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## Business Relocation to the European Island of Malta – A Practical Guide

18 Apr 2019 by Priscilla Mifsud Parker

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Malta continues with its trend of good economic

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more than 250 foreign-owned, export-oriented enterprises. On the servicing side, Malta has established itself as a reputable financial centre, a pioneer in the fintech and blockchain hub with a world-first blockchain technology legal framework, as well as a global leader in remote gaming.

Apart from its good geographical location Malta offers a number of other key advantages that set it apart from other jurisdictions. The island state excels when it comes to facility of doing business: all business is conducted in English; Malta companies can operate in any currency, and the government has set up the necessary entities to offer combined services to ease the process of relocations.

In the wake of the uncertainty created by Brexit, several companies have eyed Malta as a desirable EU destination in view of the benefits it offers as a business hub. This outlook can be seen as a direct result of Malta's resilience and stability during the financial crisis.

## **Legal Forms for Business**

Different legal forms are available in Malta to conduct business operations including the limited liability company (public/private); partnerships (en nom collectif/en commandite); trusts; and foundations. The legal form chosen most frequently by entrepreneurs relocating their operations in Malta is the limited liability company.

### ***Partnerships***

The law provides for two forms of Malta partnerships:

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- a partnership en commandite: a limited partnership where at least one partner is liable for all debts of the partnership and one or more partners are liable for its debts only to the amount indicated in the deed of partnership.

Malta laws grant each partnership legal personality distinct from that of its members, while allowing it to be transparent from a tax perspective. Moreover, a partnership en commandite may have its capital divided into shares.

Forming a partnership requires executing a deed of partnership and registering it with the Malta Registry of Companies (RoC). The registration fee depends on the value of partner contributions, with the minimum set at €245 and the maximum at €2,250. Registration may be undertaken by power of attorney granted to a local professional and thus does not require the partner to travel to Malta personally.

### ***Limited liability company***

A Malta limited liability company may be incorporated as a private or public limited liability company.

In general terms, a private limited liability (Ltd) company is limited to 50 shareholders; restricts its shares' transferability; and is prohibited from offering its shares to the public. This does not apply to a public limited liability company (Plc).

### ***Registered office***

A company registered in Malta must have a local registered office.

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As a general rule, a Malta company should have at least two members. It is nonetheless possible to incorporate a company with a single member, but certain restrictions would apply. Such company would need to be engaged principally in only one activity and would be prohibited from having a corporate director (which is generally permissible under Malta laws).

### ***Share capital***

A Ltd company must have a minimum share capital of €1,165, paid up to at least 20 per cent. A minimum share capital of a Plc must amount to at least €46,588, paid up to at least 25 per cent.

Malta does not have thin capitalisation rules. Therefore, provided that minimum share capital requirements are met, the company's operations may be funded freely through shareholders' loans.

### ***Company officers***

A Malta company must appoint at least one director, while a Plc is obliged to nominate at least two directors. A Malta company must also appoint a company secretary who must be a natural person.

### ***Company registration***

A Malta limited liability company must be registered with the RoC. This requires filing with the RoC the company's memorandum of association, which must specify, inter alia, the company's name; registered office address; share capital and members who subscribed to its shares; the number of directors; and details of the first directors, along with legal and judicial representation.

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As in the case of a Malta partnership, company registration is subject to a fee that may vary between €245 and €2,250, depending on the company's share capital.

### ***Beneficial ownership declaration***

Following the transposition into Malta's legal system of the EU's Fourth Anti-Money Laundering Directive No. 2015/849, the application for registration of a partnership or a limited liability company must be accompanied by a declaration identifying its beneficial owners.

“Beneficial owner” means any natural person or persons who ultimately own or control a body corporate through direct or indirect ownership of 25 per cent plus one of the shares, over 25 per cent of the voting rights, or over 25 per cent of the ownership interest; or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with EU law or equivalent international standards that ensure adequate transparency of ownership information.

### **Redomiciliation of Companies in Malta**

Malta laws allow foreign companies to move their domicile to Malta, subject to conditions and procedures set out in the Continuation of Companies Regulations (Legal Notice 344 of 2002). The same legislation governs redomiciliation of companies from Malta to foreign jurisdictions.

Redomiciliation or continuation may serve as an alternative to setting up a new Malta company and transferring thereto existing assets/operations. It does not require winding up the foreign company, which may remain operational during

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A foreign company may transfer its domicile to Malta provided that it is formed and incorporated (or registered) under the laws of an approved foreign jurisdiction and is similar in nature to a company as known under the laws of Malta. Furthermore, the foreign laws applicable to the entity, as well as its constitutive document (eg, charter, statutes or memorandum and articles) must allow for continuation in Malta.

A company wishing to be continued in Malta must file a request with the RoC, subject to payment of a company registration fee and along with supporting documentation that includes:

- a resolution/equivalent document of the foreign company authorising registration in Malta;
- a copy of the revised constitutive document, in line with applicable Malta laws;
- a foreign certificate of good standing or equivalent document;
- a declaration and evidence of a formal notice of redomiciliation by the company to the relevant foreign authority;
- a list of directors and the company secretary (or other company representatives); and
- proof, to the satisfaction of the RoC, that the consent of the appropriate majority of shareholders, debenture-holders and creditors has been obtained.

If the RoC is satisfied that all requisite documents are delivered, it shall issue a provisional certificate of continuation (PCC) indicating the date from which the company shall be deemed to be a company provisionally registered to continue in Malta. Once a PCC is obtained the company shall be subject to all the

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Following that, the company shall have six months from the date of issuance of the PCC to submit evidence that it has ceased to be a company in the foreign jurisdiction. Once such evidence is produced, the RoC shall issue a final certificate of continuation confirming that the company has been registered as continuing in Malta.

### Recent Developments in compliance and AML/CFT

By virtue of Legal Notice 144 of 2018 of 30 April 2018, the Malta Registry of Companies was established as a separate and autonomous agency. Up until this point, it formed part of the Malta Financial Services Authority (MFSA) and the law only provided for the Office of the Registrar, but not for a separate autonomous entity. The newly created agency took over all the duties and functions pertaining to the Registrar of Companies and assumed responsibility for all assets, liabilities and obligations, previously held or entered into by the MFSA and emanating or arising from the functions of the agency.

The restructuring was undertaken to strengthen the internal management structure of the MFSA and focus on its remit and ensure that it is well equipped to supervise the booming Maltese fintech sector. Following the changes, the MFSA introduced significant improvements in the field of financial compliance and AML/CFT, including development of an online platform for the Trusts Ultimate Beneficial Ownership Register in January 2019 and announced robust enforcement in the National AML/CFT Strategy, a document published in February 2019.

## Malta's Tax System

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treatment for entrepreneurs and investors who wish to relocate their trading or holding operations to Malta. Among other things, Malta does not levy any withholding taxes on outbound payments of dividends, interest and royalties to non-resident shareholders.

### ***Malta trading company***

Upon distribution of the trading company's income to its shareholders and payment of tax by the company, such shareholders may claim a refund of all or part of the Malta tax paid on the profits out of which the dividend is being distributed. The default tax refund applicable to the trading income amounts to six-sevenths of the Malta tax paid. Moreover, under Malta's full-imputation system of taxation (which grants a shareholder tax credit for the tax at source paid by the company), no further tax is payable at the level of the shareholder.

### ***Malta holding company***

Malta participation exemption provisions allow for income or gains from foreign investments qualifying as a participating holding (PH) to be eligible for exemption from tax in Malta. An investment would qualify as a PH, for instance, if a Malta company directly held at least 5 per cent of the equity shares conferring an entitlement to at least 5 per cent of any two of the following:

- right to vote; and
- profits available for distribution; and
- assets available for distribution on a winding up.

Capital gains derived from the disposal of a PH and, subject to certain additional conditions, dividend income from a PH, may be exempt from tax in

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Malta offers entrepreneurs a wide range of incentives to help establish new businesses or expand existing businesses. The support measures are approved by Malta Enterprise, the agency responsible for investment promotion and in particular may take a form of investment aid, facilitating access to finance, as well as supporting R&D or training. Below we outline some of the measures available.

### ***Investment aid tax credits***

This measure facilitates initial investments and relates to investment projects starting between 1 January 2018 and 31 December 2020.

Investment aid is calculated as a percentage of qualifying expenditure incurred and may take the form of tax credits and/or cash grants up to 30 per cent of the qualifying expenditure (depending on the size of the undertaking).

### ***Start-up finance 2017–2020***

The aim of this measure is to finance innovative undertakings in the early stages of development by supporting small start-up undertakings that demonstrate a viable business concept in the setting-up and initial growth phases.

Malta Enterprise provides support linked to private equity, crowdfunding and the procurement of machinery and equipment. Depending on the type of support provided, assistance may be up to €100,000 if linked to crowdfunding campaigns, and up to €200,000 when the support is linked to private equity or required to fund the procurement of machinery and equipment.

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This measure facilitates initial investments and relate to investment projects of a value between 1 January 2018 and 31 December 2020.

Investment aid is calculated as a percentage of qualifying expenditure incurred and may take the form of tax credits and/or cash grants up to 30 per cent of the qualifying expenditure (depending on the size of the undertaking).

### ***R&D feasibility studies***

This incentive supports undertakings intending to embark upon industrial research and experimental development projects by carrying out R&D feasibility studies in preparation for these projects. The support is capped at €50,000 per study.

### ***Knowledge transfer***

This incentive provides a framework for addressing skill shortages by supporting training and reskilling of existing and new employees. The aim is to support knowledge transfer, and the acquisition of new competences in line with the knowledge and skill requirements of industry.

## **Case Study**

Significant global players have moved their operations to Malta. Below we present a notable example of a success story, ie, the establishment of a European aircraft maintenance plant by Lufthansa.

### ***Aviation – Lufthansa Technik***

Lufthansa Technik was created in 2002. Initially servicing mostly Lufthansa and

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€65 million to build up local servicing capacities, which has continuously expanded in subsequent years.

### ***Blockchain companies***

A number of big players in the blockchain sector, including development companies and crypto exchanges, have moved their operations over to Malta to operate in a regulated environment. The Malta Digital Innovation Authority has been created as the authority in charge of promoting and regulating the use of innovative technology arrangements. Different and interesting models of investment and funding of projects are developing through blockchain technology.

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