for any adjustments of any such provisions made in the light of that determination.

(2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats contained in this Schedule, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by

the company; but an amount may only be transferred from that reserve to the profit and loss account if -

- (a) the amount in question was previously charged to that account; or
 - (b) it represents realised profit.
- (4) Any amounts transferred from the revaluation reserve to the profit and loss account in accordance with the provisions of sub-paragraph (3) of this paragraph shall be shown separately in the profit and loss account.
- (5) Notwithstanding the provisions of sub-paragraph (3) of this paragraph the balance standing to the credit of the revaluation reserve may be capitalised in whole or in part at any time.
- (6) The treatment for taxation purpose of amounts credited or debited to the revaluation reserve shall be disclosed in the notes to the accounts.

PART III - THE NOTES TO THE ACCOUNTS

31. Any information required in the case of any company by the provisions of this paragraph shall, if not given in the balance sheet or the profit and loss account, be given by way of the notes to the accounts. The information in respect of the following matters shall be provided as a minimum -

- (a) The valuation methods applied to the various items in the individual accounts, and the methods employed in calculating the provisions for depreciation and diminution in value. For items included in the individual accounts which are or were originally expressed in foreign currency, the bases of translation used to express them in local currency shall be disclosed;
- (b) The number and the nominal value of the shares subscribed during the accounting period within the limits of the authorised capital;
- (c) Where there is more than one class of shares, the number and the nominal value for each class, in respect of both the authorised and the issued shares;
- (d) The existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;
- (e) Information concerning the acquisition by a company of its own shares, either itself or through a person acting in his own name but on the company's behalf, relating to -
 - (i) the reasons for acquisitions made during the accounting period;
 - (ii) the number and nominal value of the shares acquired and disposed of during the accounting period and the proportion of the issued share capital which they represent;
 - (iii) in the case of acquisition or disposal for a value, the consideration for the shares;
 - (iv) the number and nominal value of all the shares acquired and held by the company and the proportion of the issued share capital which they represent;
- (f) The name, registered office and the type of each of the partnerships of which the company is a member with unlimited liability; provided that this information may be omitted if it is not material;

-
- (g) Information in respect of each item which is or would but for sub-paragraph (4) (b) of paragraph 3 of this Schedule be shown under the general item "fixed assets" in the company's balance sheet, relating to -
- (i) the amount of the purchase price or production cost, leaving out therefrom the depreciation or diminution in value in respect of that item, as at the date of the beginning of the accounting period and as at the balance sheet date respectively;
 - (ii) the effect on any amount shown in the balance sheet in respect of that item of -
 - any revision of the amount in respect of any assets included under that item made during that period,
 - acquisitions during that period of any assets,
 - disposals during that period of any assets, and
 - any transfers of assets of the company to and from that item during that period;
- (h) In respect of each item within indent (g) of this paragraph -
- (i) the cumulative amount of provisions for depreciation or diminution in the value of assets included under that item as at each date mentioned in indent (g) (i) of this paragraph;
 - (ii) the amount of any such provisions made in respect of the accounting period;
 - (iii) the amount of any adjustments made in respect of any such provisions during the period in consequence of the disposal of any assets; and
 - (iv) the amount of any other adjustments made in respect of any such provisions during the period;
- (i) The information required to be disclosed by virtue of indents (g) and (h) of this paragraph shall also be provided in the case of "Formation Expenses" where this item is shown separately from "Fixed Assets" in the balance sheet;
- (j) Amounts owed by the company and becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information shall be disclosed separately for each creditor's item, as provided for in the formats described in Part I of this Schedule;
- (k) The total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and group undertakings shall be disclosed separately;
- (l) The turnover within the meaning of paragraph 8 of this Schedule, broken down by categories of activity and into geographical market in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organised, these categories and markets differ substantially from one another.
- (m) The average number of persons employed during the accounting period, 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 as otherwise required by Formats 2 and 4 of the profit and loss account;

- (n) The difference between the tax charged for the accounting period and for earlier accounting periods and the amount of tax payable in respect of those periods, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;
- (o)
 - (i) The aggregate amount of the emoluments granted in respect of the accounting period to the directors of a company for their services as directors of that company or for their services as directors of any of its subsidiary undertakings, while acting as directors of that company; and
 - (ii) The aggregate amount of any other emoluments granted in respect of the accounting period to the directors of a company for their services in connection with the management of the affairs of the company or any of its subsidiary undertakings, while acting as directors of that company; and shown separately from the aggregate amount of emoluments referred to in item (i) above; and
 - (iii) The fact that the company has during the accounting period purchased or maintained any such insurance as is referred to in subarticle (2) of article 148 and the aggregate amount of premiums paid in respect thereof.

In this indent emoluments shall include the remuneration for the services of the directors referred to herein and all fees, percentages, gifts, compensation for loss of office and other similar payments; as well as any commitments arising or entered into in respect of retirement pensions, superannuation allowances, gratuities or other similar commitments in favour of former directors of the company referred to herein.

The commitments arising or entered into in respect of retirement pensions, superannuation allowances, gratuities or other similar commitments in favour of former directors of the company shall be shown separately from the other emoluments.

- (p) The amount of advances and credits granted to directors of a company with indications of the interest rates, main conditions and any amounts repaid; as well as commitments entered into on their behalf by way of guarantees of any kind. The said commitments shall be shown separately;
- (q) The name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;
- (r) The name and the registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking; and
- (s) Where the parent companies referred to in indents (q) and (r) of this paragraph are not registered in Malta the place where copies of the consolidated accounts referred to in these indents may be obtained, provided that they are available to the public.

32. (1) If at the end of its accounting period, the company has one or more subsidiary undertakings or participating interests in other undertakings the following information shall, where applicable, be given with respect to each such undertaking -

- (a) the kind, name and registered or principal office of each undertaking;
- (b) in relation to the shares of each class of each undertaking held by the company, the identity of each class and the proportion of the nominal value of the issued shares of that class represented by the shares held as at the end of the undertaking's relevant accounting period; and
- (c) the aggregate amount of the capital and reserves of each undertaking as at the end of its relevant accounting period, and its profit or loss for that period.

(2) For the purposes of sub-paragraph (1) of this paragraph the relevant accounting period is -

- (a) if the accounting period of the undertaking ends with that of the company giving the information in its notes to the accounts, that accounting period; and
- (b) if not, the undertaking's accounting period ending last before the end of the accounting period of the company giving that information.

(3) The provisions of sub-paragraph (1) of this paragraph are subject to the exceptions and other provisions contained in paragraphs 33 and 34 of this Schedule.

33. (1) The information otherwise required by sub-paragraph (1)(c) of paragraph 32 of this Schedule need not be given in respect of a subsidiary undertaking of a company if either -

- (a) the company is exempt from the requirement to prepare consolidated accounts; or
- (b) the company prepares consolidated accounts and -
 - (i) the accounts of the subsidiary undertaking are included in the consolidated accounts, or
 - (ii) the investment of the company in the shares of the subsidiary undertaking is included in the consolidated accounts, or in the notes of the consolidated accounts, by way of the equity method of accounting.

(2) The information otherwise required by sub-paragraph (1) (c) of paragraph 32 of this Schedule need not be given in respect of another undertaking in which the company holds shares if the company's investment in those shares is included in the individual accounts, or in the notes to the accounts, by way of the equity method of accounting.

(3) The information otherwise required by sub-paragraph (1) (c) of paragraph 32 of this Schedule need not be given in respect of any undertaking if -

- (a) the undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant accounting period mentioned in paragraph 32 of this Schedule and does not otherwise publish that balance sheet in Malta or elsewhere; and
- (b) the shares held by the company, either directly or indirectly, in that undertaking amount to less than one half in nominal value of the undertaking's issued share capital.

(4) Information otherwise required by sub-paragraph (1) of paragraph 32 of this Schedule need not be given if it is not material.

(5) References in this paragraph and in paragraph 32 of this Schedule to shares of undertakings shall include references to beneficial interests in undertakings where the capital of such undertakings is not divided into shares.

34. (1) The information referred to in paragraphs 32 and 33 of this Schedule may be disclosed in a separate statement which is to be filed with the Registrar together with the individual accounts of the company in accordance with article 181.

(2) Where the information referred to in sub-paragraph (1) of this paragraph is disclosed in a separate statement this fact shall be disclosed in the notes to the accounts.

(3) The information referred to in indent (1) of paragraph 31 and in paragraphs 32 and 33 of this Schedule may be omitted when it appears to the directors that their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions and the Registrar agrees that the information need not be disclosed.

(4) Where any information is omitted from the notes to the accounts by virtue of the provisions of sub-paragraph (3) of this paragraph that fact shall be disclosed in the notes to the accounts.

35. (1) Particulars shall be given in the notes to the accounts of any charge on the assets of the company to secure the liabilities of any other person including, where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for other than where the possibility of a loss is judged by the directors of the company to be remote -

- (a) the amount or estimated amount of that liability;
- (b) its legal nature; and
- (c) whether any valuable security has been provided by the company in connection with that liability and if so, what valuable security has been so provided.

(3) There shall be stated, where practicable -

- (a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and
- (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Commitments within any of the preceding sub-paragraphs of this paragraph undertaken on behalf of or for the benefit of a group undertaking shall be stated separately from the other commitments within that sub-paragraph.

36. (1) Where any amount is transferred -

- (a) to or from any reserves; or
- (b) to any provision for liabilities or charges; or
- (c) from any provision for liabilities and charges otherwise than for the purpose for which the provision was established,

and the reserves or provisions are shown as separate items in the company's balance

sheet or in the notes to the accounts, the information mentioned in sub-paragraph (2) of this paragraph shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information to which reference is made in sub-paragraph (1) of this paragraph is -

- (a) the amount of the reserves or provisions as at the date of the beginning of the accounting period and as at the balance sheet date respectively;
- (b) any amounts transferred to or from the reserves or provisions during that period; and
- (c) the source and application respectively of any amounts so transferred.

PART IV - TRANSITIONAL ARRANGEMENT

37. (1) If, when individual accounts are drawn up in accordance with the provisions of this Schedule for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the net book amount at the beginning of the accounting period may be treated as the purchase price or production cost.

(2) Any application of the sub-paragraph (1) of this paragraph shall be disclosed in the notes to the accounts.

FOURTH SCHEDULE

(Article 171)

FORM AND CONTENT OF CONSOLIDATED ACCOUNTS**General rules**

1. (1) Consolidated accounts shall comply so far as practicable with the provisions of the Third Schedule as if the undertakings included in the consolidation were a single company.

(2) In particular, without prejudice to articles 168 and 169 and to the provisions of this Schedule and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with individual accounts, the provisions of Part I of the Third Schedule shall apply in respect of the layout of consolidated accounts.

(3) Where the parent company is treated as an investment company with fixed share capital for the purposes of the Third Schedule the group shall be similarly treated.

2. The consolidated balance sheet and profit and loss account shall incorporate in full the information contained in the individual accounts for the undertakings included in the consolidation, subject to the adjustments if any, as may be appropriate in accordance with generally accepted accounting principles or practice.

3. (1) Consolidated accounts shall be drawn up as at the same date as the individual accounts of the parent company.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, consolidated accounts may be drawn up on a date other than the date of the individual accounts of the parent company where it appears to the directors of the parent company that it is more appropriate to do so when taking account of the balance sheet dates of the largest number and the most important of the subsidiary undertakings included in the consolidation:

Provided that such other date is within three months of the date of the individual accounts of the parent company.

(3) Where consolidated accounts are drawn up on a date other than the date of the individual accounts of the parent company in accordance with the provisions of sub-paragraph (2) of this paragraph that fact shall be disclosed in the notes to the consolidated accounts together with the reasons therefor.

(4) Account shall be taken of material matters, or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between the undertaking's balance sheet date and the consolidated balance sheet date.

(5) Where a subsidiary undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, the undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

4. (1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods.

(2) Where assets and liabilities to be included in the consolidated accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the consolidated accounts, the values or amounts shall be adjusted so as to accord with the rules used for the consolidated accounts.

(3) If it appears to the directors of the parent company that there are special reasons for departing from sub-paragraph (2) of this paragraph they may do so, but particulars of any such departure, the reasons for it and its effect shall be given in the notes to the consolidated accounts.

(4) The adjustments referred to in sub-paragraph (2) of this paragraph need not be made if they are not material for the purpose of giving a true and fair view.

(5) Any differences of accounting rules as between a parent company's individual accounts for an accounting period and its consolidated accounts shall be disclosed in the notes to the consolidated accounts and the reasons for any such differences given.

5. (1) The methods of consolidation shall be applied consistently from one accounting period to another.

(2) Derogations from the provisions of sub-paragraph (1) of this paragraph shall be permitted in exceptional cases. Any such derogations shall be disclosed in the notes to the consolidated accounts and the reasons for such derogations given together with the effect thereof on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

(3) Where the composition of the undertakings included in a consolidation has changed significantly in the course of an accounting period, the consolidated accounts shall include information which makes the comparison of successive sets of consolidated accounts meaningful.

6. (1) The provisions of this Schedule shall be interpreted by reference to the application of generally accepted accounting principles and practice to give a true and fair view within the meaning of subarticle (3) of article 171.

(2) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

Elimination of group transactions

7. (1) Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking.

(2) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, shall be eliminated in preparing the consolidated accounts.

(3) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they will be eliminated in preparing the consolidated accounts.

(4) Sub-paragraphs (2) and (3) of this paragraph need not be complied with if the amounts concerned are not material for the purposes of giving a true and fair view.

Acquisition and merger accounting

8. The provisions of paragraphs 9 to 17 of this Schedule apply where an

undertaking becomes a subsidiary undertaking of the parent company, which event is referred to in those provisions as an "acquisition", and references to the "undertaking acquired" shall be construed accordingly.

9. An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger are met and the merger method of accounting is adopted.

10. (1) The acquisition method of accounting is as detailed in this paragraph.

(2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.

In this paragraph the term "identifiable" assets or liabilities of the undertaking acquired means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.

(3) The income and expenditure of the undertaking acquired shall be brought into the consolidated accounts only as from the date of the acquisition.

(4) There shall be set off against the acquisition cost of the interest in the shares of the undertaking held by the parent company and its subsidiary undertakings, the interest of the parent company and its subsidiary undertakings in the adjusted capital and reserves of the undertaking acquired.

For the purpose of this sub-paragraph -

"the acquisition cost" means the amount of any cash consideration and the fair value of any other consideration, together with such amount, if any, in respect of fees and other expenses of the acquisition as the company may determine, and "the adjusted capital and reserves" of the undertaking acquired means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

(5) The amount resulting from the set off provided for in sub-paragraph (4) of this paragraph, if positive, shall be treated as goodwill and, if negative, as a negative consolidation difference.

(6) Goodwill shall be dealt with in accordance with the rules laid down in paragraph 19 of the Third Schedule.

11. (1) The conditions for accounting for an acquisition as a merger are -

- (a) that at least ninety per cent of the nominal value of the relevant shares in the undertaking acquired is held by or on behalf of the parent company and its subsidiary undertakings;
- (b) that the proportion referred to in paragraph (a) was attained pursuant to an arrangement providing for the issue of equity shares by the parent company or one or more of its subsidiary undertakings;
- (c) that the fair value of any consideration other than the issue of equity shares given did not exceed ten per cent of the nominal value of the equity shares issued.

(2) The reference in sub-paragraph (a) of paragraph (1) to the "relevant shares" in an undertaking acquired is to those carrying unrestricted rights to participate both in distributions and in sharing of assets by members in the event of the undertaking's winding up.

12. (1) The merger method of accounting shall be as specified in this paragraph.

(2) The assets and liabilities of the undertaking acquired shall be brought into the consolidated accounts at the figures at which they stand in the undertaking's accounts, subject to any adjustment permitted or required by this Schedule.

(3) The income and expenditure of the undertaking acquired shall be included in the consolidated accounts for the entire accounting period, including the period before the acquisition.

(4) The consolidated accounts shall show corresponding amounts relating to the previous accounting period as if the undertaking acquired had been included in the consolidation throughout that accounting period.

(5) There shall be set off against the aggregate of -

- (a) the appropriate amount in respect of shares issued by the parent company or its subsidiary undertakings in consideration for the acquisition of shares in the undertaking acquired; and
- (b) the fair value of any other consideration for the acquisition of shares in the undertaking acquired, determined as at the date when those shares were acquired,

the nominal value of the issued share capital of the undertaking acquired held by the parent company and its subsidiary undertakings.

(6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

13. (1) Where a group is acquired, paragraphs 10 to 12 of this Schedule apply with the adaptations set out in this paragraph.

(2) References to shares of the undertaking acquired shall be construed as references to shares of the parent undertaking of the group.

(3) Other references to the undertaking acquired shall be construed as references to the group; and references to the assets and liabilities, income and expenditure and capital and reserves of the undertaking acquired shall be construed as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set-offs and other adjustments required by this Schedule in the case of consolidated accounts.

14. (1) The information detailed in this paragraph with respect to acquisitions taking place in the accounting period shall be given in the notes to the consolidated accounts.

(2) There shall be stated -

- (a) the name of the undertaking acquired or, where a group was acquired, the name of the parent company of that group and the address of the registered or principal office of such undertaking, and
- (b) the effective date of the acquisition for accounting purposes, and
- (c) whether the acquisition has been accounted for by the acquisition or the merger method of accounting,

and in relation to an acquisition which significantly affects the figures shown in the consolidated accounts, further information shall be given in accordance with sub-paragraph (3) to (7) of this paragraph.

(3) The composition and fair value of the consideration for the acquisition given by the parent company and its subsidiary undertakings shall be stated.

(4) Where the acquisition method of accounting has been adopted, the book values immediately prior to the acquisition, and the fair values at the date of acquisition, of each class of assets and liabilities of the undertaking or group acquired shall be stated in tabular form, including a statement of the amount of any goodwill or negative consolidation difference arising on the acquisition, together with an explanation of any significant adjustments made and in the case of goodwill the treatment thereof and the period of amortisation, where applicable.

(5) Where the merger method of accounting has been adopted, an explanation shall be given of any significant adjustments made in relation to the amounts of the assets and liabilities of the undertaking or group acquired, together with a statement of any resulting adjustment to the consolidated reserves, including the restatement of the opening consolidated reserves.

(6) Where the merger method of accounting has been adopted there shall be stated details of the profit or loss of the undertaking or group acquired for the period from the beginning of the accounting period of the undertaking or, as the case may be, of the parent company of the group, up to the date of the acquisition and there shall also be stated the date on which the said accounting period began.

(7) In ascertaining for the purposes of sub-paragraphs (4), (5) and (6) of this paragraph, the profit or loss of a group, the book values and fair values of assets and liabilities of a group or the amount of the assets and liabilities of a group, there shall be made the set-offs and other adjustments required by this Schedule in the case of consolidated accounts.

15. (1) There shall also be stated in the notes to the consolidated accounts the cumulative amount of goodwill resulting from acquisitions in that and earlier accounting periods which has been written off.

(2) The figure required to be stated by sub-paragraph (1) of this paragraph shall be shown net of any goodwill attributable to subsidiary undertakings or businesses disposed of prior to the balance sheet date.

16. (1) Where during the accounting period there has been a disposal of an undertaking or group which significantly affects the figures shown in the consolidated accounts, there shall be stated in the notes to the consolidated accounts -

- (a) the name of that undertaking or, as the case may be, of the parent company of that group, and
- (b) the extent to which the profit or loss shown in the consolidated accounts is attributable to profit or loss of that undertaking or group.

17. The information required by paragraphs 14, 15 or 16 of this Schedule need not be disclosed with respect to an undertaking which -

- (a) is established under the law of a country outside Malta, or
- (b) carries on business outside Malta,

if in the opinion of the directors of the parent company the disclosure would be seriously prejudicial to the business of that undertaking or to the business of the parent company or any of its subsidiary undertakings, and the Registrar agrees that the information should not be disclosed.

Minority interests

18. (1) The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

(2) The amount of any profit or loss on ordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with an appropriate heading.

(3) The amount of any profit or loss on extraordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertaking included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with an appropriate heading.

Interest in subsidiary undertakings excluded from consolidation

19. The interest of the group in subsidiary undertakings excluded from consolidation under subarticle (5) of article 170 and the amount of profit or loss attributable to such an interest, shall be shown in the consolidated balance sheet and in the consolidated profit and loss account respectively by the equity method of accounting.

Joint ventures

20. Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking ("the joint venture") may, if it is not a subsidiary undertaking of the parent company and has not been treated as an associated undertaking within the terms of paragraph 21 of this Schedule be included in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation (referred to as: proportional consolidation).

Associated undertakings

21. (1) Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

(2) An undertaking shall be presumed to exercise a significant influence over another undertaking where it has twenty per cent or more of the shareholders' or members' voting rights in the undertaking.

(3) The provisions of the Ninth Schedule to this Act shall be taken into account in determining for the purposes of this paragraph, whether an undertaking holds twenty per cent or more of the voting rights in another undertaking.

(4) The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.

(5) The elimination referred to in sub-paragraph (2) of paragraph 7 of this Schedule shall be effected in so far as the facts are known or can be ascertained. Such elimination need not be effected, however, where the amounts concerned are not material for the purposes of providing a true and fair view.

(6) When the provisions of this paragraph are applied for the first time to a participating interest covered by sub-paragraph (1) of this paragraph that participating interest shall be shown in the consolidated balance sheet at its book value calculated in accordance with the valuation rules laid down in the Third Schedule to this Act. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated accounts. That difference may be calculated as at the date at which that method is used for the first time or as set out in sub-paragraph (7) of this paragraph.

(7) The difference referred to in sub-paragraph (6) of this paragraph may be calculated as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

(8) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for the consolidation, they shall for the purpose of calculating the difference referred to in sub-paragraph (6) of this paragraph, be revalued by the methods used for consolidation:

Provided that the directors of a company to which article 170 applies may decide not to carry out such revaluation in which case that fact shall be disclosed in the notes to the consolidated accounts.

(9) The book value referred to in sub-paragraph (6) of this paragraph shall be increased or reduced by the amount of any variation which has taken place during the accounting period in the proportion of the associated undertaking's capital and reserves represented by that participating interest; moreover it shall be reduced by the amount of the dividends relating to that participating interest.

(10) In so far as the positive difference referred to in sub-paragraph (6) of this paragraph cannot be related to any category of assets or liabilities it shall be dealt with in accordance with the rules laid down for the item "goodwill" within the Third Schedule to this Act. Such a positive difference may, however, if the directors of the companies to which article 170 applies so determine, be immediately and clearly deducted from reserves.

(11) Where an associated undertaking draws up consolidated accounts, the provisions of this paragraph shall apply to the capital and reserves shown in such consolidated accounts.

(12) The provisions of this paragraph need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of giving a true and fair view.

Information by way of notes to the consolidated accounts

22. In addition to the information required under any other provisions of this Schedule, the notes to the consolidated accounts shall, at least, set out information in respect of the following matters:

(1) The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the basis of conversion used to express them in the currency in which the consolidated accounts are drawn up shall be disclosed.

(2) (a) The names and addresses of the registered or principal offices of the undertakings included in the consolidation; the proportion of the capital

held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation; which of the conditions referred to in the definition of parent company, in subarticle (2) of article 2, has formed the basis on which the consolidation has been carried out.

The latter disclosure may, however, be omitted where consolidation has been carried out in the case of a subsidiary undertaking in which the parent company has a majority of the shareholders' or members' voting rights and where the proportion of the capital and the proportion of the voting rights held are the same.

- (b) The information set out in paragraph (a) of this sub-paragraph in so far as it is applicable shall be given in respect of undertakings excluded from a consolidation pursuant to the provisions of subarticles (3) to (7) of article 170 and an explanation must be given for the exclusion of the undertakings referred to in subarticle (5) of that article.
- (3) (a) The names and registered or principal offices of undertakings associated with an undertaking included in the consolidation as described in paragraph 21 of this Schedule 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.
- (b) The information set out in paragraph (a) of this sub-paragraph shall be given in respect of the associated undertakings referred to in sub-paragraph (12) of paragraph 21 of this Schedule together with the reasons for applying that provision.
- (4) The names and registered or principal offices of undertakings proportionally consolidated pursuant to paragraph 20 of this Schedule, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
- (5) The names and registered or principal office of each of the undertakings, other than those referred to in sub-paragraphs (2), (3) and (4) of this paragraph, in which undertakings included in the consolidation and those excluded pursuant to subarticle (5) of article 170, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least twenty per cent of the capital showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest accounting period of the undertaking concerned for which accounts have been adopted. Where this information is considered by the directors of a company to which article 170 applies not to be material for the purposes of giving a true and fair view it may be omitted. 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 and where less than fifty per cent of its capital is held, directly or indirectly, by the above mentioned undertakings.
- (6) The average number of persons employed during the accounting period by undertakings to which paragraph 20 of this Schedule has been applied shall be disclosed separately.
- (7) The amount of the emoluments paid in respect of the accounting period to the members of the board of directors of the parent company by reason of their responsibilities in the parent company and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of

retirement pensions for former members of those bodies, with an indication of the total for each category.

(8) The amount of advances and credits granted to the board of directors of the parent company by that undertaking or by one of its subsidiary undertakings, with indications of the interests rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category.

(9) Sub-paragraphs (7) and (8) of this paragraph shall apply to the exclusion of the corresponding provisions of the Third Schedule to this Act.

23. (1) The information contained in sub-paragraphs (2), (3) and (4) of paragraph 22 of this Schedule may be disclosed in a separate statement which is to be filed with the Registrar together with the annual accounts of the parent company in accordance with article 183.

(2) Where this information is set out in a separate statement as provided in sub-paragraph (1) of this paragraph this fact shall be disclosed in the notes to the consolidated accounts.

24. (1) The information contained in sub-paragraphs (2), (3) and (4) of paragraph 22 of this Schedule may be omitted when it appears to the directors of a company to which article 170 applies that the nature of the information is such that it would be seriously prejudicial to any of the undertakings affected by these provisions, and the Registrar agrees that the information should not be disclosed.

(2) Where any information is omitted from the notes to the consolidated accounts by virtue of the provisions of previous sub-paragraph (1) of this paragraph this fact shall be disclosed in the said notes to the consolidated accounts.

FIFTH SCHEDULE
(Article 169)

Amended by:
IV. 2003.165;
IX. 2008.42.

**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, 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 subparagraph (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.*

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.
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;
 - (c) the number and nominal value of the shares so acquired by the company or acquired by another person in such circumstances and so charged respectively during the accounting period;
 - (d) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged, whether or not during that period, are held at any time by the company or that other person during that period;
 - (e) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged, whether or not during that period, which are disposed of by the company or cancelled by the company during that period;
 - (f) where the number and nominal value of the shares of any particular

description are stated in pursuance of any of the preceding subparagraphs, the percentage of the called-up share capital which shares of that description represent;

- (g) where any of the shares have been so charged the amount of the charge in each case; and
- (h) where any of the shares have been disposed of by the company for the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

4. The director's report shall also state the number and nominal value of all the parent company's shares held by that company itself or by subsidiary undertakings of that company:

Provided that the particulars referred to in this paragraph need not be shown in the directors' report if they are included in the notes to the accounts.

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

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

Total number of shares of each class forfeited.	Number	Class
 shares

Total amount paid, if any, on shares forfeited.

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 corpo- rate, 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 SUBARTICLE (2) OF ARTICLE 2 OF THIS ACT AND PROVISIONS SUPPLEMENTARY THERE TO

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.

TENTH SCHEDULE

(Article 66A)

Partnerships *en commandite* or Limited Partnerships

PART I - REGULATIONS FOR PARTNERSHIPS *EN COMMANDITE* OR LIMITED PARTNERSHIPS

Interpretation

1. The provisions of this Schedule shall apply only to partnerships *en commandite* or limited partnerships within the meaning of article 66A of this Act.

Formation of Partnerships *en commandite* or Limited Partnerships

2. (1) A partnership *en commandite* or limited partnership may be formed by two or more partners, operates under a partnership name and has its obligations guaranteed by the unlimited 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.

(2) A partnership *en commandite* or 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 partnership shall be struck off the register, whereupon the partnership shall cease to exist.

Constitution of Partnership *en commandite* or Limited Partnership

3. (1) A partnership *en commandite* or limited partnership shall consist of:

- (a) one or more general partners who shall be jointly and severally liable for all debts of the partnership *en commandite* or limited partnership without limitation and each of whom shall satisfy the competent authority within the meaning of the Investment Services Act that he is a fit and proper person to carry out such activities or functions and shall further satisfy the requirements of article 6(7) of the Investment Services Act and any other requirements as may be established by Investment Services Rules issued by the competent authority under and within the meaning of the Investment Services Act; and
- (b) one or more limited partners who are admitted to the partnership as limited partners in accordance with the deed of partnership, who upon entering the partnership, contribute, or agree to contribute to the capital thereof a specified sum; and save for any unpaid portion of their contribution to the partnership shall not be liable for any debts of the partnership.

(2) Any person may be a partner in a partnership *en commandite* or 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 partnership.

(4) The provisions of the proviso to article 51 of this Act shall not apply to partnerships *en commandite* or limited partnerships.

Partnership name

4. (1) A partnership *en commandite* or limited partnership may be designated by any name, but such name shall end with the words "Limited Partnership" or its abbreviation "LP".

(2) No person carrying on any business in Malta, other than a partnership *en commandite* or limited partnership 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 partnership *en commandite* or limited partnership or, as the case may be, a partner therein.

(3) The name of a limited partner or a distinctive part thereof may not form part of the partnership name.

(4) A limited partner who knowingly allows his name or a distinctive part thereof to be used as the partnership name or a part of such partnership name shall be liable as a general partner to any person who extends credit to the partnership without knowledge that the limited partner was not a general partner.

(5) A person who contravenes the provisions of sub-paragraph (2) shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

Contents of deed of partnership

5. (1) A partnership *en commandite* or limited 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 Schedule in respect thereof.

(2) The deed of partnership shall be in writing and shall set out the agreement of the partners as to the affairs of the partnership and the conduct of its business.

(3) The deed of partnership shall be binding upon the partners and their assigns and upon subsequent partners in the same manner as if those persons had themselves executed it.

(4) The deed of partnership shall state:

- (a) the name and residence of each of the first partners specifying the first general and the first limited partners;
- (b) the partnership name;
- (c) the registered office in Malta of the partnership;
- (d) subject to the provisions of article 66A(1) of this Act, the objects of the partnership;
- (e) the contribution of each of the first partners to the partnership specifying the value of the respective contribution and the amount paid up in respect of such contribution;
- (f) the period, if any, fixed for the duration of the partnership.

(5) The deed of partnership shall be delivered for registration to the Registrar

who, being satisfied that it complies with the requirements of this Schedule, shall register it.

(6) 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 may be delivered in lieu of the original.

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

Duty of Registrar and effects of registration.

6. (1) On the registration of the deed of partnership and the payment of the fees prescribed under article 66A(4)(e) of this Act, 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 Schedule 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.

Where certificate of registration is not issued

7. Unless and until a certificate of registration is issued under this Schedule 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.

Changes in deed of partnership

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

(2) It shall be the duty of the general partner vested with the administration or representation of a partnership *en commandite* or limited partnership to deliver to the Registrar for registration any instrument or a copy thereof 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 registered deed of partnership, the

latter text together with any instruments registered in accordance with the provisions of sub-paragraph (3), shall prevail.

(3) Any alteration or addition to the deed of partnership of a partnership *en commandite* or limited partnership shall not take effect, unless and until it is registered as provided in sub-paragraph (2).

(4) If default is made in complying with the provisions of sub-paragraph (2), 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.

(5) Where a partnership *en commandite* or limited partnership changes its name, the general partner shall within fourteen days notify the Registrar of such change and the Registrar shall enter the new name on the register and shall issue a certificate of registration altered to meet the circumstances of the case.

(6) If default is made in complying with the provisions of sub-paragraph (5), every general partner who is in default shall be liable to a penalty, and for every day during which such default continues, to a further penalty.

General partners

9. The administration and representation of the 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.

Limited partners

10. (1) A limited partner shall not participate in the conduct or management of any business of the partnership and shall not transact the business of, sign, or execute documents on behalf of the partnership.

(2) A limited partner who acts or purports to act in contravention of the provisions of sub-paragraph (1) of this paragraph, shall be liable as if he were a general partner in respect of all debts incurred while he so acts or purports to act.

(3) A limited partner shall not be deemed to have participated in the conduct or management of the business of the partnership within the meaning of this paragraph by reason only of any one or more of the following circumstances:

- (a) he is an employee, agent or contractor of the partnership or of a general partner;
- (b) he acts as a general partner, officer, employee or shareholder of a corporate general partner;
- (c) he consults with and advises a general partner as to the business of the partnership *en commandite* or limited partnership;
- (d) he investigates, reviews, approves or is advised as to the accounts or affairs of the partnership *en commandite* or limited partnership;
- (e) he exercises any right or power conferred on limited partners by this Schedule;
- (f) he approves or disapproves an amendment to the partnership agreement;
- (g) he participates in or requests the appointment or removal of an auditor of the partnership;
- (h) he votes as a limited partner in any meeting of the partners;
- (i) he acts as surety or guarantor of or provides security for the obligations undertaken by the partnership *en commandite* or limited partnership;

- (j) he lends money to, borrows money from or enters into transaction with the partnership *en commandite* or 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, participated in the conduct of the business of the partnership *en commandite* or limited partnership within the meaning of this paragraph.

When limited partner ceases to be a partner

11. (1) A person shall cease to be limited partner:
- (a) upon the valid and absolute assignment of the whole of his partnership interest;
 - (b) upon the return of the whole of his contribution (including if appropriate, the discharge of all his obligations to make a contribution); or
 - (c) at such time or upon the occurrence of such event as may be specified in that behalf in the deed of partnership:

Provided that, in each case his name is removed from 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 paragraph 4(4) and paragraph 10(2).

(3) The fact only that a person ceases to be a limited partner shall not constitute a change or amendment to the deed of partnership.

When general partner ceases to be a partner

12. (1) A person shall cease to be a general partner upon the occurrence of any of the following events:
- (a) his resignation, retirement or removal in accordance with the requirements, if any, of the deed of partnership;
 - (b) in the case of a natural person his bankruptcy, death or legal incapacity;
 - (c) in the case of a corporate general partner, the dissolution thereof.

(2) A general partner shall within fourteen days of his ceasing to be a general partner deliver to the Registrar for registration a notification in writing of such fact and the Registrar shall cause that notification to be registered. A general partner shall not be relieved of any obligation under this Schedule until such time as he delivers to the Registrar for registration a notification in writing of such fact.

Records

13. (1) A partnership *en commandite* or limited partnership shall maintain the following or a copy thereof at the registered office:
- (a) the deed of partnership 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) 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 to make a contribution is released in whole or in part, the amount and the date of such release;
- (d) its accounting records;
 - (e) the minutes of all meetings of the general partners;
 - (f) 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 deed of partnership, be available for inspection by any partner during normal business hours.
- (3) The documents mentioned in sub-paragraph (1)(b) and (c) 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 deed of partnership so permits, instead of being maintained at the registered office, be maintained at such other place as the general partners consider appropriate, without prejudice to the right of all partners to inspect such documents.
- (5) In the event that such other place as is mentioned in sub-paragraph (4) is outside Malta, copies of accounts, returns in respect of the business 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 agreement, be available for inspection by any partner 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 partnership at intervals not exceeding six months.
- (7) Any accounting records which a partnership *en commandite* or 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 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 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 the place where access to it and written copies of it can be obtained; 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 partnership *en commandite* or limited partnership there is a contravention of any of the provisions of sub-paragraphs (1), (2), (5) or (6), the 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 of documents to be kept by the partnership shall, irrespective of the medium in which such documents are maintained, be construed as a duty to allow inspection of such documents in legible form.

Accounts of a partnership *en commandite* or limited partnership

14. (1) Every partnership *en commandite* or limited partnership shall maintain proper accounting records which shall be:

- (a) sufficient to show and explain the partnership's transactions;
- (b) disclose with reasonable accuracy, at any time, the partnership's financial position at that time;
- (c) such as to enable the general partners to ensure that the 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 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 partnership and the matters in respect of which the receipt and expenditure takes place; and
- (e) a record of the assets and liabilities of the partnership.

(2) The general partners of every partnership *en commandite* or 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 shall be drawn up in accordance with generally accepted accounting principles and practice.

(4) The individual accounts shall give a true and fair view of the partnership's assets, liabilities, financial position and profit or loss.

(5) The individual accounts shall comply with the requirements of this Act and with generally accepted accounting principles and practice 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.

(6) Where the application of the provisions of this Act would not be sufficient to give a true and fair view within the meaning of sub-paragraph (4), additional information shall be given.

(7) 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.

Application of Chapters IX and X of Part V of this Act

15. Save for what is stated in this Schedule, the provisions of Chapter IX and Chapter X of Part V of this Act shall, so far as applicable and so far as they are not inconsistent with the provisions of this Schedule, apply to partnership *en commandite* or limited partnerships, with reference to "company" therein being

construed as a reference to partnership *en commandite* or limited partnership and reference to "directors" being construed as a reference to general partners.

Accounts to be sent to limited partners

16. At the end of each accounting period the balance sheet and profit and loss account of the partnership together with the report of the general partners and the report of the auditors shall be communicated to the limited partners.

Return of limited partner's contribution

17. (1) A limited partner shall not, on dissolution or otherwise, receive from the capital of the partnership any payment representing a return of any part of his contribution to the partnership unless, at the time of and immediately following the making of the payment, the partnership *en commandite* or limited partnership is solvent.

(2) Where the partnership is insolvent at the time of or immediately following the making of such payment, or in the event of insolvency of the 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 partnership incurred at a time when his contribution formed part of the partnership assets.

(3) Subject to the provisions of sub-paragraphs (1) and (2), a limited partner may demand the return of his contribution -

- (a) on the dissolution of the partnership; or
- (b) at such time or upon the occurrence of such event or events as may be specified in the deed of partnership.

(4) A limited partner may, notwithstanding the nature of his contribution, and subject to the provisions of the deed of partnership, demand and receive either money or, where the assets of the partnership are capable of division, such divided part of the assets of the partnership as is equivalent to the value of his contribution.

(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 partnership assets (including any obligation on his part to make a contribution to the capital of the partnership); 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 or discharge by him of the debt or obligation.

(6) For the purposes of this Schedule the expression "solvent" means that the partnership *en commandite* or limited partnership is able to pay its debts in full, other than payment of the contributions to the partners, on a distribution of assets on a dissolution of the partnership, as they fall due, out of the partnership assets without recourse to the separate assets of the general partners not contributed to the partnership; and the expression "insolvent" shall be construed accordingly.

(7) A distribution of any assets of a partnership *en commandite* or 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 and interest in the partnership's assets, calculated on the basis of the value of the partnership's net assets, below the value of the amount contributed or agreed to be contributed by him.

Admission of additional limited partners

18. Subject to the provisions of the deed of partnership a partnership *en commandite* or limited partnership shall allow any number of partners to become limited partners in the partnership, provided that any such admission shall be made by the execution of an agreement in writing and 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

19. (1) Subject to the provisions of the deed of partnership the interest of a limited partner is assignable in whole or in part.

(2) An assignment by a limited partner of his interest in the partnership or any part thereof:

- (a) shall not dissolve the partnership;
- (b) shall not be valid unless made in writing and in accordance with other requirements, if any, of the deed of partnership;
- (c) shall not, unless and until the assignee is admitted to the partnership in accordance with the provisions of paragraph 18, entitle the assignee to become or to exercise any right or power of a limited partner;
- (d) shall upon the assignee being admitted to the partnership as a limited partner in accordance with the provisions of paragraph 15, entitle the assignee to the rights and powers and, subject to item (e), render him subject to the restrictions and obligations (including any obligation to make contributions to the capital of the partnership) to which the assignor was entitled or subject in respect of the interest assigned immediately before the assignment;
- (e) shall not relieve the assignor of any liability arising under paragraph 4(5) and paragraph 10(2).

(3) A limited partner, upon the valid and absolute assignment of the whole of his interest in the partnership and his removal from the register of partners, shall cease to be a limited partner and to be entitled to exercise any right or power of a limited partner.

Causes of dissolution of partnerships *en commandite* or limited partnerships

20. (1) A partnership *en commandite* or limited partnership shall be dissolved upon the occurrence of any of the following events:

- (a) upon the happening of any event specified in the deed of partnership;
- (b) upon the date fixed for its duration in the deed of partnership, if any;
- (c) upon the written agreement of all partners that the partnership shall be dissolved and notice of that fact is given to the Registrar in accordance with paragraph 22(8);
- (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 deed of partnership a partnership *en commandite* or limited partnership shall not be dissolved by any change in the limited partners, or by the bankruptcy, insolvency, death, retirement, removal, resignation, incapacity or dissolution of any limited partner whether an individual, partnership, company or other body corporate.

Dissolution by the Court

21. (1) The Court may order the dissolution of a partnership *en commandite* or limited partnership on the application of any partner or creditor or on the application of the Registrar if in its opinion:

- (a) the partnership is insolvent;
- (b) the business of the partnership has been suspended for an uninterrupted period of twelve months;
- (c) the affairs of the 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 partnership business;
- (d) the limited partners are not being provided with the information relating to the affairs of the partnership as they might reasonably expect;
- (e) the affairs of the partnership are being conducted in such manner as to defraud creditors or in an unlawful manner;
- (f) there has been persistent default by the partnership or by any general partner thereof in complying with the requirements of this Schedule or any regulation made under this Act;
- (g) 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 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 partnership's affairs and distribute its assets.

General provisions applicable to dissolutions

22. (1) Upon the dissolution of a partnership *en commandite* or limited partnership its affairs shall, unless a liquidator has been appointed by the Court under paragraph 21(2) or under sub-paragraph (3) of this paragraph, be wound up by the general partners.

(2) Upon the dissolution of a partnership *en commandite* or limited partnership no limited partner may, except in accordance with the provisions of paragraphs 17 and 24, withdraw any part of his contribution, or otherwise claim as a creditor of the partnership.

(3) Upon the dissolution of a partnership *en commandite* or limited partnership or at any time thereafter, the Court may, on application of any partner (including an assignee thereof) or any creditor, make such orders in relation to the dissolution as it thinks fit and proper, including one for the appointment of one or more liquidators to wind up the partnership's affairs and distribute its assets.

(4) On the appointment of a liquidator, whether under this paragraph or under paragraph 21, all powers of the general partners shall cease; and any person who

purports to exercise any power of a general partner at a time when, pursuant to this sub-paragraph those powers have ceased, shall be liable to a penalty.

(5) Upon the dissolution of a partnership *en commandite* or limited partnership the partnership shall cease to carry on business except to the extent necessary for its beneficial winding up; and where in relation to a partnership there is a contravention of the provisions of this sub-paragraph, the partnership and each general partner shall be liable to a penalty.

(6) All expenses properly incurred in the dissolution of a partnership *en commandite* or limited partnership, including the liquidator's remuneration, are payable from the partnership's assets in priority to all other debts.

(7) Upon the dissolution of a partnership *en commandite* or limited partnership, notwithstanding the provisions of sub-paragraph (8) pursuant to which the certificate of registration ceases to be valid, the persons winding up the partnership's affairs, in the name of and on behalf of the partnership -

- (a) may, to the extent necessary for the beneficial winding up of the partnership, prosecute, defend or settle any civil or criminal action;
- (b) shall dispose of the partnership's property and realise its assets; and
- (c) shall, in accordance with the provisions of paragraph 24 discharge the partnership's debts and distribute to the partners any remaining assets of the partnership;

the whole without prejudice to the personal liability of the partners.

(8) Upon dissolution of a partnership *en commandite* or limited partnership, notice of the fact shall, within a period of fourteen days from the date of dissolution, be filed by the general partners 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.

(9) Where the general partners fail to give the notice of dissolution required by the provisions of sub-paragraph (8), the general partners shall be liable to a penalty and shall continue to incur liability as if they were the general partners of a partnership *en commandite* or limited partnership which had not been dissolved.

(10) The dissolution of a 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 partnership is dissolved; or
- (b) the date of the order by the Court under this Schedule for its dissolution.

(11) As soon as a partnership *en commandite* or 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 partnership's property, and stating whether or not any state of affairs described in paragraph 23 has come to their attention; and
- (b) provide all partners with a copy of the said account; and
- (c) deliver to the Registrar a copy of the said account for registration.

(12) The persons conducting the winding up of a partnership *en commandite* or 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.

(13) Upon the delivery to the Registrar of the winding-up account, the Registrar shall thereupon register it and strike the name of the partnership off the register, whereupon the partnership's certificate of registration shall cease to be valid. The Registrar shall forthwith publish a notice of completion of the winding up and of such striking off.

Personal liability for certain defaults

23. (1) In any case where -
- (a) a partnership *en commandite* or limited partnership has been dissolved and is unable to pay its debts; and
 - (b) there has been in relation to the partnership a contravention of any relevant provision which -
 - (i) has contributed to the inability of the partnership to pay its debts;
 - (ii) has materially misled or deceived any partner or creditor as to, or has resulted in substantial uncertainty as to, the assets, liabilities, client money or investment instruments of the partnership; or
 - (iii) has substantially impeded the orderly winding up of the partnership's affairs;

the Court may, on the application of any creditor or partner or of any person conducting the winding up of the partnership, declare that any officer or former officer of any general partner in the partnership who is responsible for the contravention shall be personally liable, without limitation of liability, for the debts of the partnership or such part thereof as may be specified by the Court.

(2) Where the Court makes a declaration under sub-paragraph (1) in relation to any person, it may -

- (a) give such directions as it thinks fit and proper for the purpose of giving effect to the declaration; and
- (b) direct that the liability of that person under the declaration shall be a charge on -
 - (i) any debt due from the partnership to him, to any person on his behalf, to any person claiming as assignee from or through him or to any person acting on behalf of such an assignee; or
 - (ii) any charge on any partnership assets or any interest in any such charge held by or vested in him or any such person;

and the Court may also from time to time make such further orders as it thinks fit for the purpose of giving effect to any charge imposed under this sub-paragraph.

(3) In sub-paragraph (2) the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, charge or interest was created, issued or transferred but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the grounds upon which the declaration might have been made.

(4) The Court shall not make a declaration under sub-paragraph (1) in respect of a person if it considers that -

- (a) he took all reasonable steps to secure compliance by the partnership *en commandite* or limited partnership with the relevant provisions; or
- (b) he had reasonable grounds for believing and did believe that a

competent and reliable person, acting under the supervision or control of or appointed by the general partners -

- (i) was charged with the duty of ensuring that those provisions were complied with; and
- (ii) was in a position to discharge that duty.

(5) The foregoing provisions of this paragraph are without prejudice to any other penalty, remedy or proceedings, whether civil or criminal, in respect of the contravention.

(6) In any case where -

- (a) a partnership *en commandite* or limited partnership has been dissolved and is unable to pay its debts; and
- (b) there has been in relation to the partnership a contravention of any relevant provision which -
 - (i) has contributed to the inability of the partnership to pay its debts;
 - (ii) has materially misled or deceived any partner or creditor as to, or has resulted in substantial uncertainty as to, the assets, liabilities, client money or investment instruments of the partnership; or
 - (iii) has substantially impeded the orderly winding up of the partnership's affairs;

any officer or former officer of any general partner in the partnership who is responsible for the contravention shall, without prejudice to any civil liability, be guilty of an offence.

(7) In a prosecution for an offence under this paragraph, it shall be a defence for the person charged to show that -

- (a) he took all reasonable steps to secure compliance by the partnership *en commandite* or limited partnership with the relevant provisions; or
- (b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of or appointed by the general partners -
 - (i) was charged with the duty of ensuring that those provisions were complied with; and
 - (ii) was in a position to discharge that duty.

(8) For the purposes of this paragraph -

- (a) the expression "officer", in relation to a general partner, means any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer of the general partner, any person in accordance with whose directions or instructions any of the aforesaid are accustomed to act;
- (b) the expression "relevant provision" means any relevant provision of this Schedule and any other provision for the time being prescribed by regulations under this Act; and
- (c) a person shall be considered to be responsible for a contravention of a relevant provision if the contravention -
 - (i) was committed with his consent or connivance; or
 - (ii) was attributable to or facilitated by any neglect on his part.

Distribution of assets upon dissolution

24. Upon the dissolution of a partnership *en commandite* or 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 partnership debts;
- (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 partnership debts other than debts described in subparagraph (c);
- (c) finally, subject to the provisions of the deed of partnership, 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 other than for capital and profits;
 - (iii) thirdly, to general partners in respect of capital;
 - (iv) finally, to general partners in respect of profits.

Division of capital into shares

25. (1) Without prejudice to the foregoing provisions of this Schedule, 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 thereof 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 Schedule.

(3) The provisions of articles 78, 137(4), (5) and (6) and 142(2) of this Act shall apply to a partnership *en commandite* or limited partnership, the capital of which is divided into shares, with the substitution of references to general 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 references to partners for references to shareholders; and, with regard to article 137(5) of this Act, 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".

(4) 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.

(5) 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.

(6) It shall be the duty of the general 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-paragraph (4) or sub-paragraph (5), to deliver to the Registrar for registration the instrument or a copy thereof altering or adding to the deed of partnership together with a printed copy of the deed of partnership as amended in accordance with the provisions of paragraph 8(2).

(7) The change of status referred to in sub-paragraph (4) or in sub-paragraph (5) shall not take effect unless and until it is registered as required by sub-paragraph (6).

(8) (a) The provisions of this paragraph shall only apply to a partnership *en commandite* or limited partnership which qualifies as a collective investment scheme duly licensed in terms of the Investment Services Act.

(b) For the purposes of this paragraph and unless the context otherwise requires:

"base currency" means the currency in which a sub-class is denominated;

"competent authority" means the competent authority under 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 partnership *en commandite* or limited partnership with variable share capital;

"sub-class" means a distinct class of shares in a partnership *en commandite* or limited partnership to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other classes of shares in the same partnership and which may pursue investment objectives and adhere to investment policies different from those of other classes of shares in the same partnership.

(c) A deed of partnership of a partnership *en commandite* or limited partnership the capital of which is divided into shares may provide for the constitution of the partnership as a partnership *en commandite* or limited partnership with variable share capital and the provisions of article 84(2) to (7) and (9) of this Act shall, in so far as applicable, apply

mutatis mutandis and reference to the term "memorandum or articles" shall be deemed to be a reference to a "deed of partnership" and reference to the terms "company" and "investment company" shall be deemed to be references to a "partnership *en commandite* or limited partnership" and reference to paragraph (f) of article 69 of this Act shall be deemed to be a reference to paragraph (e) of article 14(1) of this Act.

- (d) A deed of partnership of a partnership *en commandite* or limited partnership the capital of which is divided into shares may provide for the constitution of the partnership as a partnership *en commandite* or limited partnership in the form of an umbrella or multi-class partnership, and provide for the constitution of sub-classes, and the different classes of shares that may be issued by such partnership, where each class of shares represents a distinct sub-class of the partnership and denominated in such currency or currencies as may be provided in the deed.
- (e) A partnership *en commandite* or limited partnership may only be validly constituted as an umbrella or multi-class partnership if it is so licensed by the competent authority.
- (f) A partnership *en commandite* or limited partnership duly licensed to be constituted as an umbrella or multi-class partnership may, with the approval of the competent authority, establish new sub-classes by the creation and issue of new classes of shares.
- (g) Each class of shares representing a sub-class in any umbrella or multi-class partnership may be designated in a different currency provided that a class of shares may be designated only in one currency.
- (h) An umbrella or multi-class partnership having its share capital denominated in different currencies shall present its annual accounts in any one of such currencies, as may be approved by the competent authority.
- (i) The general partner of an umbrella or multi-class partnership shall maintain proper accounting records of the assets and liabilities of each sub-class in the base currency of that sub-class.
- (j) The provisions of sub-paragraph (h) 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.
- (k) For the purposes of sub-paragraphs (h) and (j), the conversion from the base currency of a sub-class into the currency in which the annual accounts of the umbrella or multi-class partnership are to be presented in accordance with generally accepted accounting principles and practice. This note shall be disclosed in the notes to the accounts.
- (l) A partnership *en commandite* or limited partnership constituted as an umbrella or multi-class partnership may in its deed of partnership elect to have the assets and liabilities of each sub-class comprised in that partnership treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-class of such partnership. Where a partnership *en commandite* or limited partnership constituted as an umbrella or multi-class partnership makes the election aforementioned, the assets and liabilities of each sub-class of that 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-class of such a partnership.

- (m) Save for such proportion of the liabilities of a partnership *en commandite* or limited partnership constituted as an umbrella or multi-class partnership which by virtue of the deed of partnership or by virtue of the terms of issue of the shares constituting a sub-class are, or are to be attributable to, one or more sub-classes in the proportion established therein, the liabilities incurred in respect of each sub-class 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 partnership, and the following rules shall apply:
- (i) proceedings in relation to the partnership shall respect the legal status of each sub-class as a patrimony separate from the assets and liabilities of each other sub-class of the partnership in terms of this Schedule; and
 - (ii) proceedings under the Act shall apply *mutatis mutandis* to the sub-class as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-class is not a partnership; and any proceedings in relation to one sub-class shall not have any effect on the assets of any other sub-class of the partnership or the partnership itself.
- "Proceedings" in indent (m) of this sub-paragraph refers to any proceedings in terms of paragraphs 20 to 24 of this Schedule and Part VI of the Act.
- (n) When a partnership *en commandite* or a limited partnership is established as an umbrella or multi-class partnership and elects to have the assets and liabilities of its sub-classes treated as distinct patrimonies, the memorandum shall provide that the actual value of the paid up share capital of any sub-class shall be at all times equal to the value of the assets of any kind of the particular sub-class after the deduction of such sub-classes' liabilities and this in lieu of what is stated in article 84(2)(c)(i) of the Act.
- (o) The general partner of a partnership *en commandite* or limited partnership constituted as an umbrella or multi-class 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-class as distinct and separate from the assets and liabilities of other sub-classes in the same partnership.
- (p) The provisions of the Fifth Schedule to the Act shall apply *mutatis mutandis* to a partnership *en commandite* or limited partnership with variable share capital.
- (q) (i) A partnership *en commandite* or limited partnership may, if so authorised by its deed of partnership, issue fractional shares up to such number of decimal places, not being less than three, as shall be specified in the deed of partnership, and under such terms and conditions as may be stipulated therein.
- (ii) Fractional shares shall be automatically consolidated into a whole share of the same class when the fractional shares held by one shareholder become equal to a whole share.

Administrative penalties in respect of partnerships *en commandite* or limited

partnerships

26. (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
4(5)	Person other than a partnership <i>en commandite</i> or limited partnership or a partner therein falsely indicating existence of partnership	€465.87	€23.29
8(4)	Failure of any general partner, vested with administration or representation, to deliver to the Registrar for registration the instrument or a copy thereof altering or adding to the deed of partnership, within fourteen days from the alteration or addition	€465.87	€23.29
8(6)	Failure of any general partner, to notify the Registrar of a change in the name, in any general partner, in the registered office, in the objects or in the period fixed for the duration of, the partnership, within fourteen days of such change	€465.87	€23.29
13(10)	Failure by the partnership <i>en commandite</i> or limited partnership to maintain the documents at registered office, make them available at for inspection, and failure in respect of documents which are to be sent and kept in Malta	€465.87	€23.29
13(7)	Failure to keep any of the accounting records mentioned for a period of ten years from the date when they were made	€1,164.09	None
22(4)	Exercise by any person of the powers pertaining to the general partners after the appointment of the liquidator	€1,164.09	None

Paragraph	Default	Penalty	Daily Penalty
22(5)	Exercise by any person of the business of the partnership following its dissolution	€1,164.09	None
22(9)	Failure of the general partners to give notice of dissolution as required by paragraph 22(8)	€465.87	€23.29

ELEVENTH SCHEDULE

(Article 427)

*Amended by:
IV. 2003.170, 172.
Substituted by:
L.N. 425 of 2007.
Amended by:
IX. 2008.45.*

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
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
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 <i>en commandite</i> 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

Article	Default	Penalty	Daily Penalty
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
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 or 90(1) in respect of the obligation to issue a prospectus	€2,329.37	None
92(2)	Issue of prospectus in contravention of article 92(1)	€2,329.37	None
93(2)	Issue of a prospectus before registration thereof	€2,329.37	€46.59
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
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

Article	Default	Penalty	Daily Penalty
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
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(10)	Directors failing to deliver or delivering defective annual accounts, etc., 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

Article	Default	Penalty	Daily Penalty
212(9)	Sole member failing to record in writing all agreements between him and the company	€1,164.69	None
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
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

Article	Default	Penalty	Daily Penalty
389	Officer or agent of oversea company failing to comply with provisions as to registration or returns of oversea company	€465.87	€23.29
397(1)	Person responsible for issuing, circulating or distributing a prospectus, etc., for an oversea company in contravention of articles 391 to 396	€2,329.37	None
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

*Amended by:
IV. 2003.169.*

TWELFTH SCHEDULE
(Article 3)

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