

ABBOZZ TA' LIĠI msejjah

Att ta' l-2007 li jemenda l-Att dwar il-Kumpanniji (Kap. 386)

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) It-titolu fil-qosor ta' dan l-Att huwa Att ta' l-2007 li jemenda l-Att dwar il-Kumpanniji, u għandu jinqara u jiftiehem haġa waħda ma' l-Att dwar il-Kumpanniji, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.

Kap. 386.

(2) Dan l-Att għandu jiġi fis-sehh fid-data jew id-dati li l-Ministru responsabbli mill-finanzi għandu jistabilixxi b'Avviż fil-Gazzetta, u jistgħu jiġu appuntati dati differenti għal dispożizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. Fis-subparagrafu (iii) tal-paragrafu (b) tas-subartikolu (3) tal-artikolu 2 ta' l-Att prinċipali, minflok il-kelma "azzjonijiet" għandha tidhol il-kelma "sigurtajiet".

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

3. L-artikolu 6 ta' l-Att prinċipali għandu jiġi emendat b'dan li ġej:

Emenda ta' l-artikolu 6 ta' l-Att prinċipali.

(a) minflok in-nota marginali għandu jidhol dan li ġej:

“Indikazzjoni ta’ partikolaritajiet f’ittri tal-kummerċ, formoli ta’ ordnijiet, *websites* eċċ.”;

(b) is-subartikolu (1) ta’ dan l-artikolu jiġi sostitwit kif ġej:

“(1) Fuq l-ittri kummerċjali kollha tagħha kif ukoll fuq il-formoli ta’ l-ordnijiet, sew jekk fuq il-karta, sew permezz ta’ xi mezz ieħor, kif ukoll fuq il-*website* jew il-*websites* ta’ l-internet tagħha, jekk ikollha, soċjetà kummerċjali għandha ssemmi b’tipa legibbli isimha, it-tip ta’ shubija kummerċjali, l-uffiċċju reġistrat u n-numru ta’ reġistrazzjoni li jkollha.”;

(ċ) is-subartikolu (2) ta’ dan l-artikolu jiġi sostitwit kif ġej:

“(2) Fuq l-ittri kummerċjali kollha tagħha u fuq il-formoli ta’ l-ordnijiet, sew jekk fuq il-karta sew permezz ta’ xi mezz ieħor, kif ukoll fuq il-*website* jew *websites* tagħha, jekk ikollha, fir-rigward tal-fergħa jew post tan-negozju f’Malta, entità inkorporata reġistrata taħt it-Taqsima XI ta’ dan l-Att għandha ssemmi b’tipa legibbli isimha, il-pajjiż fejn tkun kostitwita jew inkorporata, ix-xorta ta’ soċjetà kummerċjali, l-indirizz tal-fergħa jew il-post tan-negozju f’Malta, in-numru ta’ reġistrazzjoni taħt it-Taqsima XI ta’ dan l-Att u, fejn dan ikun japplika, il-fatt illi kumpannija barranija tkun qeghda tiġi stralċjata.”;

(d) is-subartikolu (3) ta’ dan l-artikolu jiġi sostitwit kif ġej:

“(3) Fuq l-ittri kummerċjali kollha tagħha u fuq il-formoli ta’ l-ordnijiet, sew jekk fuq il-karta jew permezz ta’ xi mezz ieħor, kif ukoll fuq il-*website* jew *websites* tagħha, jekk ikollha, soċjetà f’isem kollettiv għandha wkoll tagħti f’ittri legibbli l-ismijiet tas-soċji tagħha b’zieda ma’ dak li hemm mitlub fis-subartikolu (1).”;

(e) is-subartikolu (4) ta’ dan l-artikolu jiġi sostitwit kif ġej:

“(4) Fuq l-ittri kummerċjali kollha tagħha u fuq il-formoli ta’ l-ordnijiet, sew jekk fuq il-karta jew permezz ta’ xi mezz ieħor, kif ukoll fuq il-*website* jew *websites* tagħha, jekk ikollha, soċjetà in akkomandita jew soċjetà limitata għandha wkoll tagħti f’ittri legibbli l-ismijiet tas-soċji li r-responsabbiltà tagħhom ma tkunx limitata b’zieda ma’ dak li hemm mitlub fis-subartikolu (1).”;

(f) is-subartikoli (8) u (9) ta' dan l-artikolu ghandhom jiġu enumerati mill-ġdid bhala s-subartikli (9) u (10) rispettivament;

(g) minnufih wara s-subartikolu (7) ghandu jiżdied dan is-subartikolu (8) ġdid li ġejj:

“(8) Meta ssir referenza għall-kapital tal-kumpannija fid-dokumenti jew fuq il-*websites* ta' l-internet li għalihom tkun saret referenza fis-subartikoli preċedenti, dik ir-referenza għandha tinkludi referenza sew għall-kapital azzjonarju mahruġ kif ukoll għall-kapital azzjonarju mhallas.”; u

(h) fis-subartikolu (9), kif enumerat mill-ġdid, minnufih wara l-kliem “id-disposizzjonijiet tas-subartikoli (1) sa (6)”, għandhom jiżdiedu l-kliem “ u tas-subartikolu (8)”.

4. L-artikolu 49 ta' l-Att prinċipali jiġi emendat kif ġejj:

Emenda ta' l-artikolu 49 ta' l-Att prinċipali.

(a) is-subartikolu (1) ta' dan l-artikolu għandu jiġi sostitwit kif ġejj:

“(1) Meta jkunu approvati l-kontijiet, l-istralċjarju għandu jikkonsenja lir-Registratur għar-registrazzjoni avviz ta' dik l-approvazzjoni u r-Registratur għandu jirreġistrah. Skond id-disposizzjonijiet ta' l-artikolu 21 dwar il-perjodu stabbilit fis-subartikolu (1) ta' l-istess artikolu u d-drittijiet tal-kredituri skond is-subartikolu (2) ta' l-istess artikolu, ir-Registratur għandu jhassar l-isem tas-soċjetà mir-registru. Ir-Registratur għandu minnufih jippubblika avviz li l-istralċ ikun ġie finalizzat u li sar dak it-thassir mir-registru.”; u

(b) is-subartikolu (2) ta' dan l-artikolu għandu jiġi sostitwit kif ġejj:

“(2) Meta l-mod li bih is-soċjetà għandha tiġi stralċjata jkun provdut fl-att ta' assoċjazzjoni jew ikun stabbilit bi ftehim bejn is-soċji, ikun id-dmir tas-soċji li jikkonsenjaw lir-Registratur għar-registrazzjoni nota, iffirmata minnhom kollha li l-istralċ ikun ġie finalizzat u r-Registratur għandu minnufih jirreġistrah. Bla hsara għad-disposizzjonijiet ta' l-artikolu 21 dwar il-perjodu stabbilit fis-subartikolu (1) ta' l-istess artikolu u d-drittijiet tal-kredituri skond is-subartikolu (2) ta' l-istess artikolu, ir-Registratur għandu jhassar l-isem tas-soċjetà mir-registru u għandu minnufih jippubblika avviz li l-istralċ ikun ġie finalizzat u li jkun sar dak it-thassir.”.

Emenda ta' l-
artikolu 66A ta' l-
Att prinċipali.

5. L-artikolu 66A tal-Att prinċipali ghandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) ta' dan l-artikolu:

(i) minflok il-kliem “soċjetà in akkomandita jew soċjetà limitata li fil-ftehim ta' l-assoċjazzjoni tagħha” ghandhom jidhlu l-kliem “soċjetà in akkomandita jew soċjetà limitata bil-kapital diviż f'azzjonijiet li fil-ftehim ta' l-assoċjazzjoni”; u

(ii) minflok il-kliem “u li tikkwalifika għal skema ta' investiment kollettiv u li tkun liċenzjata kif imiss skond l-Att dwar Servizzi ta' Investiment,” ghandhom jidhlu l-kliem “u li tikkwalifika għal skema ta' investiment kollettiv u li tkun debitament liċenzjata, rikonoxxuta, eżentata jew regolata b'mod iehor skond l-Att dwar Servizzi ta' Investiment”;

(b) fis-subartikolu (2) ta' dan l-artikolu:

(i) Minflok il-kliem “bid-disposizzjonijiet tat-Taqsima IV ta' dan l-Att”, ghandhom jidhlu l-kliem “bid-disposizzjonijiet ta' din it-Taqsima ta' dan l-Att”; u

(ii) fil-proviso, minflok il-kliem “jew tat-Taqsima IV ta' dan l-Att”, ghandhom jidhlu l-kliem “jew din it-Taqsima ta' dan l-Att,”;

(ċ) is-subartikolu (3) ta' dan l-artikolu, minflok il-kliem “u tat-Taqsima IV ta' dan l-Att”, ghandhom jidhlu l-kliem “u ta' din it-Taqsima ta' dan l-Att”.

Emenda ta' l-
artikolu 72 ta' l-Att
prinċipali.

6. Fl-artikolu 72 ta' l-Att prinċipali, minnufih wara s-subartikolu (5), ghandu jiżdied dan is-subartikolu ġdid li ġej:

“(6) Jistgħu jiġu mifdija dawk l-azzjonijiet privileġġati biss li ghandhom jiġu mifdija jew li jistgħu jiġu mifdija skond il-pattijiet tal-hrug tagħhom, filwaqt li l-azzjonijiet l-oħra fil-kumpannija ma jistgħux jiġu mibdula f'azzjonijiet li jistgħu jiġu mifdija.”.

Emenda ta' l-
artikolu 82 ta' l-Att
prinċipali.

7. Minflok is-subartikolu (2) ta' l-artikolu 82 ta' l-Att prinċipali, ghandu jidhol dan li ġej:

“(2) Id-dokumenti kollha ikkonsenjati lir-Registatur ghandhom ikunu awtentikati skond dan l-artikolu:

Iżda meta d-dokumenti jiġu ikkonsenjati lir-Registratur permezz ta' xi mezz elettroniku, dawk id-dokumenti jistgħu, flimkien mal-metodu ta' awtentikazzjoni mniżżel fis-subartikolu (1), jiġu awtentikati minn individwu speċifikament awtorizzat għal dan l-għan permezz ta' memorandum, jew permezz ta' risoluzzjoni tal-bord tad-diretturi, jew permezz ta' risoluzzjoni straordinarja tal-kumpannija. L-awtentikazzjoni tad-dokumenti ikkonsenjati lir-Registratur permezz ta' mezz elettroniku għandha ssir permezz ta' firma elettronika debitament rikonoxxuta mir-Registratur.”.

8. Minnufih wara l-artikolu 114 ta' l-Att prinċipali, għandhom ikunu miżjuda dawn l-artikoli godda li ġejjin:

Żieda ta' l-artikoli 114A sa 114D ma' l-Att prinċipali.

“Helsien għal rikostruzzjoni ta' Grupp.

114A. (1) Meta kumpannija tohroġ azzjonijiet (il-“kumpannija li tagħmel il-hruġ”) u l-kumpannija li tagħmel il-hruġ:

(a) tikkwalifika bhala sussidjarja ta' kumpannija ohra (il-“kumpannija *holding*”); u

(b) tagħti xi azzjonijiet:

(i) lill-kumpannija *holding*; jew

(ii) lil xi sussidjarja ohra li tikkwalifika tal-kumpannija *holding*,

bhala kunsiderazzjoni għat-trasferiment lill-kumpannija li tagħmel il-hruġ ta' attiv li ma jkunx flus ta' kumpannija li tkun membru ta' grupp ta' kumpanniji li tikkonsisti f'kumpannija *holding* u s-sussidjarji tagħha kollha li jikkwalifikaw (il-“kumpannija li tagħmel it-trasferiment”),

il-kumpannija li tagħmel il-hruġ ma tkunx mitluba skond l-artikolu 114 tittrasferixxi ebda ammont iżjed mill-valur *premium* minimu għall-kont tal-*premium*.

(2) Għall-finijiet ta' dan l-artikolu “valur *premium* minimu” jfisser l-ammont, jekk ikun hemm, li permezz tiegħu il-valur bażi tal-kumpens għall-azzjonijiet mogħtija jkun jeċċedi l-valur nominali ta' l-azzjonijiet totali.

(3) Il-valur bażi tal-kumpens għall-azzjonijiet mogħtija huwa l-ammont li bih il-valur bażi ta' l-attiv trasferit

jeċċedi l-valur bażi tal-passiv tal-kumpannija li tagħmel it-trasferiment liema passiv jgħaddi għand u jkun mehud mill-kumpannija li tagħmel il-hruġ bhala parti mill-kumpens għall-attiv hekk trasferit.

(4) Għal finijiet ta' dan l-artikolu:

(a) Il-valur bażi ta' l-azzjonijiet trasferiti ikun meqjus bhala:

(i) il-kontijiet ta' dawk l-azzjonijiet lill-kumpannija li tagħmel it-trasferiment; jew

(ii) l-ammont li bih dawk l-azzjonijiet jiġu dikjarati fir-*records* tal-kontijiet tal-kumpannija li tagħmel it-trasferiment minnufih qabel it-trasferiment; jew

(iii) il-valur tas-suq ġust tal-azzjonijiet,

skond liema jkun l-anqas.

(b) Il-valur bażi tal-passiv li jgħaddi għandu jkun eżerċitat mill-kumpannija li tagħmel it-trasferiment bhala l-ammont li bih ikunu iddikjarati l-azzjonijiet minnufih qabel ma jsir it-trasferiment.

(5) Għal finijiet ta' dan l-artikolu l-kelma “sussidjarja li tikkwalifika” għandha tfisser kumpannija li fiha l-kumpannija *holding* li jkollha mill-anqas tmenin fil-mija ta' *holding* ta' ekwità. Il-kliem “tmenin fil-mija *holding* ta' ekwità” għandu jkollhom t-tifsira mogħtija lilhom fl-artikolu 114B(5).

Helsien għal
takeover.

114B. (1) Id-disposizzjonijiet ta' l-artikolu 114 ma japplikawx meta l-kumpannija li tohroġ l-azzjonijiet (“il-kumpannija li tagħmel il-hruġ”) tiżgura li mill-anqas tmenin fil-mija tal-*holding* ta' ekwità f'kumpannija ohra skond l-arrangament li jipprovdi għall-ghotja tat-titoli ta' ekwità tal-kumpannija li tagħmel il-hruġ b'pattijiet li l-kumpens għall-azzjonijiet mogħtija għandu jkun provdut:

(a) bil-hruġ jew bit-trasferiment tal-kumpannija li tagħmel il-hruġ tat-titoli ta' ekwità fil-kumpannija l-ohra; jew

(b) bil-kancellament ta' xi azzjonijiet li ma jkunux mizmuma mill-kumpannija li tagħmel il-hruġ.

(2) Id-disposizzjonijiet ta' l-artikolu 114 m'għandhomx japplikaw meta t-titoli ta' l-ekwità fil-kumpanija li tagħmel il-hruġ jingħataw jew jiġu kancellati skond l-arranġament tal-kumpens tas-sigurtajiet ta' l-ekwità fil-kumpanija l-oħra meta dawn jinharġu bi *premium*.

(3) Id-disposizzjonijiet ta' l-artikolu 114 m'għandhomx japplikaw meta l-arranġament ikun jipprovdi wkoll għall-ghoti ta' l-azzjonijiet tal-kumpanija li tagħmel il-hruġ skond pattijiet ta' kumpens għal dawk l-azzjonijiet għandu jkun provdut:

(a) permezz tal-hruġ jew it-trasferiment lill-kumpanija li tagħmel il-hruġ ta' titoli mhux ta' ekwità fil-kumpanija l-oħra; jew

(b) bil-kancellament ta' tali azzjonijiet f'dik il-kumpanija mhux miżmuma mill-kumpanija li tagħmel il-hruġ.

(4) Id-disposizzjonijiet ta' dan l-artikolu m'għandhomx japplikaw fil-każijiet li jaqaw taħt l-artikolu 114A.

(5) Għall-finijiet ta' dan l-artikolu "tmenin fil-mija *holding* ta' ekwità" tfisser *holding* ta' tmenin fil-mija tal-valur nominali tat-titoli ta' ekwità mahruġa mill-kumpanija:

Iżda sabiex tiġi determinata l-eżistenza ta' "tmenin fil-mija ta' *holding* ta' ekwità" ikun immaterjali jekk xi wiehed minn dawk it-titoli ikunx ġie akkwizit skond l-arranġament:

Iżda wkoll azzjonijiet miżmuma mill-kumpanija l-oħra fiha nnifisha għandhom ikunu esklużi milli jiddeterminaw il-valur nominali tat-titoli ta' ekwità mahruġa mill-kumpanija.

(6) Meta l-kapital azzjonarju mahruġ tal-kumpanija li tagħmel il-hruġ ikun diviż fi klassijiet varji ta' azzjonijiet id-disposizzjoni tas-subartikolu (5) għandu jibqa' fis-seħh fir-rigward ta' kull waħda minn dawk il-klassijiet ta' azzjonijiet.

(7) Ghal finijiet ta' dan l-artikolu, azzjonijiet mizmuma minn kumpanija li tiffirma parti minn grupp tal-kumpanija li taghmel il-hruġ jew min-*nominees* taghha.

Helsien jista' jiġi rifless fil-bilanċ totali tal-kumpanija.

114Ċ. Ammont korrispondenti għall-ammont rappreżentanti l-*premiums*, jew parti mill-*premiums*, fuq l-azzjonijiet mahruġa mill-kumpanija permezz ta' xi helsien taħt 114A jew 114B m'hijiex inkluża fil-kont ta' l-azzjonijiet *premium* tal-kumpanija tista' tiġi wkoll injorata meta jiġi stabbilit l-ammont li bih l-azzjonijiet jew xi kumpens iehor għall-azzjonijiet mahruġa għandu jiġi inkluż fil-bilanċ totali tal-kumpanija.

Poter li jsiru disposizzjonijiet oħra b'regolamenti.

114D. (1) Il-Ministru jista', permezz ta' regolamenti pubblikati fil-Gazzetta, jaghmel dawk id-disposizzjonijiet li jidhirlu xierqa –

(a) għall-helsien tal-kumpaniji mid-disposizzjonijiet ta' l-artikolu 114 flimkien ma' l-*premiums* l-oħrajn li m'humiex *premiums* fi flus;

(b) għar-restrizzjoni jew modifika b'mod iehor tal-helsien mir-rekwiziti provduti b'dan il-Kapitolu.

(2) Ir-regolamenti li għalihom qed issir referenza fis-subartikolu (1) ta' dan l-artikolu jistgħu ikunu jipprovdu għal każijiet jew għal klassijiet ta' każijiet differenti u jista' jkun fihom dawk id-disposizzjonijiet inċidentali u supplimentari skond ma l-Ministru jidhirlu xierqa.”.

Emenda ta' l-artikolu 159 ta' l-Att prinċipali.

9. Fis-subartikolu (3) ta' l-artikolu 159 ta' l-Att prinċipali, għall-kliem “Il-kumpanija għandha fi żmien erbatax-il jum tad-depożitu ta' avviż ta' riżenja tibgħat kopja ta' l-avviż lir-Registatur għar-registrazzjoni.”, għandhom jiġu sostitwiti l-kliem “Il-kumpanija għandha fi żmien erbatax-il jum mid-depożitu tal-avviż ta' riżenja tinnotifika b'dan lir-Registatur għar-registrazzjoni.”.

Emenda ta' l-artikolu 182 ta' l-Att prinċipali.

10. Minflok is-subartikolu (3) ta' l-artikolu 182 ta' l-Att prinċipali, għandu jidhol dan li ġej:

“(3) Meta kumpanija tkun tmexxi negozju, jew ikollha interessi kummerċjali hekk li aktar minn disghin fil-mija tiegħu jkunu barra minn Malta u f'dak li jirrigwarda l-perjodu tal-kontijiet, id-diretturi, qabel l-għeluq taż-żmien permezz tas-subartikolu (2), jagħtu avviż lir-Registatur fil-forma preskritta:

(a) fejn jiddikjaraw li l-kumpannija hekk tmexxi negozju jew ghandha daww l-interessi; u

(b) fejn jitolbu estensjoni ghaż-żmien hekk permess;

iz-żmien permess dwar dak il-perjodu tal-kontijiet ghandu jkun ta' tmintax-il xhar:

Iżda għall-iskop ta' dan is-subartikolu, l-interessi u l-*holdings* miżmuma fil-kumpanniji iffurmati u reġistrati f'Malta jew fil-kumpanniji li għalihom issir referenza fl-artikolu 384, u d-dhul derivat minnhom, ghandu jiġi injorat għall-iskop li jiġi stabbilit jekk kumpannija tkunx qegħda tmexxi negozju jew ikollhiex xi interess kummerċjali barra minn Malta kif hawn qabel imsemmi:

Iżda aktar għall-iskop ta' l-artikolu 387 id-disposizzjonijiet ta' dan is-subartikolu għandhom japplikaw biss b'referenza għall-operazzjonijiet tal-kumpannija barranija f'Malta daqs li kieku tali operazzjonijiet kienu mmexxija minn kumpannija separata iffurmata u reġistrata f'Malta taht dan l-Att.”.

11. Fis-subartikolu (2) ta' l-artikolu 184 ta' l-Att prinċipali, minnufih fi tmiem l-artikolu, għandhom jiżdiedu l-kliem “Meta l-prospett annwali jintbghat lir-Registratur b'xi mezz elettroniku, flimkien mal-mod ta' kif jiġi iffirmit hekk kif imniżżel f'dan is-subartikolu, tali prospett annwali jista' jiġi wkoll iffirmit minn individwu speċifikament awtorizzat għal dak l-għan mill-memorandum, jew permezz ta' risoluzzjoni tal-bord tad-diretturi, jew permezz ta' risoluzzjoni straordinarja tal-kumpannija. Il-firma ta' dak il-prospett annwali għandha ssir permezz ta' firma elektronika debitament rikonoxxuta mir-Registratur.”.

Emenda ta' l-artikolu 184 ta' l-Att prinċipali.

12. Fis-subartikolu (1) ta' l-artikolu 387 ta' l-Att prinċipali, minflok il-kliem “f'kull sena kalendarja” għandhom jidhlu l-kliem “fi żmien tnejn u erbghin ġurnata mit-tmiem tal-perjodu li għalih ssir referenza fis-subartikoli (2) u (3) ta' l-artikolu 182”.

Emenda ta' l-artikolu 387 ta' l-Att prinċipali.

13. L-artikolu 401 ta' l-Att prinċipali jiġi emendat kif ġej:

Emenda ta' l-artikolu 401 ta' l-Att prinċipali.

(a) fil-paragrafu (e) tas-subartikolu (1) ta' dan l-artikolu, minflok il-kliem “jew ta' xi tnaqqis imsemmi fl-artikolu 83”, għandhom jidhlu l-kliem “jew ta' xi tnaqqis li għalih ssir referenza fl-artikolu 83”;

(b) minflok il-paragrafu (f) tas-subartikolu (1) ta' dan l-artikolu, għandu jidhol dan li ġej:

“(f) li jaghti kopji jew kopji awtentikati ta’ dokumenti reġistrati konformement ma’ dan l-artikolu mal-hlas tad-dritt preskritt lil kull min jitlobhom u dawk il-kopji jistgħu jinghataw ukoll b’ mezzi elettronici;”.

Emenda ta’ l-artikolu 425 ta’ l-Att prinċipali.

14. Fil-paragrafu (d) tas-subartikolu (1) tal-artikolu 425 ta’ l-Att prinċipali, minflok il-kliem “barra mid-Disa’, l-Ghaxar, il-Hdax u t-Tnax-il Skeda,”, għandhom jidhlu il-kliem “barra mid-Disa’, il-Hdax u t-Tnax-il Skeda”.

Emenda għat-Tmien Skeda li tinsab ma’ l-Att prinċipali.

15. Fl-inċiż (b) tas-subparagrafu (4) tal-paragrafu 4 tat-Tmien Skeda li tinsab ma’ l-Att prinċipali, minflok il-kliem “data ta’ l-ghelug” għandhom jidhlu l-kliem “rata tal-ghelug”.

Emenda konsegwenzjali fl-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti. Kap. 364.

16. L-artikolu 47 ta’ l-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti għandu jiġi emendat kif ġej:

(a) fis-subartikolu (3) ta’ l-artikolu, għandu jizzied miegħu il-paragrafu l-ġdid li ġej:

“(e) kumpannija li tipprovdi għas-sodisfazzjoni tal-Kummissarju illi hija tmexxi negozju, jew li bi hsiebha tmexxi negozju jew li jkollha, jew li tkun bi hsiebha jkollha, interessi kummerċjali, ta’ aktar minn disghin fil-mija barra minn Malta billi turi illi hija tissodisfa dawk il-kundizzjonijiet li jistgħu jidhru xierqa lill-Kummissarju.”;

(b) minflok is-subartikolu (9) ta’ l-artikolu, għandu jidhol dan li ġej:

“(9) Id-dispożizzjonijiet ta’ dan l-artikolu għandhom japplikaw biss meta l-Kummissarju jkun hekk iddeċieda u tali deċizzjoni u kwalunkwe deċizzjoni li ssir konformement mas-subartikolu (7) jew mas-subartikolu (8) għandha tibqa’ tkun applikata sa kemm il-kundizzjonijiet u d-dispożizzjonijiet rilevanti ikunu qegħdin jiġu sodisfatti.”; u

(ċ) minnufih wara s-subartikolu (9) ta’ dan l-artikolu għandu jizzied is-subartikolu ġdid li ġej:

“(10) Id-dispożizzjonijiet ta’ dan l-artikolu m’għandhomx japplikaw:

(a) meta t-titoli kummerċjali in kwistjoni jinżammu f’kumpannija li l-attiv tagħha jkun jikkonsisti

ghal kollox jew prinċipalment fi proprjetà immobbli li tkun tinsab ġewwa Malta; jew

(b) meta l-eżenzjoni msemmija tqum permezz tas-subartikolu 3(d), it-titoli kummerċjali msemmija jiġu akkwiziti minn individwu li huwa ordinarjament residenti jew domiciljat f'Malta jew minn kull persuna oħra (hlief minn xi persuna li għaliha ssir referenza fis-subartikolu (3)) li tkun proprjetà jew ikontrollata minn, jew li taġixxi għan-nom ta', individwu li huwa ordinarjament residenti u domiciljat f'Malta.”.

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu sabiex isiru ċerti emendi fl-Att dwar il-Kumpanniji, Kap. 386 u emenda konsegwenzjali fl-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti, Kap. 364.

**A BILL
entitled**

AN ACT of 2007 to amend the Companies Act (Cap. 386)

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

Short title and
coming into force.
Cap. 386.

1. (1) The short title of this Act is the Companies (Amendment) Act, 2007, and it shall be read and construed as one with the Companies Act, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date or dates as the Minister responsible for finance may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and for different purposes of this Act.

Amendment of
article 2 of the
principal Act.

2. In subparagraph (iii) of paragraph (b) of sub-article (3) of article 2 of the principal Act, for the word “shares”, there shall be substituted the word “securities”.

Amendment of
article 6 of the
principal Act.

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

(a) for the marginal note thereto there shall be substituted the following marginal note:

“Indication of particulars in business letters, order forms, websites etc.”;

(b) for sub-article (1) thereof, there shall be substituted the following:

“(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.”;

(c) for sub-article (2) thereof, there shall be substituted the following:

“(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.”;

(d) for sub-article (3) thereof, there shall be substituted the following:

“(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 sub-article (1).”;

(e) for sub-article (4) thereof, there shall be substituted the following:

“(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 sub-article (1).”;

(f) the present sub-articles (8) and (9) thereof shall be renumbered as sub-articles (9) and (10) respectively;

(g) immediately after sub-article (7) thereof, there shall be added the following new sub-article (8):

“(8) Where a reference is made to the capital of a company in the documents or internet websites referred to in the preceding sub-articles, that reference shall include a reference to both the issued and the paid up capital.”; and

(h) in sub-article (9), as renumbered, immediately after the words “the provisions of sub-articles (1) to (6)”, there shall be inserted the words “and of sub-article (8)”.

Amendment of article 49 of the principal Act.

4. Article 49 of the principal Act shall be amended as follows:

(a) for sub-article (1) thereof, there shall be substituted the following:

“(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 sub-article (1) thereof and to the rights of creditors under sub-article (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.”; and

(b) for sub-article (2) thereof, there shall be substituted the following:

“(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 sub-article (1) thereof and to the rights of creditors under sub-article (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.”.

- 5.** Article 66A of the principal Act shall be amended as follows: Amendment of article 66A of the principal Act.

(a) in sub-article (1) thereof:

(i) for the words “a partnership *en commandite* or limited partnership which in the deed of partnership”, there shall be substituted the words “a partnership *en commandite* or limited partnership the capital of which is divided into shares which in the deed of partnership”; and

(ii) for the words “and which qualifies as a collective investment scheme and is duly licensed in terms of the Investment Services Act,”, there shall be substituted the words “and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act”;

(b) in sub-article (2) thereof:

(i) for the words “by the provisions of Part IV of this Act”, there shall be substituted the words “by the provisions of this Part of this Act”; and

(ii) in the proviso, for the words “or Part IV of this Act,”, there shall be substituted the words “or this Part of this Act,”;

(c) in sub-article (3) thereof, for the words “and of Part IV of this Act”, there shall be substituted the words “and of this Part of this Act”.

- 6.** In article 72 of the principal Act, immediately after sub-article (5), there shall be added the following new sub-article: Amendment of article 72 of the principal Act.

“(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.”.

- 7.** For sub-article (2) of article 82 of the principal Act, there shall be substituted the following: Amendment of article 82 of the principal Act.

“(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 sub-article (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.”.

Addition of new articles 114A to 114D to the principal Act.

8. Immediately after article 114 of the principal Act, there shall be inserted the following new articles:

114A. (1) Where a company issues shares (the “issuing company”) and the issuing company:

“Group reconstruction relief.

(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).

Takeover
relief.

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:

(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 sub-article (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.

Relief may be reflected in company’s balance sheet.

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 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 consideration provided for the shares issued is to be included in the company's balance sheet.

Power to
make further
provisions by
regulations.

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 sub-article (1) hereof 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.”.

9. In sub-article (3) of article 159 of the principal Act, for the words “The company shall within fourteen days of the deposit of a notice of resignation send a copy of the notice to the Registrar for registration.”, there shall be substituted the words “The company shall within fourteen days of the deposit of a notice of resignation give notice thereof to the Registrar for registration.”.

Amendment of
article 159 of the
principal Act.

10. For sub-article (3) of article 182 of the principal Act, there shall be substituted the following:

Amendment to
article 182 of the
principal Act.

“(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 sub-article (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 sub-article, 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 sub-article 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."

Amendment of article 184 of the principal Act.

11. In sub-article (2) of article 184 of the principal Act, immediately at the end thereof, there shall be added the words:

"Where the annual return is forwarded to the Registrar by electronic means, in addition to the manner of signing laid down in this sub-article, 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."

Amendment to article 387 of the principal Act.

12. In sub-article (1) of article 387 of the principal Act, for the words "in every calendar year" there shall be substituted the words "within forty two days from the end of the period referred to in sub-articles (2) and (3) of article 182".

Amendment of article 401 of the principal Act.

13. Article 401 of the principal Act shall be amended as follows:

(a) in paragraph (e) of sub-article (1) thereof, for the words "or of any deduction referred to in article 83", there shall be substituted the words "or of any reduction referred to in article 83";

(b) for paragraph (f) of sub-article (1) thereof, there shall be substituted the following:

"(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;"

Amendment of article 425 of the principal Act.

14. In paragraph (d) of sub-article (1) of article 425 of the principal Act, for the words "other than the Ninth, Tenth, Eleventh and

Twelfth Schedule”, there shall be substituted the words “other than the Ninth, Eleventh and Twelfth Schedule”.

15. In indent (b) of sub-paragraph (4) of paragraph 4 of the Eighth Schedule to the principal Act, for the words “closing date”, there shall be substituted the words “closing rate”.

Amendment of the Eighth Schedule to the principal Act.

16. Article 47 of the Duty on Documents and Transfers Act shall be amended as follows:

Consequential amendment of the Duty on Documents and Transfers Act. Cap. 364.

(a) in sub-article (3) thereof, there shall be added the following new paragraph:

“(e) a company which proves to the satisfaction of the Commissioner that it carries on, or intends to carry on, business or has, or intends to have, business interests to the extent of more than ninety percent outside Malta by demonstrating that it satisfies such conditions as to the Commissioner may appear appropriate.”;

(b) sub-article (9) thereof shall be substituted by the following:

“(9) The provisions of this article shall only be applicable where the Commissioner has so determined and such determination and any determination made pursuant to sub-article (7) or sub-article (8) shall continue to be applicable as long as the relevant conditions and provisions are satisfied.”; and

(c) immediately after sub-article (9) thereof there shall be added the following new sub-article:

“(10) The provisions of this article shall not apply:

(a) where the marketable securities in question are held in a company the assets of which consist wholly or principally of immovable property situated in Malta; or

(b) where the said exemption arises by virtue of sub-article 3(d), the said marketable securities are

acquired by an individual who is ordinarily resident and domiciled in Malta or by any other person (other than any person referred to in sub-article (3)) who is owned or controlled, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.”.

Objects and reasons

The object of this Bill is to make certain amendments to the Companies Act, Cap. 386 and a consequential amendment to the Duty on Documents and Transfers Act, Cap. 364.