No. 372

MALTA BUSINESS REGISTRY

Explanatory Notes[1]

1. Introduction

Title of Regulations	Various Companies Laws (Amendment) Regulations, 2024
Activity to be regulated	S.L. 386.18, S.L. 386.25, S.L. 386.26, S.L. 386.27, S.L. 386.28
Responsible entity	Malta Business Registry
Head of Legal Unit	Dr Damian Cassar, Legal and Enforcement Unit

2. Summary and background

Aims & Objectives of the Legislation

These Explanatory Notes refer to the Various Companies Laws (Amendment) Regulations, 2024, amending various regulations under the Companies Act as specified in Part I to Part V of these regulations. The aims and objectives of these amendments are:

To transpose the second phase of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law;

To provide legal certainty in matters relating to the cross-border mobility of limited liability companies and the exchange of information in this regard through the system of interconnection of registers.

Overview of the Structure of the Instruments

This legal instrument consists of 48 amending regulations concerning the following:

Regulation 2 – scope

PART I - Amendments to the Companies Act (System of Interconnection of Registers) Regulations [hereinafter referred to as the "principal regulations"]

Regulation 4 – substitutes regulation 6 of the principal regulations

PART II - Amendments to the Companies Act (Use of Digital Tools and Processes) Regulations [hereinafter referred to as the "principal regulations"]

Regulation 6 – amends regulation 12 of the principal regulations
Regulation 7 – adds new regulation to the principal regulations

PART III - Amendments to the Cross-border Divisions of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

Regulation 9 – amends regulation 3 of the principal regulations
Regulation 10 – amends regulation 7 of the principal regulations
Regulation 11 – amends regulation 10 of the principal regulations
Regulation 12 – amends regulation 11 of the principal regulations

[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

Regulation 13 – amends regulation 14 of the principal regulations
Regulation 14 – amends regulation 15 of the principal regulations
Regulation 15 – amends regulation 17 of the principal regulations
Regulation 16 – amends regulation 18 of the principal regulations
Regulation 17 – amends regulation 21 of the principal regulations
Regulation 18 – amends regulation 26 of the principal regulations
Regulation 19 – amends the Schedule to the principal regulations
Regulation 20 – adds the Second Schedule to the principal regulations.

PART IV - Amendments to the Cross-border Conversions of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

Regulation 22 – amends regulation 3 of the principal regulations
Regulation 23 – amends regulation 7 of the principal regulations
Regulation 24 – amends regulation 10 of the principal regulations
Regulation 25 – amends regulation 11 of the principal regulations
Regulation 26 – amends regulation 14 of the principal regulations
Regulation 27 – amends regulation 15 of the principal regulations
Regulation 28 – amends regulation 17 of the principal regulations
Regulation 29 – amends regulation 18 of the principal regulations
Regulation 30 – amends regulation 19 of the principal regulations
Regulation 31– amends regulation 21 of the principal regulations

Regulation 32 - amends the Schedule to the principal regulations
Regulation 33 adds the Second Schedule to the principal regulations.

PART V - Amendments to the Cross-border Mergers of Limited Liability Companies Regulations [hereinafter referred to as the "principal regulations"]

Regulation 35 – amends regulation 3 of the principal regulations

Regulation 36 – amends regulation 6 of the principal regulations
Regulation 37 – amends regulation 7 of the principal regulations
Regulation 38 – amends regulation 10 of the principal regulations
Regulation 39 – amends regulation 11 of the principal regulations
Regulation 40 – amends regulation 14 of the principal regulations
Regulation 41 – amends regulation 15 of the principal regulations
Regulation 42 – amends regulation 17 of the principal regulations
Regulation 43 – amends regulation 18 of the principal regulations
Regulation 44 – amends regulation 19 of the principal regulations
Regulation 45 – amends regulation 20 of the principal regulations
Regulation 46 – amends regulation 27 of the principal regulations
Regulation 47 - amends the Schedule to the principal regulations
Regulation 48 - adds the Second Schedule to the principal regulations

Commentary on parts and articles

PART I - Amendments to the Companies Act (System of Interconnection of Registers) Regulations (hereinafter in this part referred to as the "principal regulations")

Interconnection of business registers – regulation 6 of the principal regulations

All documents and information submitted to the Registrar and the certificates issued by the Registrar in the course of a cross-border division, conversion and merger shall be made available through the system of interconnection of registers.

PART II - Amendments to the Companies Act (Use of Digital Tools and Processes) Regulations (hereinafter in this part referred to as the "principal regulations")

Online filing – regulation 12 of the principal regulations

Submissions to the Registrar of documents and information in order to conduct a cross-border division, conversion and merger, may be submitted entirely online.

Storage of documents by Registrar – regulation 17 of the principal regulations

All documents for the instances specified in regulation 17 that are submitted to the Registrar for registration, shall be stored in the register in a machine-readable and searchable format or as structured data.

PART III - Amendments to the Cross-border Divisions of Limited Liability Companies Regulations (hereinafter in this part referred to as the "principal regulations")

Legal certainty – regulations 3, 7, 10, 15, 17, 18, 21, 26 and the Schedule to the principal regulations

Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

Approval by the general meeting – regulation 11 of the principal regulations

The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

Administrative penalty – regulation 14 of the principal regulations

An administrative penalty is being introduced in those cases whereby a company fails

to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such an administrative penalty is similar to the amounts found under the Eleventh Schedule of the Companies Act.

Administrative penalty information – Second Schedule to the principal regulations

The table indicates the regulation from which the obligation arises, the description of the default and the amount due in administrative penalties, both the default administrative penalty and the daily administrative penalty.

PART IV - Amendments to the Cross-border Conversions of Limited Liability Companies Regulations (hereinafter in this part referred to as the "principal regulations")

Legal certainty – regulations 3, 7, 10, 15, 17, 18, 19 and the Schedule to the principal regulations

Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

Approval by the general meeting – regulation 11 of the principal regulations

The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

Administrative penalty – regulation 14 of the principal regulations

An administrative penalty is being introduced in those cases whereby a company fails to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such an administrative penalty is similar to the amounts found under the Eleventh Schedule of the Companies Act.

Documents to be submitted when Malta is the destination jurisdiction of a cross-border conversion - regulation 21 of the principal regulations

The regulation is being amended to specifically list the accompanying documents a company is to submit to the Registrar together with the draft terms as approved by the general meeting of the company. This regulation also seeks to require the extraordinary resolution approving the cross-border conversion and the declaration of solvency, when the latter is required in terms of regulation 8.

Administrative penalty information – Second Schedule to the principal regulations

The table indicates the regulation from which the obligation arises, the description of the default and the amount due in penalties, both the default administrative penalty and the daily administrative penalty.

PART V - Amendments to the Cross-border Mergers of Limited Liability Companies Regulations (hereinafter in this part referred to as the "principal regulations")

Legal certainty – regulations 3, 6, 7, 10, 15, 17, 18, 19, 20, 27 and the Schedule to the principal regulations

Legal certainty is being provided by such amendments through revised and improved references, syntax, punctuation, and other lexical corrections.

Approval by the general meeting – regulation 11 of the principal regulations

The approval of a mobility cross-border operation shall be valid if the extraordinary resolution is approved in accordance with requirements of the Companies Act and subsequently adopted after one (1) month after publication of the Registrar's statement as provided for by the regulations.

Administrative penalty – regulation 14 of the principal regulations

An administrative penalty is being introduced in those cases whereby a company fails to deliver the extraordinary resolution to the Registrar for registration, approving the cross-border operation. Such an administrative penalty is similar to the amounts found under the Eleventh Schedule of the Companies Act.

Administrative penalty information – Second Schedule to the principal regulations

The table indicates the regulation from which the obligation arises, the description of the default and the amount due in administrative penalties, both the default administrative penalty and the daily administrative penalty.

Conclusion

Officers of companies are to be made fully aware of the amending Regulations introducing certain obligations, and the administrative penalties arising therefrom. It is advisable that when company officers are unsure about their obligations, they consult a lawyer, accountant, or auditor. Failure to make the necessary filings or take the necessary action within the requested time frames will result in administrative penalties being imposed on the company and officers of the company. Such administrative penalties can be avoided if the company officers are familiar with Maltese company law and regulations.

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation. Contact info: (legal.enforcement@mbr.mt) / 2258 2300.

15th March, 2024

No. 373

MALTA BUSINESS REGISTRY

Explanatory Notes

1. Introduction

Title of Legislation	Companies Act (Suspension of Filing for Dissolution and Winding Up) (Amendment) Regulations (Subsidiary Legislation 386.24) Order of 2024 of the Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations (in accordance with Subsidiary Legislation 386.24)
Activity to be regulated	The lifting of suspension of filing for dissolution and winding up provisions stipulated in S.L. 386.24. (Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations).
Responsible entity	Malta Business Registry
Head of Legal Unit	Dr Ingrid Hamilton, Head - Insolvency and Receivership Service

2. Summary and background

These regulations seek to lift the suspensions stipulated in Subsidiary Legislation 386.24 – Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, which had been intended to act as a temporary solution and facilitate the running of companies during the COVID-19 pandemic.

3. Overview of the Structure of the Instruments

The amendments in the Companies Act (Suspension of Filing for Dissolution and Winding Up) (Amendment) Regulations consist of four (4) regulations. Said regulations establish and regulate as follows:

i. Regulation 1 stipulates the title.

ii. Regulation 2 amends sub-regulation (3).

iii. Regulation 3 amends regulation 4.

iv. Regulation 4 amends regulation 5.

Moreover, the Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, Order, 2024 comprises the order of the Minister for the Economy, Enterprise and Strategic Projects in accordance to the Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations (Subsidiary Legislation 386.24).

4. Commentary on Parts and Articles

As per the above Part 3, regulation 1 specifies the title of the amending regulations.

Regulation 2 provides for the addition of sub-regulation (3) to regulation 3 of the principal regulations whereby it provides that the Court may abbreviate the time limits stipulated in sub-regulations (1) and (2) of regulation 3 of the principal regulations, if the said Court considers it reasonable and expedient to do so for the purpose of ensuring the proper and efficient administration of justice in relation to the following:

(i) regulation 3(1) of S.L. 386.24 affected the right of creditors and any debenture holder to file for the dissolution and consequential winding up of a company in terms of article 214 of the Companies Act (Chapter 386 of the Laws of Malta). Article 214 lays down the possible reasons for which a company may be dissolved and consequently wound up, either by the Court or voluntarily;

(ii) regulation 3(2) of S.L. 386.24 provided for the stay of proceedings which applied to all those proceedings or actions brought in Court by creditors and any debenture holder, on or after the 16th of March 2020, for the dissolution and consequential winding up of a company, in terms of article 214 of the Companies Act (Chapter 386 of the Laws of Malta).

Regulation 3 provides for the amendment of regulation 4 by substituting sub-regulation (2) of regulation 4 of the principal regulations. The deemed date of dissolution of a company whereby a winding up order has been made in terms of the certain special circumstances brought about by regulation 4 shall be lifted and the provisions of regulation 4 of the principal regulations shall remain valid for a period of six (6) months from the date of coming into force in terms of regulation 3, unless the Court considers it reasonable and expedient for the purpose of ensuring the proper and efficient administration of justice to order, in the winding up order itself, that article 223 of the Act shall apply.

Regulation 4 provides for the amendment of regulation 5 by adding a new sub-regulation (4) to regulation 5 of the principal regulations, which provides that notwithstanding the suspension in terms of sub-regulation (1), the Court may nonetheless hear an application made in terms of article 316 of the Act if it considers it reasonable and expedient to do so for the purpose of ensuring the proper and efficient administration of justice.

5. Conclusion

The provisions of the Companies Act (Suspension of Filing for Dissolution and Winding Up) (Amendment) Regulations (S.L. 386.24) which were introduced to act as a temporary solution to facilitate the running of companies during the COVID-19 pandemic are hereby being amended for the purpose of ensuring the proper and efficient administration of justice after the pandemic. Thus, the Ministerial order provides for the lifting of the suspension of proceedings in terms of the principal regulations, whereas the amending regulations provide for circumstances wherein the Court is of the opinion that it is not expedient for the companies concerned to adhere to the time-limits stipulated in the principal regulations. Thus, failure to make the necessary filings or take the necessary legal action within the requested time frames stipulated in the law or alternatively as imposed by the Court shall result in penalties being imposed on the company and officers of the company.

N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.

15th March, 2024