

MALTA

ATT Nru. XXX ta' l-1997

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

**ATT biex jemenda l-Att ta' l-1995
dwar il-Kumpanniji.**

ACT No. XXX of 1997

AN ACT enacted by the Parliament of Malta.

**AN ACT to amend the Companies Act,
1995.**

Nagħti l-kunsens tiegħi.

(L.S.)

UGO MIFSUD BONNICI
President

26 ta' Diċembru, 1997

ATT Nru. XXX ta' l-1997

ATT biex jemenda l-Att ta' l-1995 dwar il-Kumpanniji

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. Dan l-Att jista' jissejjah l-Att ta' l-1997 li jemenda l-Att dwar il-Kumpanniji, u għandu jiftiehem u jinqara haġa waħda ma' l-Att ta' l-1995 dwar il-Kumpanniji, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor.

Att XXV ta' l-1995.

2. L-artikolu 428 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 428 ta' l-Att prinċipali.

(a) minflok is-subartikolu (4) tiegħu għandu jidhol dan li ġej:

“(4) Kemm-il darba ma jkunx provdut xort'ohra f'dan l-artikolu, u minkejja kull haġ'ohra li tinsab fil-Memorandum jew fl-Istatut jew fl-att tas-soċjetà, skond il-każ, mill-1 ta' Marzu, 1998, id-dispożizzjonijiet ta' dan l-Att għandhom ikunu japplikaw għal soċjetajiet kummerċjali ffurmati u registrati taht l-Ordinanza. Dawk is-soċjetajiet kummerċjali għandhom, qabel l-1 ta' Marzu, 1998, iħarsu d-dispożizzjonijiet ta' dan l-Att u għandhom, sa dak iż-żmien, ikompli jiġu regolati bl-Ordinanza:

Iżda soċjetà kummerċjali tista', billi thares id-dispożizzjonijiet ta' dan l-Att qabel dik id-data, tagħzel li tkun

regolata bid-dispożizzjonijiet ta' dan l-Att u ghal dan l-ghan il-kumpanija ghandha b'żieda tikkonsenja avviż bil-miktub lir-Reġistratur ghar-reġistrazzjoni; u dik l-għażla ma tibdiex isehh kemm-il darba u sakemm dak l-avviż ma jkunx reġistrat.”;

(b) minflok is-subartikoli (8), (9) u (10) tieghu ghandu jidhol dan li ġej:

“(8) Jekk soċjetà ta' investment bhalma hemm imsemmija fis-subartikolu (3) ta' dan l-artikolu, tonqos li thares id-dispożizzjonijiet ta' dak is-subartikolu fiż-żmien rispettiv hemm stabbilit, dik il-kumpanija ghandha tkun meqjusa xolta u r-Reġistratur jista', f'kull żmien, jagħmel rikors lill-Qorti skond id-dispożizzjonijiet tat-Titolu II tat-Taqsima V ta' dan l-Att:

Iżda l-Qorti tista', jekk jidhrilha xieraq, tagħti żmien iehor ta' mhux aktar minn sena mid-data tad-deċiżjoni tagħha f'liema żmien is-soċjetà kummerċjali tista' tirrimedja n-nuqqas.

(9) Soċjetà kummerċjali bhalma hemm imsemmija fis-subartikolu (4) ta' dan l-artikolu ghandha tagħmel dawk il-bidliet mehtieġa sabiex thares id-dispożizzjonijiet ta' dan l-Att sat-28 ta' Frar, 1998.

(10) Kull tibdil li jenhtieġ li jsir bis-saħħa tas-subartikolu (9) ta' dan l-artikolu ghandu jsir:

(a) fil-każ ta' soċjetà f'isem kollettiv, bil-kunsens ta' soċju jew soċji li jkunu ikkontribwew mill-anqas hamsin fil-mija tal-kontribuzzjonijiet magħmulin lis-soċjetà;

(b) fil-każ ta' soċjetà in akkomandita, bil-kunsens ta' soċju jew soċji ġenerali li jkunu ikkontribwew mill-anqas hamsin fil-mija tal-kontribuzzjonijiet magħmulin mis-soċji ġenerali lis-soċjetà, jew li jkollhom mill-anqas hamsin fil-mija mill-valur nominali tal-ishma tas-soċjetà li jkunu jinżammu mis-soċji ġenerali skond il-każ, flimkien mal-kunsens ta' soċju jew soċji limitati li jkunu ikkontribwew mill-anqas hamsin fil-mija tal-kontribuzzjonijiet magħmulin mis-soċji limitati lis-soċjetà jew li jkollhom mill-anqas hamsin fil-mija mill-

valur nominali ta' l-ishma li jkunu jinżammu mis-soċji limitati skond il-każ;

(ċ) fil-każ ta' kumpannija, minkejja kull haġa li tinsab fil-Memorandum jew l-Istatut, permezz ta' riżoluzzjoni mgħoddija f'laqgħa ġenerali msejha għal dak il-għan minn -

(i) hamsin fil-mija tal-membri rappreżentati fil-laqgħa u li jivvotaw; jew

(ii) għadd ta' membri li jkollhom bejniethom mhux anqas minn hamsin fil-mija tal-valur nominali ta' ishma rappreżentati f'dik il-laqgħa u li jivvotaw;

u kull dispożizzjoni dwar *quorum* f'dik il-laqgħa ma għandhiex tapplika.

Id-dispożizzjonijiet ta' dan is-subartikolu m'għandhomx japplikaw għal xi bidliet fl-att tas-soċjetà jew fil-Memorandum jew fl-Istatut, skond il-każ, li ma jkunux daqstant meħtieġa sabiex jitharsu d-dispożizzjonijiet ta' dan l-Att.”; u

(ċ) minnufih wara s-subartikolu (13) tiegħu, għandhom jiżdiedu dawn is-subartikoli li ġejjin:

“(14) Soċjetà kummerċjali bħalma hemm imsemmija fis-subartikolu (4) ta' dan l-artikolu li tonqas milli tagħmel il-bidliet meħtieġa sabiex thares id-dispożizzjonijiet ta' dan l-Att qabel l-1 ta' Marzu, 1998, għandha tehel penali ta' Lm50, u għal kull gurnata wara dik id-data li matulha jkompli n-nuqqas, penali ulterjuri ta' Lm2. Id-dispożizzjonijiet tas-subartikoli (1) u (2) ta' l-artikolu 427 ta' dan l-Att m'għandhomx ikunu japplikaw għall-penali imposti taht dan is-subartikolu.

(15) Minkejja d-dispożizzjonijiet tal-paragrafu (d) tas-subartikolu (1) ta' l-artikolu 401 ta' dan l-Att, sa dak iż-żmien li l-istrument jew riżoluzzjoni, jew kopja tagħhom, li jagħtu sehh lill-bidliet meħtieġa bis-saħħa tas-subartikolu (4) ta' dan l-artikolu jiġu konsenjati lir-Registatur għar-registrazzjoni, u sa dak iż-żmien li jithallsu xi penali li jistgħu isiru dovuti bis-saħħa tas-subartikolu (14) ta' dan l-artikolu, ir-Registatur m'għandux iżomm u jirreġistra:

— fil-każ ta' kumpannija, xi riżoluzzjoni, avviż, prospett jew dokument iehor meħtieġ li jkun registrat taht dan l-Att, hlief għal xi riżoluzzjoni, avviż, prospett jew dokument li jkun

mehtieg li jiġi konsenjat lir-Registatur skond id-dispożizzjonijiet tat-Titolu II tat-Taqsima V u ta' l-artikoli 122, 146, 183 u 184 ta' dan l-Att; u

— fil-każ ta' xi soċjetà kummerċjali oħra xi strument li jkun jagħti sehh għal xi bdil jew zieda fl-att tas-soċjetà.

(16) Il-Ministru jista' b'ordni fil-Gazzetta, jistabbilixxi data, li tkun data wara l-31 ta' Diċembru, 1998, li fiha kumpannija li tonqos li thares id-dispożizzjonijiet tas-subartikolu (4) ta' dan l-artikolu titqies bħala kumpannija li ma tkunx qegħda tmexxi negozju jew li ma tkunx qed topera għall-ghanijiet ta' l-artikolu 325 ta' dan l-Att.”.

Emenda ta' l-artikolu 431 ta' l-Att prinċipali.

3. Is-subartikolu (1) ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tiegħu, minflok il-kliem “relattiva tagħhom lis-soċjetà.” għandhom jidhlu l-kliem “relattiva tagħhom lis-soċjetà; u”; u

(b) minnufih wara l-paragrafu (ċ) tiegħu kif emendat għandu jizdied dan il-paragrafu ġdid li ġej:

Att XVII
ta' l-1995.

“(d) Soċjetà kummerċjali li fl-1 ta' Marzu, 1998, tkun attiv kontrollat kif imfissra fl-Att ta' l-1995 dwar Kumpanniji Kontrollati (Proċedura ta' Stralċ), għandha tkompli tiġi regolata bl-Ordinanza sa sitt xhur wara li dik is-soċjetà kummerċjali tkun waqfet milli tkun attiv kontrollat skond dak l-Att; u d-dispożizzjonijiet ta' l-artikolu 428 ta' dan l-Att għandhom ikunu japplikaw għal dik il-kumpannija kontrollata bħallikieku riferenza li hemm għat-28 ta' Frar, 1998, kienet riferenza għall-aħħar jum tal-perijodu ta' sitt xhur wara li s-soċjetà kummerċjali tkun temmet milli tkun attiv kontrollat, u riferenza għall-1 ta' Marzu, 1998 kienet riferenza għall-ewwel jum li jiġi minnufih wara dak il-perijodu, u d-dispożizzjonijiet tas-subartikolu (16) ta' l-imsemmi artikolu 428 ikunu biss japplikaw wara l-31 ta' Diċembru tas-sena li fiha jkun skada dak il-perijodu ta' sitt xhur.”.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 167 tal-15 ta' Diċembru, 1997.

MYRIAM SPITERI DEBONO
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

26th December, 1997.

ACT No. XXX of 1997

AN ACT to amend the Companies Act, 1995.

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. This Act may be cited as the Companies (Amendment) Act, 1997, and shall be read and construed as one with the Companies Act, 1995, hereinafter referred to as "the principal Act".

Short title.
Act XXV of 1995.

2. Section 428 of the principal Act shall be amended as follows:

Amendment of
section 428 of the
principal Act.

(a) for subsection (4) thereof there shall be substituted the following:

"(4) Unless otherwise provided in this section, and notwithstanding anything contained in the Memorandum or Articles or in the deed of partnership, as the case may be, as from the 1st March, 1998, the provisions of this Act shall apply to commercial partnerships formed and registered under the Ordinance. Such commercial partnerships shall, before the 1st March, 1998, comply with the provisions of this Act and shall, until such time, continue to be regulated by the Ordinance:

Provided that a commercial partnership may, by complying with the provisions of this Act before such date, elect to be regulated by the provisions of this Act and for this purpose the company shall additionally deliver a notice in writing to the Registrar for registration; and such election shall not take effect unless and until such notice is registered.”;

(b) for subsection (8), (9) and (10) thereof there shall be substituted the following:

“(8) If an investment company as is referred to in subsection (3) hereof, fails to comply with the provisions of the said subsection within the period therein specified, that company shall be considered dissolved and the Registrar may, at any time, apply to the Court in accordance with the provisions of Title II of Part V of this Act:

Provided that the Court may, if it thinks fit, grant a further period not exceeding one year from the date of its decision in which the commercial partnership may remedy the failure.

(9) A commercial partnership as is referred to in subsection (4) of this section shall make the changes necessary in order to comply with the provisions of this Act by the 28th February, 1998.

(10) Any changes necessitated by virtue of subsection (9) of this section shall be made:

(a) in the case of a partnership *en nom collectif*, with the consent of a partner or partners having contributed at least fifty per cent of the contributions made to the partnership;

(b) in the case of a partnership *en commandite*, with the consent of a general partner or partners having contributed at least fifty per cent of the contributions made by the general partners to the partnership, or holding at least fifty per cent of the nominal value of the shares of the partnership held by the general partners as the case may be, together with the consent of a limited partner or partners having contributed at least fifty per cent of the contributions made by the limited partners to the partnership or holding at least fifty per cent of the nominal value of the shares held by the limited partners as the case may be;

(c) in the case of a company, notwithstanding anything contained in the Memorandum or Articles, by means of a resolution, passed by a general meeting of the company called for the purpose, by —

(i) fifty per cent of the members represented at the meeting and voting; or

(ii) a number of members having between them not less than fifty per cent of the nominal value of the shares represented at that meeting, and voting thereat;

and any provision relating to the quorum of members at that meeting shall not apply.

The provisions of this subsection shall not apply to any changes to the deed of partnership or to the Memorandum or Articles, as the case may be, which are not strictly necessary in order to comply with the provisions of this Act.”; and

(c) immediately after subsection (13) thereof, there shall be added the following subsections:

“(14) A commercial partnership as is referred to in subsection (4) of this section which fails to effect the changes necessary in order to comply with the provisions of this Act before the 1st March 1998 shall become liable to a penalty of Lm50, and for every day thereafter during which the default continues, to a further penalty of Lm2. The provisions of subsections (1) and (2) of section 427 of this Act shall not apply to the penalties imposed under this subsection.

(15) Notwithstanding the provisions of paragraph (d) of subsection (1) of section 401 of this Act, until such time as the instrument or resolution, or a copy thereof, giving effect to the changes necessitated by virtue of subsection (4) of this section is delivered to the Registrar for registration, and until such time as any penalties that may be incurred by virtue of subsection (14) of this section are paid, the Registrar shall not retain and register:

— in the case of a company, any resolution, notice or return required to be registered under this Act, other than any resolution, notice, return or other document required to be registered under this Act, other than any resolution, notice, return or other document required to be delivered to the Registrar in terms of the provisions of Title II of Part V and of sections 122, 146, 183 and 184 of this Act; and

— in the case of any other commercial partnership any instrument giving effect to any alteration or addition to the deed of partnership.

(16) The Minister may by order in the Gazette, establish a date, being a date after the 31st December 1998, on which any company which fails to comply with the provisions of subsection (4) of this section shall be deemed to be a company which is not carrying on business or is not in operation for the purposes of section 325 of this Act.”.

Amendment to section 431 of the principal Act.

3. Subsection (1) of section 431 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof for the words “contribution to the partnership.”, there shall be substituted the words “contribution to the partnership; and”; and

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

Act XVII
of 1995.

“(d) a commercial partnership which on the 1st March, 1998, is a controlled asset as defined in the Controlled Companies (Procedure for Liquidation) Act, 1995, shall continue to be regulated by the Ordinance until six months after such commercial partnership shall have ceased to be a controlled asset in accordance with that Act; and the provisions of section 428 of this Act shall apply to such controlled company as if reference therein to the 28th February 1998 were a reference to the last day of the period of six months after the commercial partnership shall have ceased to be a controlled asset, and a reference to the 1st March 1998 were a reference to the first day immediately following such period, and the provisions of subsection (16) of the said section 428 shall only be applicable after the 31st December of the year in which the said period of six months would have lapsed.”.

Passed by the House of Representatives at Sitting No. 167 of the 15th December, 1997.

MYRIAM SPITERI DEBONO
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives