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ESTABLISHING A BUSINESS ENTITY IN MALTA**



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ESTABLISHING A BUSINESS ENTITY IN MALTA



*“Establishing a Business Entity in Malta”*

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**Introduction**

With its corporate laws based upon those of the UK, Malta has incorporated laws and principles into its own legislation, providing comfort and security to the commercial and business community. The most common form of business entity being set up in Malta is the limited liability company, which is mostly used for holding or trading activity. However, various other forms of entities may be set up in order to conduct business in Malta, as will be shown below.

Malta has been a member state of the European Union since 2004 and it officially entered the Eurozone in 2008, cementing its position as a player in the global financial services industry and making it ideal as a destination for business. Malta’s highly efficient corporate tax regime is perhaps one of the

most attractive aspects of setting up a business entity in Malta. At the forefront of the incentives which encourage foreign business to establish operations in Malta, is the fact that Malta’s strategic geographical location in the Mediterranean facilitates access and commercial connections to mainland Europe and the rest of the EU, as well as North Africa and the Middle East. Language is also not a barrier – although Malta has its own language (Maltese) English is also an official language, with most people also being able to speak other languages including Italian and French.

Although small, Malta’s size does indeed offer advantages. The Malta Financial Services Authority (MFSA) is the main regulator of financial services on the island and is easily accessible. The tight-knit business community facilitates networking and provides ample opportunity for building a client base.

The below table has been created with the aim of providing a general overview of the steps to be taken to set up various types of business entities in Malta and the characteristics of each.

**1. Types of Business Entities, Characteristics and Management**

NAME OF ENTITY	SET-UP REQUIRMENTS, CAPITALISATION AND CHARACTERISTICS	MANAGEMENT
<b>Limited Liability Company</b>	<ul style="list-style-type: none"> <li>• Capital is divided into shares which are held by its shareholders. The shareholders' liability is limited to the amount unpaid on the shares they hold;</li> <li>• Name must end with 'limited' or 'Ltd;'</li> <li>• Minimum share capital of €1,164.69, of which at least 20% of the value must be paid up;</li> <li>• At least one shareholder, but not more than 50 shareholders;</li> <li>• Shares and debentures cannot be offered to the public;</li> <li>• Right to transfer shares is restricted.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum of one director;</li> <li>• Decisions are taken by Board Resolutions or Shareholders' Resolutions – ordinary or extraordinary. These may be taken by round robin;</li> <li>• Annual General Meetings are used to present accounts and reports, declare dividends, and appoint directors. All other business is conducted during Extraordinary General Meetings.</li> </ul>
<b>Public Liability Company (PLC)</b>	<ul style="list-style-type: none"> <li>• Shares can be sold to the public, with no share transfer restrictions;</li> <li>• The company's name must end with 'public limited company' or 'p.l.c;'</li> <li>• Minimum share capital of €46, 587.47, of which at least 25% of the value must be paid up;</li> <li>• Proposal of shares to the public: shares must first be offered on a pre-emptive basis to its existing members in proportion to the share capital held by them.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum of two directors to satisfy the four-eye principle for more accountability and transparency;</li> <li>• Decisions of the shareholders are taken through resolution – higher majorities required than those for a private company;</li> <li>• Directors of a public company must consent to act as such, either by signing the memorandum of association or by delivering their consent in writing to the Registrar of Companies.</li> </ul>
<b>Partnership en nom collectif</b>	<ul style="list-style-type: none"> <li>• Partners: two or more legal or natural persons;</li> <li>• Deed of partnership is entered into by a private writing, or a public deed registered with the Malta Business Registry;</li> <li>• Liability of the partnership is limited to the amount of contribution which is unpaid by the partners;</li> <li>• Each partner is liable for the obligations and debts of the partnership with all their present and future property. The liability of the partners between themselves is divided proportionately.</li> </ul>	<ul style="list-style-type: none"> <li>• Each partner is a managing partner, unless the deed of partnership establishes otherwise;</li> <li>• Each can administer, represent, and bind the partnership;</li> <li>• Each partner is entitled to vote at meetings, have a share of the partnership's profits and control and administer the partnership's affairs.</li> </ul>



<p>Partnership en commandite The 'Limited Partnership'</p>	<ul style="list-style-type: none"> <li>• The partners can be both individuals and body corporates.</li> <li>• General partners have unlimited and joint and several liability towards the obligations of the partnership, while the limited partners are only liable up to the amount unpaid on their contribution.</li> <li>• Obligations of the partnership are guaranteed by the unpaid contribution of the limited partners.</li> <li>• Deed of partnership to specify which are limited partners and which are general- in default partnership will be assumed to be a partnership <i>en nom collectif</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• The general partners are responsible for the administration and management of the partnership.</li> <li>• The partners decide as to which of them will administer the partnership and who has the power to dismiss such partner from office;</li> <li>• A limited partner cannot perform any acts of administration nor transact business on behalf of the partnership, unless empowered through a power of attorney to carry out specific acts.</li> </ul>
<p>European Economic Interest Grouping (EEIG)</p>	<ul style="list-style-type: none"> <li>• For 2 to 20 persons wishing to develop their economic activity;</li> <li>• entity has separate legal personality;</li> <li>• Profit making cannot be an aim of the EEIG, although this can be made in the process of conducting its activities;</li> <li>• The EEIG is formed in line with the law of an EU member state. They must have their registered office in the EU;</li> <li>• The public cannot be invited to invest in it, and it cannot employ more than 500 people.</li> </ul>	<ul style="list-style-type: none"> <li>• Must have at least two organs: the members acting collectively and the managers;</li> <li>• The managers represent and bind the entity in its dealings with third parties;</li> <li>• Members each have one vote although members can hold more than one vote. However, one member cannot hold the majority of the voting rights.</li> </ul>
<p>INVCO</p>	<ul style="list-style-type: none"> <li>• Public investment company (INVCO p.l.c.) having a fixed share capital, with the object of investing in funds to spread investment risk and give its members the benefit of the results of the management of its funds;</li> <li>• INVCO must have a limit on its authorized share-capital and each share must have a nominal share value;</li> <li>• Some restrictions: an INVCO can only have up to</li> </ul>	<ul style="list-style-type: none"> <li>• Internal management carried out similarly to public limited companies;</li> <li>• Directors must pass a 'fit and proper' test and be approved by the MFSa;</li> <li>• Annual reports must be filed, and accounts and directors' report must comply with both the Companies Act and the Investment Services Act.</li> </ul>



	<p>15% of its investments as holdings in other companies that are not other INVCOs; Distribution of an INVCO’s capital profits is prohibited by its M&amp;A, and it cannot retain more than 15% of income derived from securities.</p>	
<p><b>SICAV</b></p>	<ul style="list-style-type: none"> <li>• Form of company with a variable share capital equal to the net asset value of the company, and no nominal value assigned to the shares;</li> <li>• For collective investment or retirement scheme use;</li> <li>• May be registered as a private (SICAV Ltd.) or a public (SICAV p.l.c.) company;</li> <li>• Several different structuring options: <ul style="list-style-type: none"> <li>- Multi-fund/ ‘umbrella’ company where different classes or groups of shares comprise sub-funds with distinct investment objectives and policies;</li> <li>- Possibility for each sub-fund to have a separate patrimony, thus allowing for the ring-fencing of assets &amp; liabilities of each sub-fund;</li> <li>- Recognised Incorporated Cell Companies (RICC), where each Incorporated Cell (IC) is established as a separate collective investment scheme, with its own licence and separate legal &amp; juridical personality. The RICC would provide standardised administrative services to its ICs in a ‘platform’ setup.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Internal management carried out similarly to public or private companies, depending on whether the entity is a private investment company (SICAV Ltd) or a public investment company (SICAV p.l.c.);</li> <li>• Number of Directors and the criteria which they must fulfil varies, depending on the purpose for which the SICAV is being set up (e.g., an Alternative Investment Fund, a Professional Investor Fund, or an Undertaking for the Collective Investment in Transferable Securities (UCITS), and the category of investment licence which the SICAV obtains under the Investment Services Act;</li> <li>• Directors must pass a ‘fit and proper’ test and be approved by the MFSA. The Registry of Companies must be notified of changes in relation to the officers of the company;</li> <li>• Annual reports must be filed, and accounts and directors' report must comply with both the Companies Act and the Investment Services Act.</li> </ul>
<p><b>Trust</b></p>	<ul style="list-style-type: none"> <li>• A trust creates a fiduciary relationship between the trustee and the beneficiaries;</li> <li>• Property is transferred to trustee who has all the rights of a person having absolute title to property;</li> <li>• However, the rights of ownership of the trustee are limited by the duties they owe to the beneficiaries;</li> <li>• Malta is a signatory to the Hague Convention on the law applicable to trusts and therefore recognises trusts which are not Maltese trusts;</li> </ul>	<ul style="list-style-type: none"> <li>• Trustee must act with prudence, diligence, and utmost good faith and to administer the property as if it were his own;</li> <li>• Delegation of tasks by trustee is not allowed except in certain instances e.g., role of investment manager;</li> <li>• Other powers may also be allowed to trustee e.g., power to vary terms of the trust deed;</li> <li>• Trustee can resign or be removed by the Court. Once</li> </ul>



	<ul style="list-style-type: none"> <li>• <b>Separate patrimony</b> between property held trustee and other property of the settlor;</li> <li>• <b>Flexibility</b> when it comes to distribution amongst beneficiaries and ensures that the property is not divided but is administered as one, ensuring continuity across generations.</li> </ul>	<p>this occurs, ownership is transferred to the successor trustee.</p>
<p>Family Trust Company/ Private Trust Companies (PTC)</p>	<ul style="list-style-type: none"> <li>• Corporate version of the private, individual trustee- a company can be set up in order to act as trustee and manage a family’s wealth and assets settled under trust;</li> <li>• It cannot be a company that holds itself out as providing trustee services or one which habitually acts as trustee;</li> <li>• Does not require MFSA authorisation but only registration in Register kept by the MFSA for that purpose.</li> </ul>	<ul style="list-style-type: none"> <li>• Family members can act as directors or exercise control through shareholder voting rights;</li> <li>• Change in trustee can be conducted by simply changing the directors;</li> <li>• Minimum of three directors: must be approved by MFSA as being fit and proper;</li> <li>• At least one of the directors must be a person who has experience in the administration of trusts.</li> </ul>



## ***2. Matters to be considered when choosing a particular type of business entity***

The decision as to which one of the business entities should be opted for, depends largely on the circumstances. Maltese law does not prescribe that a certain type of business entity needs to be set up if circumstances subsist, although in the case of limited liability companies, certain variances would apply, if for instance, the company is a single member company. In making such a decision, certain considerations should always be made, most prominently, taxation, employment law, whether the entity is intended to provide a service and contractual requirements applicable under Maltese law.

## ***3. Steps and timing to incorporate a company***

As the limited liability company is the most common form of business entity used as a vehicle for entry in the Maltese market, main focus will be placed on the requirements that need to be fulfilled and timing involved in incorporating and registering the company. The process for registration of the company starts with the registration of the Memorandum and Articles of Association (M&A) to the Malta Business Registry (MBR). The responsibility for the adherence of the Articles of Association with the law, rests with the subscribers or the original shareholders of the company. The M&A must also be accompanied by proof of payment of the original subscribed share capital which takes the form of a bank slip, together with the payment of the registration fee due to the MBR and simple due diligence carried out on the first directors and shareholders if these are not already known to the MBR. The company is deemed to come into existence and is authorised to commence business as from the date of registration indicated on the stamp placed by the MBR on the M&A. This date is also indicated on the certificate of incorporation issued by the MBR and which is

kept at the company's registered office. In practice, if all documents submitted are in order, the name of the company is available and the fees are paid, registration will take place with effect from the date of filing and will be registered on the MBR's online records, one to two days later. The registration number allocated to the company is usually available within hours.

## ***4. Governance, Regulation & Maintenance***

### ***4.1 Corporate Governance***

The aim being good corporate governance is to encourage the business structure to create value, such as through innovation or development, and provide accountability and control systems commensurate with the risks involved. Whilst Maltese law does not include a specific list of rules which should be followed, the Malta Financial Services Authority has issued guidelines for licensed entities, which can be used as guiding principles for limited liability companies.

The Companies Act sets out the obligations which partnerships en nom collective, partnerships en commandite, and limited liability companies (both public and private) must fulfil. SICAVs and INVCOs must adhere to the obligations as set out in the Companies Act, as well as the Investment Services Act and any other Maltese/EU law which governs investment services.

The governance of companies is carried out by their directors, who have duties of loyalty, care, diligence, and skill towards the entities they manage. Amongst the obligations they must fulfil are the duty to keep accounting records and submit accounts which are independently audited, an auditor's report and a directors' report annually. The annual accounts must be filed within 10 months from the end of the financial year. The format of the accounts varies according to the size of the company.





Companies which have subsidiaries must draw up consolidated financial statements for the group of companies. Another statutory obligation is the submission of an annual return to the MBR, which sets out the registered address, a summary of the changes in the share capital, a list of shareholders and the particulars of the directors and the company secretary.

#### **4.2 Majority Rule and Minority Rights and Protection**

In Malta, the principle of majority rule has been recognised as an essential feature of a limited liability company. The minority must, as a matter of necessity, accept the decisions of the majority or else attempt to reverse them through lobbying or other means. At the same time, this rule places the majority shareholder in a position of power which can give rise to abuse and in such instance, lobbying might not be an effective remedy for the minority shareholder. The Companies Act 1995 provides a remedy in cases where the affairs of the company or any act or omission of the company has been or is likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to a member. Whilst the wording of the law does not limit the application of this remedy to minority shareholders, it is generally held that the intention of the legislator was to include this section in the law for the protection of the minority shareholder as the position of power allowed to majority shareholders already places the latter in an advantageous position. The Maltese courts then have wide discretionary powers as to the kind of remedy it can grant.

#### **4.3 Maintenance and Regulation**

The officers of companies must also inform the Malta Business Registry about changes occurring within the company, which is done by submitting statutory forms to the Malta Business Registry. These changes include the appointments and resignations of directors and

company secretaries, share transfers, amendments to the constitutional documents of the company, a change in registered address, or issue of shares. An annual return must also be submitted to the MBR, providing a summary of the structure of the Company at a particular point in time. The annual return must be signed by the director or company secretary. As of the 30<sup>th</sup> of June 2018, the annual return must also be accompanied by a 'Beneficial Ownership Form', which provides information about the company's ultimate beneficial owner.

Issues relating to money laundering and the funding of terrorism are of utmost importance to the existence of a business entity, both a t incorporation stage and also as an ongoing obligation. In Malta, money laundering is criminalised primarily through the Prevention of Money Laundering Act which is supported by the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). This Act also establishes the Financial Intelligence Analysis Unit, which is the regulator when it comes to AML and CFT issues. The FIAU has also issued implementing procedures which are meant to assist subject persons in fulfilling their obligations under the PMLFTR. However, these procedures are not mere guidelines are actually binding on all those subject to them. Persons incorporating a company in Malta are screened for anti-money laundering and the countering of funding of terrorism purposes. It is common that a person interested in setting up a Maltese company gets in touch with a company services provider (CSP), which agrees with the original subscribers of the company to set up the company for them. The services carried out by CSPs fall under the definition of 'relevant activity under the PMLFTR. As a subject person, the CSP will need to carry out various checks before agreeing to set up the company, including verification of the client's identity, determining the source of wealth and



source of funds of the proposed company's UBO, and identifying the AML and FT risks involved in entering into a business relationship with that person. Where the business relationship is of an ongoing nature, CSP are obliged to continue monitoring the level of risk throughout the duration of that relationship.

#### 4.4 Tax and Reporting obligations

A company which is registered in Malta, but which is foreign owned, can benefit from an exemption from the duty to be paid on documents and transfers. Following incorporation, the company must apply to the Commissioner for Revenue in Malta, providing information about the company and asking the Commissioner to authorise the application of the exemption to that Company. The application of this exemption is also registered with the Malta Business Registry.

Malta's attractive corporate tax refund system is one of the advantages enjoyed when setting up a company in Malta. A company is considered to be tax resident in Malta when the management and control of the company is exercised in Malta. According to our income tax legislation, Maltese companies are subject to

corporate tax at the rate of 35% on their worldwide income and capital gains. Foreign companies incorporated outside Malta carrying out business activities in Malta are liable to tax on income arising in Malta.

When companies are taxed at the standard rate of 35%, following the distribution of dividends, shareholders are entitled to a refund of the majority of the tax paid by the company. The purpose of this imputation system is to eliminate any double taxation that might arise on the distribution of such dividends. Thus, company profits will only be subject to tax at corporate level. This effectively means that a trading company can claim up to 30% tax refund, making for a net tax rate of 5. A structure can be set up specifically to benefit as much as possible from the efficient tax system in Malta. A Malta trading company pays the applicable 35% tax whilst the remaining 65% is paid as dividend to a Malta holding company. The Malta holding company will then receive 6/7<sup>th</sup> refund of the tax paid by the trading company on distributed profits. At that point, no additional tax is due on transfers of profit to the foreign company or the foreign shareholders.