

L.N. 422 of 2021**COMPANIES ACT
(CAP. 386)****Companies Act (Use of Digital Tools and Processes)
Regulations, 2021**

IN EXERCISE of the powers conferred by article 425 of the Companies Act, the Minister for the Economy and Industry has made the following regulations:-

1. (1) The title of these regulations is the Companies Act (Use of Digital Tools and Processes) Regulations, 2021. Citation and scope.

(2) The scope of these regulations is to transpose 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, and they shall be interpreted and applied accordingly.

2. In these regulations, unless the context otherwise requires: Interpretation.

"Act" means the Companies Act; Cap. 386.

"electronic identification means" means an electronic identification means as defined in point (2) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council;

"electronic identification scheme" means an electronic identification scheme as defined in point (4) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council;

"electronic means" means electronic equipment used for the processing, including digital compression, and the storage of data, through which information is initially sent and received at its destination; that information being entirely transmitted, conveyed and received in a manner to be determined by Member States;

"formation" means the whole process of establishing a company in accordance with the Act and any other subsidiary legislation thereto, including the drawing up of the company's memorandum and articles of association, if any, and all the necessary steps for the entry of the company in the register;

"registration of a branch" means a process leading to disclosure

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of documents and information relating to a branch newly opened in a Member State;

"template" means a model for the memorandum and articles of association of a company which is drawn up by Member States in compliance with national law and is used for the online formation of a company;

"Member States" means a Member State of the European Union and includes an EEA State.

Electronic
identification
means.

3. (1) The Registrar shall ensure that the following identification means shall be recognized for the purposes of online procedures and which may be used by applicants who are Union citizens:

(a) an electronic identification means issued under an electronic identification scheme approved in Malta;

(b) an electronic identification means issued in another Member State and recognized for the purpose of cross-border authentication in accordance with Article 6 of Regulation (EU) No 910/2014.

(2) The Registrar may refuse to recognize electronic identification means where the assurance levels of those identification means do not comply with the requirements set out in Article 6(1) of Regulation (EU) No 910/2014.

(3) All identification means recognized by the Registrar shall be made publicly available.

(4) Where justified by reason of public interest in preventing identity misuse or alteration and where there are reasons to suspect identity falsification, the Registrar may, on a case-by-case basis, require, for the purposes of verifying an applicant's identity, the taking of the necessary measures which could require the physical presence of that applicant to fulfil any aspect of the online procedures referred to in these regulations, including the drawing up of the memorandum and articles of association of a company.

(5) The provisions of sub-regulation (4) shall not preclude the applicant from completing any other steps of the procedure online.

Concise and
user-friendly
information.

4. (1) The Registrar shall ensure that concise and user-friendly information, that may serve to assist in the formation of companies and the registration of branches, is made available on the registration portal as maintained by him.

(2) The information referred to in sub-regulation (1) shall be made available free of charge, in the English language, and accessible by means of the Single Digital Gateway.

(3) The information shall at least include the following:

(a) rules on the formation of companies and the associated online procedures, including the use of templates, requirements relating to the use of templates, identification of persons, use of languages and applicable fees;

(b) rules on the registration of branches and the associated online procedures, including the requirements relating to the registration of documents, identification of persons and use of languages;

(c) rules on becoming a director, company secretary and judicial or legal representative of a company, including rules on the disqualification of directors as referred to in the Act and the supervisory entities responsible for keeping information about disqualified directors; and

(d) the powers and responsibilities of persons holding the office of director, company secretary and the legal and judicial representation of the company.

5. Save as otherwise provided in these regulations, the Registrar shall ensure that the online formation of companies, including the drawing up of the memorandum and articles of association of a company, may be carried out fully online, through the registration portal as maintained by him, without the necessity for the applicants to appear in person.

Online formation of companies.

6. (1) The Registrar shall ensure that for the process of the online formation of companies, including the use of templates as referred to in these regulations and on the documents and information required for the formation of a company, the submission of documents or information may be carried out in electronic form.

Submission of documents or information.

(2) The Registrar shall ensure that electronic copies of documents and information provided by the register during the process of the online formation of companies, are authenticated by means of trust services referred to in Regulation (EU) No 910/2014.

7. (1) The Registrar shall ensure that every online formation of a company complies with the provisions of the Act relating to the formation of companies including:

Conformity with the provisions of the Act.

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(a) procedures to ensure that the applicants have the necessary legal capacity and authority to represent the company;

(b) means to verify the identity of the applicants through the appropriate electronic identification means;

(c) requirements for the applicants to use trust services referred to in Regulation (EU) No 910/2014;

(d) procedures to verify the legality of the object of the company;

(e) procedures to verify the legality of the name of the company; and

(f) procedures to verify the appointment of directors.

(2) The foregoing requirements may also include the following:

(a) procedures to ensure the legality of the company's memorandum and articles of association, including the correct use of templates;

(b) consequences of the disqualification of a director;

(c) the role of the company service provider or other authorised person responsible for any aspect relating to the online formation of a company in accordance with the Company Service Providers Act; and, or

(d) the exclusion of online formation where the share capital of the company is paid by way of contributions in kind.

Cap. 529.

Applicability of articles 76 and 77 of the Act.

8. (1) The online formation of a company shall not be conditional on obtaining a licence or authorisation, save for the provisions of articles 76 and 77 of the Act.

(2) The Registrar shall ensure that where the payment of share capital is required as part of the procedure to form a company, the necessary means are provided for such payment to be made online to a bank account of a bank operating in the Union in accordance with regulation 16 and shall ensure the existence of means to provide for proof of such payments online.

Completion of templates for online formation.

9. (1) The Registrar shall ensure that the online formation of companies formed exclusively by natural persons, who use the templates referred to in these regulations, is completed within five

working days.

(2) In all other cases, online formation shall be completed within ten working days from the later of the following:

(a) the date of completion of all formalities required for the online formation of a company, including the submission of documents and information required to be delivered for registration to the Registrar; or

(b) the date of the payment of the registration fee, the payment in cash for share capital or the payment for the share capital by way of a contribution in kind.

(3) Where it is not possible for the online formation to be completed within the foregoing time periods, the Registrar shall notify the applicant of the reasons for the delay.

10. (1) The Registrar may, where justified by reason of the public interest in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company, including the drawing up of the memorandum and articles of a company, request the physical presence of the applicant.

Physical presence of the applicant may be required.

(2) The provisions of sub-regulation (1) shall not preclude any other steps of the procedure from being completed online.

11. (1) Templates for the online formation of companies shall be made available on the registration portal maintained by the Registrar, which will be accessible by means of the Single Digital Gateway.

Templates.

(2) The templates may be used by the applicants for the online formation of companies.

(3) The templates shall be made available in the English language, as a language broadly understood by the largest possible number of cross-border users.

12. (1) The Registrar shall ensure that the following documents and information, including any modification thereof, may be filed online through electronic means and authenticated, where applicable, in accordance with article 82 of the Act:

Filing and authentication of documents and information.

(a) the memorandum and the articles of association, if any, of a company;

(b) any amendments to the memorandum and articles of

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association of a company;

(c) the complete amended text, to date, of the memorandum and articles of association, if any, following every amendment;

(d) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body are:

(i) legal or judicial representatives of the company and whether such representation is held jointly or not;

(ii) directors of the company;

(iii) Company secretary;

(e) at least once a year, the amount of subscribed share capital where the memorandum or articles of association of a company mention an authorised share capital, unless the increase in share capital necessitates an amendment to the memorandum and articles of association;

(f) the financial statements for each financial year;

(g) any change in the registered office of the company;

(h) the winding-up of the company;

(i) any declaration of nullity of the company by the courts;

(j) the appointment of liquidators, particulars concerning them and their respective powers, unless such powers are those expressly and exclusively derived from law or the memorandum and articles of the company; and

(k) the termination of the liquidation and notice of eventual striking-off of the company from the register.

(2) The Registrar may verify electronically the origin and integrity of the documents filed online.

Overseas
company.

13. (1) The Registrar shall ensure that an overseas company, constituted or incorporated in another Member State, may carry out the procedure of registering a branch in Malta fully online, without the necessity for the applicants to appear in person, subject to the

electronic identification means referred to in regulation 3 and to the exception under regulation 10.

(2) The Registrar shall ensure that every online registration of a branch complies with the provisions as contained in the Act relating to the registration of branches, including:

(a) procedures to ensure that the applicants have the necessary legal capacity and authority to represent the company;

(b) the appropriate electronic identification means to verify the identity of the persons registering the branch;

(c) requirements for the applicants to use trust services as referred to in Regulation (EU) No 910/2014;

(d) procedures to verify the legality of the object of the branch;

(e) procedures to verify the legality of the name of the branch;

(f) procedures to verify the legality of the documents and information submitted for the registration of the branch; and

(g) procedures to provide for the role of the company service provider or other authorised person responsible for any aspect relating to the online registration of a branch of a company in accordance with the Company Service Providers Act. Cap. 529.

(3) The provisions of regulation 8 shall, *mutatis mutandis*, apply to the online registration of branches.

(4) The Registrar shall ensure that the online registration of a branch of a company is completed within ten working days from the completion of all requirements, including the receipt of documents and information required for registration of a branch by the Registrar.

(5) Where it is not possible to register a branch within the foregoing period, the Registrar shall ensure that the applicant is notified of the reasons for the delay.

14. (1) The Registrar shall ensure that the following documents and information, or a change thereto, relating to the branch of a company, may be filed online: Online filing of documents and information.

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- (a) name of the company;
- (b) registered office of the company;
- (c) registration number of the company in the register;
- (d) legal form of the company;

(e) the documents and information relating to the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body are:

- (i) legal or judicial representatives of the company and whether such representation is held jointly or not;

- (ii) directors of the company;

- (iii) Company secretary; and

(f) the financial statements for each financial year of the company.

(2) The provisions of regulation 13(2) shall, *mutatis mutandis*, apply to the online filing of documents and information of branches.

Fees.

15. (1) The Registrar may charge fees for the online procedures referred to in these regulations, provided that the charged fees are transparent and applied in a non-discriminatory manner.

(2) The fees for online procedures associated with the disclosure of electronic copies of the documents which the Registrar is required to retain and register in terms of article 401(1)(d) of the Act shall not exceed the recovery of the costs incurred for providing such services.

Online payment service.

16. (1) Where the completion of an online procedure as referred to in these regulations requires a payment, the Registrar shall ensure that payment may be made by means of a widely available online payment service that can be used for cross-border payments.

(2) The online payment service utilised shall:

- (a) permit for the identification of the person making the payment; and

- (b) be provided by a financial institution or payment service provider established in a Member State.