

MALTA

ATT Nru XXXI tal-2020

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT sabiex jemenda l-Att dwar il-Kumpaniji, Kap. 386, u sabiex jipprovdli dwar affarijiet ancillari għal dawn jew konnessi magħhom.

ACT No. XXXI of 2020

AN ACT enacted by the Parliament of Malta.

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

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

23 ta' Ġunju, 2020

ATT Nru XXXI tal-2020

ATT sabiex jemenda l-Att dwar il-Kumpaniji, Kap. 386, u sabiex jipprova dwar affarijiet ancillari 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-Kumpaniji, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kumpaniji, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 386.

2. L-artikolu 142 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 142 tal-Att prinċipali.

"142.(1) Persuna ma għandhiex tkun kwalifikata sabiex tkun maħtura jew li żzomm kariga ta' direttur tal-kumpanija jew segretarju tal-kumpanija jekk:

(a) tkun interdetta jew nieqsa mill-kapaċità jew tkun falluta;

(b) tkun instabet hatja ta' xi delitt kontra l-fiduċja pubblika jew ta' serq jew ta' frodi jew li xjentement tkun irċeviet proprjetà miksuba b'serq jew bi frodi;

A 610

(ċ) tkun minuri li ma tkunx giet emanċipata għall-kummerċ; jew

(d) tkun soġġetta għal ordni ta' skwalifika taht l-artikolu 320:

Iżda skwalifika skont id-dispożizzjonijiet tal-paragrafu (b) għandha tibqa' valida:

(i) għal dejjem, jekk il-piena stabbilita għad-delitt li dwaru nstabet hatja hi ta' priġunerija għal għomorha;

(ii) għal perjodu ta' hmistax (15)-il sena jekk il-piena stabbilita għad-delitt li dwaru nstabet hatja hi ta' priġunerija bejn hamsa u għoxrin (25) sena u tletin (30) sena;

(iii) għal perjodu ta' għaxar (10) snin jekk il-piena stabbilita għad-delitt li dwaru nstabet hatja hi ta' priġunerija 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 nstabet hatja hi ta' priġunerija bejn hames (5) snin u għaxar (10) snin;

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

(vi) għal perjodu ta' tliet (3) snin jekk il-piena stabbilita għad-delitt li dwaru nstabet hatja hi ta' priġunerija għal inqas minn erba' (4) snin:

Iżda wkoll fi kwalunkwe każ il-perjodu ta' skwalifika skont dan il-proviso m'għandux ikun anqas mill-piena ta' priġunerija li l-persuna tkun ingħatat.

(2) Minkejja d-dispożizzjonijiet ta' dan l-Att jew tal-memorandum u statut tal-kumpanija dwar il-formalitajiet dwar il-ħatra u l-kwalifika ta' direttur jew ta' ufficjal ieħor, kull irregolarità dwar il-ħatra ta' direttur jew ta' ufficjal ieħor ta' kumpanija li titqajjem wara li tkun saret il-pubblikazzjoni tal-ħatra tiegħu ma għandhiex tingieb mill-kumpanija kontra terzi

kemm-il darba l-kumpanija ma tippruvax li dawk it-terzi kienu jafu bl-irregolarità fiż-żmien rilevanti.

(3) Terzi li ma kenux jafu bl-irregolaritajiet imsemmija fis-subartikolu (2) fiż-żmien rilevanti jistgħu jgħibu dik l-irregolarità kontra l-kumpanija.

(4) Ir-Registratur jista' jwaqqaf persuna milli tiġi maħtura bħala direttur jew segretarju tal-kumpanija ta' soċjeta kummerċjali proposta jew ta' kumpanija eżistenti jekk dik il-persuna hi jew kienet direttur jew segretarju ta' kumpanija Maltija eżistenti li dwarha hi tkun kisret id-dispożizzjonijiet ta' dan l-Att għal tliet (3) darbiet f'perjodu ta' sentejn (2), li għandhom jiġu kkalkolati mill-ewwel ksur, u li tkun għadha fin-nuqqas għal dak li jirrigwarda ksur wiehed jew aktar minn tali ksur.

(5) Kwalunkwe persuna li tħoss ruħha aggravata b'restrizzjoni milli tiġi maħtura bħala direttur jew segretarju tal-kumpanija skont is-subartikolu (4) tista' tippreżenta rikors quddiem il-qorti kontra r-Registratur għat-tneħħija ta' tali restrizzjoni."

3. L-artikolu 320 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 320 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, il-kliem "fuq rikors tal-Avukat Ġenerali jew tar-Registratur" għandhom jiġu sostitwiti bil-kliem "fuq rikors tal-Avukat Ġenerali, jew tar-Riċevitur Uffiċjali jew tar-Registratur";

(b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) il-kliem "fuq rikors tal-Avukat Ġenerali jew tar-Registratur" għandhom jiġu sostitwiti bil-kliem "fuq rikors tal-Avukat Ġenerali, jew tar-Riċevitur Uffiċjali jew tar-Registratur";

(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' kumpanija kisret id-dispożizzjonijiet ta' dan l-Att għat-tielet darba 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' kumpanija li f'xi żmien tkun saret insolventi, sew jekk waqt li kienet direttur jew wara u li l-imġieba tagħha bħala direttur tal-kumpanija, jew meħuda għaliha waħedha jew flimkien mal-imġieba tagħha bħala direttur ta' xi kumpanija jew kumpaniji oħra, jagħmluha mhux tajba biex ikollha x'taqsam mat-treġġja ta' kumpanija."

Emenda tal-artikolu 329B tal-Att prinċipali.

4. L-artikolu 329B tal-Att prinċipali għandu jiġi emendat kif ġej:

(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 l-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 rimborzati 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 tħallas 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-ispiża, igawdi mill-istess trattament preferenzjali li jgawdi r-rimborż ta' spejjeż dovuti lill-istraċċjarju skont dan l-Att.

Mingħajr preġudizzju 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 ġejj:

"(b) Il-Qorti għandha tahtar bhala 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-riward tal-ħatra tal-kontrollur speċjali."

5. Minnufih wara s-subartikolu (8) tal-artikolu 425 tal-Att prinċipali għandhom jiġu miżjuda dawn is-subartikoli ġodda li ġejjin:

Emenda tal-artikolu 425 tal-Att prinċipali.

"(9) Il-Ministru jista' jippreskrivi regolamenti għall-preżentata u, jew għall-iffirmar b'mod elettroniku ta' avvizi meħtieġa b'dan l-Att, għall-firem elettronici, għall-ħruġ b'mod elettroniku ta' ċertifikati, ittri u kull dokument ieħor maħruġ mir-Reġistratur u għal kull haġa oħra anċillari.

(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 sabiex jinżammu laqgħat ġenerali, kemm jekk ordinarji jew straordinarji, u għaż-żamma b'mod virtwali ta' laqgħat ġenerali annwali u laqgħat oħra.

(11) Il-Ministru jista' jagħmel regolamenti għall-aħjar twettiq ta' xi dispożizzjoni tas-subartikolu (1) tal-artikolu 218, 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 fl-imsemmi subartikolu li jipprezentaw rikors għal stralc skont id-dispożizzjonijiet tas-subartikolu (1) tal-artikolu 218 u tal-artikolu 214.

(12) Il-Ministru jista' jagħmel regolamenti għall-aħjar twettiq ta' xi dispożizzjoni tal-artikolu 316, 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 tal-istess artikolu 316.

(13) Il-Ministru jista' jagħmel regolamenti għall-aħjar twettiq ta' xi dispożizzjoni tal-artikolu 223, u jista', mingħajr preġudizzju għall-ġeneralità ta' dak li ntqal qabel, permezz ta'

A 614

dawk ir-regolamenti jistabilixxi regoli godda dwar id-data li fiha l-kumpanija titqies li giet xolta."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 345 tas-17 ta' Ġunju, 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

23rd June, 2020

ACT No. XXXI of 2020

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:-

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".

Short title.

Cap. 386.

2. Article 142 of the principal Act shall be substituted by the following:

Substitution of article 142 of the principal Act.

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

(a) he is interdicted or incapacitated or is an undischarged bankrupt;

(b) he has been convicted of any of the crimes

A 616

affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;

(c) he is a minor who has not been emancipated for trade; or

(d) he is subject to a disqualification order under article 320:

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

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

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

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

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

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

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

Provided further that in any case the disqualification period in terms of this proviso shall not be less than the term of imprisonment that the person would have been awarded.

(2) Notwithstanding the provisions of this Act or of the memorandum and articles of a company relating to the formalities of the appointment of a director or other officer and to his qualification, any irregularity concerning the appointment

of a director or other officer of a company raised after the completion of the publication of his appointment shall not be relied upon by the company as against third parties unless the company proves that such parties were aware of the irregularity at the relevant time.

(3) Third parties who were not aware of the irregularities referred to in sub-article (2) at the relevant time may rely on that irregularity as against the company.

(4) The Registrar may restrict a person from being appointed as director or company secretary of a proposed commercial partnership or an existing company if he is or has been a director or secretary of an existing Maltese company in relation to which he has breached the provisions of this Act for three (3) times within a period of two (2) years, that shall be reckoned from the first breach, and he is still in default as to one or more of such breaches.

(5) Any person who feels aggrieved by a restriction from being appointed as director or company secretary in terms of sub-article (4) may bring an application before the court against the Registrar for the removal of such restriction."

3. Article 320 of the principal Act shall be amended as follows: Amendment of article 320 of the principal Act.

(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 time in a period of two (2) years that shall be reckoned from the first breach; or"; and

(iii) paragraph (b) thereof, shall be substituted by

A 618

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.

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

(a) in paragraph (a) of 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.

Cap. 12.

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

(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."

5. Immediately after sub-article (8) of article 425 of the principal Act there shall be added the following new sub-articles:

Amendment of article 425 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, letters, and any other documents issued by the Registrar and any other ancillary matters.

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

(11) The Minister may make regulations for the better carrying out of any of the provisions of sub-article (1) of article 218, and may, without prejudice to the generality of the foregoing, by such regulations suspend the right of any of the persons mentioned in the said sub-article to file a winding up application in terms of the said sub-article (1) of article 218 and article 214.

(12) The Minister may make regulations for the better

A 620

carrying out of any of the provisions of article 316, and may, without prejudice to the generality of the foregoing, by such regulations suspend even retrospectively the application of the provisions of the said article 316.

(13) The Minister may make regulations for the better carrying out of any of the provisions of article 223, and may, without prejudice to the generality of the foregoing, by such regulations prescribe new rules in relation to the deemed date of dissolution of a company."

Passed by the House of Representatives at Sitting No. 345 of the 17th June, 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

