

# Setting up a Malta company

A Malta company can be registered within two working days provided the pertinent documentation is submitted to the Registry of Companies. A Memorandum and Articles of Association is drafted and signed by all the shareholders of the proposed company. This together with a confirmation that the minimum share capital has been deposited with a local bank is submitted to the Maltese Registry of Companies for registration. The minimum share capital amounts to Eur1,165 (or its equivalent in foreign currency), which can be 20% paid up. The share capital of a limited liability company may be denominated in any currency including but not limited to EUR, SEK, STG, USD amongst others.

## Registration fees

Registration fees paid on incorporation of a Malta company depend on the company's authorized share capital. The minimum fees amount to Eur235 while the maximum fees amount to Eur2,250. Annual registration fees also depend on the company's authorized share capital and range from Eur100 to Eur1,400.

## Directors

The minimum number of directors of a Malta company is one while there are no maximum number, therefore a company may have any number of directors which is considered necessary for the proper functioning and management of the company.

Directors of a company must act honestly and in good faith in the best interests of the company. The directors of a company shall promote the well-being of the company and shall be responsible for:

(a) the general governance of the company and its proper administration and management; and

(b) the general supervision of its affairs.

The directors of a Malta company shall:

(a) be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person

(b) not make secret or personal profit from their position without the consent of the company, nor make personal gain from confidential company information;

(c) ensure that their personal interests do not conflict with the interests of the company;

(d) not use any property, information or opportunity of the company for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with the consent of the company in general meeting or except as permitted by the company's memorandum or articles of association;

(e) exercise the powers they have for the purposes for which the powers were conferred and shall not misuse such powers.

## **Company secretary**

Every company registered in Malta must have a company secretary. A company secretary cannot be a body corporate and must therefore be an individual.

The duties of a company secretary of a Malta company are:

- (a) Keeping an up to date register of members and register of debentures
- (b) Ensuring that all statutory forms, copies of resolutions and returns are prepared and delivered to the Registrar within the prescribed time limit
- (c) Attendance at general and board meetings
- (d) Formulation of agendas
- (e) Reading of the minutes to the meeting
- (f) Sending proper notices of general meetings and of the annual general meeting to members and auditors
- (g) Keeping of minutes of directors' meetings and general meetings
- (h) Distributing copies of the company's accounts and other documents to members and debenture holders, and ensuring that people entitled to do this can inspect company records; and
- (i) Keeping a copy of the company's M&A up to date

## **Restrictions for foreign investors**

There are no restrictions for foreign individuals or companies to hold shares in a Malta company, irrespective of their nationality, domicile or residence.

Furthermore, there are no restrictions for an EU national to carry out any trade or business via a Maltese limited liability company. However a third country national may not carry out any trade or business in Malta without obtaining the necessary permits from the Maltese authorities. These will be subject to certain conditions being satisfied including investment in fixed assets and the creation of new employment opportunities for Maltese and EU nationals. The restrictions take into account labour market conditions including the availability or otherwise of Maltese and EU workers in certain trades or industries.

## **Re-domiciliation**

It is possible for a Malta company to re-domicile to a foreign jurisdiction. The Malta company will cease to be regulated by Maltese Company law and instead will be regulated by the law of the jurisdiction in which it will re-domicile. There are no restrictions in this regard and Maltese companies may freely re-domicile to a foreign jurisdiction of choice. It is also possible for foreign companies to re-domicile to Malta.

The foreign company has to be registered in a country or jurisdiction, which is approved by the Registry of Companies in Malta. Such countries have a provision in their laws, which

authorizes a body corporate registered in their jurisdiction to change their domicile to a foreign jurisdiction.

The company will be provisionally registered as continuing in Malta and a provisional certificate of continuation will be issued. The foreign company must within a period of six months from the date of the issue of the provisional certificate of registration, submit evidence to the Registrar that it has ceased to be a company registered in the foreign country. The Registrar will then issue a certificate of continuation confirming that the company has been registered as continuing in Malta.

The body corporate must also have a clause in its statute or Memorandum and Articles of Association, which would allow the company concerned to continue in a foreign country, without being dissolved.

### **Liquidation**

There are three forms of liquidations mainly a) a voluntary winding up, b) a creditors' winding up and c) a Court winding up. When the shareholders resolve to place the company into liquidation, the powers of the directors will cease and all the powers to represent the company in liquidation will vest in the liquidator. The appointed liquidator will have the duty and responsibility to liquidate the company and wind up its affairs in accordance with the provisions of the Companies Act.

In the case of a voluntary winding up, the directors must make a declaration of solvency meaning that the company will be able to pay off its liabilities within 12 months from date of dissolution.

### **Annual Financial Statements**

Every Malta company must prepare on an annual basis a set of financial statements consisting of:

- (a) Income and Expenditure Statement
- (b) Statement of Financial Position
- (c) Cash flow Statement
- (d) Statement of changes in equity
- (e) Notes to the accounts

Every Malta company must prepare annual financial statements which must be filed with the Malta Registry of Companies within the stipulated deadlines. Files will be imposed for late filing of the annual financial statements.

Maltese companies are not required to file annual financial statements with the Maltese tax authorities but are required to have them audited. Instead an excel sheet referred to as Tax Index of Financial Data (TIFD) is filed which provides all details of the company's income and expenditure for the year and balances held at the end of the year.

Every Malta company must have its annual financial statements prepared in accordance with International Financial Reporting Standards and audited by a Certified Public Accountant who holds a practicing certificate in auditing. There are no exemptions for small companies to have their audited financial statements audited. All companies, irrespective of their size, number of employees, turnover or balance sheet totals must have their financial statements audited.

## **Taxation**

Malta offers a very attractive tax regime beneficial to both the company and its shareholders. Please visit our website [www.act.com.mt](http://www.act.com.mt) for more information about the various tax incentives applicable to Maltese limited liability companies. You may also visit our brochure on taxation of Maltese companies. You may find this by clicking on the following link <http://www.act.com.mt/media/images/active/fact-sheets-malta/Taxation%20of%20Malta%20Companies.pdf>.

## **About ACT**

ACT is in a position to advise and assist you on the most tax efficient structure to set up to meet your business needs. Tax and Corporate Law are our passion and at ACT you can find the right people to guide you and assist you in whatever you may need both during the initial stages of your business operations and also during the various stages in your business venture.

Please speak to us by contacting one of the firm's' partners on [info@act.com.mt](mailto:info@act.com.mt).

## ***Disclaimer***

This article contains general information only and is not intended to address the circumstances of any particular individual or entity. ACT, by means of this article is not rendering any accounting, business, financial, investment, legal, tax, or other professional advice or service. This article is not a substitute for such professional advice, nor should it be used as a basis for any decision or action that may affect your finances or your business. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Before making any decisions or before taking any action that may affect your finances or your business, you should consult a qualified professional adviser. ACT shall not be responsible for any loss whatsoever sustained by any person who relies on this article.

**Information as at 19<sup>th</sup> February 2015**