

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,663, 18 ta' Ottubru, 2016
Taqsimha C

Nru. 172

18. 10. 2016

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Edward Scicluna, M.P., Ministru għall-Finanzi, u moqri għall-Ewwel darba fis-Seduta tat-12 ta' Ottubru, 2016.

A BILL introduced by the Honourable Edward Scicluna, M.P., Minister for Finance, and read the First time at the Sitting of the 12th October, 2016.

**ATT sabiex jemenda l-Att
dwar il-Kumpanniji, Kap. 386.**

**AN ACT to introduce amendments
to the Companies Act (Cap. 386).**

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.

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

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2016 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 imsejjah "l-Att prinċipali".

Titolu fil-qosor
Kap. 386.

2. Is-subartikolu (2) tal-artikolu 258 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 258 tal-Att prinċipali.

(a) il-paragrafi (d), (e), (f), (g), (h), (i) u (j) tiegħu għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (f), (g), (h), (i), (j), (k) u (l) rispettivament;

(b) minnufih wara l-paragrafu (ċ) tiegħu għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(d) kull infiq meħtieġ magħmul mill-kontrollur speċjali waqt il-qadi ta' dmirijietu skont l-artikoli 329A u 329B;

(e) ir-rimunerazzjoni tal-kontrollur speċjali;" u

(ċ) minnufih wara l-paragrafu (l) tiegħu, kif enumerat

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mill-ġdid, għandu jizdied il-paragrafu ġdid li ġej:

"(m) kull finanzjament ġdid li jingħata lill-kumpannija għall-iskop tal-proċedura ta' rkuprar skont l-artikoli 329A u 329B."

Emenda tal-artikolu 327 tal-Att prinċipali.

ġej:

3. L-artikolu 327 tal-Att prinċipali għandu jiġi emendat kif

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Meta ftehim jew arrangament ikun propost bejn kumpannija u l-kredituri tagħha, jew xi klassi minnhom, jew bejn il-kumpannija u l-membri tagħha, jew xi klassi minnhom:

(a) il-qorti tista', fuq rikors tal-kumpannija jew ta' xi kreditur jew membru tagħha jew, fil-każ ta' kumpannija li tkun qed tiġi stralċjata, l-istralċjarju, tordna li laqgħa tal-kredituri jew klassi ta' kredituri, jew tal-membri tal-kumpannija jew klassi ta' membri, skont il-każ, tissejjaħ b'dak il-mod li tordna l-qorti; jew

(b) il-kumpannija jew kreditur, bl-awtorizzazzjoni ta' mhux inqas minn żewġ terzi tal-kredituri jew klassi ta' kredituri, jistgħu jitolbu sabiex jiġi mahtur medjatur skont l-artikolu 20 tal-Att dwar il-Medjazzjoni, u fil-medjazzjoni għandha tissejjaħ laqgħa għal-kredituri, jew klassi ta' kredituri, skont il-każ, sabiex dawn il-kredituri u il-kumpannija jaslu għal ftehim jew arrangament. Il-prinċipji msemmija fl-Att dwar il-Medjazzjoni għandhom japplikaw.";

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

(i) is-subartikolu prezenti għandu jiġi enumerat mill-ġdid bħala l-paragrafu (a) tiegħu;

(ii) minflok il-kliem "jirrapprezentaw tliet kwarti", għandhom jidhlu l-kliem "jirrapprezentaw żewġ terzi";

(iii) minnufih wara l-kliem "jew bi prokura fil-laqgħa", għandhom jizdiedu l-kliem "imsejjaħ skont is-

subartikolu (1)(a)";

(iv) minnufih wara l-paragrafu (a) tiegħu għandu jiżdied il-paragrafu ġdid li ġej:

"(b) Jekk il-kredituri kollha, wara l-proċess ta' medjazzjoni, jaslu għal ftehim jew arrangament bil-miktub skont is-subartikolu (1)(b), dak il-ftehim jew arrangament ikun jorbot lill-kredituri kollha, kif ukoll lill-kumpannija jew, fil-każ li l-kumpannija tkun qed tiġi stralċjata, lill-istralċjarju."; u

(ċ) is-subartikolu (3) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(3) L-ordni tal-qorti, jew il-ftehim jew arrangament milhuq wara il-proċess ta' medjazzjoni skont is-subartikolu (2) ma jkollu l-ebda effett sakemm kopja ta' kull tali ordni, ftehim jew arrangament tkun konsenjata lir-Registatur għar-registrazzjoni skont l-artikolu 329(5); u kopja ta' kull tali ordni, ftehim jew arrangament għandha tkun mehmuża ma' kull kopja tal-memorandum tal-kumpannija maħruġ wara li jkun sar l-ordni, ftehim jew arrangament.".

4. Fis-subartikolu (1) tal-artikolu 328 tal-Att prinċipali, minflok il-kliem "skont l-artikolu 327" għandhom jidhlu l-kliem "jew fejn ikun maħtur medjatur skont l-artikolu 327".

Emenda tal-artikolu 328 tal-Att prinċipali.

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

Emenda tal-artikolu 329B tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (b)(ii) tiegħu, minnufih wara l-kliem "bord tad-diretturi" għandhom jiżdiedu l-kliem "kull meta, wara li jkun ġie iċċirkulat avviz li jsejjaħ laqgħa ġenerali skont l-artikolu 329A, il-laqgħa ġenerali ma ssirx, jew ma jkunx hemm *quorum* waqt il-laqgħa, jew ma tgħaddix riżoluzzjoni biex isir rikors biex il-kumpannija tidhol fil-proċess ta' rkuprar minhabba li jkun hemm parità wara it-tehid ta' vot";

(ii) fil-paragrafu (b)(iii) tiegħu, minflok il-kelma "kredituri." għandhom jidhlu l-kliem "kredituri; jew"; u

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(iii) minnufih wara għandu jizdied is-subparagrafu ġdid li ġej:

"(iv) minn kredituri li jiffurmaw parti minn klassi ta' kredituri jekk dawn il-kredituri jkunu jirrapprezentaw iktar minn nofs il-kredituri fil-valur tal-kredituri tal-kumpannija f'dik il-klassi.";

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

"(ċ) (i) Kredituri b'interessi differenti għandhom jiġu trattati fi klassijiet separati li jirriflettu dawk l-interessi.

(ii) Fil-każ li jkun hemm kemm kredituri assigurati u kredituri mhux assigurati, dawn il-kredituri għandhom jiġu ikkunsidrati bħala klassijiet separati.";

(v) il-paragrafi (d) u (e) tiegħu għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (e) u (f) rispettivament; u

(vi) minnufih wara l-paragrafu (ċ) tiegħu għandu jizdied il-paragrafu ġdid li ġej:

"(d) Il-hatra ta' kontrollur speċjali għandha ssir għal żmien ta' mhux iktar minn erba xhur; iżda, f'kull żmien li matulu jkun hemm fis-seħh proċedura biex kumpannija tirkupra, il-qorti tista', jekk tintwera raġuni xierqa, testendi ż-żmien b'perjodu jew b'perjodi ta' erba' xhur, iżda li b'kollox ma jeċċedux it-tmien xhur.";

(b) fil-paragrafu (b)(ii) tas-subartikolu (2) tiegħu, minflok il-kliem "u l-indirizzi" għandhom jidhlu l-kliem "u l-indirizzi, li jinkludi indirizzi b'posta elettronika,";

(ċ) is-subartikolu (3) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (ċ)(i) tiegħu, minflok il-kliem "kredituri, tal-azzjonijisti" għandhom jidhlu l-kliem "kredituri, waqt li jitqiesu l-klassijiet differenti ta' kredituri, tal-azzjonijisti"; u

(ii) fil-paragrafu (e) tiegħu, minflok il-kliem

"għoxrin jum tax-xogħol" għandhom jidhlu l-kliem "erbghin jum tax-xogħol";

(d) is-subartikolu (4) tiegħu għandu jiġi emendat kif ġej:

(i) is-subartikolu preżenti għandu jiġi enumerat mill-ġdid bħala l-paragrafu (ii) tiegħu, u minnufih qabel l-imsemmi paragrafu għandu jiżdied il-paragrafu ġdid li ġej:

"(i) Id-dispożizzjonijiet ta' dan l-artikolu ma japplikawx għal kull finanzjament ġdid mgħoti lill-kumpannija biex jiġi implimentat pjan ta' rkuprar tal-kumpannija:

Izda kull finanzjament ġdid taht dan l-Att, għandu jeskludi finanzjament, djun u obbligi oħra li jkunu diġà eżistenti qabel l-ordni għall-irkuprar tal-kumpannija, ukoll jekk dawn l-imsemmija finanzjament, djun u obbligi oħra huma ristrutturati b'tali mod sabiex jiġu inklużi f'xi finanzjament miksub jew li għandu jkun miksub wara l-ordni ta' rkuprar tal-kumpannija.";

(ii) fil-paragrafu (f) tiegħu, minflok il-kliem "jista' jsir kontra l-kumpannija jew xi proprjetà tal-kumpannija" għandhom jidhlu l-kliem "jista' jsir jew jitkompla kontra l-kumpannija jew xi proprjetà tal-kumpannija, inkluż kull mandat maħruġ skont l-artikolu 312 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili";

(iii) il-paragrafu (g) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (h);

(iv) minnufih wara l-paragrafu (f) tiegħu għandu jiżdied il-paragrafu ġdid li ġej:

"(g) l-ebda proċedura ta' arbitraġġ ma tista' ssir jew titkompla kontra l-kumpannija jew kontra xi proprjetà tagħha; u"; u

(v) fil-paragrafu (h) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "ebda proċediment ġudizzjarju" għandhom jidhlu l-kliem "minkejja kull ma' jingħad f'dan is-subartikolu, ebda proċediment ġudizzjarju";

(e) is-subartikolu (5) tiegħu għandu jiġi emendat kif ġej:

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(i) fil-paragrafu (a)(i) tiegħu, minflok il-kliem "u biex jaqdi" għandhom jidhlu l-kliem "għal perijodu kif stipulat fis-subartikolu (1)(ċ). Il-kontrollur speċjali għandu jaqdi";

(ii) fil-paragrafu (a)(ii) tiegħu, minflok il-kliem "u l-attiv" għandhom jidhlu l-kliem "u l-attiv, u skont kull regolament applikabbli li jkun sar mill-Ministru";

(iii) fil-paragrafu (a)(iii) tiegħu, minflok il-kliem "mal-hatra tiegħu." għandhom jidhlu l-kliem "mal-hatra tiegħu:", u minnufih wara għandu jizjed il-proviso ġdid li ġej:

"Izda l-qorti tista' tordna li r-rimunerazzjoni u hlasijiet oħra li l-kontrollur speċjali jista' jkollu jedd għalihom jiġu imħallsa minn fond speċjali mwaqqaf b'regolamenti magħmula taht is-subartikolu (15), liema rimunerazzjoni u hlasijiet oħra jiġu rimborsati mingħand il-kumpannija kif imsemmi f'dan l-artikolu. Ir-Registatur tal-Qrati għandu minnufih jikkonsenja kopja ta' din l-ordni lir-Riċevitur Uffiċjali.

Il-kumpannija għandha tiġi nnotifikata bil-miktub bin-nefqa li tkun saret skont din il-proviso.

Il-kumpannija għandha tħallas din in-nefqa minnufih, u fil-każ li l-kumpannija tkun stralċjata jew tkun fil-proċess li qegħda tiġi stralċjata, ir-Riċevitur Uffiċjali għandu, fir-rigward ta' din l-ispiza, igawdi mill-istess trattament preferenzjali li jgawdi r-rimborz ta' spejjeż dovuti lill-istraċlarju skont dan l-Att.

Kopja tal-avviż kif imsemmi f'dan il-proviso notifikata permezz ta' att ġudizzjarju lill-kumpannija 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

(iv) fil-paragrafu (b) tiegħu, minnufih wara l-kliem "il-hatra tiegħu." tgħandhom jizjed l-kliem "Il-qorti tista tahtar bhala kontrollur speċjali individwu li huwa msemmi fil-lista ta' individwi eligibbli li jservu

bħala kontrolluri speċjali, miżmuma mir-Riċevitur Uffiċjali.";

(f) fil-paragrafu (ċ) tas-subartikolu (6) tiegħu, minflok il-kliem "tal-kumpannija" għandhom jidhlu l-kliem "tal-kumpannija, u proposti magħmula mir-rikorrenti skont is-subartikolu (2)(a) dwar kif tista' titjeb il-qagħda finanzjarja u ekonomika tal-kumpannija,";

(g) is-subartikolu (7) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (a) tiegħu, minflok il-kliem "u membri," għandhom jidhlu l-kliem "u membri, jew klassi ta' membri,";

(ii) minnufih wara l-paragrafu (a)(ii) tiegħu, għandu jizjed is-subparagrafu ġdid li ġej:

"(iii) jiġu diskussi il-proposti dwar il-prospetti futuri tal-kumpannija, u t-tmexxija tagħha, li jkunu sejrin jiġu pprezentati lill-qorti.";

(iii) fil-paragrafu (b) tiegħu, minflok il-kliem "erbatax-il jum jingħataw biex issir xi laqgħa bħal dik" għandhom jidhlu l-kliem "sebat ijiem jingħataw biex issir l-ewwel laqgħa ta' kredituri u membri, jew klassijiet tagħhom";

(iv) fil-paragrafu (ċ) tiegħu, minflok il-kliem "laqgħat tal-kredituri u membri f'gazzetta ta' kuljum b'ċirkolazzjoni għal kollox jew prinċipalment f'Malta, mhux aktar tard minn erbatax-il jum" għandhom jidhlu l-kliem "l-ewwel laqgħa ta' kredituri u membri, jew klassijiet tagħhom, f'gazzetta ta' kuljum b'ċirkolazzjoni għal kollox jew prinċipalment f'Malta, mhux iktar tard minn sebat ijiem"; u

(v) minnufih wara l-paragrafu (d) tiegħu, għandu jizjed il-paragrafu ġdid li ġej:

"(e) Il-kontrollur speċjali għandu jiżgura li kull avviż b'sejha għall-ewwel laqgħa tal-kredituri jew membri, jew klassijiet tagħhom, għandu jingħata ukoll lill-kredituri li jkunu magħrufa u li jkunu jgħixu jew qegħdin bbażati barra minn Malta, u dawk il-kredituri li jkunu barra minn

C 950

Malta għandhom jingħataw l-opportunità li jipparteċipaw f'kull laqgħa bħal dik, u fil-każ ta' xi dritt għal xi votazzjoni, dan jkun jista' jsir b'mezzi eletronici."

(g) is-subartikolu (11) tiegħu għandu jiġi emendat kif ġej:

(i) il-paragrafu (a) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (a)(i);

(ii) fil-paragrafu (a)(i) tiegħu, kif enumerat mill-ġdid, minflok il-kliem "kull perijodu ta' erba' xhur li jibdew mal-egħmil tal-ordni sakemm jispiċċa l-hatra tiegħu" għandhom jidhlu l-kliem "l-perijodu inizjali tal-hatra jew wara kull perijodu ta' estensjoni li jingħata";

(iii) minnufih wara l-paragrafu (a)(i) tiegħu, kif enumerat mill-ġdid, għandu jiżdied is-subparagrafu ġdid li ġej:

"(ii) Il-kontrollur speċjali jista', jekk jidhirlu li hemm il-htieġa raġjonevoli, flimkien mal-imsemmi rapport, iressaq talba lill-qorti għal estenzjoni tal-hatra tiegħu għal perijodu ieħor ta' erba' xhur sa massimu totali tal-hatra tiegħu ta' mhux aktar minn tnax il-xahar."; u

(iv) minnufih wara l-paragrafu (b) tiegħu, għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(c) Il-qorti għandha fi żmien li ma jaqbiżx għoxrin jum ta' xogħol minn meta jispiċċa il-perijodu tal-hatra tal-kontrollur speċjali, liema żmien jgħodd ukoll għal kull estensjoni li tkun ingħatat għal-hatra tal-kontrollur speċjali, tiddikjara l-għeluq taż-żmien tal-proċedura ta' rkupru tal-kumpannija, u li l-kumpannija tkun irkuprat, jew li l-kumpannija għandha tiġi xolta u stralċjata, indipendentement mill-fatt jekk il-qorti tkunx irċeviet ir-rapport mingħand il-kontrollur speċjali. Il-qorti għandha tagħti dawk il-provvedimenti u kondizzjonijiet li jidhriha li huma neċessarji fiċ-ċirkostanzi tal-każ.

(d) Kull kreditur jew membru jew ir-Registratur jew ir-Riċevitur Uffiċjali jista', f'kull

hin wara li jkun skada l-perijodu ta' għoxrin jum ta' xogħol imsemmi fil-paragrafu (ċ), jitlob lill-qorti sabiex tiddikjara l-għeluq tal-proċedura ta' rkuprar tal-kumpannija.";

(h) is-subartikolu (12) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (e) tiegħu, minnufih wara l-kliem "għal kolloxx jew f'parti," għandhom jiżdiedu l-kliem "waqt li jitqiesu l-interessi tal-kredituri, tal-kumpannija u tal-membri tagħha, u l-klassijiet partikolari ta' membri u kredituri,"; minnufih wara l-kliem "dwar riżorsi finanzjarji," għandhom jiżdiedu l-kliem "inkluż finanzjament ġdid"; u minflok il-kliem "mill-kredituri kollha." għandhom jidhlu l-kliem "mill-kredituri kollha, u għandu jinkludi l-pożizzjoni tal-kredituri fir-rigward tal-imsemmija proposti."; u

(ii) minnufih wara l-paragrafu (g) tiegħu, għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(h) Fejn il-qorti tapprova l-pjan propost ta' rkuprar tal-kumpannija, sew b'emendi jew mingħajrom, dawk il-kredituri li ma jkunux jaqblu ma' dan il-pjan jistgħu jressqu appell quddiem il-Qorti tal-Appell (Ġurisdiżzjoni Inferjuri) kostitwita skont l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jekk ikun jidhrilhom li d-drittijiet tagħhom ser ikunu inqas milli kienu ser jieħdu li kieku l-kumpannija kellha tiġi xjolta u stralċjata meta kien sar ir-rikors skond is-subartikolu (1)(b). Biex jiġu salvagwardati l-interessi tal-kredituri li jkunu qed jappoġġjaw il-proċess ta' rkuprar, l-appell ma għandux awtomatikament jissospendi l-implimentazzjoni tal-pjan u l-proċess ta' rkuprar, u r-rimedju li jistgħu jingħataw ikunu limitati għal kumpens dwar telf li jkun soffra ir-rikorrent bhala riżultat tal-proċess ta' rkuprar.

(i) Fejn fil-pjan ta' rkuprar jkun previst finanzjament ġdid lill-kumpannija, kull persuna li tkun ipprovdiet dan il-finanzjament ġdid, sakemm ma jkunx hemm agir frodulenti, għandha tkun eżenti minn kull responsabbiltà ċivili u kriminali relatata mall-proċess ta' rkuprar tal-kumpannija.".

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Ghanijiet u Raġunijiet

L-għan ta' dan l-Abbozz ta' Liġi hu li jemenda l-Att dwar il-Kumpanniji sabiex jittejbu l-proċessi ta' rkuprar għal kumpanniji reġistrati li jkunu f'diffikultajiet finanzjarji.

**A BILL
entitled**

AN ACT to introduce amendments to the Companies Act (Cap. 386).

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, 2016, and this Act shall be read and construed as one with the Companies Act, hereinafter referred to as "the principal Act".

Short title and commencement.

Cap. 386.

2. Sub-article (2) of article 258 of the principal Act shall be amended as follows:

Amendment of article 258 of the principal Act.

(a) paragraphs (d), (e), (f), (g), (h), (i) and (j) thereof shall be renumbered as paragraphs (f), (g), (h), (i), (j), (k) and (l) respectively;

(b) immediately after paragraph (c) thereof there shall be added the following new paragraphs:

"(d) any necessary disbursements by the special controller in the course of his office in terms of articles 329A and 329B;

(e) the remuneration of the special controller;"

and

(c) immediately after paragraph (l) thereof, as renumbered, there shall be added the following new paragraph:

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"(m) any new financing granted to the company for the purpose of a recovery procedure in terms of articles 329A and 329B."

Amendment of article 327 of the principal Act.

3. Article 327 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(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:

(a) 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 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; or

(b) the company or any creditor, with the sanction of not less than two-thirds of the creditors or class of creditors, may seek the appointment of a mediator in terms of article 20 of the Mediation Act, and such mediation shall organise a meeting of the creditors, or class of creditors, as the case may be, in order for such creditors and the company to reach a compromise or arrangement. The principles under the Mediation Act shall apply.";

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

(i) the current sub-article shall be re-numbered as paragraph (a) thereof;

(ii) for the words "representing three-fourths", there shall be substituted the words "representing two-thirds";

(iii) immediately after the words "or by proxy at the meeting", there shall be added the words "called in terms of sub-article (1)(a)";

(iv) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(b) If all the creditors, as a result of the mediation process, execute a written agreement containing a compromise or arrangement in terms of sub-article (1)(b), such arrangement shall be binding on all creditors, and also on the company or, in the case of a company in the course of being wound up, on the liquidator."; and

(c) sub-article (3) thereof shall be substituted by the following:

"(3) The court's order, compromise or agreement reached during mediation in terms of sub-article (2) shall have no effect until a copy of every such order, compromise or arrangement has been delivered to the Registrar for registration in accordance with article 329(5); and a copy of every such order, compromise or arrangement shall be annexed to every copy of the company's memorandum issued after order, compromise or arrangement has been made.".

4. In sub-article (1) of article 328 of the principal Act, for the words "under article 327" there shall be substituted the words "or where a mediator is appointed in terms of article 327".

Amendment of article 328 of the principal Act.

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

Amendment of article 329B of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) in paragraph (b)(ii) thereof, immediately after the words "board of directors" there shall be added the words "whenever, following a notice to convene a general meeting in terms of article 329A, the general meeting does not convene, or a quorum is not present at the said meeting, or a resolution with regards to the filing of a recovery application is not passed due to an unresolved tie following a vote";

(ii) in paragraph (b)(iii) thereof, for the word "creditors." there shall be substituted the words "creditors; or"; and

(iii) immediately thereafter there shall be added the following new sub-paragraph:

"(iv) by creditors forming part of a class of creditors if such creditors represent more than half

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in value of the company's creditors in that class.";

(iv) paragraph (c) thereof shall be substituted by the following:

"(c) (i) Creditors with different interests should be treated in separate classes which reflect those interests.

(ii) Where both secured and unsecured creditors exist, they shall be treated as separate classes.";

(v) paragraphs (d) and (e) thereof shall be renumbered as paragraphs (e) and (f) respectively; and

(vi) immediately after paragraph (c) thereof there shall be added the following new paragraph:

"(d) The appointment of a special controller shall be made for a period not exceeding four 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 further periods of four months, provided that the aggregate additional periods do not exceed a further eight months.";

(b) in paragraph (b)(ii) of sub-article (2) thereof, for the words "and addresses" there shall be substituted the words "and addresses, including electronic mail addresses,";

(c) sub-article (3) thereof shall be amended as follows:

(i) in paragraph (c)(i) thereof, for the words "creditors, shareholders" there shall be substituted the words "creditors, regard being had to the different classes of creditors, of the shareholders"; and

(ii) in paragraph (e) thereof, for the words "twenty working days" there shall be substituted the words "forty working days";

(d) sub-article (4) thereof shall be amended as follows:

(i) the current sub-article shall be re-numbered as paragraph (ii) thereof, and immediately before the said paragraph there shall be added the following new

paragraph:

"(i) The provisions of this article shall not apply with respect to any new financing given to the company for the purpose of implementing a recovery plan:

Provided that new financing under this Act shall exclude financing, debts or obligations which already existed at the time of the recovery order, even if such financing, debts, or obligations are restructured in any manner in order to be included with any financing obtained or to be obtained after the recovery order.";

(ii) in paragraph (f) thereof, for the words "shall be made against the company or any property of the company" there shall be substituted the words "shall be made or continued against the company or any property of the company, including any warrant in terms of article 312 of the Code of Organization and Civil Procedure";

(iii) paragraph (g) thereof shall be renumbered as paragraph (h); and

(iv) immediately after paragraph (f) thereof there shall be added the following new paragraph:

"(g) no arbitration proceeding shall be made or continued against the company or any property of the company; and"; and

(v) in paragraph (h) thereof, as re-numbered, for the words "no judicial proceedings" there shall be substituted the words "notwithstanding anything contained in this sub-article, no judicial proceedings";

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

(i) in paragraph (a)(i) thereof, for the words "and to carry" there shall be substituted the words "for a period as specified in sub-article (1)(c). The special controller shall carry";

(ii) in paragraph (a)(ii) thereof, for the words "and assets" there shall be substituted the words "and assets, and in terms of any applicable regulations made by the Minister";

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(iii) in paragraph (a)(iii) thereof, for the words "to his appointment." there shall be substituted the words "to his appointment:", and immediately thereafter there shall be added the following proviso:

"Provided that the court may 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 proviso shall be notified in writing to the company.

The company shall effect payment without delay, and in the event that the company is or has been dissolved, the Official Receiver shall, in regard to the said expense, enjoy the same preferential ranking as expenses properly incurred by a liquidator in accordance with this Act.

A copy of the aforementioned notice 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

(iv) in paragraph (b) thereof, immediately after the words "to his appointment." there shall be added the words "The court may 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.";

(f) in paragraph (c) of sub-article (6) thereof, for the words "of the company" there shall be substituted the words "of the company, and any proposals made by the applicant in terms of sub-article (2)(a) as to how the financial and economic situation of the company can be improved,";

(g) sub-article (7) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "and members," there shall be substituted the words "and members, or classes thereof,";

(ii) immediately after paragraph (a)(ii) thereof, there shall be added the following new sub-paragraph:

"(iii) discussing the proposals for the future prospects and management of the company, to be presented to the court.";

(iii) in paragraph (b) thereof, for the words "fourteen days notice shall be given of the holding of any such meeting or meetings" there shall be substituted the words "seven days notice shall be given of the holding of the first meeting of creditors and members, or classes thereof";

(iv) in paragraph (c) thereof, for the words "meetings of creditors and members in a daily newspaper circulating wholly or mainly in Malta, not later than fourteen" there shall be substituted the words "first meeting of creditors and members, or classes thereof, in a daily newspaper circulating wholly or mainly in Malta, not later than seven"; and

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

"(e) The special controller shall ensure that any notice convening the first meeting of creditors or members, or classes thereof, shall also be given to known creditors residing or based abroad, and such foreign creditors shall also be given the opportunity to participate in any such meeting, and any voting rights may be exercised by means of electronic communication.".

(g) sub-article (11) thereof shall be amended as follows:

(i) paragraph (a) thereof shall be re-numbered as paragraph (a)(i);

(ii) in paragraph (a)(i) thereof, as re-numbered, for the words "every period of four months commencing from the date of the making of the order until the termination of his appointment" there shall be substituted

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the words "the original period of appointment or at the end of each extension";

(iii) immediately after paragraph (a)(i) thereof, as re-numbered, there shall be added the following new subparagraph:

"(ii) The special controller may, if he deems it is reasonably necessary, together with the said report, present an application to the court for a one time extension of his appointment for a further period of four months up to a maximum period of appointment not exceeding twelve months."; and

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

"(c) The court shall within a period not exceeding twenty working days from the termination of the period of appointment of the special controller, including any extension thereof, declare the termination of the company recovery procedure, and that the company has recovered, or that it shall be dissolved and wound up, irrespective whether it has received the said report from the special controller. The court shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.

(d) Any creditor or member or the Registrar or the Official Receiver may at any time after the lapse of the twenty working days mentioned in paragraph (c) apply to the court for a declaration of the termination of the recovery procedure.";

(h) sub-article (12) thereof shall be amended as follows:

(i) in paragraph (e) thereof, immediately after the words "in whole or in part," there shall be added the words "regard being had to the interests of the creditors, the company and its members, and the particular classes of members and creditors,"; immediately after the words "to financial resources," there shall be added the words "including new financing"; and for the words "by all the creditors." there shall be substituted the words "by all the creditors, and shall include the position of the creditors

with regards to the said proposals."; and

(ii) immediately after paragraph (g) thereof, there shall be added the following new paragraphs:

"(h) Where the court accepts the proposed recovery plan, with or without amendments, the dissenting creditors may apply to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and Civil Procedure, if they consider that their rights are likely to be reduced to a level which is lower than what they would be granted had the company been dissolved and wound up at the time of the recovery application in terms of sub-article (1)(b). In the interest of the creditors supporting the plan, such appeal shall not automatically suspend the implementation of the recovery plan and procedures, and remedies shall be limited to compensation for the loss suffered by the applicant as a result of the recovery procedure.

(i) Where the proposed recovery plan seeks new financing, the providers thereof shall, in the absence of any fraudulent actions, be exempt from civil and criminal liability relating to the recovery procedure."

Objects and Reasons

The object of this Bill is to amend the Companies Act so as improve the recovery process for registered companies in financial difficulties.

