

The background of the page is a photograph of three business professionals walking down a modern, light-colored stone staircase. On the left, a man in a light blue shirt and tie is smiling and looking towards the woman in the center. The woman is wearing a light grey suit and is also smiling. On the right, an older man in a dark blue suit and tie is walking towards them. The staircase has a glass railing on the left side. The overall atmosphere is professional and positive.

# LEGAL ADVISORY SERVICES

BDO MALTA



## OVERVIEW

Malta has certainly become an enticing destination for all investors all over the world. Indeed, Malta's steady economy together with being well-known as a stable financial and business hub, make it a very attractive investment destination for investors around the globe.

Due to the increasing complexity of national and international legislation and regulatory processes, newly set up businesses and growing businesses are constantly exposed to legal requirements necessitating the guidance of legal professionals.

Our legal advisory services team is composed of fully qualified lawyers specialised in different legal sectors, who provide business-oriented guidance on legal matters and assist clients to coordinate their interests and operations in accordance with Maltese legal requirements.

Our legal professionals are motivated by their genuine interest in the law and always strive to put their expertise and experience at the disposal of our clients to help achieve the best possible outcomes.

## CORPORATE & COMMERCIAL ADVICE

Maltese company law provides a well-structured framework for the setting up and the upkeep of companies and partnerships in Malta. For this reason, Malta has been deemed to be one of the most appealing European jurisdictions for new corporate structures and re-domiciliation.

BDO Malta's Legal Advisory Team has the expertise to advise international clientele on various corporate law and commercial law matters.

Our legal professionals can assist buyers, sellers and investors in a number of cross border transactions and can also provide established businesses with the required legal professional advice on all aspects of Maltese corporate structures and conduct a comprehensive legal due diligence. Furthermore, our legal professionals can also guide local and international clientele with the legal and regulatory requirements imposed on corporate vehicles set up in Malta.



## FINANCIAL REGULATORY SERVICES

Malta has become home to several successful financial services operators. This is because, over the years, Malta has developed the necessary regulatory framework which paved the way for the establishment and licensing of such operators. This, coupled with Malta's accession to the European Union in 2004 and the adoption of the Euro in 2008, has put Malta in the limelight of financial services operators who wish to establish themselves in one of the strongest and more stable economies in Europe.

The financial services sector is overseen by the Malta Financial Services Authority ('MFSA') which is the authority entrusted with the regulation and supervision of financial services operators in Malta. The MFSA ensures that Malta remains a reputable jurisdiction in the financial services sector and curbs down abuse from those entities which are non-compliant.

Malta has enacted several legislative instruments which cater for financial institutions, credit institutions and investment services. Below is an overview of these legislative instruments.

### **Financial Institutions Act, Chapter 376 of the Laws of Malta**

The Financial Institutions Act regulates entities referred to as 'financial institutions' which can be classified in the following two categories:

- ▶ Institutions undertaking payment services and/or the issuance of electronic money; and,
- ▶ Institutions undertaking other activities such as lending, financial leasing, the provision of guarantees and commitments, foreign exchange services and money brokering.

The Financial Institutions Act transposes the provisions of the European Union's Second Payment Services Directive and the Second Electronic Money Directive, applicable to authorised payment and electronic money institutions.

### **The Banking Act, Chapter 371 of the Laws of Malta**

The Banking Act regulates entities referred to as 'credit institutions'. Credit institutions may conduct a few activities, however the taking of deposits from retail customers is the licensable activity that distinguishes a credit institution from other licensed entities.

### **The Investment Services Act, Chapter 370 of the Laws of Malta**

The Investment Services Act regulates entities referred to as 'investment services providers' which include the following:

- ▶ Firms regulated under MIFID (European Union Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments);
- ▶ Alternative Investment Fund Managers (AIFMs) and UCITS Management Companies, collectively referred to as Investment Managers; and,
- ▶ Custodians of financial instruments.



## INVESTMENT FUNDS

Since the launch of the Professional Investor Regime in 2000, Malta has been increasingly attracting fund promoters to the jurisdiction, evidenced by the yearly growth in the number of hedge funds licensed in Malta and the number assets under administration. This rise in popularity results from the approachability of the MFSA, which adopts a flexible approach to new business proposals, the relatively low regulatory costs and the fact that investment restrictions are kept to a minimum.

Malta has established itself as an innovative and reliable financial services centre, hosting a variety of financial services businesses and structures including AIFs, UCITS, fund managers, fund administrators, forex brokers, payment services providers, investment advisors and insurance principals. Malta also boasts of a variety of Investment funds, being the first EU Member to introduce UCITS III in November 2007, has fully implemented MiFID and also offers PIFs which are Shariah Compliant.

Maltese hedge funds often take form of PIFs, which are most commonly set up as an investment company with variable or fixed share capital with a multi-fund or umbrella fund structure. PIFs are aimed at more experienced investors with a very high net-worth, and thus, with the exception of PIFs investing in immovable property, are not subject to restrictions on their investment and borrowing powers.

During mid-2016, the Malta Financial Services Authority have re-defined the concept of a Professional Investor Fund, removing the previously existing categories of PIFs and allowing only PIFs promoted to 'Qualifying Investors'.

**In order to classify as a Qualifying Investor, the following criteria must be satisfied:**

- ▶ Invest a minimum of €100,000 or its currency equivalent in the PIF, which investment may not be reduced below this minimum amount at any time by way of a partial redemption;
- ▶ Declare in writing to the fund manager and the PIF that he/she is aware of and accepts the risks associated with the proposed investment; and
- ▶ Satisfy at least one of the following:
  - ▶ is a body corporate which has net assets in excess of €750,000 or which is part of a group which has net assets in excess of €750,000;
  - ▶ is an unincorporated body of persons or association which has net assets in excess of €750,000;
  - ▶ is a trust where the net value of the trust's assets is in excess of €750,000;
  - ▶ is an individual whose net worth or joint net worth with that of the person's spouse, exceeds €750,000; or
  - ▶ is a senior employee or director of a service provider to the PIF.

Under the PIF regime, the fund can opt to be self-managed and self-administered, usually through an ad hoc Investment Committee of the Board of Directors of the company or appoint a professional Manager. Thereby reducing the costs and eliminating the need to appoint third-party administrators. However, it is still possible to have an externally managed structure.

When applying for a PIF licence, the applicant should provide the MFSA with a duly filled application form together with a Memorandum and Articles, Offering Memorandum (and Offering Supplement/s in the cases of sub-Fund/s), the applicable fee, PQs of Directors, Compliance Officer, MLRO and, where applicable, Investment Committee members. The MFSA must also be provided with Competency Forms of the acting Compliance officer, Money Laundering Reporting Officer and, where applicable, the portfolio manager.

The Legal Advisory Services Team at BDO Malta have an investment fund practice thereby offering assistance with the structuring and setting up of funds and on-going advice after post-licensing stage. We help our clients with the drafting of regulatory documentation, including offering memoranda and ancillary agreements, manage relations with regulatory authorities, providing ongoing regulatory advice, passporting in or out of Malta under the relevant directives (MiFID, UCITS and AIFMD); and providing transactional work including drafting and negotiation of documentation.

## INSURANCE

The Maltese insurance sector has shown considerable growth in the past years as it continues to incorporate the standards set by European Union Insurance Directives.

The business of insurance in Malta is mainly regulated by two Acts: the Insurance Business Act (Cap. 403 of the laws of Malta) and the Insurance Distribution Act (Cap. 487 of the laws of Malta). These two pieces of legislation are significantly important as they set out specific conditions for obtaining the relevant authorisations so that one may carry out the business of insurance (inside or outside of Malta) either through their principal place of business, through a branch or through an insurance intermediary. In conjunction with these acts, the Malta Financial Services Authority ('MFSA') has also issued its own 'Insurance Rules' and 'Insurance Intermediaries Rules'.

The MFSA, being the sole local regulator responsible for the Maltese financial market, is geared at providing a pro-businesses approach to the various types of insurance structures available locally, namely:

- ▶ Insurance and reinsurance undertakings;
- ▶ Insurance intermediaries;
- ▶ Affiliated insurance companies (captive insurance companies); and
- ▶ Protected cell companies (PCCs) and Incorporated Cell Companies (ICCs).

Our team of legal professionals at BDO Malta are able to assist in various matters relating to Insurance which include the following:

- ▶ Licensing of insurance and reinsurance undertakings;
- ▶ The provision of authorisations relating to insurance intermediaries;
- ▶ The provision of passporting rights in EU;
- ▶ Advice and assistance on any transactional work;
- ▶ Drafting of policy documentation, insurance contracts, insurance distribution contracts and any other related documentation ;
- ▶ Assistance with relevant transactions.



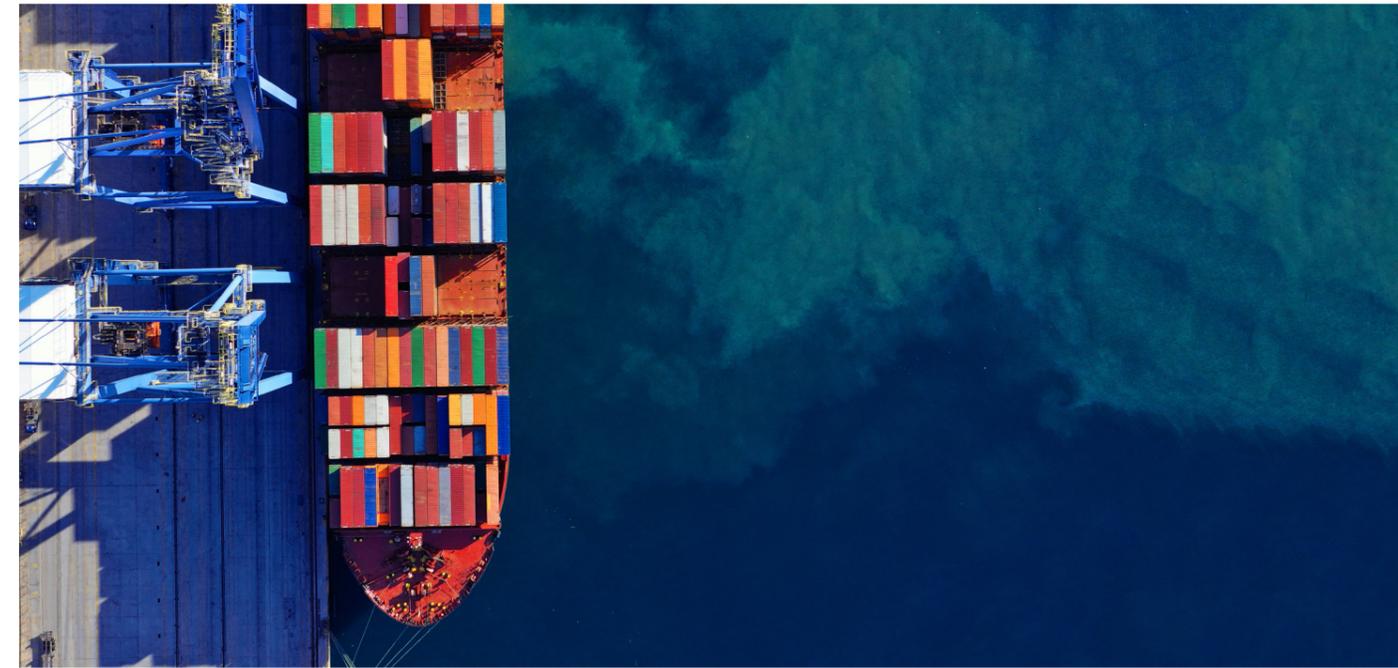
## MARITIME

Malta enjoys a key position in the heart of the Mediterranean and together with its world class port facilities, superyachts marinas and the provision of other various related services, Malta has certainly positioned itself as one of the best options for international shipping. The Maltese flag has grown to become an attractive, reputable and internationally recognized flag in the maritime world, with the Maltese Ship Register being one of the leading registers not only in Europe but also worldwide.

Malta is considered as having an advantageous, cost-efficient system which adheres to most of the major international safety standards and conventions whilst boasting an effective mortgage system and low tonnage tax schemes.

Our Legal Advisory Services team have developed a strong understanding of the shipping and yachting industry and can assist clients who are ship or yacht owners, ship operators and international financier with professional services which include the following:

- ▶ Assistance with the registration of ships and yachts in Malta
- ▶ Assistance with the setting up of shipping organisations in accordance with the applicable Maltese legislation
- ▶ Advising and assisting clients with other matters affecting ships and yachts, including crewing requirements, bareboat charter registration and yacht leasing
- ▶ Assisting clients with issues relating to ship finance, which includes the drafting and review of loan agreements, security agreements, statutory mortgages and any other ancillary documentation required to enter the relevant financing transaction.



### Ship Registration

#### What is a ship in terms of Maltese law?

The Merchant Shipping Act, enacted in 1973, defines a "Ship" as "every description of vessel used in navigation, whether self-propelled or not, and it includes barges, pontoons, floating establishments, installations or structures, oil rigs and other similar vessels, and for those parts of the Act wherever applicable it shall also include a ship under construction."

#### The Registration Process

Anyone who owns a ship and intends to register such ship with the Maltese Registry will need to submit an application which requires, amongst others, proof of qualification to own the vessel, a declaration of ownership, a copy of the ship's International Tonnage Certification (where applicable), an application for minimum safe manning certificate, provision of evidence of seaworthiness and the payment of the initial registration fees and annual tonnage tax. Where the owner of the ship is not Maltese, the application may also be submitted by an authorised representative of the owner.

The provisional registration is granted for a six-month period however, this may be extended for further periods which shall not exceed six months. Within one month of the vessel's provisional registration, further documentation must be submitted to the register, which shall include the builder's certificate, documentation which evidence ownership of the vessel and documentation which indicate that any former registrations of the ship have been cancelled.

It is important to note that the registration process distinguishes between the age of the vessels. Vessels which are older than 15 years but not more than 20 years must pass an inspection by an authorised flag state before or within one

month of provisional registration. When the ship is between 20 and 25 years of age, then it must pass an inspection before it is provisionally registered. Trading ships over the age of 25 years cannot be registered however, there may be specific instances in which this is allowed by the Register, at its own discretion and on a case-by-case basis decision.

A similar process applies for Super Yachts and Bareboat Charter Registration.



## AVIATION

With its central location in the Mediterranean, dynamic legislative framework, multilingual workforce and beneficial fiscal regime, Malta has been demonstrating continued success in its trading and investment activities. The aviation industry in Malta is no exception and over the past years, this industry has shown considerable advances as it aims to follow the success which has been brought about by the maritime industry, whose mercantile register has positioned Malta in the forefront not only in Europe, but also internationally.

Malta's growth in the aviation industry can be attributed to various investments which have been made in different areas some of which include, maintenance, repair and overhaul (MRO) operations, production of aircraft components, flight-training, research and development and further investments in airside facilities.

The Aircraft Registration Act of 2010 introduced a framework in which its provisions set out to regulate the registration of private and commercial aircrafts in the National Aircraft Register, joint and fractional ownership of aircrafts and mortgages and other special privileges on aircrafts. The Aircraft Registration Act has also brought about with it the implementation of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol.

According to the Aircraft Registration Act of 2010, aircraft registration may be made in one of the following capacities:

- ▶ As owner of an aircraft (who also operates the aircraft);
- ▶ As owner of an aircraft under construction or an aircraft which is temporarily non-operational or not being managed;
- ▶ As an operator of an aircraft which is under a temporary title, such as lease;
- ▶ As a buyer of an aircraft which is under a conditional sale or title, reservation or similar agreement and which satisfies the requisite conditions which may be prescribed. The buyer also needs to be authorised to operate the aircraft.

The following registrants are qualified persons who may register an aircraft used in air services:

- ▶ The Government of Malta;
- ▶ A citizen of Malta or a citizen of the EU or an EEA State or Switzerland. The individual needs to have a place of residence or business in Malta, the EU, the EEA or Switzerland. This qualification includes persons sharing in the ownership of the aircraft by virtue of the community of acquests;
- ▶ An undertaking which has been set up in accordance with the laws of Malta, the EU, an EEA State or Switzerland and has established a registered office, central administration and principal place of business within the same jurisdiction. The Act requires that not less than 50% of the undertaking is owned and effectively controlled by the Government of Malta or by any EU Member State or an individual (as described above), whether directly or indirectly through one or more intermediate undertakings.

On the other hand, a person may register a private aircraft if he/she is a natural person who is a citizen of Malta, the EU or an EEA State or Switzerland or alternatively, it can be an undertaking established in one of these jurisdictions. Such person needs to have the legal capacity to own or operate an aircraft in terms of law, comply with the requirements established under the Aircraft Registration Act and, if such individual is an international registrant, have an appointed resident agent in Malta.

Our team of legal professionals have developed a thorough understanding of the area and are able to offer clients the following services:

- ▶ Assistance with the registration of aircrafts in Malta;
- ▶ Assistance with issues relating to aircraft chartering and leasing, financing transactions, sale and purchase of aircrafts and aircraft engines, mortgages and securities.
- ▶ Assistance with negotiating, drafting and reviewing of the agreements and the provision of advise on any related matter.
- ▶ Assistance with crewing requirements and related service agreements.

## INTELLECTUAL PROPERTY

Successful entrepreneurs and businesses invest most of their efforts, knowledge and resources to develop and market a product or service which is distinctive, sought after and potentially profitable. Therefore, it is vital for any person or company to protect their ideas, together with safeguarding the branding and the essence of their service or product. To do so, they must be mindful of their intellectual property rights ("IPRs") and of the different mechanisms provided in to exploit such rights to the best of their abilities.

IPRs are the proprietary rights belonging to creators (or owners) over their intellectual (or intangible) assets, such as: inventions, literary and artistic works, trade name, designs, marks and logos, among others. IPRs allow the owners to safeguard their interests and to benefit from intellectual assets by providing them with different forms of protection at law. Inherently, such protection generally results in 'negative rights' which essentially prohibit others from taking certain actions (for example not to display or sell your product without authorisation) - in a specific territory for a specified period. It is noteworthy that IPRs are not universal and vary from country to country, although there are international treaties and organisations in place which ensure conformity and standardisation of processes relating to the registration and enforcement of such rights.

### The most recognised IPRs include:

- ▶ **Copyrights** – protection over literary and artistic creations (such as texts and audio/visual works);
- ▶ **Trademark** – protection over signs and marks (such as logos and tradenames);
- ▶ **Patents** – protection over inventions having a practical use (being products or processes);
- ▶ **Designs** – protection over the aesthetic features of a product (such as the shape or pattern).

BDO's Legal Advisory Services Department is equipped to support our clients and provide you with the right guidance regarding the exploitation and protection of your intellectual property and IPRs. Our assistance may be sought in several instances and include, among others:

1. Advising on the IPRs which may be applicable to your service or product,
2. Protecting your creations by registering them with the competent authorities in Malta and abroad,
3. Safeguarding your intellectual property interests within commercial transactions such as the transfer of businesses or acquisition products.

## EMPLOYMENT LAW

The Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta, together with the extensive number of regulations which have been enacted throughout the years, in order to regulate both the public and private sectors of employment in Malta, place rigorous demands on employers, making it necessary for employers to seek external legal assistance to ensure that they are compliant with the most recent legislative requirements.

Our Legal Professionals at BDO Malta have the necessary expertise required to assist employers in a vast array of matters relating to employment and labour law. The services offered by our legal professionals in respect of employment and industrial relations matters include the following:

- ▶ Drafting of Employment agreements and employee handbooks implementing and enforcing policies (including confidentiality, data protection, leave entitlements, use of company property) which are tailor-made for our clients' needs;
- ▶ Industry-specific conditions of employment;
- ▶ Implementation of suitable incentive schemes;
- ▶ Data protection and privacy issues in relation to employment;
- ▶ Providing assistance with regards to the transfer of employees between undertakings;
- ▶ Assistance and providing legal advice with regards to resignations, dismissals and redundancies.



## IMMIGRATION BY INVESTMENT

The interest in immigration by investment options has grown significantly in recent years and they have become high on the agenda of international entrepreneurs and their families, especially following the disruption of the COVID-19 pandemic. Being granted citizenship in a European Union jurisdiction, such as Malta, creates new avenues for investment, business opportunities and guarantees greater international mobility.

The Maltese economy is one of the strongest and most stable in the European Union and Eurozone. Malta has repeatedly positioned itself as one of the top relocation destinations in the world, given its remarkable employment rate, its warm climate, a rich culture, and a very high standard of living. Malta has gained a reputation for being one of the best jurisdictions in which to invest, due its competitive tax regime and a well-developed legal system.

In November 2020, the Government of Malta issued the 'Granting of Citizenship for Exceptional Services Regulations' which provides that Maltese citizenship may be granted to fit and proper individuals who have either rendered an exceptional contribution to Malta or to humanity, proved to be of exceptional interest to Malta or contributed an exceptional direct investment in the economic and social development of Malta.

Applicants who opt to apply for the issuance of Maltese citizenship by contributing an exceptional direct investment in the economic and social development of Malta, may choose to extend their application to their family members, namely spouses, children up to 18 years of age, unmarried and financially dependant children between the age of 18 and 29 and dependent parents or grandparents of the applicant or the spouse above the age of 55.

Such applicants shall be required to satisfy the following financial requirements:

- ▶ A contribution of €600,000 on behalf of the main applicant, where the main applicant would be able to prove that he or she has been resident in Malta for a minimum period of 36 months, Or
- ▶ A contribution of €750,000 on behalf of the main applicant, where the main applicant would be able to prove that he or she has been resident in Malta for a minimum period of 12 months.
- ▶ An additional contribution of €50,000 for each family member, included in the application as dependant of the main applicant.

Further, the applicant must also acquire a residential property in Malta worth at least €700,000 or to take a residential property in Malta on lease, provided that the annual rent is at least €16,000. Such immovable property. Such immovable property acquired or taken on lease shall need to be held for at least 5 years.

Our dedicated team of professionals and specialists in immigration by investment legislation have the required expertise and can advise applicants on all aspects of citizenship law, as well as the legal implications to consider when acquiring Maltese citizenship. Our professionals can guarantee a trustworthy, confidential, and personalised service.

## FOR MORE INFORMATION:

### **BDO MALTA**

Triq it-Torri Msida  
MSD 1824  
Malta

Tel: +356 2131 3060  
Fax: +356 2131 3064  
info@bdo.com.mt

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