



Chapter XX

MALTA

Malcolm Mifsud¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Immigration and citizenship have evolved in Malta since it became independent in 1964. The Maltese government throughout the years has introduced various schemes on immigration with the main aim of attracting investment or high net worth individuals to Malta. More often than not the purchase or renting of property have been included in these schemes to give an obvious boost to the construction industry in Malta. In 2014 a new scheme was introduced for the acquisition of citizenship, the Individual Investor Programme (IIP), which has undergone a rough passage into Maltese legislation; however, today it enjoys the approval of the European Commission.

i Legislation and policy

The central government is the regulator in Malta on all issues concerning citizenship and immigration. The regulator with regard to citizenship and the IIP (see Section III.iii, *infra*), is the recently established entity Identity Malta. Prior to the introduction of the IIP, applicants for citizenship were processed by a department within the Prime Minister's Office. This department still exists and processes all applications for citizenship other than the IIP. The IIP regulator is Identity Malta.

With regard to residency, the Global Residence Scheme is regulated by the tax authorities in Malta. This Scheme is primarily a tax scheme and therefore the Director General (Inland Revenue) is the authority that accepts applications. On the other hand work permits are issued by the Employment and Training Corporation, which is the regulator in Malta for most employment registrations. Therefore, persons applying for registration of employment must do so to the Employment and Training Corporation (ETC); consequently, third-country nationals seeking permission to work in Malta must apply to the ETC.

ii The immigration authorities

iii Exemptions and favoured industries

¹ Malcolm Mifsud is a partner at Mifsud & Mifsud Advocates.



II INTERNATIONAL TREATY OBLIGATIONS

Malta is a member of both the European Union (EU) and the European Economic Area (EEA), which confer immigration and employment benefits on nationals of Member States and also create immigration rights for certain foreign nationals. In addition, Malta is party to the Schengen Agreement, which established open borders and a common short-term visitor regime among signatory countries.

III THE YEAR IN REVIEW

In July 2014, Directive 2011/98 of 13 December 2011 was transposed and implemented in Maltese law by means of Legal Notice 160/2014 – the Single Application for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third Country Workers legally residing in Malta Regulations 2014. According to said Directive all Member States are required to adapt their legislation and internal procedures to draw up a single permit application through which a non-EU national may obtain a work permit and residence permit.

As a result of the application of said Directive, a non-EU national who applies for an employment licence in Malta does not apply with the ETC but instead submits the application to the Department for Citizenship and Expatriate Affairs. The ETC is still, however, involved in the application procedure through its examination of the request from a labour market perspective.

The single permit application generally applies to all non-EU nationals, but some exceptions exist to the general rule. The single permit procedure will not apply to third-country nationals:

- a* applicants who are family members of Union citizens, EEA or Swiss citizens who have exercised, or are exercising, their right to free movement;
- b* applicants who are posted workers for as long as they are posted;
- c* applicants who have applied for admissions or have been admitted to Malta to work as intra-corporate transferees;
- d* applicants who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- e* applicants who are beneficiaries of international protection;
- f* applicants who are beneficiaries of protection in accordance with national law or practice, or international obligations, or have applied for protection in accordance with national law or practice, or international obligations, and whose application has not given rise to a final decision;
- g* applicants who enjoy long-term resident status in a Member State, including Malta, of the European Union;
- h* applicants whose removal has been suspended for reasons of fact or law;
- i* applicants who have applied for admission or who have been admitted to Malta as self-employed workers;
- j* applicants who have applied for admission or have been admitted as seafarers for employment or work in any capacity on board a ship registered in or sailing under the flag of a Member State;



- k* applicants who have been admitted to Malta for the purpose of studies in accordance with the provisions of the Conditions of Admission of Third Country Nationals for the purposes of Studies Regulations;
- l* applicants who have been authorised to work in Malta for a period not exceeding six months; and
- m* applicants who are allowed to work in Malta on the basis of a visa.

Notwithstanding the foregoing, the major recent development in Maltese immigration law remains the Individual Investment Programme, whereby an individual and his or her dependants may acquire citizenship through investment.

i The IIP

By means of Legal Notice 450 of 2013, Malta launched a new citizenship scheme that is known as the Individual Investor Programme of the Republic of Malta (IIP). The scheme grants Maltese citizenship by a certificate of naturalisation to non-Maltese nationals and their dependants who contribute to the economic development of Malta. The scheme was introduced by means of a subsidiary legislation issued under the Maltese Citizenship Act, Chapter 188 of the Laws of Malta.

Qualifications and general requirements

To qualify as a main applicant for the IIP one must at least be 18 years of age. The applicant must provide proof of having been a resident of Malta for a period of 12 months preceding the issuing of the certificate of naturalisation, and must meet the following investment requirements:

- a* acquire real estate with a minimum value of €350,000 to be held for at least five years; or lease a residential immoveable property in Malta for a period of five years, at an annual rent of at least €16,000; and
- b* make a contribution to the National Development and Social Fund; and
- c* make an investment in stocks, bonds or special purpose vehicles to be identified by Identity Malta, for a minimum value of €150,000 to be held for a minimum period of five years.

Applications shall be made on the forms prescribed under the IIP regulations and shall be accompanied by the prescribed due diligence and bank charges fees, and by the following documents:

- a* a certificate in the form prescribed by Identity Malta from a reputable health system, to the satisfaction of Identity Malta, stating that the main applicant and his or her dependants are not suffering from any contagious disease and that they are otherwise in good health;
- b* a police certificate or certificates, which may, however, also be submitted subsequently at a later date but in any case before the application is approved;
- c* evidence, through due diligence processes, that the main applicant and his or her dependants are fit and proper persons to hold Maltese citizenship;
- d* an undertaking to remit the total of the required contribution, less the non-refundable payment already made at the time of submission of the application, of the amount as specified hereunder, when called to do so by Identity Malta;
- e* an affidavit of support for each dependent who is over 18 years of age; and



f any other document as may be required from time to time by notice issued by Identity Malta.

Eligibility criteria

In addition to the qualifications and general requirements set out above, the minimum eligibility criteria for an application under the programme, for the applicant and any of his or her dependants, shall be as follows:

- a a proper background verification of the applicant and his or her dependants over the age of 12 years, as the case may be;
- b a police certificate issued by the Malta police as well as a police certificate issued by the competent authorities in the country of origin and in the country or countries of residence where the applicant has resided for a period of more than six months during the last 10 years;
- c the applicant or any of his or her dependants shall not be individuals indicted before an international criminal court or individuals who have appeared at any time before an international criminal court, whether such persons have been found guilty or otherwise by such court;
- d the applicant or any of his or her dependants shall not be persons listed with the International Criminal Police Organization at the time of application;
- e the applicant or any of his or her dependants are not, or may not be, a potential threat to national security, public policy or public health;
- f the applicant or any of his or her dependants shall not be individuals who, at any time, had pending charges related to crimes of terrorism, money laundering, funding of terrorism, crimes against humanity, war crimes, or crimes that infringe upon the protection of human rights and fundamental freedoms as established by the European Convention on Human Rights, or who have been found guilty of any such crimes;
- g the applicant or any of his or her dependants shall not be individuals who have been found guilty or have had charges brought against them regarding any of the criminal offences that disturb the good order of the family, including, without limitation, the following:
 - paedophilia;
 - defilement of minors;
 - rape;
 - violent indecent assault;
 - inducing underage persons to prostitution; and
 - abduction; and
- h the applicant or any of his or her dependants shall not be individuals who at any time were found guilty of or, at the time of the application, are being interrogated, are suspected of or have had criminal charges brought against them for any criminal offence, other than an involuntary offence, punishable with more than one year's imprisonment. The applicant shall attach to his or her application a sworn declaration before a commissioner for oaths, lawyer or notary public that the said information that he or she has provided is true and correct.



The application process

Every application shall be presented to, and examined by, Identity Malta, either directly or through the concessionaire. The application must be presented through an approved agent and a non-refundable payment of €10,000 must be made.

Identity Malta shall, within 90 days of the presentation of an application, verify that the application is in order and that all the necessary due diligence has been carried out.

Within 30 days of the date of completion of this verification, Identity Malta will notify the approved agent in writing of whether the application has been accepted or refused. At this stage, Identity Malta may also inform the Approved Agent that the application is still being processed.

In the event that the application is approved, Identity Malta will issue a letter of approval to the main applicant informing him or her that he or she must provide evidence of a global health insurance policy coverage for at least €50,000 for the main applicant and each of the dependants, and must provide proof that they can maintain the same for an indefinite period. The applicant must also, within four months from the date of the said letter, provide a written undertaking to acquire and hold a residential immovable property as described above. The property purchased or taken on lease may not be sublet and such property shall be retained by the applicant for a period of at least five years from the date of purchase or lease. The applicant must also, within four months, provide a written undertaking that he or she will make other such investments in Malta in, among other things, stocks, bonds and debentures.

Once the application has been accepted the applicant must, within five days, remit the contribution, which is to be received within 20 days of such instruction. After all the above requirements have been satisfied, Identity Malta will notify the Minister to issue a certificate of naturalisation.

Contributions and fees

Malta individual investor programme	Contribution to the national economic and social development fund
Principal applicant	€650,000 (€10,000 non-refundable deposit prior to the submission of the application)
If applicable, add spouse	+ €25,000
If applicable, add for each dependant aged under 18 [18 and under or under 18?]	+ €25,000
If applicable, add for each dependant aged over 18 [18 and over or over 18?]	+ €50,000

Malta individual investor programme	Residential immovable property
Purchasing immovable property	€350,000
Leasing immovable property	€16,000 annually
Such property cannot be let or sublet and must be retained by the applicant for a period of at least five years.	

Malta individual investor programme	Investments
Stocks, bonds or debentures	€150,000



ii Renunciation and deprivation of citizenship

The Act stipulates that a Maltese citizen may renounce his or her Maltese citizenship and the Minister will register such a renunciation and therefore that person will cease to be a Maltese citizen upon registration. No renunciations may take place while Malta is engaged in war or if the Minister deems that it is contrary to public policy.

On the other hand, Article 14 of the Act lists the following instances in which the Minister may deprive of citizenship persons who have been registered as Maltese citizens or naturalised:

- a if the person has shown himself or herself by act or speech to be disloyal or disaffected towards the President of the Republic or the government of Malta;
- b if the person in time of war traded or communicated with the enemy of Malta;
- c if within seven years of being naturalised the person has been sentenced, in any country, for a crime that carries a prison sentence of at least 12 months; and
- d if the person has been ordinarily resident in foreign countries for a continuous period of seven years and was not in the service of the Maltese government, or an international organisation of which the Maltese government is a member, or if he or she has not written to the government indicating his or her intention to retain Maltese citizenship.

The Minister's decision to grant, refuse or remove citizenship is final and not subject to any appeal or review of the court. Therefore, from Article 19 of the Act, it seems that the court has no jurisdiction to carry out a judicial review as provided in Article 469A of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

IV EMPLOYER SPONSORSHIP

i Working and residing in Malta

As seen in Section III, *supra*, any person who is not a citizen of an EU country needs an employment licence to be able to work in Malta. EU, EEA and Swiss nationals do not require an employment licence to work in Malta.

Such licences are issued to employers wishing to engage foreigners for a determined period and for a specific purpose, after it has been ascertained that every effort has been made to engage a suitable Maltese citizen.

A third-country national may, however, opt to apply as a self-employed worker and, therefore, would not depend on the employer for the issue of the employment licence, since it is the employer who has to apply and not the jobseeker.

To qualify for self-employed status, a third-country national must meet one or more of the following criteria:

- a the applicant should invest in Malta capital expenditure of at least €100,000 within six months of the date on which the ETC licence is issued. Capital expenditure shall solely consist of fixed assets (such as immoveable property, plants and machinery) used for the business purposes reflected in the business plan submitted with the application;
- b the applicant should be a highly skilled innovator with a sound business plan, which is to be submitted with the application, and who commits to recruiting at least three EEA, Swiss or Maltese nationals within 18 months of establishment;
- c the applicant should be the sole representative of an overseas company that holds a sound reputation, has been established for at least three years abroad and wishes to open a branch in Malta; and



d the applicant should be a person leading a project formally approved by Malta Enterprise, with formal notice of said project given by the latter to the ETC.

ii Incorporating a private limited liability company in Malta

A third-country national may, therefore, apply for an employment licence after incorporating a company in Malta; the company would be fully owned by such a third-country national. Incorporating a company in Malta requires €1,200 in share capital, of which only 20 per cent must be paid up. Companies in Malta are regulated by the Malta Financial Services Authority (MFSA), and the incorporation of every company is done under the authority of the MFSA.

Registration and annual MFSA fees depend on the amount of authorised share capital that the company is allowed to issue. Registration fees range from €245 to €2,250, while annual fees payable to the MFSA range from €100 to €1,400. The annual fees are paid yearly with the presentation of the annual return, which states the share capital and lists the shareholders, directors and company secretary.

Documents required

In the case of an application for a new employment licence for a third-country national, the process is as follows. The employer must fill in an application form and submit it to the ETC by hand or by post.

The following documentation needs to be provided at application stage:

- a* an application form;
- b* a curriculum vitae;
- c* a position description;
- d* references or testimonials;
- e* one passport photo;
- f* a copy of any travel documents;
- g* a copy of a valid visa (if the third-country national is in Malta);
- h* a copy of qualification certificates and accreditation or recognition;
- i* a covering letter by the employer indicating the site of work;
- j* the relevant fee;
- k* evidence of the search for EEA or Swiss or Maltese nationals;
- l* a lease agreement; and
- m* additional documents as may be requested by Identity Malta at any time.

The application process

When the application is received, the Department of Citizenship and Expatriate affairs verifies that all documentation is present and that the fee has been paid. If documentation is complete, the application moves on for processing and is passed on to the ETC. Preliminary verification includes checks as to the existence and operations of the company concerned, and its staff lists as registered with the ETC.

The application is then considered from a labour market perspective and certain verifications will be made by the ETC, including checks with health and immigration authorities, as well as other relevant sector-specific authorities. If clearance is withheld from any of these authorities, the application will be rejected and the applicant informed accordingly. If no authority presents an objection, an approval letter is generated and delivered to the applicant upon collecting the card.



The approval letter must include any conditions that the ETC wishes to add in their labour market clearance. Once the card is issued the applicant will be in possession of an employment licence and a residence permit.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

i Residency

The Global Residence Programme

In 2013 Malta launched the Global Residence Programme (GRP) for foreigners; it addresses non-EU, non-EEA and non-Swiss nationals, and has drastically reduced the thresholds previously in place. The GRP is a fiscal scheme that attracts investment to Malta and allows third-country nationals to travel freely within the European Union.

Individuals who wish to apply for residency under this programme must purchase or rent property situated in Malta at the following values.

Owned

- a Immoveable property other than in the south of Malta: €275,000;
- b immoveable property situated in the south of Malta: €220,000; or
- c on Gozo: €250,000.

Rented

- a Immoveable property other than in the south of Malta: €9,600 per annum;
- b immoveable property situated in the south of Malta: €8,750 per annum; or
- c on Gozo: €8,750 per annum.

The lease on rented property must be taken out for at least a 12-month period and be evidenced by a certified lease agreement.

As well as purchasing or renting property as indicated, the applicant must also be in receipt of stable and regular resources that are sufficient to maintain himself or herself and any dependants without recourse to the social assistance system in Malta. The applicant also has to submit a police conduct certificate issued not earlier than six months prior to the date of submission of the application, together with a sworn declaration taken before a Commissioner of Oaths in Malta confirming that he or she is not subject to any ongoing civil or criminal proceedings.

The application process

An application for residency under the GRP may only be submitted to the Commissioner for Revenue through the services of an authorised registered mandatory (ARM).

A non-refundable administrative fee of €6,000 needs to be paid by means of a bank draft to the Inland Revenue Department upon submission of the application. Once the application, together with all the documentation, is submitted to the Commissioner, it is checked for completeness and vetted accordingly. An acknowledgment letter is sent to the ARM indicating the progress of the application.

Once the due diligence process is completed a decision will be taken and if the outcome is positive, a letter of intent is issued and sent to the ARM. This will be accompanied by a notice of primary residence, which must be completed and signed by the applicant. The said



letter of intent is valid for a period of 12 months; the certified lease or final deed of sale, as the case may be, must be submitted within this period for the final confirmation letter to be issued.

Taxation

An individual who has been granted residency under the GRP will be subject to tax at a rate of 15 per cent on any income that is received in Malta from foreign sources by the applicant and his or her dependants. This rate of tax will apply from the year of confirmation of the status up to the year of cessation, both years included. A minimum tax of €15,000 annually is to be paid, which covers income that is remitted to Malta and does not include income that arises in Malta.

The GRP has also widened the definition of dependants, which now includes the following:

- a the applicant's spouse;
- b minor children including minor children and children who are in the care and custody of the applicant or the applicant's spouse; and
- c children including adopted children and children who are in the care and custody of the applicant or the applicant's spouse, who are not minors but who, because of circumstances of serious illness or disability, are unable to maintain themselves.

Any other income chargeable to tax in Malta in accordance with the Income Tax Act that is not charged to tax as separate income at the rate mentioned above will be charged at the rate of 35 per cent.

The programme also provides that income that is chargeable to tax in Malta in accordance with the Income Tax Act to certain dependants, mentioned below, will be charged to tax separately at the applicable tax bands in accordance with the Income Tax Act. The dependants are:

- a the person with whom the applicant is in a stable and durable relationship;
- b children who are over the age of 18 but under the age of 25, including adopted children and children who are in the care and custody of the applicant, the applicant's spouse or the person with whom the applicant is in a stable and durable relationship, who are not economically active; and
- c brothers, sisters and direct relatives in the ascending line of the applicant, the applicant's spouse or the person with whom the applicant is in a stable and durable relationship.

An individual who benefits from the above tax status must submit an annual tax return to the Inland Revenue Department. The return should also include an annual declaration that identifies whether any changes were made in that year.

ii Malta Residence and Visa Programme

By means of Legal Notice 288 of 2015 Malta has launched a new residence scheme entitled 'The Malta Residence and Visa Programme Regulations, 2015', which addresses non-EU/EEA/Swiss nationals.

The programme offers the applicant, who is at least 18 years of age, and his or her dependants, an opportunity to travel to all Schengen states without the need to apply for a visa. In order to apply, the applicant must satisfy certain conditions highlighted hereunder.



Property investment

Applicants are required to invest in property in Malta or Gozo, such investment may be made in the form of purchase or lease. In terms of the regulations, a qualifying property is an immovable property that was purchased for a consideration of €320,000 if situated in Malta or €270,000 if situated in Gozo or the south of Malta. Alternatively, an applicant may opt to rent property in Malta for not less than €12,000 per annum. If the property is situated in Gozo or in the South of Malta, the minimum rent must not be less than €10,000 per annum. The property must be held for a minimum period of five years.

Investment

The applicant is also required to make an investment in a form determined from time to time by Identity Malta having an initial value of €250,000, which investment must be retained for a minimum period of five years.

Financial resources

The applicant must also prove that he has sufficient means to maintain himself and his dependants without recourse to the social assistance system of Malta. The programme sets a minimum threshold of income as follows: €100,000 of annual income arising outside of Malta or evidence that the applicant has capital of not less than €500,000.

Health insurance

The applicant and any of his or her dependants must also hold adequate health insurance covering the EU territory. The individual must satisfy a 'fit and proper test' in order to be granted a permit under this programme.

Contribution and registration fee

An administration fee of €5,500, which is not refundable, must be paid on submission of the application. Once it is established by Identity Malta that the beneficiary qualifies for such status, he is to pay a contribution of €30,000 (less the administration fee that was paid upon application).

Submission of application

An application under the Malta Residence and Visa Programme Regulations may only be made through an authorised registered mandatory.

VI OUTLOOK AND CONCLUSIONS



MALCOLM MIFSUD

Mifsud & Mifsud Advocates

Malcolm Mifsud read law at the University of Malta. He specialised in maritime and shipping law at the IMO International Maritime Law Institute.

Dr Mifsud started his career by joining one of the then largest law firms in Malta and was assigned maritime, civil and commercial litigation cases. In December 1998, he co-founded the law firm Griscti & Mifsud Advocates and was responsible for the litigation department within the firm. In 2007, Dr Mifsud, together with his brother Cedric Mifsud, set up another law firm, Mifsud & Mifsud Advocates, where he is responsible for the civil and commercial litigation practice. He is also a director of the corporate services company Aegis Corporate Services Limited.

Dr Mifsud has held a number of public posts. He was the director of Gozo Channel Company Limited (1999–2003), legal reviser at the translations unit at the Ministry of Justice and Local Government (2002–2003) and an advocate for legal aid.

Dr Mifsud was elected for five consecutive times as Mayor of Pietà. In June 2009, he was elected president of the committee of the Central Region and was also appointed as a member of the EU Committee of the Regions.

MIFSUD & MIFSUD ADVOCATES

123 Melita Street

Valletta 1123

Malta

Tel: +356 2723 7172

Fax: +235 2723 7314

info@mifsudadvocates.com.mt

www.mifsudadvocates.com.mt