

BASIC FACTS ON A MALTESE COMPANY



The Law

Maltese company law is principally based on English company law and is in conformity with EU directives. In fact, Maltese Company law has been in line with EU company law directives even before Malta's entry in the EU. The main legislation is the Companies Act of 2005. Shipping companies are regulated by the Merchant Shipping Act. The Maltese Companies Act defines the types of corporate entities or commercial partnerships that may be established.

Types

Limited liability company

The limited liability company is the most preferred vehicle for doing business due to the separate legal personality and limited liability it offers.

The limited company can be either of a public nature (Plc) or of a private nature (Limited or Ltd). The minimum number of subscribers or shareholders for public and private companies is two, but a private limited liability company may also be formed as a single-member as long as the sole shareholder and sole director are not themselves corporate entities, and the objects clause is restricted to one main activity.

A private company is one that in its constitutive document, restricts the right to transfer shares, limits the number of its members to fifty (50) and prohibits any invitation to the public to subscribe to any shares or debentures of the company, unlike the public company.

Partnerships

Maltese company law also offers the possibility of having a partnership, with either the 'Partnership en commandite' being a partnership with at least one unlimited partner and other limited partners or the 'Partnerships en nom Collectif', being an unlimited partnership.

Capital

The minimum authorised and issued share capital under Maltese law is as follows:

- ❖ private companies - €1,164.69 with at least 20% thereof paid up upon subscription;
- ❖ public companies - €46,587.47 with at least 25% thereof paid upon subscription.

Currency

The company's share capital may be denominated in any currency. Malta does not impose any exchange control restrictions and this facilitates the use of Maltese corporate vehicles for international business. Exchange risk is further minimised by the fact that the company's income tax is paid in the same currency of the share capital. Any tax refunds are also given in the same currency.

Registration

The registration of a company is done by submitting the necessary documentation to the Registry of Companies. The documentation includes the Memorandum and Articles of Association (M&A) together with an identification document of the subscribers, and proof that initial share capital has been paid up. The M&A must be signed by the subscribers or their attorneys, but need not be executed in front of a notary public. This enables subscribers to set up a company without actually having to physically come to Malta, however, due diligence documentation with respect to Know Your Customer (KYC) procedures are required. Once all the documentation is submitted to the Registry of Companies the company incorporation or registration is done within 24 hours.

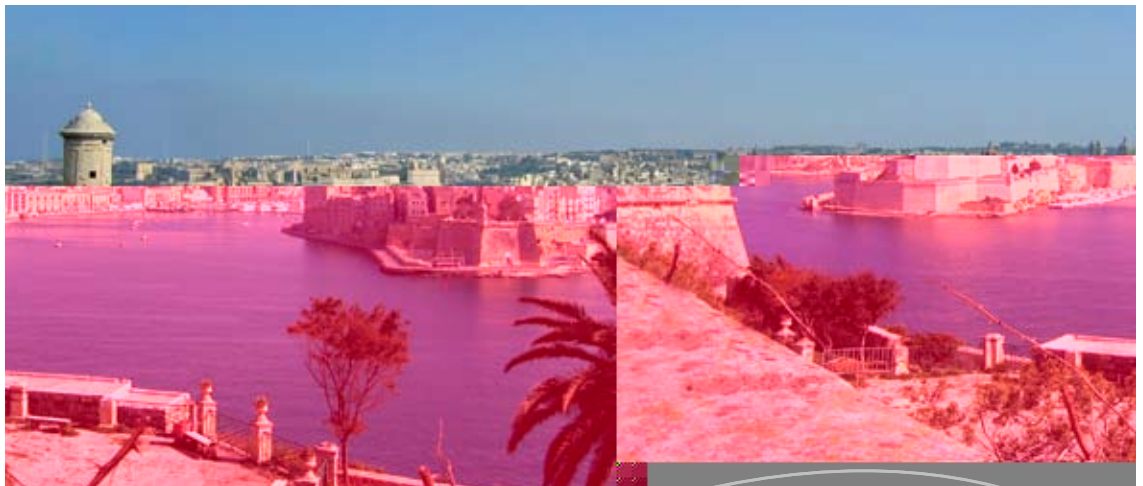
Fiduciary services

Malta has a fully fledged trustee regime and hence shares in Maltese companies may be held by licensed trustees in a fiduciary capacity for and on behalf the subscribers.



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- Registration Fee** A registration fee is payable to the Registry of Companies and depends on the amount of authorised share capital. The fee ranges between a minimum of €245 and a maximum of €2,250.
- Annual Fee** An annual registration fee is also payable to the Registry of Companies with the minimum fee being €100 for companies having a share capital not exceeding €1,500 and the maximum fee being €1,400 for companies with a share capital of €2,500,000 and over.
- Directors and Company Secretary** 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.
- General Meetings** The general meetings need not be held in Malta but may be done via a telephone or video conference. Moreover, a company may opt not to convene a general meeting if all the shareholders are in agreement and sign the necessary resolutions.
- Annual Return** Companies must submit an annual return upon each anniversary of the company's registration date. The annual fee is payable together with the annual return.
- Annual Accounts** After the financial year end, audited financial statements must be laid before and approved by the general meeting of the company and eventually submitted to the Registry of Companies. A company may opt for a financial year end other than 31st December as long as the first period is not less than six months and not more than eighteen months. The time allowed for the submission of accounts before the general meeting is ten months after the financial year end for private companies and seven months after the financial year end for public companies.
- Form of Accounts** Audited financial statements must be prepared in accordance with the Companies Act 2005. Small companies are allowed to submit abridged accounts.
- Continuation of Companies** Maltese law allows companies to change their domicile in and out of Malta. Companies moving their domicile to Malta must come from a jurisdiction which allows this. This possibility enables companies to freely move from one jurisdiction to another without the need of going through a liquidation process.
- Companies wanting to move their domicile to Malta must submit certain documentation to the Registry of Companies. The Maltese Registrar then issues a provisional certificate and such certificate is converted into a 'Certificate of Continuation' upon the presentation of evidence that the company has ceased to exist in the foreign jurisdiction.



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