

MALTA

ATT Nru. IV ta' l-1991

ACT No. IV of 1991

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

AN ACT enacted by the Parliament of Malta.

ATT biex jemenda l-Ordinanza dwar Soċjetajiet Kummerċjali, Kap. 168.

AN ACT to amend the Commercial Partnerships Ordinance, Cap. 168.

Naghti l-kunsens tiegħi.

(L.S.)

CARMELO CARUANA
Agent President

30 ta' Jannar, 1991

ATT Nru. IV ta' l-1991

ATT biex jemenda l-Ordinanza dwar Soċjetajiet Kummerċjali, Kap. 168.

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

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1991 li jemenda l-Ordinanza dwar Soċjetajiet Kummerċjali, u għandu jinqara u jiftiehem haġa waħda ma' l-Ordinanza dwar Soċjetajiet Kummerċjali, hawnhekk iżjed 'il quddiem imsejha "il-liġi prinċipali".

Titolu fil-qosor
u bidu fis-sehh.
Kap. 168.

(2) Id-dispożizzjonijiet ta' l-artikolu 3 ta' dan l-Att għandhom jitqiesu li bdew isehħu fl-1 ta' Jannar, 1990.

2. Minflok l-artikolu 125 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni
ta' l-artikolu 125
tal-liġi prinċipali.

"125. Persuna ma tkunx kwalifikata li tinhatar jew ikollha l-kariga ta' direttur ta' kumpannija jekk —

(a) tkun interdetta jew inkapaċitata jew falluta mhux meħlusa; jew

(b) tkun instabet hatja ta' xi wieħed mir-reati li jirrigwardaw il-fiduċja pubblika jew serq jew frodi jew ir-riċettazzjoni ta' proprjetà miksuba b'serq jew bi frodi li ssir xjentement."

3. Fl-artikolu 145 tal-liġi prinċipali minflok il-kliem "Għandu jkun hemm mal-prospett annwali —" għandhom jidhlu l-kliem "Għandu jkun hemm mal-prospett annwali, li ma jkunx il-prospett

Emenda ta'
l-artikolu 145
tal-liġi prinċipali.

annwali ta' kumpanija li l-oġġettivi tagħha huma limitati għall-ghanijiet biss ta' proprjetà, tmexxija, amministrazzjoni jew thaddim ta' vapuri u għal transazzjonijiet anċillari għal dan:".

Sostituzzjoni ta' l-artikolu 192 tal-liġi prinċipali.

4. Minflok l-artikolu 192 tal-liġi prinċipali għandu jidhol dan l-artikolu li ġej:

"Dmirijiet addizzjonali ta' Registratur.

192. (1) B'zieda għad-dmirijiet l-oħra preskritti b'din l-Ordinanza, ikun dmir tar-Registratur —

(a) li jiżgura t-tharis ta' kull dispożizzjoni ta' din l-Ordinanza li tehtieg li att isir jew jonqos milli jsir taht penali;

(b) li jagħmel proċeduri għall-ġbir ta' kull penali skond din l-Ordinanza fil-Qorti tal-Kummerċ;

(ċ) li jzomm u jirreġistra kull dokument li jkun mehtieg li jiġi konsenjat jew moghti jew notifikat lilu għal registrazzjoni skond xi waħda mid- dispożizzjonijiet ta' din l-Ordinanza;

(d) meta skond xi waħda mid-dispożizzjonijiet ta' din l-Ordinanza —

(i) xi dokument ikun mehtieg li jiġi konsenjat jew moghti jew notifikat lilu għal pubblikazzjoni; jew

(ii) xi ċertifikat ikun mahruġ minnu wara r-registrazzjoni jew bdil ta' isem jew tibdil jew amalgamazzjoni ta' soċjetà, jew l-isem ta' soċjetà jkun thassar mir-registru,

li jara mingħajr dewmien li dikjarazzjoni tkun pubblikata fil-Gazzetta tal-Gvern li turi d-data li fiha r-registrazzjoni, konsenja jew notifika tkun saret, jew li fiha l-isem tas-soċjetà kien imhassar mir-registru, u x-xorta ġenerali tad-dokument jew ċertifikat, u li tagħti dawk il-partikolaritajiet li jkunu mehtieġa li jiddistingwu s-soċjetà li għaliha d-dikjarazzjoni tirreferixxi.

(2) Meta r-Registratur jagħti avviż bil-miktub lil xi persuna li dik il-persuna saret suġġetta għal penali taht din l-Ordinanza, u fih jispeċifika x-xorta tal-ksur tal-liġi u jindika ammont dovut bhala penali għal dak il-ksur, il-persuna li lilha jkun ingħata l-avviż għandha titqies, mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli li ġejjin ta' dan l-artikolu, li wehlet penali taht din l-Ordinanza u l-ammont indikat kif intqal qabel bhala dovut bhala penali għandu jitqies li jkun il-penali dovut taht din l-Ordinanza għall-ksur tal-liġi speċifikat fl-avviż.

- Kap. 12. (3) Avviż bhal dak imsemmi fis-subartikolu (2) ta' dan l-artikolu ghandu, meta tiġi notifikata kopja tiegħu permezz ta' att ġudizzjarju lill-persuna indikata fl-avviż, jikkostitwixxi titolu eżekuttiv għall-effetti u finijiet kollha tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili sakemm dik il-persuna ma tibdiex proċedimenti quddiem il-Qorti tal-Kummerċ fi żmien tletin jum minn meta tkun saritilha n-notifika sabiex toġġezzjona għall-penali hekk stabbilita.
- Proċedimenti speċjali fil-qorti. (4) Meta persuna tkun tixtieq tibda proċedimenti li bihom joġġezzjona għal penali msemmija fis-subartikolu (2) ta' dan l-artikolu, dawk il-proċedimenti għandhom jinbdew permezz ta' rikors li jsir kontra r-Registratur.
- (5) Ir-rikors ghandu, taht piena ta' nullità, jkun fih b'mod ċar u haġa b'haġa x-xorta ta' l-ilment, il-fatti li minnhom johroġ l-ilment, ir-raġunijiet għaliex dak l-ilment għandu jintlaqa', u t-talba li l-piena mhijiex dovuta skond il-liġi jew li hi dovuta skond il-liġi f'ammont inqas.
- (6) Il-Qorti ma għandhiex tannulla jew tnaqqas piena kif imsemmi qabel hlief jekk dik il-piena ma tistax skond il-liġi tinghata fiċ-ċirkostanzi tal-każ, jew ma tistax skond il-liġi tiġi stabbilita f'dak l-ammont li jkun ġie hekk stabbilit mir-Registratur.
- (7) Ir-rikorrent għandu jannetti mar-rikors dawk id-dokumenti kollha li jsaħħu t-talba tiegħu u li huwa jkollu setgħa li jipproduċi, u għandu jindika fir-rikors tiegħu l-ismijiet tax-xhieda kollha li jkollu hsieb li jipproduċi filwaqt li jiddikjara, dwar kull wieħed minnhom, xi prova jkun irid jagħmel permezz tagħhom.
- (8) Il-qorti għandha, mingħajr dewmien, tiffissa r-rikors għas-smieġ kemm jista' jkun malajr, f'data li f'ebda każ ma għandha tkun iktar tard minn tletin jum mid-data tal-preżentata tar-rikors.
- (9) Ir-rikors, u l-avviż tad-data appuntata għas-smieġ, għandhom jiġu notifikati lir-Registratur mingħajr dewmien, u l-imsemmi Registratur għandu jippreżenta r-risposta tiegħu fi żmien hmistax-il jum mid-data tan-notifika tar-rikors.
- (10) Ir-Registratur għandu, fir-risposta tiegħu, jiddikjara b'mod ċar u haġa b'haġa jekk ikunx jaqbel mal-fatti indikati fir-rikors, u r-raġunijiet għaliex ikun qiegħed joġġezzjona għat-talba; barra minn hekk huwa għandu wkoll jiddikjara fir-risposta tiegħu l-ismijiet tax-xhieda li jsaħħu r-raġunijiet tiegħu u jannetti mar-risposta d-dokumenti kollha li jkunu jsaħħu dan.

(11) Fil-jum appuntat għas-smiegh tar-rikors, il-qorti għandha tikkunsidra dawk il-materji kollha ta' fatt u ta' liġi li jgħorġu biss mir-rikors, mir-risposta jew mid-dokumenti preżentati, minn kull wiehed mill-partijiet, jew mix-xhieda indikati minn kull wiehed mill-partijiet fir-rikors jew fir-risposta, skond il-każ, jew mis-sottomissjoni orali ta' kull wiehed mill-partijiet.

(12) Il-qorti tisma' l-każ dwar ir-rikors u twasslu għal konkluzjoni fi żmien hamest ijiem tax-xogħol mid-data appuntata għall-ewwel smiegh tar-rikors, u ma jingħata ebda differiment hlief jew bil-kunsens taż-żewġ partijiet, jew għal raġuni eċċezzjonali li tiġi verbalizzata mill-qorti, u dik id-data tad-differiment ma għandhiex tkun iktar tard minn dik li tkun hekk ġustifikata minn dik ir-raġuni.

Kap. 12. (13) Hlief għad-dispożizzjonijiet ta' qabel dan ta' dan l-artikolu, id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar il-proċedimenti li jsiru fil-Prim'Awla tal-Qorti Ċivili għandhom japplikaw dwar kull rikors bħal dak.

(14) Minkejja d-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 256 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, it-titolu eżekuttiv imsemmi fis-subartikolu (3) ta' dan l-artikolu ma għandux ikun eżegwibbli qabel ma jiskadu tletin jum minn notifika ta' l-att ġudizzjarju msemmi f'dak l-artikolu.

(15) Id-deċiżjoni tal-qorti dwar rikors imsemmi fis-subartikolu (4) ta' dan l-artikolu, li tkun tikkonferma l-ghoti ta' piena stabbilita mir-Reġistratur jew li tkun tnaqqas xi piena bħal dik, għandha titqies, meta ssir *res judicata*, li tkun deċiżjoni tal-qorti li tkun qed tordna l-hlas mir-rikorrent tal-piena kif din tkun ġiet konfermata jew imnaqqsa.

(16) Appell minn deċiżjoni tal-Qorti tal-Kummerċ dwar rikors imsemmi fis-subartikolu (4) ta' dan l-artikolu, għandu jsir permezz ta' rikors li għandu jiġi preżentat fi żmien sitt ijiem tax-xogħol mid-data tad-deċiżjoni; l-appellat għandu fi żmien sitt ijiem tax-xogħol min-notifika tar-rikors jippreżenta risposta għar-rikors.”.

Dispożizzjonijiet
transitorji.

5. (1) Id-dispożizzjonijiet ta' l-artikolu 3 ta' l-Att għandhom japplikaw għall-prospetti annwali relattivi għas-sena 1990 u għas-sena ta' wara.

(2) Id-dispożizzjonijiet ta' l-artikolu 4 ta' dan l-Att għandhom ikunu japplikaw ukoll għal penali stabbiliti mir-Reġistratur tas-Socjetajiet qabel id-dhul fis-seħħ ta' dak l-artikolu, sakemm qabel dik id-data ma jkunux diġa' nbdew proċedimenti għall-ġbir ta' dawk il-penali permezz ta' citazzjoni fil-Qorti tal-Kummerċ.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 470 tat-23 ta' Jannar, 1991.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Skrivan tal-Kamra tad-Deputati.

I assent.

(L.S.)

CARMELO CARUANA
Acting President

30th January, 1991

ACT No. IV of 1991

AN ACT to amend the Commercial Partnerships Ordinance, Cap. 168.

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
and
commencement.
Cap. 168.

1. (1) This Act may be cited as the Commercial Partnerships (Amendment) Act, 1991, and shall be read and construed as one with the Commercial Partnerships Ordinance, hereinafter referred to as “the principal law”.

(2) The provisions of section 3 of this Act shall be deemed to have come into force on the 1st January, 1990.

Substitution
of section 125
of the
principal law.

2. For section 125 of the principal law there shall be substituted the following:

“125. A person shall not be qualified for appointment or hold office as director of a company if —

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

(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.”.

Amendment
of section 145
of the
principal law.

3. In section 145 of the principal law for the words “There shall be annexed to the annual return —” there shall be substituted the words “There shall be annexed to the annual return, not being the annual

return of a company whose objects are limited to the sole purposes of owning, managing, administering or, operating ships and to transactions ancillary thereto:".

4. For section 192 of the principal law there shall be substituted the following section:

Substitution
of section 192
of the
principal law.

"Additional
duties of
Registrar.

192. (1) In addition to the other duties prescribed by this Ordinance, it shall be the duty of the Registrar —

(a) to ensure compliance with any provision of this Ordinance requiring an act to be done or to be omitted to be done under a penalty;

(b) to institute proceedings for the recovery of any penalty under this Ordinance in the Commercial Court;

(c) 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 Ordinance;

(d) where under any of the provisions of this Ordinance —

(i) any document is required to be delivered or given to or served on him for publication; or

(ii) any certificate is issued by him on the registration or change of name or conversion or amalgamation of a partnership, or the name of a partnership is struck off the register,

to cause without delay a statement to be published in the Government Gazette showing the date at which the registration, delivery or service was made, or at which the name of the 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 partnership to which the statement relates.

(2) Where the Registrar gives notice in writing to any person that such person has become liable to a penalty under this Ordinance, 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 the following subsections of this section, be deemed to have incurred a penalty under this Ordinance and the amount indicated as aforesaid as due by way of penalty shall be deemed to be the penalty due under this Ordinance in respect of the infringement specified in the notice.

Cap. 12.

(3) A notice as is referred to in subsection (2) of this section 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 Organisation and Civil Procedure unless such person shall within thirty days from the date of such service institute proceedings before the Commercial Court objecting to the penalty so fixed.

Special
court
proceedings.

(4) Where any person desires to institute proceedings objecting to a penalty referred to in subsection (2) of this section, such proceedings shall be instituted by application against the Registrar.

(5) 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.

(6) 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.

(7) 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 the witnesses he intends to produce stating, in respect of each, the proof which he intends to make.

(8) 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.

(9) 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 fifteen days after the date of the service of the application.

(10) 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.

(11) On the day fixed for the hearing of the application, the court shall consider the issues of fact and of law as are ascertainable only 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.

(12) The court shall hear the application to a conclusion within five working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties, or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

Cap. 12. (13) Saving the preceding provisions of this section, the provisions of the Code of Organisation and Civil Procedure relating to proceedings before the First Hall of the Civil Court shall apply in relation to any such application.

(14) Notwithstanding the provisions of subsection (2) of section 256 of the Code of Organisation and Civil Procedure, the executive title referred to in subsection (3) of this section shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to.

(15) The decision of the court upon an application referred to in subsection (4) of this section, 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 judgement of the court ordering the payment by the applicant of the penalty as confirmed or reduced.

(16) An appeal from a decision of the Commercial Court upon an application referred to in subsection (4) of this section, shall be made by means of an application 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.”.

Transitory provisions.

5. (1) The provisions of section 3 of the Act shall apply to the annual returns relative to the year 1990 and to the years thereafter.

(2) The provisions of section 4 of this Act shall apply also to penalties fixed by the Registrar of Partnerships before the coming into force of that section, unless before that date proceedings for the recovery of such penalties have already been instituted by writ of summons before the Commercial Court.

Passed by the House of Representatives at Sitting No. 470 of the 23rd January, 1991.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives.