

Nru. 128

15. 5. 2020

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Silvio Schembri, M.P., Ministru għall-Ekonomija, Investiment u Negozji Żgħar, u moqri għall-Ewwel darba fis-Seduta tat-13 ta' Mejju 2020.

A BILL introduced by the Honourable Silvio Schembri, M.P., Minister for the Economy, Investment and Small Businesses, and read the First time at the Sitting of the 13th May 2020.

ATT sabiex jemenda l-Att dwar il-Kumpanniji, Kap. 386, u sabiex jipprovi dwar affarijiet anċillari għal dawn jew konnessi magħhom.

AN ACT to amend the Companies Act, Cap. 386, and to provide for matters ancillary or incidental thereto.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT sabiex jemenda l-Att dwar il-Kumpanniji, Kap. 386, u sabiex jipprovi dwar affarijiet anċillari għal dawn jew konnessi magħhom.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 li jemenda l-Att dwar il-Kumpanniji, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kumpanniji, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 386.

2. Is-subartikolu (1) tal-artikolu 142 tal-Att prinċipali għandu jiġi emendat kif ġej:

Jemenda l-artikolu 142 tal-Att prinċipali.

(a) fil-paragrafu (d) tiegħu, il-kliem "taħt l-artikolu 320." għandhom jiġu sostitwiti bil-kliem "taħt l-artikolu 320:";

(b) minnufih wara l-paragrafu (d) għandu jiżdied il-paragrafu ġdid li ġej:

"(e) matul il-perjodu li kienet direttur jew segretarju ta' kumpannija, hi kisret id-dispożizzjonijiet ta' dan l-Att għat-tielet darba konsekuttiva f'perjodu ta' sentejn (2) li għandu jiġi kkalkolat mill-ewwel ksur;" u

(ċ) minnufih wara l-paragrafu (e) kif emendat, għandu jiżdied il-proviso ġdid li ġej:

"Iżda skwalifika skont id-dispożizzjonijiet ta' dan il-paragrafu għandha tibqa' valida:

(i) għal dejjem, jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija għal għomorha;

(ii) għal perjodu ta' hmistax (15)-il sena jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija għal hamsa u għoxrin (25) sena sa tletin (30) sena;

(iii) għal perjodu ta' għaxar (10) snin jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija bejn għaxar (10) snin u hamsa u għoxrin (25) sena;

(iv) għal perjodu ta' tmien (8) snin jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija bejn hames snin (5) u għaxar (10) snin;

(v) għal perjodu ta' hames (5) snin jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija bejn erba' (4) snin u għaxar (10) snin; u

(vi) għal perjodu ta' tliet (3) snin jekk il-piena stabbilita għad-delitt li dwaru nstabt hatja hu ta' prigunerija għal inqas minn erba' (4) snin;".

Jemenda l-
artikolu 218 tal-
Att prinċipali.

3. Fil-proviso tas-subartikolu (1) tal-artikolu 218 tal-Att prinċipali, il-kliem "jew direttur tal-kumpannija." għandhom jiġu sostitwiti bil-kliem "jew direttur tal-kumpannija:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda wkoll il-Ministru jista' jagħmel regolamenti għall-aħjar twettiq ta' xi dispożizzjoni ta' dan is-subartikolu, u jista', mingħajr preġudizzju għall-ġeneralità ta' dak li ntqal qabel, permezz ta' dawk ir-regolamenti jissospendi d-dritt ta' kull wieħed mill-persuni msemmija qabel li jipprezentaw rikors għal stralc skont id-dispożizzjonijiet ta' dan is-subartikolu u l-artikolu 214."

Jemenda l-
artikolu 316 tal-
Att prinċipali.

4. Minnufih wara s-subartikolu (5) tal-artikolu 316 tal-Att prinċipali, għandu jiżdied is-subartikolu ġdid li ġej:

"(6) Il-Ministru jista' jagħmel regolamenti għall-aħjar twettiq ta' xi dispożizzjoni ta' dan l-artikolu, u jista', mingħajr preġudizzju għall-ġeneralità ta' dak li ntqal qabel, permezz ta' dawk ir-regolamenti jissospendi, ukoll b'mod retrospettiv, l-

applikazzjoni tad-dispożizzjonijiet ta' dan l-artikolu."

5. L-artikolu 320 tal-Att prinċipali għandu jiġi emendat kif ġej: Jemenda l-artikolu 320 tal-Att prinċipali.
- (a) fis-subartikolu (1) tiegħu, il-kliem "fuq rikors tal-Avukat Ġenerali jew tar-Reġistratur" għandhom jiġu sostitwiti bil-kliem "fuq rikors tal-Avukat Ġenerali, jew tar-Riċevitur Uffiċjali jew tar-Reġistratur";
- (b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:
- (i) il-kliem "fuq rikors tal-Avukat Ġenerali jew tar-Reġistratur" għandhom jiġu sostitwiti bil-kliem "fuq rikors tal-Avukat Ġenerali, jew tar-Riċevitur Uffiċjali jew tar-Reġistratur";
- (ii) il-paragrafu (a) tiegħu għandu jiġi sostitwit b'dan li ġej:
- "(a) li dik il-persuna, matul il-perjodu li fih kienet direttur ta' kumpannija kisret id-dispożizzjonijiet ta' dan l-Att għat-tielet darba konsekuttiva f'perjodu ta' sentejn (2) li għandu jiġi kkalkulat mill-ewwel ksur; jew"; u
- (iii) il-paragrafu (b) tiegħu għandu jiġi sostitwit b'dan li ġej:
- "(b) li dik il-persuna hija jew kienet direttur ta' kumpannija li f'xi żmien tkun saret insolventi, sew jekk waqt li kienet direttur jew wara u li l-imġieba tagħha bħala direttur tal-kumpannija, jew meħuda għaliha waħedha jew flimkien mal-imġieba tagħha bħala direttur ta' xi kumpannija jew kumpanniji oħra, jagħmluha mhux tajba biex ikollha x'taqsam mat-treġija ta' kumpannija."
6. L-artikolu 329B tal-Att prinċipali għandu jiġi emendat kif ġej: Jemenda l-artikolu 329B tal-Att prinċipali.
- (a) fil-paragrafu (a) tas-subartikolu (1) tiegħu, il-kliem "imposta bil-paragrafu (ċ)." għandhom jiġu sostitwiti bil-kliem "imposta bil-paragrafu (d).";
- (b) is-subartikolu (5) tiegħu għandu jiġi emendat kif ġej:
- (i) is-subparagrafu (iii) tal-paragrafu (a) tiegħu

għandu jiġi sostitwit b'dan li ġej:

"(iii) tordna li r-rimunerazzjoni u hlasijiet oħra li l-kontrollur speċjali jista' jkollu jedd għalihom jiġu inizjalment imħallsa minn fond speċjali mwaqqaf b'regolamenti magħmula taħt is-subartikolu (15), liema spejjeż għandhom jiġu rimborżati mingħand il-kumpanija kif imsemmi f'dan l-artikolu. Ir-Registratur tal-Qrati għandu, minnufih wara li ssir tali ordni, jikkonsenja kopja ta' din l-ordni lir-Riċevitur Uffiċjali.

Il-kumpanija għandha tiġi notifikata bil-miktub bin-nefqa li tkun saret skont dan l-artikolu.

Il-kumpanija għandha minnufih thallas l-ispejjeż li jkunu saru skont dan l-artikolu, wara talba mir-Riċevitur Uffiċjali u fil-każ li l-kumpanija tkun giet stralċjata, ir-Riċevitur Uffiċjali għandu, fir-rigward ta' din l-ispiza, igawdi mill-istess trattament preferenzjali li jgawdi r-rimborż ta'spejjeż dovuti lill-istraċċjarju skont dan l-Att.

Mingħajr preġudizzji għall-paragrafu ta' qabel dan, kopja tat-talba għall-ħlas qabel imsemmi notifikata permezz ta' att ġudizzjarju lill-kumpanija jew lill-uffiċjali tagħha, għandha tikkostitwixxi titolu eżekuttiv għall-effetti u l-finijiet kollha tat-*Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.*"; u

Kap. 12.

(ii) il-paragrafu (b) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(b) Il-Qorti għandha taħtar bħala kontrollur speċjali individwu mil-lista ta' individwi eliġibbli biex jinhatru fil-kariga ta' kontrollur speċjali miżuma mir-Riċevitur Uffiċjali, waqt li titqies in-natura tal-kumpanija li għandha tiġi strutturata mill-ġdid, u l-kompetenza u l-esperjenza tal-kontrollur speċjali fit-tmexxija ta' intrapriżi kummerċjali. Il-Qorti għandha tara li ma jkun hemm l-ebda konflitt ta' interess fir-rigward tal-ħatra tal-kontrollur speċjali."

Jemenda l-artikolu 429 tal-Att prinċipali.

7. Minnufih wara s-subartikolu (8) tal-artikolu 429 tal-Att prinċipali għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(9) Il-Ministru jista' jippreskrivi regolamenti għall-preżentata u, jew għall-iffirmar b'mod elettroniku ta' avviżi meħtieġa b'dan l-Att, għal firem elettronici, għall-hruġ b'mod elettroniku ta' certifikati, ittri u kull dokument ieħor maħruġ mir-Registratur u għal kull haġ'ohra aniċllari.

(10) Il-Ministru jista' permezz ta' regolamenti dwar iż-żamma ta' laqgħat ġenerali annwali, jestendi t-terminu għaż-żamma tal-laqgħa ġenerali annwali u għat-tqegħid u l-approvazzjoni tal-kontijiet. B'żieda ma' dan, il-Ministru jista' permezz ta' regolamenti jipprovdi għas-sospensjoni ta' kull perjodu biex jinżammu laqgħat ġenerali, kemm jekk ordinarji jew straordinarji, u għaż-żamma b'mod virtwali ta' laqgħat ġenerali annwali u laqgħat oħra."

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz huma sabiex isiru emendi fl-Att dwar il-Kumpanniji li prinċipalment għandhom x'jaqsmu mad-dmirijiet ta' diretturi, il-preżentata ta' rikors għal xoljiment u stralc, u l-proċedura biex kumpannija tirkupra.

BILL
entitled

AN ACT to amend the Companies Act, Cap. 386, and to provide for matters ancillary or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. The short title of this Act is the Companies (Amendment) Act 2020 and this Act shall be read and construed as one with the Companies Act, hereinafter referred to as the "principal Act".

Cap. 386.

Amendment of
article 142 of
the principal
Act.

2. Sub-article (1) of article 142 of the principal Act shall be amended as follows:

(a) in paragraph (d) thereof, the words "under article 320." shall be substituted by the words "under article 320;";

(b) immediately after paragraph (d) thereof, there shall be added the following new paragraph:

"(e) during the time he has been a director or a secretary of a company, he has breached the provisions of this Act for the third consecutive time in a period of two (2) years to be reckoned from the first breach;"; and

(c) immediately after paragraph (e), as amended, thereof, there shall be added the following proviso:

"Provided that a disqualification in terms of paragraph (b) shall remain valid:

(i) in perpetuity, if the punishment for the crime he has been convicted of is of imprisonment for life;

(ii) for a period of fifteen (15) years if the punishment for the crime he has been convicted of is of imprisonment of twenty-five (25) to thirty (30) years;

(iii) for a period of ten (10) years if the punishment for the crime he has been convicted of is of imprisonment between ten (10) to twenty-five (25) years;

(iv) for a period of eight (8) years if the punishment for the crime he has been convicted of is of imprisonment between five (5) to ten (10) years;

(v) for a period of five (5) years if the punishment for the crime he has been convicted of is of imprisonment between four (4) to ten (10) years;

(vi) for a period of three (3) years if the punishment for the crime he has been convicted of is less than four (4) years."

3. In the proviso to sub-article (1) of article 218 of the principal Act, the words "to the company." shall be substituted by the words "to the company:" and immediately thereafter there shall be added the following new proviso:

Amendment of article 218 of the principal Act.

"Provided further that the Minister may make regulations for the better carrying out of any of the provisions of this sub-article, and may, without prejudice to the generality of the foregoing, by such regulations suspend the right of any of the aforementioned persons to file a winding up application in terms of this sub-article and article 214."

4. Immediately after sub-article 5 of article 316 of the principal Act, there shall be added the following new sub-article:

Amendment of article 316 of the principal Act.

"(6) The Minister may make regulations for the better carrying out of any of the provisions of this article, and may, without prejudice to the generality of the foregoing, by such regulations suspend even retrospectively the application of the provision of this article."

C 4030

Amendment of
article 320 of
the principal
Act.

5. Article 320 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, the words "upon the application of the Attorney General or the Registrar" shall be substituted by the words "upon the application of the Attorney General, the Official Receiver or the Registrar";

(b) sub-article (2) shall be amended as follows:

(i) the words "upon the application of the Attorney General or the Registrar" shall be substituted by the words "upon the application of the Attorney General, the Official Receiver or the Registrar";

(ii) paragraph (a) thereof, shall be substituted by the following:

"(a) that such person, during the time he has been a director of a company, has been in breach of the provisions of this Act for the third consecutive time in a period of two years to be reckoned from the first breach; or"; and

(iii) paragraph (b) thereof, shall be substituted by the following:

"(b) that such person is or has been a director of a company which at any time has become insolvent, whether while he was a director or subsequently, and that his conduct as a director of that company, either taken alone or taken together with his conduct as a director of any other company or companies, makes him unfit to be involved in the management of a company.".

Amendment of
article 329B of
the principal
Act.

6. Article 329B of the principal Act shall be amended as follows:

(a) in paragraph (a) if sub-article (1) thereof, the words "imposed by paragraph (c)." shall be substituted by the words "imposed by paragraph (d).";

(b) sub-article (5) thereof shall be amended as follows:

(i) sub-paragraph (iii) of paragraph (a) thereof,

shall be substituted by the following:

"(iii) order that the remuneration and the disbursements of the special controller are initially paid out of a fund established by regulations in terms of sub-article (15), which expense shall be recoverable from the company in accordance with this article. On the making of such order, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Official Receiver.

The expense paid out pursuant to this article shall be notified in writing to the company.

The company shall effect payment of expenses paid out pursuant to this article without delay, upon a request by the Official Receiver and in the event that the company has been dissolved, the Official Receiver shall, in regard to the said expense, enjoy the same preferential ranking as a liquidator for his expenses as properly incurred in accordance with this Act.

Without prejudice to the previous paragraph, a copy of the aforementioned request for payment, served by means of a judicial act on the company or its officers, shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure."; and

Cap. 12.

(ii) paragraph (b) thereof, shall be substituted by the following:

"(b) The Court shall appoint as the special controller an individual from the list of individuals eligible to occupy the office of special controller held by the Official Receiver, regard being given to the nature of the company to be restructured and the special controller's experience and expertise in the management of business enterprises. The Court shall ascertain that there is no conflict of interest in relation to his appointment."

7. Immediately after sub-article (8) of article 429 of the principal Act there shall be added the following new sub-articles:

Amendment of article 429 of the principal Act.

"(9) The Minister may prescribe regulations for electronic filing and/or electronic signing of notices required by this Act, electronic signatures, the issuing of electronic certificates,

C 4032

letters, and any other documents issued by the Registrar and any other ancillary matters.

(10) The Minister may by regulations on the holding of annual general meetings, extend the term for the holding of the annual general meeting and for the laying and approval of accounts. In addition to that the Minister may by regulations provide for suspension of any periods to general meetings, whether ordinary or extraordinary and to the holding of virtual annual general meetings and other meetings."

Objects and Reasons

The objects and reasons of this Bill are to affect amendments to the Companies Act mainly related to the duties of directors, the filing for dissolution and winding up, and the company recovery procedure.