

Incorporation of Maltese Companies

Recent developments

As from 1998, Malta had its laws reviewed and were found to be compliant to the international standards laid down in the OECD and FATF recommendations as well as those of the EU, except in some minor areas.

One of the issues raised related to 'nominee companies' and the Maltese Government was requested to review the current system which had been the cornerstone of the 1988 offshore companies and trust legislation. A project has therefore been launched to phase out this nominee company regime. In fact, amendments have now taken effect deleting all references to nominees in other legislation such as the Companies Act and the Professional Secrecy Act.

In order to avoid a resulting regulatory vacuum, the MFSA decided to revise legislation to preserve and enhance, where appropriate, regulation of fiduciary services in line with the OECD's principles of increased transparency, improved exchange of information and non-discrimination, keeping in view also Malta's EU membership.

Maltese legislation does not encourage anonymity, nor one hundred per cent confidentiality (such as Switzerland), but attempts to strike a good balance between market needs and regulator and international compliance. Professional secrecy does not block regulatory requests nor requests under money laundering regulations.

Information Required for Setting up a Malta Company

A Malta Company may be set up using a Fiduciary Company duly authorised by the Malta Financial Services.

- Information / Documents Required in Respect of a Corporate Shareholder:-

- Certified copy of statute (or equivalent) of corporate shareholder
- Certified copy of Certificate of Registration (or equivalent) of corporate shareholder
- Copy of latest audited accounts
- Details of ultimate ownership structure of corporate shareholder
- Details of directors of corporate shareholder
- 2 bank references on corporate shareholder
- Resolution / Power of Attorney of the board of directors authorising the setting up of a Malta company
- Photocopy of passport of person(s) authorised to issue instructions to Fiduciary Company
- Brief details of business history and background of person(s) authorised to issue instructions to Fiduciary Company

- Information/ Documents Required in Respect of an Individual Shareholder

In respect of each shareholder

- Name and residential address details
- Details of place and date of birth
- Nationality
- Two bank references acceptable to us addressed to Fiduciary Company' confirming character and reputation
- Photocopy of passport
- Brief details of previous business history and background

- Requirements in respect of proposed Malta company

- Proposed name
- Description of intended activities
- Currency in which capital is to be demonstrated
- Estimate of turnover in first year of operation
- Remittance in foreign currency to cover share capital and formation costs
- Signature on Company Secretary Agreement – (if applicable)
- Table - Schedule of Costs

Registration fees payable to the Registrar of Companies are calculated on the basis of the company's authorised share capital as follows:

Companies Act (Fees) Regulations, 2008
(Extract from L.N. 354 of 2008)

Authorised Share Capital	Registration in Paper Format Fee Payable	Registration in Electronic Format: Fee Payable
Up to €1,500	€245	€210
Over €1,500 but not exceeding €5,000	€245 with the addition of €15 for each €500 or part thereof in excess of €1,500	€210 with the addition of €12 for each €500 or part thereof in excess of €1,500
Over €5,000 but not exceeding €10,000	€350 with the addition of €20 for each €1,000 or part thereof in excess of €5,000	€294 with the addition of €17 for each €1,000 or part thereof in excess of €5,000
Over €10,000 but not exceeding €50,000	€450 with the addition of €20 for each €2,500 or part thereof in excess of €10,000	€379 with the addition of €17 for each €2,500 or part thereof in excess of €10,000
Over €50,000 but not exceeding €100,000	€770 with the addition of €20 for each €10,000 or part thereof in excess of €50,000	€651 with the addition of €17 for each €10,000 or part thereof in excess of €50,000
Over €100,000 but not exceeding €250,000	€870 with the addition of €10 for each €15,000 or part thereof in excess of €100,000	€736 with the addition of €8 for each €15,000 or part thereof in excess of €100,000
Over €250,000 but not exceeding €500,000	€970 with the addition of €10 for each €10,000 or part thereof in excess of €250,000	€816 with the addition of €8 for each €10,000 or part thereof in excess of €250,000
Over €500,000 but not exceeding €1,000,000	€1,220 with the addition of €20 for each €20,000 or part thereof in excess of €500,000	€1,016 with the addition of €17 for each €20,000 or part thereof in excess of €500,000
Over €1,000,000 but not exceeding €2,500,000	€1,720 with the addition of €10 for each €50,000 or part thereof in excess of €1,000,000	€1,441 with the addition of €8 for each €50,000 or part thereof in excess of €1,000,000
Over €2,500,000	€2,250	€1,900



Annual fees payable to the Registrar of Companies are calculated on the basis of the company's authorised share capital as follows:

Companies Act (Fees) Regulations, 2008
(Extract from L.N. 354 of 2008)

	In Paper Format	In Electronic Format
Doesn't exceed € 1,500	€100	€85
Exceeds €1,500 but does not exceed €5,000	€140	€120
Exceeds €5,000 but does not exceed €10,000	€160	€135
Exceeds €10,000 but does not exceed €50,000	€350	€300
Exceeds €50,000 but does not exceed €100,000	€400	€340
Exceeds €100,000 but does not exceed €250,000	€600	€510
Exceeds €250,000 but does not exceed €500,000	€800	€680
Exceeds €500,000 but does not exceed €1,000,000	€900	€765
Exceeds €1,000,000 but does not exceed €2,500,000	€1,200	€1,020
Exceeds €2,500,000	€1,400	€1,200

Re-domiciliation of Companies

The Maltese Companies Act, 1995 allows for the continuation or re-domiciliation of foreign companies to Malta and also of Malta registered companies to other foreign jurisdictions. The jurisdictions to which and from which re-domiciliation is presently permitted include EU Member States, EEA Countries and OCED Member States.

Re-domiciliation of a foreign company to Malta

The Companies Act, 1995 provides the procedure which a foreign company that wishes to re-domicile to Malta must follow. One of the conditions laid down in the relative regulations is that the foreign company must be authorized to re-domicile by its charter, statute or memorandum and articles of association or by any other instrument constituting or defining the same company. It must therefore be confirmed that the statutory documents of the foreign company allow for its continuance in Malta.

In order to re-domicile to Malta, a request must be made by the foreign company to the Maltese Registrar of Companies. This request must be accompanied by certain documents, which include the following:

- A resolution or equivalent document of the shareholders of the foreign company authorizing it to be registered as being continued in Malta;
- A copy of the constitutive document of the foreign company which is to serve as a basis of preparation of the Memorandum and Articles of Association, which is to be prepared in accordance with the provisions of Maltese law;
- A certificate of good standing or an equivalent document in respect of the foreign company issued by the competent authority in which the foreign company was formed;
- A declaration signed by at least two directors of the foreign company, unless the Board of Directors is composed of one, confirming the following:
 - The name of the foreign company and the name under which it is to be continued in Malta;
 - The jurisdiction under which it is incorporated;
 - The date of incorporation;
 - The decision having the foreign company registered as continuing in Malta;
 - The communication of the foreign company to the relevant authority of the country where it is incorporated informing them of its decision to be registered to continue in Malta;
 - That no proceedings for breach of laws of the country or jurisdiction of incorporation have been commenced against such foreign company.
- A declaration signed by at least two directors confirming the solvency of the foreign company and that they are not aware of any circumstances which may negatively affect, in a material manner, the solvency position of the company within a period of twelve months;
- A list of directors of the foreign company as well as the details of the company secretary, if any, or of the persons vested with the administration or the representation of the foreign company;
- Such material as the Registrar may require in order to satisfy himself that:



- Such request is permitted by the laws of the country or jurisdiction where the foreign company has been incorporated, and
 - The consent of such number or proportion of shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction where the foreign company has been incorporated.
- Payment of registration fees, which vary depending on the authorised share capital of the foreign company.

Within a period of six months from such a request, the foreign company must submit documentary evidence to the Registrar that it has ceased to be a company registered in the country or jurisdiction where it had been initially formed and incorporated or registered. On submission of such evidence, the company shall surrender to the Registrar, the Provisional Certificate of Continuation, and the Registrar shall issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta.

Effects of re-domiciliation

Once the Registrar of Companies issues the company with a Certificate of Provisional Registration, the following are the most salient consequences thereof:

- The company will be *deemed to be a company incorporated in Malta*, in terms of the Companies Act, 1995, by its original name, as from the date of the Certificate of Provisional Registration;
- Continuation will not create a new legal entity – the company shall retain, and continue to Malta with, all its assets, rights, liabilities and obligations intact;
- The company will henceforth be regulated by its Constitutive Document (now in compliance with the Companies Act), the Companies Act and Maltese law generally;
- The company is required to provide documentary evidence to the effect that it has been struck off the register in the country in which it was originally incorporated within 6 months of the date of issue of the Certificate of Provisional Registration.

Tax implications on continuation

- With effect from the date of the company's Certificate of Provisional Registration, the company is 'deemed to be incorporated in Malta' in terms of law. The company therefore becomes domiciled and resident in Malta in terms of the Income Tax Act.
- No tax or other levy is charged upon continuation of the company to Malta;
- Any undistributed profits of the company (unless, exceptionally, charged to tax in Malta at an earlier stage) will be allocated to the Company's Untaxed Account on the date of continuation to Malta. A dividend distributed by the company from its Untaxed Account to a non-resident shareholder is tax exempt in that shareholder's hands and no disclosure thereof need be made.
- The company may fully benefit, as a Malta tax resident, from Malta's network of a large



number of OECD-based Double Tax Treaties.

- Shares in the company may be held through a licensed fiduciary shareholder or through a trust.
- Foreign-owned overseas-based Maltese companies are presently not required to register for VAT.

Re-domiciliation of a Maltese company overseas

A request may be made by a company registered in Malta to the proper authorities in the country or jurisdiction in which it wishes to be re-domiciled so long as this is permitted. This may be done after the appropriate consent is obtained from the Maltese Registrar of Companies.

The request to the Registrar must be made in the prescribed form and must also be accompanied by a declaration of the directors containing the details of the company, the country or jurisdiction to which it wishes to be re-domiciled to and the date of this re-domiciliation.

Consent will only be given by the Registrar so long as the regulations in force are complied with and where it is satisfied that the company is not involved in any proceedings for dissolution, insolvency etc. Furthermore the consent of the Registrar shall not take effect before a period of three months from the date of publication of a relative notice in the Government Gazette has elapsed. This notice allows any creditors of the company to object to the proposed re-domiciliation.

Once the authority in the country or jurisdiction in which the company has been continued issues the relevant certificate of continuation and a copy thereof is delivered to the Registrar, then the company will be struck off the Maltese register of companies.