

Doing business in Malta



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Preface

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Chapter 1



Introduction to Malta

Geography

Malta is an archipelago situated in the middle of the Mediterranean Sea between Southern Italy and the Northern African coast. The total area is 316 square kilometres that consists of Malta the largest island, Gozo, Comino and other small islands that are uninhabited. The topography of the Maltese islands is hilly towards the northwest and low-lying towards the southeast. There are no mountains or rivers and the Maltese coastline is picturesque with many harbours, bays, creeks, sandy beaches and rocky caves.

Malta enjoys a moderate Mediterranean climate characterised by warm summers and mild winters. The mean temperature during the winter months (November to April) is usually 14 degrees Celsius, whilst the prevailing during summer months (May to October) averages 23 degrees Celsius. The average amount of rainfall is approximately 550mm.

History

Malta was occupied by several regimes since time immemorial. The first to be recorded were the Phoenicians, who were followed by the Carthaginians. After the destruction of Carthage Malta was occupied by the Roman Empire, later forming part of the eastern or Byzantine block. In 870, the islands were taken over by the Arabs and the country remained under their domain until 1090, until Count Roger of Normandy added Malta to his conquest of Sicily.

In 1530, Charles V of Spain offered Malta to the Knights of St. John of Jerusalem. The Knights were driven from Malta by Napoleon in 1798, however the French ruled only for two years. Thereafter, Malta became a British Crown Colony, which it remained until September 21, 1964, when it became an independent sovereign state. In 1974, Malta became a Republic. Malta is a member of the Commonwealth, the United Nations and the Council of Europe. In May 2004, Malta became a full member of the European Union, and joined the Euro zone on 1st January 2008.

Malta is in many ways a microcosm of Mediterranean history and within the space of a few kilometres it is possible to see and visit anything from prehistoric temples to spectacular fortifications and historic towns. Exploring the Maltese countryside can also be very rewarding as Malta has lots of spots to be enjoyed.

Government

After many years of foreign occupation, Malta acquired its independence in 1964, when it became a parliamentary democracy. The President of the Republic of Malta who is appointed by the House of Representatives is the titular Head of State.

The executive power rests with the Prime Minister and the Cabinet of Ministers. The Prime Minister is usually the party leader commanding the greater support in the House of Representatives.

Legislative power lies in the hands of the House of Representatives which currently has sixty-five members drawn from two major political parties, the Nationalist Party and the Malta Labour Party. Malta has adopted the single transferable vote electoral system. Elections are held approximately every five years by universal secret ballot.

The last elections were held in March 2008 resulting in a narrow victory for the Nationalist Party with 49.34% of first preference votes.

Economy

Malta has an open market economy, an excellent track record and enjoys a high standard of living at relatively moderate cost.

Malta has created the right economic environment to meet the demands of the global market. It has strong and long-standing links with Europe, North Africa and has a liberal foreign investment policy. Malta has a thriving industrial sector with over 200 foreign and some 400 locally-owned manufacturing companies. More recently, TECOM investments, the parent company of the Dubai Internet City has commenced with building its first internet city outside of Dubai which will be located in Malta, further enhancing the State's ICT profile. Products made in Malta are exported worldwide and comprise semiconductors, electronic components and sub-assemblies, pharmaceuticals and medicinal, rubber and plastics, fabricated metal products and machinery, software, garments, food products and others.

Malta does not have any natural resource wealth, energy reserves or any heavy industry: the country thus depends entirely on imports to meet its requirements of basic products, energy needs, industrial products as well as consumer goods. Major imports are electrical and electronic components, machinery, mineral fuels & oils, vehicles, plastics, and food products.

The flexible and highly trained multi-lingual workforce is Malta's main asset and helps to ensure the country's competitive edge through high-quality production at costs that are highly competitive when compared to mainland Europe.

Malta offers a modern transportation infrastructure, state of the art telecommunications networks and frequent air links to Europe, North Africa and Middle Eastern destinations. Malta's strategic location in the centre of the Mediterranean as well as its excellent harbours and Freeport make it an excellent manufacturing location.

Malta was classified as a developing country up to some years ago, however its present standard of living is comparable with most of the European countries. Malta has developed its industrial base concentrating primarily on manufacturing for export. Tourism has developed into a main feature, in fact since 1992 the number of tourist arrivals exceeded the one million mark. The services sector is now also becoming a significant part of Malta's economy with about one third of its GDP derived from this sector.

The Maltese economy continued to register a sustained rate of economic growth during the first six months of 2008. Favourable signs were also particularly evident in the labour market, with significant growth in employment and a further reduction in the unemployment rate. Improved economic activity and job creation were largely underpinned by a positive performance in a number of emerging economic activities. Meanwhile, the restructuring process underway in certain established sectors continued.

In the first six months of 2008, real GDP increased by 3.3 per cent. In nominal terms, GDP exhibited a growth of 6.1 per cent to reach €2,745.8 million.

During the first eight months of 2008, the increase in tourist departures was sustained, with a further advance of 9.6 per cent. However, such increased numbers were not reflected in higher tourist earnings, as gross foreign exchange earnings from tourism registered a marginal decline of 0.8 per cent during the first half of 2008.

Malta's Foreign Policy

In the light of Malta's geo-political heritage, ranging from its size, geographical location, recent independence following centuries of colonial rule, the relationship with neighbouring Mediterranean states and more recently Membership in the EU, Malta has developed a foreign policy in line with this context focusing on solidarity, respect for democracy, the rule of law and human rights, a humanitarian approach and a propensity to giving.

With Malta's accession to the EU, Malta has entered a new environment with new challenges that require different approaches. Membership with the EU provides Malta with the tools to influence decision-making in European policies including common foreign policy hence enabling Malta to strengthen its relevance and weight on the international fora.

Malta's Membership to the European Union

Following a period of rapid development in terms of infrastructure, industry and economic growth in Malta, in 1992 the government of the day, then the Nationalist Party applied for European Union membership. Throughout the subsequent five years Malta implemented a number of EU policies and directives; it introduced a body of legislation with the aim of promoting Malta as a financial services centre and it reviewed the country's taxation policies by introducing Value Added Tax. Upon its election to Government in 1996, the new Labour government froze Malta's application bid for membership, removed the Value Added Tax system and started negotiations with the EU to form a relationship other than full membership, known as a partnership. Malta's EU application was reactivated as soon as the Nationalist Party won the elections in 1998 and concluded its pre-accession negotiations with the EU in 2002. In March 2003 a referendum to determine EU membership was held which resulted in a vote in favour of membership.

Malta signed the EU Accession Treaty in April 2003 and formally became a full member of the European Union on the EU enlargement bloc occurring on the 1st May 2004.

Import Controls

Since its accession to the European Union on May 1st of 2004, Malta has adopted the EU Common External Tariff. Consequently, trade with Malta is totally free from customs duties, provided that the country of origin of the goods is one of the other EU Member States.

Duties for non-European countries are relatively low, notably for manufactured goods (4.2% on average for the general rate); however textile, clothing items and food-processing industry sectors still know protective measures.

Exchange Controls

There are no exchange controls in Malta on inward or outward investment, however, long-term insurance contracts with insurance undertakings that are non-EEA, are prohibited. Foreign currencies can be bought and sold freely and there are no restrictions on the maintenance of foreign currency bank accounts in Malta.

There are no limitations on the repatriation of profits from Malta. Malta, in common with the rest of the EU, has enacted laws to prevent the laundering of the proceeds of serious crime. Financial and some other institutions must obtain and retain satisfactory evidence of the identity of a potential customer before they do any business with that customer, even for relatively small sums.

The Judicial & Legal System

Malta's independent judicial system is backed by many years of experience and supported by the Constitution and principles of natural justice. The island's civil law is largely based on the Napoleonic Code. The criminal code is Italian in origin, but a system of trial by jury is modelled on English principals. Company and taxation law are also based on the English counterparts.

According to the Constitution of Malta, the Constitutional Court is the highest Court with jurisdiction over Constitutional issues – these include questions related to Fundamental Human Rights violations by the State. Following the ratification of the European Convention on Human Rights, aggrieved individuals enjoy a right of appeal from the Constitutional Court to the European Court of Human Rights. In invoking rights under the European Convention of Human Rights, the Courts may also make reference to judgements of the European Court of Human Rights.

The Superior Courts, which are presided by Judges, decide cases of both a civil and commercial nature related to claims amounting to more than € 11,647 and other cases dependent on the subject matter of the claim. The Civil Court is split into what is known as the First Hall and the Family Section. While the Inferior Courts that are presided by Magistrates decide cases of both a civil and commercial nature related to claims amounting to less than € 11,647, criminal matters are presided by Magistrates or Judges depending on the nature of the alleged infringement. The Courts of Magistrates also serve as a court of criminal inquiry, wherein evidence regarding a criminal offence is compiled.

A Small Claims Tribunal is presided by an adjudicator who decides cases on principles of equity according to law. Adjudicators are appointed from amongst advocates for a term of five years. Adjudicators decide cases brought before them without delay. The aim is to have claims not exceeding the sum of €3,494 decided summarily. Sittings of this Tribunal are held in Malta or Gozo. An appeal from the decision of the Tribunal lies to the Court of Appeal on specific cases listed in the Act establishing the Tribunal.

A number of minor infringements of the law such as minor traffic offences (including parking violations), illegal disposal of litter and other minor offences are penalised and are heard by Commissioners of Justice in Local Tribunals situated in various localities. The Commissioners are selected from among persons holding a law degree and given a three-year appointment. As the offences have been de-penalised the case may be decided even in the absence of the accused. Appeals are only possible on points of law.

The influence of Roman law and of the Napoleonic Codes is easily identifiable in the Maltese legal system, particularly in the civil law regime. French and Italian laws have also had influence in the development of Malta's civil law system – being all similarly influenced on Roman law. English Law has also had significant influence on certain areas of criminal law and procedures during the early part of the last century. Maltese criminal law has always adopted the maxim of the presumption of innocence, not guilty, in favour of the accused. Another similarity between the two legal systems is that the presiding Judge sits with a jury. Judicial precedents from major European jurisdictions also have significant influence on the interpretation and judgements of Maltese courts in instances where neither specific law has been enacted to regulate the issue nor customs have been developed.

The Maltese legal system also provides for the possibility of making use of an alternative dispute resolution mechanism – that of arbitration. The recourse to arbitration proceedings is a standard condition in international contracts today, mainly due to the quick solution that Arbitration provides. Although the nature of arbitration normally requires the consent of both parties to submit to the jurisdiction of arbitration proceedings, the Arbitration Act also provides for certain situations where the resort to arbitration is mandatory – these include minor traffic accidents and condominium disputes.

The Arbitration Act also provides for the setting up of the Malta Arbitration Centre, which was set up to promote and encourage the conduct of domestic arbitration and international commercial arbitration. It is administered by a Board of Governors appointed by the President of Malta but is independent of Government. The Malta Arbitration Centre provides both a list arbitrators and a venue for the holding of arbitration proceedings.

Population

Malta, renowned for its hospitality, has a homogeneous population with no ethnic, racial, religious or linguistic problems. Malta is one of the most densely populated countries in the world, with a density of 1,261 persons per square kilometre. In July 2008, the population of the Maltese Islands stood at 412,000. The average annual population growth rate is 0.4%. Malta has a multi-lingual labour force that is very flexible and adaptable.

Birth rate averages 10.33 birth/ 1,000 people and the death rate averages 8.29 deaths/ 1,000 people. Even though the rich history of the islands has caused the present population to be an amalgam of various stocks, the Maltese people are mainly considered to be Southern Europeans.

Language & Religion

In spite of the various historical influences, Malta acquired a unique cultural identity and a language, which have survived centuries of domination. Maltese is the national language but for both official and business purpose both Maltese and English are official languages. Besides being very fluent in both the above two languages, many Maltese can also speak one or more additional languages such as Italian, French and German.

The Maltese language is a combination of Semitic and Romantic origin, with the former having a major influence on its structure. It is written in Latin characters. The people on the islands have diverse linguistic skills. In fact, English is the second official language of the country. Most Maltese are practising Roman Catholics, and it is the official religion of the island according to the Constitution. There are also several other religious communities, including non-Christians, who have their own place of worship and who can practice their beliefs without restrictions.

Education

Compulsory education is up to the age of 16, with the Government offering a free system of education. Private schools are also present on the island. Presently close to 10,000 students attend University whereby they are financially helped through a student workers scheme.

Living and Working in Malta

Living and working on the island offers many advantages. A European life style is available at a reasonable cost. International cuisine, a superb climate, good leisure and educational facilities, a low crime rate, and a historical and cultural environment are all available.

A friendly and relaxed lifestyle is offered, yet Malta is fully equipped to meet the most demanding requirements for a modern business surrounding.

Work Permits

Normally a work permit will only be issued to a foreigner if there is no suitably qualified local, and the employer will need to operate training and 'understudy' schemes. The regime is less restrictive when foreign investment is involved, and if an expatriate controls 40% of a project, he will always be able to get work permits for himself and for one other expatriate. A permit is valid for one year and costs €58.23. Anyone who wishes to reside permanently in Malta other than in conjunction with permitted work must apply for a residency permit under the 1988 Residence Scheme. A deposit of €4192.86 is required; the amount will be held on account and credited in the first year of assessment for which a tax return is required.

An applicant must provide evidence of sufficient capital (€349405.29) or an annual income of €23293.68. A permit holder must buy or rent property on the island, but benefits from tax and import duty incentives. With the exceptions of Romania and Bulgaria, Malta does not apply any restrictions to its labour market to nationals of the European Union. For Romania and Bulgaria, the Maltese Government has decided to continue applying the current national measures in force in order to regulate the access of the Maltese labour market after the accession of these two countries to the European Union on 1 January 2007. As a result, Bulgarian and Romanian nationals will need a work permit in order to access the Maltese labour market. Each request for a work permit will be assessed on a case-by-case basis. Citizens from all other countries need to go through a full work permit and residence permit application.

Sports and Recreation

One of the principal attractions of Malta is undoubtedly the possibility of practising quite a variety of outdoor sports even in winter. Moreover, many of the leading hotels in Malta have health and fitness facilities. Apart from sports, the theatre is a widespread mode of recreation. For those who enjoy the nightlife, Malta offers a number of smart and lively discotheques.

Transport and Communications

There are no internal problems regarding transport. Communications with the outside world are easy and rapid. Air and sea connections are efficient and frequent.

Malta is easily accessible by air within a few hours from most of the major European countries. The national airline, Air Malta, currently schedules direct services to all major European and North African destinations including:

Aberdeen, Alghero, Amsterdam, Athens, Barcelona, Belfast, Berlin, Birmingham, Bologna, Bremen, Brindisi, Brussels, Budapest, Cagliari, Catania, Dresden, Dublin, Dusseldorf, Edinburgh, Frankfurt, Geneva, Genoa, Glasgow, Hamburg, Hannover, Innsbruck, Istanbul, Larnaca, Leeds, Leipzig/Halle, London, Lyon, Manchester, Marseille, Milan, Moscow, Munich, Naples, Oslo, Palermo, Paris, Prague, Reggio Calabria, Rome, Sofia, Stockholm, Tripoli, Tunis, Toulouse, Venice, Vienna and Zurich.

An increasing number of low cost airlines have started operating from Malta in 2006 and are currently serving a number of major European destinations, mainly those that are not adequately served by the national airline.

The largest port in Malta is the Grand Harbour, which is a natural harbour bordered by fortified cities and bastions and located in the central part of Malta. The Grand Harbour is Malta's main port for a host of shipping services from dry-docking facilities to a cruise liner terminal. The Malta Freeport established in 1988 has experienced rapid growth and is now a major maritime transshipment logistic centre in the Mediterranean region.

The Malta Freeport amalgamates the activities of container handling and industrial storage and is assuming ever-increasing importance for the country's economy. Extensive conventional and roll-on and roll-off services by international shipping lines carry freight and cargo from Malta directly to Mediterranean, North European, Middle Eastern and Asian ports. Most manufacturing industries are located within 20 minutes of a harbour or the Malta International Airport.

In the last few years the country's road network has been extensively upgraded and a number of road reconstruction projects are nearing completion. It is expected that further extensive development of the road network will be carried out in the coming years, partly with the assistance of EU and other structural funds.

Malta has a state of the art communications infrastructure with international telecommunications connections being significantly expanded through satellite technology and high capacity fibre-optic cables linking Malta with mainland Europe. Two operators provide mobile cellular telephone services. Internet usage is widespread and Malta's government extensive online services are one of the best in the EU.

Time

Malta is on Central European Time (CET), one hour ahead of Greenwich Mean Time (GMT). During daylight savings time, from the last Sunday in March to the last Sunday in October clocks are advanced one hour.

Public Holidays

• New Year's Day	1 st January
• Feast of St. Paul's Shipwreck	10 th February
• Feast of St. Joseph	19 th March
• Freedom Day	31 st March
• Good Friday	No Fixed Date
• Workers' Day	1 st May
• Commemoration of the 1919 Uprising (one of the events that lead to the first Self-Government Constitution in 1921)	7 th June
• Feast of St. Peter and St. Paul	29 th June
• Feast of the Assumption of the Blessed Virgin Mary	15 th August
• Feast of Our Lady of Victories	8 th September
• Independence Day	21 st September
• Feast of the Immaculate Conception	8 th December
• Republic Day	13 th December
• Christmas Day	25 th December

Chapter 2



Business Entities Available

Sole Proprietor

This type of business entity is the least regulated and is subject to the least number of formalities in terms of Maltese law. The sole requirement to commence operation is to obtain a trading licence and one may commence operation immediately. The trader will be trading in his own name and therefore does not benefit from separate legal personality in any manner and is therefore personally responsible for all the trading obligations. Also tax liability is calculated on the individual tax rates of the proprietor.

The principal advantages of this business entity include the flexibility of the operation, no restrictions on decision-making and almost no reporting requirements.

Corporate Entities

Malta's law related to companies is regulated by the Companies Act (Chapter 386 of the Laws of Malta), which was founded on the British Companies Act and the Insolvency Act, however it has been amended to ensure compliance with applicable EU Directives. The Registrar of Companies is the official that ensures Maltese companies are in compliance with the Companies Act. The Registry of Companies is located within the premises of the Malta Financial Services Authority, helping to ensure that financial service practitioners in Malta may seek to all they need from local officials at a single venue.

Maltese law provides for several forms of corporate entities, but the most frequent form of business entity is by far the limited liability company, which may have the status of a public or private company, furthermore private companies may be either exempt or non exempt. Limited liability companies may also be registered as investment companies with variable share capital (SICAV) or investment companies with fixed share capital (INVCO). Limited liability companies carrying out the business of insurance may also be registered as/or converted into a protected cell company (PCC). Apart from the limited liability company, the Companies Act also provides for the possibility of an additional two types of partnerships – the partnership *en nom collectif* wherein the partners are unlimitedly liable for the obligations of the partnership with their personal assets and the partnership *en commandite* which consists in general partners with unlimited liability together with limited partners whose liability will be limited to their contribution to the partnership.

The Private Limited Liability Company

The private limited liability company has “Limited” or “Ltd” suffixed to its name. The entity is created by submission of the Memorandum and Articles to the Registrar (both English and Maltese) together with the appropriate fee. Provided that all the necessary documentation is in hand, incorporation of such a company normally takes between twenty-four and forty-eight hours while shelf companies are not available. Fees payable to the Registrar of Companies on incorporation are calculated according to the authorised share capital of a company, with the minimum share capital of a private limited liability company amounting to € 1,164.69 subscribed by at least two persons and 20% paid up, while that of a public limited liability company must be at least € 46,587.47 subscribed at least by two persons and 25% paid up.

Directors

Companies must appoint at least one director and one company secretary. The director may be a corporate entity but the company secretary must be an individual. As a rule, a sole director cannot occupy the post of company secretary as well unless the company is a single member company and has an 'exempt' status.

Directors manage all the business of the company to the exclusion of business that falls within the competence of general meetings.

The number of directors and the identity of the first directors of a company are to be specifically included in the company's Memorandum of Association. Subsequent directors are appointed by ordinary resolutions at general meetings. Directors may either resign or be removed or not have their terms renewed. A director is removed by an ordinary resolution taken at a general meeting of the company.

Public Securities

In order for a company's securities to be listed on the Malta Stock Exchange, the company must have the legal status of a public company.

A private company may change its status to a public company by an extraordinary resolution altering its memorandum or articles and incorporating in such alteration all those changes required by the Companies Act for a company to hold the status of a public company, including the removal of the restrictions on share transfers. The revised memorandum and articles of association must be delivered to the Registrar for registration.

Registration Requirements for Public Securities

The basic requirements for a listing are:

- Shareholders funds less intangibles of at least Euro 582,599;
- Paid-up Capital of at least Euro 233,000;
- Twenty percent of the issued, fully paid-up Capital in the hand of the general public;
- Three year trading record;
- Flotation limit of at least Euro 233,000 in the case of equities and Euro 2,330,000 in the case of bonds (ordinarily a company must list its shares before allowed to list its bonds but the Council of the Malta Stock Exchange may grant a derogation from this requirement);
- Adequate profit forecast;
- Shares must be freely transferable;
- Financial information;
- Acceptable level of risk attached;
- Adequate Capital;
- Sufficient management resources;
- Suitable Memorandum and Articles of Association;
- Absence of conflict of interest; and
- Expected to enjoy continuity of dealing.

The Listing Particular Document (or Prospectus) contains:

- The Directors' Responsibility statement
- Corporate History (business activity, market spread, product/quality control)
- Trading Record (current trading, prospects)
- Risk Factors

- Financial Information (Consolidated Profit and Loss Accounts , Balance Sheets, Source and Application of Funds, Statement regarding Accounting policies, Dividend forecast, Earnings per share)
- Particulars of Directors, Senior Management and Employees including Sponsoring Stockbroker, Financial Adviser, Auditor, Legal Adviser, Bankers
- Additional Information (Subsidiary Companies, Working Capital Statement, Premises,- Directors and other interest, Services Contract/Material Contracts, any issues subject to litigation, Taxation outstanding and forecasted
- Documents available for inspection (Memorandum and Articles of Association, Services Contracts, Material Contracts, Audited Consolidated Accounts, List of Shareholders and an analysis of holdings)
- Extract from Board Minutes with relevant resolution.

The company must also provide the Stock Exchange with:

- Date fixed for any Statutory Board Meeting to announce results and / or dividends;
- What resolutions are going before that Meeting and later whether carried or not;
- Changes to the Memorandum and Articles of Association;
- Changes to the Management Structure;
- Half-yearly report: i.e. Financial in summary form with an indication of trading performance of last six months
- Preliminary Profit Statement after Audit;
- Annual Report with detailed requirements regarding underlying policies;
- Any Price-sensitive information that the Market must know;
- Information relating to acquisitions, expansions, disposal and / or restructures.

The various advantages offered by having one's securities listed on the Malta Stock Exchange, include the following:

- Expansion of access to capital;
- The increase of employee commitment and recruiting power;
- The complementing of product marketing;
- The expansion of business relationships;
- Flexibility in personal financial planning;
- There are also taxation benefits.

When a company acquires the status of a quoted company, the rate of income tax chargeable on the gains or profits arising to it shall be reduced in respect of the said gains or profits so arising in the year in which it acquires the status of a quoted company and in the subsequent two years as follows:

- by two percentage points if 20% or more but less than 30% of its issued voting share capital is offered to the public as a listed security;
- by 3.5 percentage points if 30% or more but less than 40% of its issued voting share capital is offered to the public as a listed security;
- by five percentage points if 40% or more of its issued voting share capital is offered to the public as a listed security.

The above tax benefits are not available for bond issues. However a bond listed on the Malta Stock Exchange is exempt from capital gains tax upon disposal by an investor.

The Single Member Company

The Companies Act also provides for an exception to the general rule that each limited liability company must have at least two shareholders – this is in the form of a single member company. A single member company is subject to additional restrictions provided in the Companies Act including that it must specify its main trading activity. There are also additional specific conditions on shareholders (mainly that shareholders must be individuals and directors may not be corporate entities).

Continuation of Companies

Following Legal Notice 344 of 2002, it became possible to continue the existence of a company incorporated or constituted outside of Malta to transfer its domicile to Malta – this will entitle such entities to be fully regulated by Maltese law therefore benefiting from the relevant advantages. In order to perform such re-domiciliation there are certain conditions that must be met, namely:

- The entity must be a corporate body
- The original jurisdiction must be an approved jurisdiction in terms of the said Legal Notice
- The laws of its original jurisdiction must permit the entity to transfer its jurisdiction
- The constitutional document of the entity must permit the transfer of its domicile

Once these conditions are met, there is a specific procedure that must be followed and the entity will continue to exist under Maltese law. All rights & obligations of the entity vis-à-vis third parties existing at the date that were regulated under the regime of original jurisdiction shall remain in effect after the re-domiciliation is completed – hence continuation of the original entity under Maltese law.

Shipping Companies

Shipping companies are regulated by Legal Notice 223 of 2004 the Merchant Shipping (Shipping Organisations – Private Companies) Regulations issued under the Merchant Shipping Act.

There are many advantages to registering shipping companies in Malta, but the major ones are that such entities enjoy a complete tax exemption to owners, charterers and financiers of Maltese ships of over 1,000 net tons (this exemption may be extended to smaller ships) no restrictions on the nationality of shareholders and/or directors of Maltese shipping companies, nor of the ship's master, officers and crew, no trading restrictions, low company registration and formation costs and no restrictions on the sale and mortgaging of Maltese ships.

Branch of a Foreign Company

An overseas company that establishes a branch in Malta must register an authentic copy of its incorporation document (either in English or Maltese) with the Registrar of Companies within one month of its establishment. A branch does not have a separate legal personality from the overseas company nor is there any requirement for reincorporation in Malta.

Following amendments to Maltese tax legislation in 2007, branches of overseas companies are now treated in the same manner as Maltese registered companies – they will however need to submit audited accounts for the branches operations to be so entitled.

Non-Resident Shareholders

Since 1994 Malta has allowed shareholders of certain companies an effective tax rate of 4.17%. This was achieved through a series of tax refunds based on the dividends a company distributed to its shareholders and was known as the International Trading Company (ITC) regime. In March 2006, the EU Commission formally requested Malta to abolish the regime.

In 2006 Malta reached agreement with the European Commission that effectively preserves intact its competitive imputation tax system for business in Malta. The proposal, which was developed by the Maltese Government, extends the refundable tax credit system to all Maltese companies and shareholders. This important agreement ensures Malta's future ability to continue to be an attractive and competitive environment for international business and investment. Such an agreement thus abolished the ITC regime and introduced a new tax refund system. Such a new tax refund system does not constitute a complete departure from the old ITC regime. It is based on the same concepts, but has been revamped to remove its ring-fenced benefits and the discrimination against shareholders resident in Malta.

Partnership *En Nom Collectif*

As stated above, the main differentiating feature of the partnership *en nom collectif* is that the partners are unlimitedly liable for the obligations of the partnership with all their property, present and future and not limited to their contribution to the partnership (unlike the limited liability company). Before the partnership's creditors may attack the personal assets of the partners, they must first exhaust all the assets of the partnership itself.

Amongst the partners themselves, the obligations of the partnership are settled in proportion to the partner's respective contributions.

Any partner who has settled more than his share may have recourse against the others for such excess. Two or more partners may form the partnership *en nom collectif* and the government fees for setting a partnership up are the same as those applicable to limited liability companies. There are some minor running advantages with respect to partnerships in comparison to limited liability companies. Mainly, they are neither bound to submit an annual return nor do they have to file accounts to the Registry of Companies.

Partnership *En Commandite*

A partnership *en commandite* may be considered to be a hybrid between a limited liability company and a partnership *en nom collectif* – as this type of partnership is formed by both general partners who are unlimitedly liable for the obligations of the partnership with all their property, present and future and not limited to their contribution to the partnership, and limited partners whose liability is limited to any unpaid amount of their contribution to the partnership.

As in the partnership *en nom collectif*, before the partnership's creditors may attack the personal assets of the partners, they must first exhaust all the assets of the partnership itself.

There are two types of partnership *en commandite*, being either an ordinary partnership where the contribution of the partners are provided for in terms of their proportion of interest, or a partnership with the partner's contribution being divided into shares.

Civil Partnerships

It is also possible for two or more persons to create a partnership under the Civil Code. Partners will not be jointly and severally liable for the debts of the partnership and one partner cannot bind the others unless the others so have granted authority to do. The partnership's objectives must be lawful and the scope of such a partnership is to share a benefit that they derive there from. There are no registration requirements, nor are there any disclosure requirements for civil partnerships. The partners must contribute money, property or skill and will be entitled to receive their share of the benefits as agreed in the partnership agreement.

Co-operatives

A Co-operative is another type of business entity that is possible under Maltese law, however this entity is not widely used. The legal setup for such organisations was provided for in the Co-Operative Societies Act, 2001. A minimum of seven members may form a co-operative and this may have any lawful object clause desired by the members. The Co-operatives Board whose main function is to guide, assist and manage the co-operative supervises the administration of co-operatives. The principal advantage of a co-operative is that all profits earned by the co-operative are not subject to tax while they remain in the hands of the co-operative.

Joint Ventures

When two or more parties undertake an economic activity together, they may opt to create a new entity known as a joint venture. In order to create this new entity, all parties must contribute equity and share in the revenues, expenses and control of the enterprise.

A joint venture may be created for one specific project or for the continuation of a business relationship. The terms of a joint venture are generally set out in a contract or other binding arrangement and usually specify the initial contribution from each joint venture and the share of revenues or other benefits (if any), and expenses of each of the joint venture.

As a structure, a joint venture can take the form of a corporation, a limited liability company a partnership or other legal structure that is permitted within one's jurisdiction. A joint venture can be set up between two or more local companies. However it is common to see a joint venture created between a local company and a foreign company in order for the foreign company to have geographical presence and for the companies to complement their skills.

The main aim as to why an agreement is entered into whereby two or more undertakings will agree to co-operate is generally done with a view to profit. Although it is common that a new enterprise will be created for joint venture purposes, the joint venture may also be directed at enhancing the efficiency of an existing activity. Here, the simplest form of joint venture is where the parties decide to retain their own independence and base their co-operation entirely upon contract.

Owing to the fact that a joint venture comprises in the cooperation between two or more undertakings, there is no doubt that competition law implications may arise. The prohibitions laid down in Articles 5 and 9 of the Competition Act (Chapter 379 of the Laws of Malta) are also applicable to joint ventures. Whilst the said Articles prohibit agreements and practices reached between undertakings in Malta, joint ventures must also abide by Article 81 and 82 of the EC Treaty, which are equivalent to local legislation, but apply where there is other member states' involvements.

The Business Promotion Act (Chapter 325 of the Laws of Malta), which provides incentives for those industries demonstrating growth and employment potential that are engaged in manufacture, repair, improvement or maintenance activities, and which Act provides fiscal incentives to qualifying companies with tax rates as low as 5% for a given number of years, also provides for joint ventures by giving such entities advantages so as to be recognised as such a company.

Trusts

Although Malta is essentially a civil law jurisdiction, the legislator has introduced the concept of Trusts over time. Trusts were originally limitedly available to non-residents with very advantageous benefits and it is only since 2004 that the setting up of trusts in Malta has been made available to both residents and non-residents. Today the Trusts and Trustees Act regulate the Trusts.

A trust is an obligation, which binds a person or persons (called the trustee) to deal with property of which the trustee is deemed to be the legal owner (called the trust property) for the benefit of persons (called the beneficiaries) or for a charitable purpose in accordance with the terms of the trust.

In terms of Maltese law, a trust is an example of a fiduciary relationship between the Settler and the Trustee whereby the settler transfers his property to the trustee who shall act in terms of the trust deed. Due to this fiduciary nature of trusts, a trustee must be licensed to act as such in terms of the Trusts and Trustees Act except in certain limited cases provided by law.

Audit Requirements and Practices

Auditors require a warrant in order to practice their profession in Malta. It is first necessary that one completes the required course at the University of Malta or obtains an equivalent to the degree of a B. ACC. An equivalent to the said degree in the international sphere is the A.C.C.A. programme.

Once such a level of education is reached, a warrant to carry out the functions of an auditor may be obtained after two years of practice in the said office.

Auditors are bound to abide and comply with the Accountancy Profession Act, as well as the Accountants and Auditors Code of Ethics.



Chapter 3

Financial Services Regulation

Law established the Malta Financial Services Authority (MFSA) on 23rd July 2002. It is a fully autonomous public institution and reports to Parliament on an annual basis. The MFSA has taken over supervisory functions previously carried out by the Central Bank of Malta, the Malta Stock Exchange and the Malta Financial Services Centre and is now the single regulator for financial services. The sector incorporates all financial activity including banking, investment and insurance. The MFSA also manages the Registry of Companies and has also taken over responsibility as the Listing Authority.

The organisational structure of the MFSA ensures that the regulatory and operational functions of the Authority are exercised within strict legal demarcations. The Board of Governors presided by the Chairman sets out policy and general direction and is assisted by the Legal and International Affairs Unit. The Director of this Unit is also the Secretary to the Board of Governors. The Supervisory Council, headed by the Director General is exclusively responsible for issuing licenses and regulation and is composed of the Directors responsible for Banking, Securities, Pensions, Insurance, Company Compliance, Corporate and Trustee Services. Operations are the responsibility of the Board of Management and Resources composed of the Directors responsible for Business Development, Human Resources, Information Technology and Administration led by the Chief Operations Officer. Co-ordination between these two organs is ensured at Co-ordination Committee level.

Creating the MFSA as a single regulator was a structured part of Malta's long term strategy to create a mainstream finance centre in the country. Malta is a jurisdiction that follows and helps develop international best practice. Finance companies have benefited from a reduction in bureaucracy, streamlined procedures, lower fees and compliance costs and a more consistent implementation of standards.

The MFSA is also responsible for consumer education and consumer protection in the financial services sector. This function is vested in the Consumer Complaints Manager.

The consumer therefore has one single point of decision-making and policy creation. More importantly, the founding of the MFSA means that Malta now has one skilled, experienced and powerful body seeking to protect consumers whilst encouraging fair and open competition in the financial services sector.¹

Investment Services Regulation

The principal body of laws establishing a comprehensive regulatory framework for the provision of investment services in Malta is The Investment Services Act, 1994 and subsidiary legislation enacted under that Act. The Malta Financial Services Authority (MFSA) requires the highest levels of probity and honesty by operators and applies the Fit and Proper test to its licensees. This test requires key staff within an investment service provider together with any licensees to demonstrate solvency, competence and integrity in their dealings at all times. The Act lists a number of activities that require a licence from the MFSA. These activities include Dealing as Principal or Agent; Arranging Deals; Management of Investments; Trustee, Custodian or Nominee Services; Investment Advice and Stock broking.

¹ <http://www.mfsa.com.mt>

The Act also requires that an investment scheme would have a collective investment scheme licence before offering its units to investors. The Act defines a collective investment scheme, the main investment setup in Malta, as any scheme or arrangement which has as one of its objects the collective investment of capital acquired by means of an offer of units for subscription which operates according to the principle of risk spreading, the contributions and the profits out of which payments are to be made are pooled and units can be repurchased, redeemed out of the assets of the scheme and units are issued continuously or at short intervals. The legal structure of the scheme may be in the form of a SICAV (Sociétés d'Investissement à Capital Variable), INVCO (Investment Companies with Fixed Share Capital), a mutual fund, an investment partnership or a unit trust.

Investment Funds

The different types of schemes available under the Maltese investment regulatory structure in which the level and strictness of regulation, depends on the type of scheme being set-up with investor and market protection as a whole being the underlying principle. These types include Professional Investor Funds; Private Schemes; Specialist Schemes and Retail Funds.

Professional Investor Funds can be promoted either to Qualifying Investors or to Experienced Investors. Professional Investment Funds for Qualifying Investors may be promoted to entities or individuals with net assets in excess of USD1.0 million and persons with reasonable experience in the acquisition and/or disposal of funds of a similar nature or property of the same kind in which the fund deals. The minimum initial investment in such a fund is of USD 100, 000 and the amount of invested funds may not be lower than this level except if it is a result of a fall in the NAV of the fund.

Professional Investment Funds for Experienced Investors may be promoted to persons, who have the expertise, experience and knowledge to be able to make their own investment decisions and understand the risks involved. The minimum initial investment in such a fund is of USD 20,000 and the amount of invested funds may not be lower than this level except if it is a result of a fall in the NAV of the fund.

Private Schemes are investment schemes that limit their number of unit holders and that must show a close relationship between the unit holders. The nature of the scheme must essentially be private. Such a scheme does not require licensing under the Act although the promoters must apply to the MFSA for recognition.

Retail Funds are those funds that are offered to the general public – and therefore are the most strictly regulated. The special rules include specifications regarding the setup of the Manager, Custodian and Administrator of the fund together with investment restrictions with the general aim to ensure a minimum level of risk spreading.

Banking Services Regulation

The Banking Act, 1994, regulates banking business in Malta. This law, which has replaced the previous Banking Act 1970, has adopted European Union directives as the main reference for the regulatory concepts and supervisory practices, which it introduced.

The Banking Act, 1994 has introduced a modern regulatory regime with all the flexibility necessary in a modern and dynamic banking environment. To achieve this flexibility, the Act has provided for the appointment of a competent authority responsible to administer the provisions of the Act, particularly as regards regulation and supervision of banks.

The MFSA as the competent authority is also empowered to issue directives to credit institutions, to monitor risks and establish other regulatory requirements.

The Financial Institutions Act, 1994 regulates non-bank financial institutions that are institutions, which do not fund their activities through the taking of deposits. The activities of financial institution amongst other activities include lending, financial leasing, venture or risk capital and foreign exchange dealing.

The Act authorizes the competent authority so appointed to issue directives to financial institutions for supervisory, regulatory and prudential purposes.

Insurance Regulation

The Insurance Business Act, 1998, regulates the business of insurance in Malta. The Act provides for the authorisation and supervision of insurance companies by the MFSA. The MFSA has the power and the duty to ensure that companies authorised to carry on the business of insurance comply with the provisions of the Insurance Business Act, the provisions of any regulations made under the Insurance Business Act and the requirements by any Insurance Rule issued by the MFSA.

The MFSA may grant an authorisation to a company whose head office is in Malta to carry on the business of insurance in or from Malta or in or from a country outside Malta to a company whose head office is in a country outside Malta to carry on the business of insurance in or from Malta.

The class or part class or classes of business of insurance as specified in the Second and Third Schedules of the Act and different requirements (in terms of own funds and solvency) may be required for entities carrying on the business of insurance of different classes. An authorisation may be restricted to business of reinsurance or be subject to any condition imposed by the Authority.

Affiliate Insurance Companies

Captive Insurance Companies known as Affiliated Insurance Companies under Maltese law are companies licensed to undertake business of insurance limited to risks originating with shareholders of connected undertakings or entities. The motivation leading to the use of Captive Insurances may range from the lack of a specific type of insurance coverage required by a company in the market to an attempt to reduce costs of insurance suffered by a company to cover its operations.

Setting up your Captive Insurance in Malta may enjoy various benefits. Malta is an ideal jurisdiction for your Captive Insurance for risks originating in the EU and elsewhere. The benefits of EU membership, apart from assurance of compliance with EU standard Directives and Regulations in among others the Financial Services field, include the possibility to insure risks originating anywhere in the EU under the same licence and without the use of fronting arrangements.

Captive Insurers and Insurance Managers in Malta benefit in terms of a workforce that is highly specialised and professional as well as in terms of the cost facilities.

Maltese registered Captive Insurances may draw up abridged accounts and are exempt from publishing their accounts in local newspapers, contributing to the protection and compensation fund and the payment of duty on any contract of insurance relating to a risk situated outside Malta. Captive Insurances are taxed at 35% while the shareholders are entitled to refunds reducing the effective taxation of the operation to single digit figures. Yet Maltese legislation requires Captive Insurances to maintain levels of solvency (which for Captive Insurances carrying out general business the solvency margin is calculated on a premium basis or on a claims basis, while for Captive Insurances carrying out long term business it is calculated according to the class in which it operates) and own fund's (which varies according to the class in which it operates) to the same level as required by current EU Directives, therefore making Malta an ideal jurisdiction both in terms of the quality of its regulation, under the watchful-eye of the Malta Financial Services Authority and in terms of advantages to the parent company.

Captive Insurance companies may not be the ideal solution for all operations and depends on the specific circumstances of the operation in question. Maltese legislation provides an alternative to such entities in the form of a Protected Cell Company (PCC). The business of a PCC is limited to insurance and the assets of each cell are segregated from that of the company and also those of other cells within the company. This implies that the creditors of a particular cell have no recourse against the assets or other cells within the PCC. However the PCC with its cellular and non-cellular components form a single legal entity. A PCC may lead to reduced expenses and overheads where the use of a Captive Insurance company may not provide sufficient advantages to justify its existence.

The European Single Passport

Following Malta's accession to the European Union, insurers and intermediaries whose head office is situated within the European Economic Area (EEA) are able to *passport* their services or establish a branch in Malta without the need to go through the application for and granting of a licence by the MFSA. On the basis of the same rule, insurance undertakings and intermediaries established and licensed in Malta are also able to provide their services in any of the other EEA states through the European Single Passport.

In order to avail of the benefits of the European Single Passport this consists merely in a brief application to the home regulator (the original regulator that has issued the licence) as well as a notification to the host regulator (the regulator of the jurisdiction in which such services will be provided). Pass-porting insurers/intermediaries are only subject to regulation by the home member state and both the host and home regulator may be in direct contact with each other on any issue that may arise related to the activity of the pass-ported entity in the host state, thus ensuring protection of customers in the host jurisdiction while respecting the fundamental freedom of provision of services.

The Prevention of Money Laundering and Funding of Terrorism

The laundering of money is generally considered to be the process by which funds, which have been derived in an illicit manner, are converted to give such funds the appearance that they have been legitimately derived. Criminals have traditionally developed their techniques to cater for changes in anti-money laundering legislation. The term laundering was coined from the use of laundries to legitimise illicit income being a business that usually dealt in cash payments.

Following several developments in prevention of money laundering legislation, money launderers have altered their techniques to make use of the banking system, auditors, external accountants, professional services providers, nominee companies, trustees, casinos, dealers in precious stones, metals or works of arts and the real estate market. Anti-money laundering legislation traditionally focussed on financial institutions however has developed over time to catch up with the new techniques used by launderers.

Prevention of money laundering legislation was often limited to certain sources of income, such as trafficking in illicit substances with other criminal activities being subsequently included. Today prevention of money laundering legislation usually covers any income derived from a crime.

As a result of the terrorist attacks on the United States in 2001, the world community had diverted its attention to prevent the use of the financial institutions for the funding of terrorism around the world therefore imposing an additional burden on subject persons to follow the source and use of funds which they are involved in. This has lead to the promulgation of several United Nations resolutions seizing funds belonging to suspect terrorist foundations together with a global enhancement of prevention of money laundering legislation.

The process of money laundering generally includes three stages namely placement, layering and integration:

- *Placement* is the initial point of entry of illicit funds into the financial system. It is at this stage that money laundering is most easily detectable. The launderer may attempt to do this in several stages depending on the source and the amount of the illicit funds.

- *Layering* is the creation of complex networks of transactions which attempt to obscure the link between the initial entry point of the funds and the end of the laundering cycle. A general rule of thumb is that when a transaction is more complex than it justifiably needs to be then it should give rise to suspicion.
- *Integration* is possible following the completion of the above two processes. It is at this stage that the money launderer may invest the funds in other legitimate operations.

Legislation aimed at the prevention of money laundering has been introduced to the Maltese legal system in 1994 with the Prevention of Money Laundering Act and has not stopped developing since. The most recent amendments being adopted in 2005 extended the scope of the Act to include the funding of terrorism. The Prevention of Money Laundering Act applies to all persons, whether natural or corporate and stipulates that any person convicted of money laundering shall be liable to a fine not exceeding € 2,329,373.40 or to imprisonment for a period not exceeding fourteen years or to both such fine and imprisonment. The Act also establishes the Financial Intelligence Analysis Unit (FIAU) – which strives to combat money laundering and contributes to a safe and stable financial and economic environment and provides details of powers and obligations of the FIAU and how it should fulfil its duties. Subject persons are obliged to report any suspicious transactions within three days from when such suspicion has arisen to the FIAU for further investigation and failure to do so will render subject persons liable to fines imposed by the FIAU without recourse to the courts.

The Prevention of Money Laundering and Funding of Terrorism Regulations enacted in 2003 and amended in 2006 transposing most of the Financial Action Task Force (FATF) forty recommendations into the Maltese legal system.

The Regulations impose obligations on subject persons, being those persons, whether natural or legal that carry out relevant financial activity or relevant activity in terms of the Regulations. Relevant financial activity includes any business of banking, life assurance business, investment business and stock broking; while relevant activity includes the activity performed by auditors, external accountants and tax advisors, real estate agents in the exercise of their profession, notaries and independent legal professionals while assisting their clients in the planning or execution of transactions while buying or selling or real property or business entities, opening or management of bank, savings or securities accounts and others, fiduciaries acting as fiduciary shareholders, casino licensees, dealers in precious stones or metals or works of art or similar good whenever payment is made in cash in an amount equivalent to € 11,646.87 and associated activities.

Before forming a business relationship, subject persons are required to carry out certain controls that include a prior due diligence exercise, implement record keeping procedures and maintain an internal reporting setup. The Regulations do not provide a definition of what customer due diligence (CDD) is, apart from including identification procedures. Subject persons are free to apply additional CDD requirements that generally include:

- Verification of the customers identity
- Details regarding the corporate structure of the prospective client
- Information about the purpose and nature of the business relationship
- Ongoing monitoring of the business relationship and maintaining any information updated.

Where possible, the information required above should be provided by an independent and reliable source. With Malta's accession to the European Union, Maltese prevention of money laundering legislation has taken on further developments and shall remain on the cutting edge of prevention to money laundering regulation. The EU has already implemented two Directives aimed at preventing money laundering with a third being adopted and having repealed the previous two Directives in 2005. The Third Money Laundering Directive is intended to bring EU legislation in line with the FATF Forty Recommendations. This Directive provides for risk classification where relevant persons may opt to apply enhanced or simplified customer due diligence depending on the risk-sensitivity of the transaction or relationship concerned. While conducting their risk analysis relevant persons should focus on products and transactions that are characterised by a high risk of money laundering. Member States should have implemented the Third Money Laundering Directive by the 15th December 2007.

Foundations

Introduction

By means of Act III of 2007 there have been some amendments to the laws of Malta. Such changes have affected the laws on private foundations. Some of the most significant changes in this regard, have been done to the Notaries Profession and Notaries Archives Act, the Income Tax Act and the Duty on Documents and Transfers Act.

There has been a new provision inserted in the Duty on Documents and Transfers Act, namely that of Article 32D by means of the said Act III of 2007, which holds that administrators of a foundation may opt for the foundation to be treated as a trust in certain circumstances. In such instances, the provisions relating to trusts shall apply to foundations.

The said Act also clarifies the position on private foundations, where it holds that a foundation is to be treated like a corporation and taxed at the rate of 35%.

Definition of a Foundation

A private foundation is a legal entity, which may be set up by an individual person or a group of persons for a specific purpose. As properly defined by the law, a foundation is an organisation consisting of a universality of things constituted in writing, including by means of a will, by a founder or founders whereby assets are destined either for the fulfilment of a specified purpose for the benefit of a named person or class of persons, and are entrusted to the administration of a designated person or persons.

The patrimony, namely assets and liabilities, of the foundation are kept distinct from that of its founders, administrators or any beneficiaries. Such assets may originate from any lawful business or activity, and may be present or future assets of any nature. The law seems to classify foundations under two headings. A foundation shall be referred to as a 'purpose foundation' if it is established exclusively for a charitable, philanthropic or other social purpose or as a non-profit organisation or for any other lawful purpose, whereas a foundation shall be referred to as a 'private foundation', when it is established for private benefit. Unlike a charitable foundation, a private foundation does not solicit funds from the public. Unless evident from its statute, a foundation shall be considered a private foundation. Private foundations must indicate the names of their beneficiaries or a declaration that the foundation is constituted for the benefit of beneficiaries.

Thus the foundation consists in the dedication of a fund to a specified object with an appropriate organisation for its administration.

Foundations and Trusts

The term 'foundation' does not include trusts. However a foundation may be converted into a trust and a trust may be converted into a foundation. The Civil Code of Malta clearly lists a foundation as a legal entity. There are many areas of similarity between trusts and foundations, such as their beneficiaries and their interest, however one main difference between the two, is that a foundation has legal personality, whilst a trust does not. In many countries, the law on foundations does not address beneficial interests in any particular detail; however this cannot be said about the new Maltese law of foundations.

Formation and Revocation of a Trust

Maltese law requires that foundations must be created by public deed or by a will. They shall be deemed to have a legal personality from the date of their establishment. Just as any other public deeds, foundations must be registered with the Public Registry.

The legal personality of the foundation also requires registration. Prior to registration, there must be the written consent of persons who were named in the statute to act as administrators. A private foundation also requires a beneficiary. If there is no such beneficiary, then subject to certain exceptions, the Court may strike off the legal personality of the foundation. Once registered, a foundation is valid for 100 years, unless otherwise indicated with regards to certain forms of foundations. As a rule, a foundation cannot be revoked prior to the term for which it is established.

However, a private foundation may be terminated prior to this time, on the demand of all the beneficiaries of the foundation and with the consent of the founder, provided that the founder has not expressly excluded such a right.

Following the death of the founder, the Court shall have the power to dissolve and wind up any private foundation when requested by all the beneficiaries of the foundation, if it is established that the foundation is no longer necessary to achieve the intentions of the founder.

Furthermore, the statute of the foundation may provide that it is revocable. However revocation shall not invalidate acts already lawfully carried out, or lawful acts which are in progress. Revocation shall neither affect lawful commitments made and not yet fulfilled. Revocation of a foundation must be notified to the Registrar who shall strike off the said foundation.

In order to establish a foundation, there is the necessity of an assignment of property or money. Very low thresholds are set in this regard. The founder, or any other person with his consent, may add to the assets of a foundation by additional endowments, at any time.

A foundation may be set up for various reasons, provided that there is a legal purpose. However, a foundation may not be established to trade or carry on commercial activities, even if proceeds are for a social purpose, subject to certain exceptions.

Private Foundations

A foundation may also be established for the private benefit of one or more persons, or of a class of persons. This is known as a private foundation. In such an instance, the beneficiaries shall enjoy the benefits of the foundation, and shall have legally enforceable rights against the foundation. Foundations hold fiduciary obligations upon all persons administering them. Benefits under a foundation are personal to the beneficiaries, where creditors have rights only to the extent of the beneficiary's entitlements under the foundation.

Unless otherwise provided for, the death of a beneficiary does not devolve his entitlements under the foundation to his heirs, but such entitlements shall dissolve.

On the other hand if it is the foundation that terminates, the assets thereof shall devolve on the founder or his heirs at law. The founder of a foundation may also be a beneficiary. If there are two founders, decisions shall be taken unanimously; whilst if there are more than two founders, decisions are taken by the majority unless otherwise is provided in the deed of the foundation.

There must also be an administrator of the foundation, who may apply to the court for directions concerning his duties. Administrators must inform the beneficiaries regarding their entitlement in the foundation.



Chapter 4

Prime Activities in Malta

Ship Registration under the Maltese Flag

Malta being an island in the central part of the Mediterranean has always been a centre of trade with a maritime tradition. Whilst Malta's strong maritime tradition has meant that foreign vessels have long been registered in Malta, the last few years have seen the island's open ship registry develop swiftly. In this highly competitive market place gross tonnage of Maltese-registered ships has significantly increased and Malta is amongst the first rank of maritime nations in terms of ship registrations.

All sectors of maritime activity in Malta are co-ordinated by the Malta Maritime Authority which operates a comprehensive maritime centre adequately supported by the right administrative, legal, fiscal and infrastructure framework. The Malta Maritime Authority's objective is to internationally enhance Malta's image ensuring respect for the Maltese flag and yet lure ship owners – and ship financiers – to registering vessels in Malta.

In order to be eligible under the Malta flag, a vessel must be wholly owned by a citizen of Malta or by a company established under the laws of Malta. However, it is recommended that a Maltese shipping company be registered for each vessel.

Vessel registration under the Maltese flag and the operation of ships is regulated by the Merchant Shipping Act (Chapter 234 of the Laws of Malta originally enacted in 1973) which is a law based on the UK legislation but subsequently revised and amended.

Any type of vessel from pleasure yachts to oil rigs may be registered under the Malta flag. It is also possible under the Merchant Shipping Act for ships under construction to be registered.

A vessel is first registered provisionally under the Malta flag for six months, extendible for a further period of six months during which period, all documentation necessary for permanent registration must be finalised.

Full registration is then obtained by the delivery of the relevant documentation and this has to be effected within the six months of provisional registration.

Bareboat Charter Registration

The Merchant Shipping Act also provides both for bareboat charter registration of foreign ships under the Malta flag and for the bareboat charter registration of Maltese ships under a foreign flag. Vessels so registered enjoy the same rights and privileges and have the same obligations as any other ship registered in Malta.

A bareboat charter registration lasts for the duration of the bareboat charter or until the expiry date of the underlying registration, whichever is the shorter, but in no case for a period exceeding two years. Registration may however be extended.

Mortgage Registration

Provisional or permanent registration of a vessel under the Maltese flag may be used as security for a debt by means of a mortgage.

International banks have found the Maltese ship mortgage satisfactory. The Maltese mortgage finds its origin in the English mortgage and has similar powers, but has been supplemented with additional powers and status from the Civil Law system applying in Malta. The Maltese mortgage for instance, is an executive title and can be enforced without the need for a judgment; the mortgage has rights in relation to the registry in so far as certification of the ship and maintenance of the status of the registration is concerned. A ship cannot be sold or re-mortgaged without the consent of the mortgagee and the mortgage attached to the proceeds of insurance and mishaps.

The priority of a registered mortgage is established at both the date and the time of the registration. A foreign mortgage will be recognised as a mortgage and will have the status, rights and powers of a Maltese mortgage if it satisfies the requirements listed in the Merchant Shipping Act. Amongst the most important advantages of a Maltese mortgage one finds the following:

- Mortgage is well protected and is high up in the list of debts given priority in the distribution of the proceeds of a forced sale;
- Registered mortgage attached to the ship in respect of which it is registered until it is discharged;
- No document stamp duty is payable in respect of mortgage instruments;
- Mortgage on a Maltese ship is widely recognised and enforced.

VAT Treatment of Yacht Leasing

For the purpose of VAT, the lease of the craft is a supply of services with the right of deduction of input VAT by the lessor, where such right applies. This supply of services is taxable according to the use of the craft, attributed within the territorial waters of the European Union (EU, provided that the lessor is a Maltese company - including a commercial bank) which is leasing the craft to any Maltese or non-Maltese person or company.

Due to the nature of the use of pleasure crafts, it is very difficult to trail the movements of pleasure crafts in order to determine the period that the craft spends within the territorial waters of the EU and the time it spends outside the EU. In this regard, The VAT department have issued guidelines that establish the estimated percentage portion of the lease based on the time that the craft is used within the territorial waters of the EU. These percentages are set according to the length of the craft and its means of propulsion (power or sailing).

Remote Gambling in Malta

With the publication of the Remote Gaming Regulations in 2004, Malta established a comprehensive legislative framework aiming to provide a secure on-line environment to players and simultaneously guarantee remote gaming operators a competitive framework.

These regulations were published after extensive consultation with the operators resulting in a flexible legislative instrument that while setting down the fundamental regulatory principles leaves sufficient space and scope to deal with future requirements. Malta has set new standards for operators who want to locate their business in a stable and reputable jurisdiction to obtain a competitive edge within their market.

Today under the regulatory watch of the Lotteries and Gaming Authority, the present gaming and gambling situation is a far from that present only a few years ago. Each operator requires a licence issued by the authority and is obliged to comply with ongoing reporting standards. Stringent licensing criteria intended to ensure that only those who are fit and proper are considered for licensing accompanied by certification and review procedures helps ensure that abuses of the system are avoided and the interests of customers are safeguarded.

The local regulatory system provides for four separate classes of licences depending on the nature of the operator's intended activity.

- Class 1: For operators managing their own risk on repetitive games. This class covers casino-type games, skill games and online lotteries.
- Class 2: For operators managing their own risk on events based on a matchbook. Under this class falls fixed odds betting, pool betting and spread betting.
- Class 3: Operators taking a commission from promoting and/or abetting games. This class includes P2P, poker networks, betting exchange and game portals.
- Class 4: To host and manage remote gaming operators, excluding the licensee himself. This is intended for software vendors who want to provide management and hosting facilities on their platform.

The ever increasingly presence and convenience of online services has led to the booming of the international online gaming market with the local industry taking a significant chunk thereof.

This is mainly a result of:

- Malta's beneficial tax treatment of companies
- Malta's EU membership since May 2004
- An excellent financial services sector and a balanced regulatory framework
- Detailed procedures relating to control systems together with the financial protection of players
- International bandwidth security ensured by several fibre optic cables and a microwave connection to mainland Europe
- The availability of a skilled workforce at competitive salaries.

One should also consider that the European Commission is moving towards the removal of Member State gaming and gambling monopolies, being in violation of the Treaty, as the European Court of Justice has clearly held that any prohibition or obstacle to inter-Community trade must be applied in a consistent and methodical manner, and not giving undue preference to a domestic operator.



Chapter 5

Taxation

Corporate Taxation

The standard corporate tax rate applicable to companies registered in Malta is 35% and there are no thresholds for reduced rates of taxation applicable. There are no controlled foreign company, thin capitalisation or transfer pricing rules applicable under Maltese legislation.

Following amendments implemented to the Maltese Income Tax Acts in 2007, in line with an agreement reached with the EU, a revamped system of corporate tax refunds is now available. The agreement that Malta has reached with the EU includes the retention of the full imputation tax system wherein tax paid by a company in Malta is imputed to the shareholder. The refund system was extended to all income derived from Malta and to all shareholders irrespective of their residence among other amendments. A company that is registered and taxable in Malta allocates its income to one of the five tax accounts depending on the nature of the income concerned.

A shareholder who receives a dividend from a company that is registered in Malta from profits allocated to the company's Maltese taxed Account or its Foreign Income Account and which does not consist of passive interest or royalties may claim back a refund of six-sevenths of the tax paid by the company on that income – the effective rate of Malta tax being 5%.

A shareholder who receives a dividend from a company that is registered in Malta from passive interest or royalties may claim back a refund of five-sevenths of the tax paid by the company on that income – the effective rate of Malta tax thereon being 10%.

The above two types of refunds are available in situations where the Maltese company does not claim double taxation relief which includes: Double Tax Relief under one of the Double Taxation Treaties that Malta is a party to, Unilateral Relief or the Flat Rate Foreign Tax Credit. The recipients of dividends distributed from the foreign income account on which the company has opted for double taxation relief will be entitled to a two thirds refund of the Malta tax paid. The former two are dependent on the tax paid outside of Malta and proof thereof is required, however the Flat Rate Foreign Tax Credit includes a mechanism where a deemed tax credit of 25% is given to the company, and two-thirds refund on the Malta tax paid is further provided to the shareholder – with an effective rate of Malta tax being 6.25%.

Shareholders must register with the Commissioner of Inland Revenue in order to benefit from the tax refunds mentioned above. Furthermore, any income or gains derived by a company registered in Malta from a participating holding or from the disposal of such holding, the company need not declare such income or gain in its tax return. Alternatively the company may be subject to tax at the full 35% rate and apply for a full refund of Malta tax paid. This option is limited by means of the introduction of several anti-abuse conditions that have to be satisfied before a holding is classified as a participating holding. Principally the shares held must be of at least 10% of the capital stock in the foreign company; or the value of shares exceeds 1.2 million Euro and is held for more than 183 days.

The subsidiary entity must also either be an EU resident entity or is taxed at a rate not lower than 15% or derives less than 50% of its income from passive interest or royalties or is not a portfolio investment and is taxed at a rate of more than 5%. For all other entities that do not qualify as a participating holding under the above conditions, these will not be entitled to the exemption or full refund.

With the introduction of the new refund system available in Malta with effect from 1st January 2007, companies resident in Malta will no longer be able to apply for ITC status (*international trading company – this company must be solely engaged in trading with persons outside Malta who are not Maltese residents and the members of such companies were granted refunds with an effective Malta tax burden of 4.17%*). ITCs will lose their status by the 31st December 2010 but profits earned by such companies until such date will continue to be governed by the refund regime until 31st December 2014.

Branches that have been registered with the Commissioner of Inland Revenue will be entitled to the same treatment and relative refunds as companies registered in Malta on those profits attributable to the activities performed in Malta.

Fiscal Year

The fiscal/ financial year is defined in the financial year act. It states that the 31st of December shall be the date on which every financial year, subsequent to that ending on the 1st March, shall end. Normally the fiscal year starts at the 1st of April and ends at the 31st of March, so it takes 12 months.

All tax returns must be filed by April 15th following the close of the calendar year. For Fiscal year taxpayers' returns must be filed within four months from the end of the fiscal year.

Payment of tax

An Individual who is a Maltese Resident pays tax on his income as a wage earner or as a self-employed person. A “permanent resident” will be taxed on his income in Malta and overseas. A foreign resident pays tax only on the income he earns in Malta. An employer is obligated to deduct at source, each month the amount of tax payable on a wage. There is the possibility to deduct certain payments from the taxable income of an individual. Passive income of a couple is attributed to the one, having the higher income.

Individuals have to file the annual return until August 30th. Self-Employed persons must make 3 equal advance payments on April 30th, August 31st and December 31st based on the taxable income for the previous year. Back duty has to be paid by the August 31 following the end of the tax year. Employed persons who are receiving a salary are not bound to file an annual return, but they have to submit a declaration by June 15th. A similar declaration must be filed by an individual in respect of his income from a pension, dividend from a local corporation and income from an investment in respect of which tax of 15% was deducted at source.

Limited Companies have to submit a report on the date of 30th June. In practice, a report may be submitted up until September 30th. Advance payments for a company are on the dates and in the amounts specified for an individual. Annual tax differentials must be paid by September 30th. Anti-abuse provisions have been introduced in order to mitigate aggressive tax planning. Royalties and similar income accruing from patents on inventions to persons undertaking research leading to the development of such patents will be exempt from income tax. This exemption is conditional.

Capital Gains Tax

A tax on capital gains at the rate of 35% for companies is payable on the transfer of ownership of securities, business goodwill, copyrights, patents, trademarks and trade names and on the assignments of ownership rights over such properties. Capital gains by companies are computed separately and added to trading income in the same way as income from investments and non-trading income.

Capital losses may be carried forward and set off against future gains made from capital transfers. The capital gains tax enforcement provisions are integrated within the Income Tax Act. The tax is charged on gains from the sale of assets situated in Malta and on gains from the sale of assets situated abroad by persons domiciled and ordinarily resident in Malta. A provisional payment of 7% must be immediately paid to the Commissioner of Inland Revenue on signing of the deed of transfer.

Dividends

In terms of the full imputation system, resident companies are bound by law to withhold 35% company tax at source, originally paid by the company on all dividend payments made to shareholders. Since the paying company or organisations will have already paid the Government tax at 35% on profits, the company keeps the 35% withheld from dividends paid to shareholders so that in reality, companies in Malta effectively pay no income tax on distributed income. Company tax returns now in electronic format distinguish accounting profits between Foreign Income Account, the Malta Taxed Account and the untaxed account.

Interest Deduction

Interests on loan or other debts are also to be taxed with a corporate income tax rate of 35%. Malta grants a refund on dividends paid to non-residents. A non-resident company gets a refund of generally two-thirds of the Maltese tax paid by the resident company which paid dividends to the non-residents.

Repatriation of Profits

Malta does not levy any withholding tax payments of dividends to non-resident shareholders that facilitate the repatriation of profits to low-taxed jurisdictions.

Tax on the Transfer of Immovable Property

Following amendments to the Income Tax Act implemented in November 2005, transfers of immovable property are no longer subject to the capital gains rules but are subject to a final withholding tax of 12% on the transfer amount. The transferor may in certain circumstances opt to be taxed at standard rates on the gain made on the transfer. Under the old system the transferor would be subject to a 35% tax on the gains made from the transfer. Property that had been acquired through inheritance or partition prior to 1992 is taxed at a final withholding tax of 7%.

The current time window of five years during which taxpayers may opt to have profits or gains from the sale of real estate taxed at 35% rather than by way of the final withholding tax of 12% of the market value, was extended by two years, to seven years as from the year 2010. This option will be available for transfers occurring between 2010 and 2011.

Certain exceptions to the prior rule apply whereby the transferor may opt for the old system to apply (transferor must inform the notary who is publishing the deed). These include the following situations:

- When the property purchased is re-sold within a period of five years (when several transfers form part of a single project the transferor will have to opt under which rules he/she will be taxed at the time of the first transfer);
- Non-residents may opt to be taxed under the old system. A non-resident may only sell their property in Malta to a Maltese citizen. However, if he is not able to find a buyer who is either a Maltese or EU citizen, only then can he make the transfer to another foreign national. To qualify the non-resident has to produce a statement signed by the tax authorities of the country of that person's residence confirming that person's residence in that country and certifying that he is subject to tax in that country on profits derived from the transfer of immovable property situated in Malta;
- Companies that transfer immovable property that has been held for a minimum period of three years with the intention to purchase another property for the same purpose, will be entitled to apply for rollover relief under the old provisions (postponement of tax until second property is transferred).
- When the property transferred is located within a special designated area in terms of the Immovable Property (Acquisition by non-Residents) Act, should the transferor so choose at the time of the publication of the relative deed.

Certain transfers of immovable property are exempt from both capital gains and the final withholding tax, these include:

- The transfer of one's residence owned and occupied for at least three years;
- Transfer of property between companies within the same group.

Inheritance Taxes

There are no inheritance taxes in Malta. However in the event of death, the beneficiary is liable to 5% stamp duty on the value of the immovable property in Malta, as at time of death. If the property is jointly owned and one of the spouses passes away, the 5% is levied on half the value of the property. This tax is not payable upon the transfer of the residential home to the surviving spouse, provided that the surviving spouse does not sell the home during his/her lifetime.

Rental Income Taxes

Letting of property is allowed as long as a letting licence is obtained from the Malta Tourism Authority. Licences will be issued once the property meets first class standard requirements or consists of a villa with a pool. Properties may be rented under a long let or holiday licence.

Annual Property Taxes

There is no annual tax or rates on property.

Value Added Tax (VAT)

The standard VAT rate is 18%. With Malta's membership to the European Union, various changes to the VAT Act have become necessary. The changes relate mostly to Intra-Community and international operations as well as changes to the reporting system. Reduced rates of 5% and 0% apply in certain cases (e.g. food, pharmaceuticals, exports, local and international transport, printed matter and confectionary items. Some transactions are exempt (e.g. banking and insurance services and the sale of immovable property).

Every taxable person that makes intra-Community supplies of goods to businesses registered in other EU Member States is required to make a quarterly recapitulative statement. The information on this statement will be shared with the authorities of other Member States and is designed as a means of controlling supplies that are exempt in one Member State and are reported and taxed as acquisitions in another Member State.

Persons established in the European Union but not established in Malta, may qualify under the Special Refund Scheme. Maltese VAT incurred on services received by persons established in the EU but not in Malta, or goods supplied to persons established in the EU but not in Malta or charged on importation of goods into Malta may be refunded to such persons under the same conditions as those that govern the right of a taxable person registered for VAT in Malta to deduct Input VAT.

There are VAT refunds for research projects, as well as restoration projects and expenses for the construction of Church Schools.

Furthermore, no refund on VAT will be given if there are pending VAT returns.

Eco Contribution

The provisions of the Eco-Contribution Act have come into force as from September 2004. Producers are to charge the eco-contribution when items are first sold or transferred or otherwise disposed of, destroyed or when they are no longer in the manufacturer's possession. The VAT department is the competent authority for the administration of the Eco-Contribution Act. The liability for the payment of eco-contribution lies with the producers and they will be required to pay their dues through an eco-contribution return.

Individual Taxation

Personal income tax is paid on all income tax accruing in or derived from Malta and on income accruing in or delivered from abroad by persons domiciled and ordinarily resident in Malta. Income arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta will be taxed only if it is received in Malta.

Expatriate employees are not considered to be ordinarily resident in Malta if they do not work or reside in Malta for more than 183 days in any one-year. The term income involves gains and profits from any trade, business, profession or vocation; gains or profits from any employment or office; dividends and interest; pensions, annuities or other annual payments; and rents, royalties or other profits derived from ownership of property.

Personal Income Tax Rates for the Year 2010:

Resident married couples opting for joint computation.

Taxable income Tax € Rate Cumulative:

0	11,900	0%
11,901	21,200	15%
21,201	28,700	25%
Over	28,701	35%

Resident single persons and married couples opting for separate computation.

Taxable income Tax € Rate Cumulative:

0	8,500	0%
8,501	14,500	15%
14,501	19,500	25%
Over	19,501	35%

Non-residents (married or single)

Taxable income Tax € Rate Cumulative

0	700	0%
701	3,100	20%
3,101	7,800	30%
Over	7,801	35%

Returned Migrants:

Married /Single

First	€	5,900	0%	/First	€	4,200	0%
Excess 15%				/Excess 15%			

Fringe Benefits Tax

Certain benefits such as use of cars for private purposes, rent, school fees, free meals etc. are added to the salaries and taxed accordingly. All cash allowances paid to employees with the exception of cash allowances paid in respect of the use of employee-owned cars for business purposes are fully taxable. Employees are responsible for the disclosure of fringe benefits provided by third parties over which the employer has no control.

Employers are responsible for reporting the value of fringe benefits provided by them or by associated companies. Employers who fail to report the fringe benefits properly and on time will be subject to penalties. Employers have to keep records that show how the valuation of the fringe benefit was determined.

Residence in Malta

Malta has two most attractive residency schemes, which are probably the most advantageous schemes available throughout the European Union for persons wishing to change their tax residence. Moving your residence from a high-tax country to Malta could make huge savings on tax liabilities. Ordinary residence (available only to EU nationals):

- No minimum residence stay requirement - you may even not spend any time in Malta
- No minimum annual tax
- No tax on your world wide wealth
- No tax on your world wide income which is not remitted to Malta
- No investment required

- No Inheritance Tax or Wealth Tax
- Easy qualification requirements
- Low tax rates on remitted income
- No border controls for travel within the Schengen Area
(From January 2008 Malta has become a full member)

Permanent residence (available to all nationalities):

- No minimum residence stay requirement - you may even not spend any time in Malta
- Minimum annual tax of just Euro 4,200
- No tax on your world wide wealth
- No tax on your world wide income which is not remitted to Malta
- No investment required
- No Inheritance Tax or Wealth Tax
- Easy qualification requirements
- Fixed tax at 15% on remitted income (minimum as above)
- No border controls for travel within the Schengen Area
(From January 2008 Malta has become a full member)

There is no difference in the legal concept of residence in both cases. The distinction between Ordinary and Permanent Residence is merely one of tax rates but the legal effect is the same in that you are deemed to be resident for tax purposes in Malta. In the case of Ordinary Residents, the applicant must have a Maltese address prior to the application. The applicant will therefore need to buy or rent a property prior to the application being filed. The minimum value on the property being rented or bought must be the same minimums as for Permanent Residents. Permanent residents must either purchase an apartment for not less than Euro 115,000 or lease/rent property for not less than Euro 4,200 per year within twelve months from the issue of the permit.

The ordinary resident is not restricted in any way as to the extent of income that must be remitted to Malta each year and there is no minimum remittance requirement. On the other hand the Permanent resident would also need to open a bank account in Malta into which account, he must annually deposit Euro 15,000 plus Euro 2,500 for his wife and for each dependant.

The Permanent resident can freely use this money for any purpose whatsoever and provided the funds have been remitted to Malta, they need not be kept in the account. Neither is it necessary to keep this sum as a minimum deposit in the Maltese Bank account. All that is required is that over a period of twelve months, the sum of Euro 15,000 plus 2,500 is brought into Malta (for his wife each dependant if applicable).

Employment License

Foreign nationals require an employment license in order to work under employment, in Malta. The requirements for obtaining a work permit in Malta depend greatly upon whether the applicant is an EU citizen or otherwise.

An EU, EEA and Swiss citizen have to apply for their employment license by filling in a standard form provided by the Employment and Training Corporation. As from 2nd February 2009, these applicants will immediately be provided with a Provisional Employment License.

The provisional employment license is valid for 30 days from the date of submission of the application and until such time as another license is issued in respect of the same employee.

EU nationals have a right to reside in Malta if they are exercising any of their Treaty rights as workers, self-employed persons, economically self-sufficient persons or students. EU nationals and their family members can accept offers of work and seek employment in Malta, work (whether as an employee or in self-employment) and/or set up a business. An employment license is not required in the case of self-employment.

A non-EU/EEA citizen is subject to more stringent conditions than the above. Such citizens must also fill in the requisite application form provided by the Employment and Training Centre. The said authorities generally require other documentation.

Flat Tax Option for Foreign High-Earners

A 15% flat tax on income to attract foreign workers engaged in specialised jobs will soon be introduced to make it attractive for companies to engage experts on a temporary basis.

The legislative move will be in harmonization with the income tax regimes currently in force for foreign workers in Malta and it is intended to help companies attract scientists and experts who may be required for particular jobs. Currently, foreigners who are resident in Malta are taxed at the same rates applicable to Maltese residents. These are progressive rates of tax with a maximum rate of 35% with different tax rates for single and married individuals.

Income, arising in Malta to non-resident foreigners is also taxed at progressive rates with a maximum rate of 35%. However, the tax bands are significantly different. The first 700 Euros are tax-free while the next 2,400 Euros are taxed at 20% and the next 4,700 Euros are taxed at 35%.

The current regime also has a flat tax rate option for foreigners who are registered in terms of the Resident Scheme Regulations. These are taxed at a flat rate of 15% subject to a minimum tax payment of 4,192 per annum.

The proposed legislation will apply to high-income non-resident foreigners engaged on a temporary basis.

Visas

On 21 December 2007 Malta joined the Schengen system at the end of a gradual process of adjusting to the common visa regime provided by

the Convention Implementing the Schengen Agreement. While strengthening the common external border, there was a parallel and gradual removal of internal border controls, giving total freedom of movement within all the territories of the Schengen Area.

The right to free movement means that every EU citizen is entitled to travel freely around the Member States of the European Union, and settle anywhere within its territory. No special formalities are required to enter a EU country.

This fundamental right extends to members of the EU citizen's family, and applies regardless of their situation or the reason for travel or residence.

The possession of a visa does not give the third country national the automatic right of entry, as bearers must prove that they will meet the conditions of entry.

Visas may be issued to an individual applicant and apposed to an individual passport. Group visas are issued to a group of aliens, all having the same nationality of the passport-issuing country, and provided that the document is expressly and formally recognized by Malta. Group visas cannot exceed 30 days.

Visas are divided into three main categories:

1. Schengen Visas.

These are valid for the territories of all the Schengen Member States and are further classified into the following sub-groups:

- Airport Transit Visa (Type A)
- Transit Visa (Type B)
- Short-Stay Visa (Type C), valid for up to 90 days and for single or multiple entries.

2. Limited Territorial Validity visas (LTV).

These are only valid for the Schengen State whose representative issued the visa (or in particular cases for other Schengen states where specifically named) without any possibility of access to or transit through the territory of any other Schengen States. They are issued solely for humanitarian reasons, or in the national interest, or under international obligations as an exception to the common system. An alien may not directly apply for these visas, which are issued in a few specific cases by the diplomatic or consular representative when it deems it appropriate to issue the visa for the reasons as stated even though not all the conditions are met for the issue of a Schengen Visa, or when the applicant does not hold a validly recognised travel document, in particular emergencies or in case of need.

3. 'Long stay' or "National" visas

These are only valid for visits that are longer than 90 days (Type D), with one or more entries, in the territory of the Schengen State whose diplomatic representative issued the visa, and to transit through the territory of other Schengen States for a period of not more than five days.

Regulations on stays exceeding 90 days fall within the competence of Malta's national authorities and third-country nationals requesting to enter Malta with a purpose of a long stay, will at first be granted a "national" visa in order to receive a residence permit.

Taxations of Trusts

The settlement of an asset on trust falls under the very wide definition of a taxable transfer and therefore subject to capital gains under the Income Tax Act, even if the transfer is made for no consideration. The Income Tax Act provides that gains and profits relating to settlement of property in trust means the difference in the market value of the property at the time of the settlement and the cost of acquisition of the property. The Act however does provide an exhaustive list of transfers that are subject to capital gains, where any transfers that fall outside the list are not subject to capital gains on settlement.

The law provides an exhaustive list of taxable transfers for capital gains purposes. Broadly speaking, these are the transfer of immovable property; the transfer of securities, business, goodwill, copyright, patents, trademarks and trade names, and the transfer of a beneficial interest in a trust (this is subject to certain particular exceptions, however it is not the purpose of this article to delve into the specific details of such exceptions).

Therefore transfers that do not fall within these limits are not taxable transfers for capital gains.

It could be that the settlement of property on trust, that although is provided for in the exhaustive list mentioned above would be exempt from capital gains – either because the law provides that no transfer has in fact taken place or else because the law provides no gain or loss has been made on a particular transfer.

The law provides that no transfer has taken place when the three following conditions are satisfied:

- A trust is created by a written instrument
- There exists a sole settlor
- The sole settlor is also the sole beneficiary

The Income Tax Act also provides for an exemption from capital gains where:

- The settlor makes a direct donation of such trust to beneficiaries that are persons other than the settlor himself, and
- The relevant trust instrument specifically provides that the beneficiaries have an irrevocable vested right to receive all the property settled in trust as specified in the said written instrument, and
- The relevant trust instrument specifically provides that the beneficiaries are either the spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants of the beneficiary, or
- Approved philanthropic institutions, and
- The beneficiaries include persons who are in existence at the time of the settlement of such property on trust.

Duty is due on the transfer of immovable property and related rights in accordance with the Duty on Documents and Transfers Act. This is also applicable to the settlement of relevant assets on trust. The Act does however provide certain exemptions.

These exemptions include transfers by a settlor to the trustees of a trust which the settlor is the sole beneficiary and where the settlor has an irrevocable vested right to receive the trust property; transfers by a settlor to the trustees of a trust created for the purpose of a designated commercial transaction; and transfers by a settlor to the trustees of a trust created for the purpose of a commercial transaction not being a designated commercial transaction but which has been approved by the Commissioner of Inland Revenue.

Trusts are generally considered to be transparent for tax purposes, meaning that income attributable to a trust is not charged tax in the hands of the trustee if such income is distributed to the beneficiaries.

When all the beneficiaries of a trust are non-Maltese residents and when all the income attributable to a trust is derived from sources outside Malta, there will be no tax impact under Maltese tax law.

Beneficiaries are then charged tax on income distributed by the trustees. Income attributable to a trust that is not so distributed to beneficiaries is charged tax while in the hands of the trustee at the rate of 35% and there will be no further refunds or reductions.

It may be in the interest of the beneficiaries that any benefit that they receive from the trust is actually taxed in Malta. The Income Tax Acts provide the trustee with the irrevocable option to have a trust treated as a company for tax purposes.

This would give the trust the possibility to make use of over forty double taxation treaties that are currently in force and the possibility to enjoy the various tax benefits provided to non-Maltese resident or domiciled shareholders.

The non-resident beneficiaries will be eligible to receive the refunds provided under the Income Tax Acts as if they were shareholders; the trustee may also seek to obtain an advance revenue ruling from the Commissioner of Inland Revenue.

Effectively this will grant the trust the possibility to be treated as a Maltese registered Company, alternatively the trust could operate what is known as the Foreign Income Account (FIA), where beneficiaries receiving distributions from the FIA are entitled to refunds reducing the effective tax rate to single digit figures.

As the Trust consists of the holding of property and other assets, there is no economic activity carried on and it is therefore outside the scope of VAT. Since the Trustee services essentially consist of management and administration of assets of which the Trustee is the legal owner, it is considered that any sums that the Trustee is entitled to appropriate from the trust assets by way of remuneration do not constitute a consideration for services rendered.

Therefore no economic activity is deemed to be carried out, where such remuneration is specified under the terms of the deed of the Trust.

However if the Trustee exploits the property of the Trust for a consideration then this exploitation is considered as an economic activity, and if such activity is taxable under Maltese VAT legislation, then the Trustee has to register for VAT in Malta.

Taxation of Partnership

Partnership En-Nom-Collectif is transparent for tax purposes and the partners declare their share of profit in their personal tax returns. Tax is therefore chargeable according to the applicable personal tax rates.

Partnership En-Commandite in terms of the Maltese Income Tax Act, which has its capital divided into shares will be treated as a company for Maltese income tax purposes.

Malta's Double Taxation Treaties

Malta has concluded various treaty agreements with 46 countries so as to avoid double taxation. Not all the agreements are already in force.

The following table shows the maximum rates of tax on dividends, interest and royalties paid to residents of Malta.

Country	Dividends			Interest	Royalties
	(A) (%)	(B) (%)	(C) (%)		
Albania	15	5	25	5	5
Australia	15	15	–	15	10
Austria	15	15	–	5	10
Barbados	15	5	5	5	5
Belgium	15	15	–	10	10
Bulgaria	30	30	–	0	10
Canada	15	15	–	15	10
China	10	10	–	10	10
Croatia	5	5	–	0	0
Cyprus	15	15	–	10	10
Czech Republic	5	5	–	0	5
Denmark	15	0	25	0	0
Egypt	10	10	–	10	12

Estonia	15	5	25	10	10
Finland	15	5	10	0	0
France	15	5	10	10	10
Georgia	-	-	-	-	-
Germany	15	5	10	0	0
Greece	10	5	25	8	8
Hungary	15	5	25	10	10
Iceland	15	5	10	0	5
India	15	10	25	10	15
Italy	15	15	–	10	10
Korea	15	5	25	10	0
Kuwait	15	10	–	0	10
Latvia	10	5	25	10	10
Lebanon	5	5	–	0	5
Libya	15	15	–	15	15
Lithuania	15	5	25	10	10
Luxembourg	15	5	25	0	10
Malaysia	0	0	–	15	15
Montenegro	10	5	25	10	10

Morocco	10	6.5	25	10	10
Netherlands	15	5	25	10	10
Norway	15	15	–	10	10
Pakistan	-	15	20	10	10
Poland	15	5	20	10	10
Portugal	15	10	25	10	10
Qatar	-	-	-	-	-
Romania	5	5	–	5	5
San Marino	10	5	25	0	0
Singapore	0	0	0	10	10
Slovak Republic	5	5	–	0	5
Slovenia	15	5	25	5	5
South Africa	5	5	–	10	10
Spain	5	0	25	0	0
Sweden	15	0	10	0	0
Switzerland*	N/A	N/A	N/A	N/A	N/A
Syria	0	0	–	10	18

Tunisia	10	10	–	12	12
United Arab Emirates	-	-	-	-	-
UK	10	10	–	10	10
USA*	N/A	N/A	N/A	N/A	N/A

** Treaty limited to income derived from the operation of ships or aircraft in international traffic.*

A full double tax treaty was signed with the USA and is waiting ratification by the Senate.

Other treaties which were signed but are not in force are those with Bahrain, Belgium, Isle of Man, Jordan, Libya and Serbia.

- (A)** Rates applicable to minor shareholdings.
- (B)** Rates applicable to major shareholdings.
- (C)** Percentage required qualifying for major shareholding.

Chapter 6



Grants and Incentives

State Government Incentives

Malta Enterprise is enabled by the Malta Enterprise Act (ME Act) to support the development of enterprise in Malta. Malta Enterprise has developed a new set of incentives for the promotion and expansion of businesses, covering a range of sectors and activities.

Malta Enterprise provides incentives for foreign direct investors and local enterprises demonstrating commitment towards growth and increase in value added and employment. Enterprises engaged in manufacturing, ICT development activities, Call Centres, Pharmaceuticals, Biotechnology, Filming and Audio-visual, among others, may benefit from these incentives.

The incentives available under the ME Act may be subdivided into six (6) separate themes, namely:

Investment Aid

The Investment Aid Regulations include tax incentives which are aimed to stimulate investment and job creation by attracting new investment projects and promoting the expansion or diversification of existing enterprises into certain targeted fields of business defined in these regulations as 'qualifying activities'.

The regulations provide an exhaustive list of activities, which may be eligible to receive tax incentives. In general, qualifying activities are those related to:

- Manufacturing
- Information and Communications Technology (I.C.T.),
- Research and development and innovative start-ups
- Eco-innovations, waste treatment and environmental solutions
- Biotechnology
- The provision of facilities directly required in the development or production of feature films
- Science and technology private tertiary educational services
- Private health-care services
- Logistics services
- Activities set out in Article 11 of the Malta Free ports Act.

In general, the tax incentives under these regulations take the form of an investment tax credit. The regulations provide two bases over which the tax credit may be calculated. The tax credit may be calculated either as:

- A percentage of the capital expenditure on the qualifying activity; or
- A percentage of the wage costs for wages paid in connection with the jobs created as a result of the qualifying project.

The amount of credit varies in accordance with the size of the undertaking and is capped at the percentages prescribed in the Incentive Guidelines. Further, given that the regulations do not impose any conditions on the choice of basis over which the tax credit may be calculated, this implies that an undertaking is free to use the most favourable basis to maximise its tax credit.

SME Development

This incentive may be provided to support Small and Medium-sized Enterprises to help them develop and diversify their activities, penetrate new markets, increase competitiveness, develop new products and services, and consolidate their existing market share.

Through this incentive eligible enterprises may be provided with part financing for their first time participation in trade fairs, and subcontracting external experts in relation to new development projects.

Through this incentive ME will cover up to 50% of the total eligible costs. The total aid received by one enterprise may not exceed €10,000 in one calendar year.

Small Business and Self-employed

The 2010 budget has provided fiscal benefits to small businesses and the self employed in order to encourage them to invest, expand and increase their efficiency.

Self- employed persons and small businesses employing up to a maximum of 10 persons, and sole traders, making an investment, will be granted a tax credit of 40%, limited to Euro 25,000.

The said credit will be given to those making an investment in the coming two years and who:

- Arrange their shop or facility
- Invest in machinery, technology, apparatus or instruments enhancing their operations, such as systems helping to save energy or producing alternative energy
- Invest in order to comply with health, safety, environment and physical access regulations
- Create new jobs or recruit apprentices after 10 November 2009.

The said tax credits are increased to 60% for those who carry out these investments in Malta's sister island, Gozo.

Furthermore an incentive will be offered to those incurring expenses to increase workplace accessibility to new employees suffering from a disability.

Enterprise Support

This involves assistance to businesses to support them in developing their international competitiveness, improving their capabilities and networking with other businesses.

Different scheme are available according company's activity and project:

- Business Advisory Services
- Trade Promotion
- ERDF International Competitiveness Grant Scheme
- ERDF Energy Grant Scheme
- Network Support: Business & Development Networks
- Business Development Scheme

R&D and Innovation Programmes

The Legal Notice entitled Assistance for Research and Development and Innovation and Regulations, 2009, issued under the Malta Enterprise Act, provide the legal basis of this incentive.

Incentives are offered to stimulate innovative enterprises to engage in research & development. These include:

- Research and Development Tax Credits
- European Regional Development Fund Research and Development Grant
- EUREKA Projects Grant Scheme
- Preparatory Technical Feasibility Studies Scheme
- Loan of Highly Qualified Personnel
- Innovative Clusters and Collaborations.

The total aid for any project may not exceed Euro 350,000 over a period of 5 years.

The undertaking receiving assistance shall be a legal entity in charge of managing the participation and access to the cluster's premises, facilities and activities.

Access to Finance

Maltese law provides for three types of financing under the Business Promotion Act. The three instruments, administered by Malta Enterprise, are: loan guarantees; soft loans and interest rate subsidies.

Loan Guarantees provide eligible businesses with the finance necessary for the acquisition of capital assets, to help with either their production or their supply of services. The maximum loan guarantee is 75% of the loan requirement - as stated in Article 10 of the Business Promotion Regulations.

A Soft Loan is a loan offered at low interest and is available for purposes specified in the Business Promotion Act. The maximum soft loan available is 75% of the loan requirement as stipulated in Article 8 of the Business Promotion Regulations.

Loan Interest Rate Subsidies aim to increase the competitiveness and innovative capacity of eligible enterprises. The subsidies support capital assets, leading to a more effective and efficient production and supply of service, and are offered under Article 9 of the Business Promotion Regulations.

Employment and Training (ETC Incentives)

The Employment & Training Corporation administers these incentives:

- Enterprises are supported in recruiting new employees and training their staff.
- Tax Credits are available to support enterprises financing the studies of employees at a post-graduate level and also to individuals who embark on such personal development on their own initiative. Further tax credits support the employment of additional employees holding an approved qualification (2nd degree, higher or equivalent) in a relevant role.

- 17.5 % Tax Credits additional to standard deductions on tuition costs and wages of employees having their studies financed by the enterprise.
- The company's share of the employee's social security contribution for the first 36 months of employment when recruiting additional highly qualified employees holding approved qualifications in a relevant post.

Within these thematic groups, there are more than 20 new incentives designed to support enterprises. These will aid enterprises to expand their business, invest in research & development, innovate their processes, tap into EU Funds, develop their international competitiveness potential, and to network with other enterprises.

Other Incentives

The Malta Enterprise Corporation is to offer the following new incentives to encourage foreign direct investment towards Malta:

- An incentive for foreign investors already operating in Malta to increase the scope of their existing operations to such areas as legal, financial, back office, logistical, research and development, marketing and sales, and prototyping services
- An incentive to attract new foreign companies to set up shared services centres in areas such as call centres, software development, digital gaming, human resources, accounts and finance management, market research and internet publication;
- Fiscal benefits for qualifying costs spent on interactive digital media products and qualifying costs spent on sound recording houses, including costs incurred to bring productions to Malta.

Protection of Intellectual and Industrial Property

Copyright

Copyright is protected in Malta by the Copyright Act 2000 (CAP 415). “To make new provision in respect of copyright and neighbouring rights and certain “sui generis” intellectual property rights in substitution of the provisions of the Copyright Act, Cap. 196.”

Trademarks

Trademarks may comprise shapes of goods or their packaging, letters, words, figurative elements etc (Trade marks Act, 2000). The Maltese Trademarks Act does not allow multi-class applications and a separate application must be filed for the same trademark under each separate class of goods/services. Under Maltese law, trademarks are registered for a period of ten (10) years and are renewable for consecutive periods of ten (10) years. For registration to be made in Malta, a trademark must be:

- A sign capable of being represented graphically; and
- A sign capable of distinguishing goods or services of one undertaking from those of other undertakings.

Patent

The Patents Act regulates the registration and protection of patents on a national level in Malta. This Act is based on European guidelines and has updated Malta’s previous legislation that regulated this field.

The term of a patent shall be 20 years from the date of filing of the application (20 years is the norm in most countries). The maintenance of a patent is subject to a maintenance fee, which is due after the third year and each year subsequently.