

SUBSIDIARY LEGISLATION 386.08**COMPANIES ACT (EUROPEAN ECONOMIC
INTEREST GROUPING) REGULATIONS**

1st May, 2004

LEGAL NOTICE 271 of 2003.

- 1.** The title of these regulations is the Companies Act (European Economic Interest Grouping) Regulations. Citation.
- 2.** In these regulations, unless the context otherwise requires - Interpretation.
"the Act" means the Companies Act; Cap. 386.
"body corporate" means any entity having a legal personality distinct from that of its members;
"contract" means the contract for the formation of an EEIG;
"Court" means the Civil Court, First Hall;
"EC Regulation" means the Council Regulation of the European Community on the European Economic Interest Grouping published by EC Regulation 2137/85;
"EEIG" or "grouping" means a grouping referred to as a European Economic Interest Grouping formed pursuant to the provisions of these regulations;
"Member State" means a member state of the European Community;
"officer", in relation to an EEIG, includes a manager, or any other person designated as an officer in the contract of the EEIG.
- 3.** (1) An EEIG may be formed by groups or associations consisting of not less than two and not more than twenty persons for the purpose of facilitating or developing the economic activities of its members, or to improve or increase the profits or benefits of such activities. Formation of an EEIG.
- (2) The activities of the EEIG shall be related solely to the economic activities of its members and to ancillary activities thereto.
- (3) A grouping shall not -
- (a) exercise, whether directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking;
- (b) directly or indirectly, in any manner whatsoever, hold shares in a member undertaking:
Provided that the holding of shares shall be possible when necessary for the achievement of the objects of the grouping and if done on its members' behalf;
- (c) employ more than five hundred persons;

(d) be a member of another EEIG.

(4) An EEIG has a legal personality distinct from that of its members and shall on its registration be the subject of rights and obligations, be capable of making contracts or other legal acts and of suing and being sued.

Constitution of an EEIG.

4. (1) Only the following may be members of a grouping:

- (a) companies and other bodies corporate which have been constituted or incorporated in accordance with the law of a Member State and which have their registered or statutory office and central administration in a Member State;
- (b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the European Union.

(2) A grouping shall consist of at least:

- (a) two companies or other bodies corporate within the meaning of subregulation (1)(a) which have their central administrations in different Member States; or
- (b) two natural persons within the meaning of subregulation (1)(b) who carry on their principal activities in different Member States; or
- (c) a company or other body corporate and a natural person, both within the meaning of subregulation (1), of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

Indication of particulars in business letters, etc.

5. (1) In all its business letters and order forms an EEIG shall mention in legible characters its name, the country in which the grouping is registered, together with its registration number, its official address, whether the managers of the grouping are required to act jointly, and, where applicable, the fact that the grouping is in liquidation.

(2) In all its business letters and order forms, an EEIG registered in accordance with the provisions of regulation 23 shall, in addition to the requirements of subregulation (1), also state in legible characters particulars relating to its own registration.

(3) If default is made in complying with the provisions of subregulations (1) and (2), every officer of the grouping who is in default shall be liable to the penalty established in the Schedule.

How an EEIG is constituted.

6. A grouping which has, as its official address, an address in Malta shall not be validly constituted under these regulations unless a contract has been entered into by the parties intending to form a grouping and such contract is delivered to the Registrar for registration.

7. (1) A contract for the formation of an EEIG shall include the following:

Contents of contract for formation of an EEIG.

- (a) the name of the grouping preceded or followed by the words "European Economic Interest Grouping" or by the letters "EEIG", except where those words already form part of the name;
- (b) the official address of the grouping;
- (c) the objects for which the grouping is formed;
- (d) the name, legal form, permanent address or registered office, and the registration number and place of registration, if any, of each member of the grouping;
- (e) the period, if any, fixed for the duration of the grouping.

(2) The contract for the formation of an EEIG shall be delivered for registration to the Registrar who, being satisfied that it complies with the requirements of these regulations in respect of registration and of matters precedent and incidental to it, shall register it.

8. (1) In addition to the contract for the formation of a grouping, the following documents and particulars must also be delivered to the Registrar for registration within fourteen days from the happening thereof:

Additional documents.

- (a) any amendment to the contract, including any change in the composition of a grouping;
- (b) notice of the setting up or closure of any establishment of the grouping;
- (c) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with regulation 13;
- (d) any decision relating to the dissolution and winding up of a grouping;
- (e) notice of the appointment of a liquidator of a grouping which shall include his name, residential address, nationality and official means of identification;
- (f) notice of termination of the appointment of a liquidator;
- (g) notice of the termination of the winding up of the grouping;
- (h) any proposal to transfer the official address, in accordance with regulation 10;
- (i) any clause exempting a new member from liability for the obligations of the grouping originating prior to his admission as member, in accordance with regulation 15.

(2) If default is made in complying with the provisions of regulation 7 and subregulation (1) of this regulation, every officer of the grouping who is in default shall be liable to a penalty and,

for every day during which the default continues, to a further penalty as established in the Schedule.

Duties of Registrar and effect of registration.

9. (1) On the registration of an EEIG and the payment of the prescribed fees, the Registrar shall certify under his hand that the EEIG has been registered indicating the date of registration.

(2) A certificate of registration given in respect of an EEIG under this regulation is conclusive evidence that the requirements of these regulations in respect of registration and of matters precedent and incidental to it have been complied with, and that the EEIG is an organisation authorised to be registered, and is duly registered, under these regulations.

(3) All persons carrying on activities or entering into agreements in the name for or on behalf of the grouping in respect of which a certificate of registration has not been issued shall, unless the grouping does not, after its registration, assume the obligations arising out of such activities, be personally and jointly and severally liable for their dealings with third parties entered into by them in the aforementioned capacity.

Transfer of official address.

10. (1) When the transfer of the official address of an EEIG registered in Malta results in a change in the law applicable under article 2 of the EC Regulation, a transfer proposal must be drawn up, delivered to the Registrar for registration and published accordingly.

(2) The decision to transfer must be taken after the lapse of two months of the publication of the proposal. Such decision requires the unanimous consent of the members of the grouping. The transfer shall become effective on the date on which the new official address of the grouping is registered.

(3) Upon presentation to the Registrar of proof that the grouping has been registered at the registry for its new official address, the termination of the grouping's registration with the Registrar shall take effect.

Liability of members.

11. An EEIG has its obligations guaranteed by the unlimited and joint and several liability of its members:

Provided that no action shall lie against the members unless the property of the grouping has first been discussed.

Votes of members.

12. (1) Each member of an EEIG shall be entitled to one vote unless the contract for the formation of the grouping provides that certain members are entitled to more than one vote:

Provided that no one member shall hold a majority of votes.

(2) A unanimous decision by the members of a grouping shall be required to:

- (a) alter the objects of a grouping;
- (b) alter the number of votes allotted to each member;
- (c) alter the manner in which decisions are taken;
- (d) extend the duration of a grouping beyond the period

fixed in the contract;

- (e) alter the contribution by any member to the financing of the grouping;
- (f) alter any other obligation of a member, unless otherwise provided by the contract;
- (g) make any alteration to the contract of the grouping not covered by this subregulation, unless otherwise provided by that contract.

13. Subject to the unanimous consent of the other members being obtained, any member of a grouping may assign his participation, or a proportion thereof, either to another member or to a third party. Assignment of participation.

14. Unless otherwise provided for in the contract, a member of the grouping may use his participation as security only after the unanimous consent of the other members has been obtained: Participation as security.

Provided that the holder of the security shall not at any time become member of the grouping by virtue of that security.

15. (1) A decision to admit new members to a grouping requires the unanimous consent of the members of the grouping. New members.

(2) Where a person becomes a member of an already existing grouping, he shall thereby become liable for all the obligations of the grouping even if incurred before the date at which he becomes a member.

(3) Notwithstanding the provisions of subregulation (2), a new member may be exempted from liability, by the contract or in the instrument of admission, for the obligations of the grouping which originated before his admission.

16. (1) A member of a grouping may withdraw in accordance with the conditions laid down in the contract or, in the absence of such conditions, with the unanimous consent of the other members. Withdrawal of member.

(2) Any member of a grouping may, in addition to the above, withdraw on just and proper grounds.

17. (1) Any member may be expelled from the grouping - Expulsion of member.

- (a) if he commits a serious breach of duty as a member;
- (b) if he causes or threatens to cause serious disruption in the operation of the grouping;
- (c) in such other cases for which provision is made in the contract for the formation of the grouping.

(2) Unless otherwise provided by the contract, such expulsion may occur only by a decision of the court to which joint application has been made by a majority of the other members.

18. In addition to the provisions of regulations 16 and 17, a person shall also cease to be a member of a grouping upon the occurrence of any of the following events: Cessation of membership.

- (a) failure to comply with the provisions of regulation

4(1);

- (b) in the case of a natural person, his bankruptcy, death or legal incapacity;
- (c) in the case of a company or other body corporate, the dissolution thereof.

Managers of an
EEIG.

19. (1) An EEIG shall be managed by one or more persons and, where the person managing the EEIG is a body corporate, such body corporate must designate one or more natural persons to represent it.

(2) Any natural person designated under subregulation (1) to represent the body corporate acting as manager of an EEIG shall be subject to the same liabilities as if he himself were a manager.

(3) The contract or, where not specifically provided for, a unanimous decision of the members of the grouping shall determine the conditions for the appointment and removal of the manager together with his powers.

(4) In so far as the contract does not provide that the grouping shall be validly bound only by two or more managers acting jointly, the representation of a grouping shall vest in each of the managers severally.

(5) Any act done by a manager of the grouping shall bind the grouping as regards third parties, notwithstanding that such act falls outside the objects of the grouping.

(6) Notwithstanding the provisions of subregulation (5), the grouping shall not be bound by an act which falls outside its objects if it proves that the third party knew that it was outside the grouping's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the contract shall not in itself be sufficient to prove that the third party knew or could not have been unaware that the act was outside the grouping's objects.

(7) Any limitation on the powers of any manager of the grouping shall not be relied on as against third parties independently of whether that limitation, published or not, arises from the contract or from a decision by the members of the grouping.

Return as to
changes among
managers of an
EEIG.

20. (1) There shall be delivered to the Registrar for registration a return of any change among the managers of a grouping, specifying the date of the change, together with the name and residence and, in the case of a body corporate, its principal or registered office, within fourteen days from the happening thereof. In the case of the appointment of a manager, the return shall also indicate whether the person is authorised to act alone or jointly with any other manager.

(2) If default is made in complying with the provisions of subregulation (1), every officer of the grouping who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty as established in the

Schedule.

21. Each member of the grouping shall be entitled to obtain information from the manager concerning the business of the grouping and to inspect the books and business records of the grouping.

Inspection of records.

22. (1) The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract or, in the absence of any such provision, in equal shares.

Profits resulting from grouping's activities.

(2) The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract or, in the absence of such provision, in equal shares.

23. (1) Any EEIG establishment situated in Malta but having its official address in another Member State shall deliver, within one month of the establishment becoming so situated in Malta, to the Registrar for registration, a certified copy of the contract together with a certified translation into English of the contract and other documents and particulars to be filed in accordance with these regulations if the contract and other documents and particulars, or any part thereof, are not in English.

Registration of establishment of EEIG whose official address is outside Malta.

(2) The Registrar shall not register an EEIG establishment under this regulation unless he is satisfied that all the requirements of these regulations in respect of registration and of matters precedent and incidental to it have been complied with.

(3) Subject to subregulation (2), the Registrar shall retain the copy of the contract and any certified translation, delivered to him in accordance with subregulation (1) and register the EEIG establishment.

(4) If default is made in complying with the provisions of subregulation (1), every officer of the grouping who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty as established in the Schedule.

24. (1) Where any provision of these regulations provides for the imposition of a penalty as established in the Schedule, the amount of such penalty shall be determined by reference to such Schedule, which specifies the maximum penalty that may be imposed by the Registrar for non-compliance with the relevant provision.

Administrative penalties in respect of EEIGs.

(2) The first column of the said Schedule indicates the provision of these regulations which imposes a penalty, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of these regulations, the third column establishes the maximum penalty and the fourth column establishes the maximum daily default penalty, if any. The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue

from the day following that on which the default occurs.

(3) Action by the Registrar for the recovery of a penalty under these regulations shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) The provisions of article 401 of the Act shall, *mutatis mutandis*, apply to administrative penalties under these regulations.

Applicability of certain provisions of the Act.

25. Save in so far as inconsistent with the provisions of these regulations or of the EC Regulation, Title II of Part V of the Act shall apply to EEIGs, and their establishments, registered under these regulations as if they were companies registered under the Act and as if any reference to a director included a reference to a manager of the EEIG and any other person who has or has had control or management of the EEIG's business

Inspection of documents.

26. Any person shall be entitled to -

- (a) inspect any documents or particulars kept by the Registrar under these regulations or a copy thereof; and
- (b) request the Registrar to supply copies, including certified copies, of any such document or particulars or any part thereof against payment of the fee prescribed under the Act.

Publication of documents.

27. (1) The Registrar shall cause to be published in the Gazette -

- (a) the particulars which must be included in the contract for the formation of a grouping, in accordance with the provisions of regulation 7, and any amendments thereto;
- (b) the number, date and place of registration as well as notice of the termination of the grouping;
- (c) in the case of those documents and particulars referred to in regulation 8(1)(b) to (i) a notice, stating the name of the EEIG, the description of the documents or particulars and the date of receipt.

(2) The Registrar shall also forward to the Office for Official Publications of the European Community notice of the formation or dissolution of a grouping, together with its number, date and place of registration, within one month of the publication of the relevant documents and particulars in the Gazette.

Purpose of regulations.

28. (1) The purpose of these regulations is to apply the relevant provisions of EC Regulation 2137/5, and these regulations shall be interpreted accordingly.

(2) In the event that any of the provisions of these regulations conflict with the provisions of the EC Regulation, the latter shall prevail.

SCHEDULE

(Regulation 24)

PENALTIES

Regulation	Default	Penalty	Daily Penalty
5(3)	Failure to indicate particulars concerning grouping on business letters, etc.	200 liri	None
8(2)	Officer of grouping failing to comply with provisions as to registration or returns of EEIG	200 liri	10 liri
20(2)	Failure of officer of EEIG to notify the Registrar of changes in managers of grouping	200 liri	10 liri
23(4)	Officer of grouping failing to notify EEIG situated in Malta but having its official address outside Malta	200 liri	10 liri
