

# ***Factual analysis of Member States Investors' Schemes granting citizenship or residence to third- country nationals investing in the said Member State***

## ***Deliverable B.I Investors' Citizenship Schemes in Malta***

JUST/2016/RCIT/FW/RIGH/0152 (2017/06)



March 2018

This Report has been prepared by Emma Psaila and Jelena Dzankic for Milieu Ltd under the contract JUST/2016/RCIT/FW/RIGH/0152 (2017/06).

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

**Milieu Ltd** (Belgium), Chaussée de Charleroi 112, B-1060 Brussels, tel.: +32 2 506 1000; e-mail: [emma.psaila@milieu.be](mailto:emma.psaila@milieu.be); [ana.gomez@milieu.be](mailto:ana.gomez@milieu.be) and [vanessa.leigh@milieu.be](mailto:vanessa.leigh@milieu.be); web address: [www.milieu.be](http://www.milieu.be).

*Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State*

**TABLE OF CONTENTS**

<b>I.</b>	<b>GENERAL BACKGROUND .....</b>	<b>4</b>
<b>II.</b>	<b>PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA .....</b>	<b>8</b>
<b>1</b>	<b>APPLICATION PHASE .....</b>	<b>8</b>
<b>2</b>	<b>APPLICABLE CRITERIA AND VERIFICATION PROCEDURES .....</b>	<b>18</b>
<b>3</b>	<b>ECONOMIC AND FINANCIAL EFFICIENCY OF AWARDING CITIZENSHIP TO FOREIGN INVESTORS.....</b>	<b>27</b>
<b>III.</b>	<b>OTHER COMMENTS .....</b>	<b>29</b>



## I. GENERAL BACKGROUND

### ■ *Legal background*

The Maltese Citizenship Act provides for the acquisition, deprivation and renunciation of Maltese citizenship.<sup>1</sup>

In October 2013, Malta adopted Act XV of 2013 that amended the Maltese Citizenship Act and introduced the Individual Investor Programme (IIP), defined as ‘the individual investor programme as referred to in article 10(9)(b)’. Article 10(9)(b) of the Maltese Citizenship Act states that the Minister responsible for matters relating to Maltese citizenship may grant a certificate of naturalisation as a citizen of Malta to any person who is an applicant, or is a spouse or an eligible dependant of such applicant, under the individual investor programme of the Republic of Malta, and satisfies the requirements of the Act. The application must be made as prescribed under the Act and the applicant must take the oath of allegiance.

Act XV of 2013 also amended Article 24 of the Maltese Citizenship Act dealing with the power to make regulations under the Act. The President of Malta may by regulations make provision, *inter alia*, ‘for providing for any contributions or other fees of whatever nature in respect of the individual investor programme’ (Article 24(i)(h)) and ‘for prescribing the requirements for and administration of the individual investor programme and for the granting of a certificate of naturalization as a citizen of Malta to an applicant, and spouse and eligible dependants of such applicant, meeting the requirements as may be prescribed’ (Article 24(1)(i)). Malta’s IIP law was adopted by virtue of such powers.

This first draft of the IIP law sparked reactions both from within Malta and from other EU Member States, since it proposed a direct exchange of Maltese citizenship for a pecuniary contribution of EUR 650,000 (due diligence and criminal record checks applied). However, as the exchange of citizenship for investment resulted in much domestic and international contention, the IIP law, then Legal Notice 450 of 2013 (LN 450/2013),<sup>2</sup> stipulated additional criteria that the investors were required to meet in order to become eligible for Maltese and consequently EU citizenship. These additional criteria included either the possession of property in the value of EUR 350,000, or the rental of property for at least EUR 16,000 per year; and an additional investment of EUR 150,000 into a project determined by the state authorities.<sup>3</sup> While increasing the amount of the contribution and specifying its targets, the amendments did not require further commitment on behalf of the investors. This amendment also capped the number of successful main applicants to 1,800 meaning that the existence of the scheme is subject to this limit (see point 1.3 in Section II below). The current IIP scheme will no longer be available once that limit is reached<sup>4</sup> and new legislation would be necessary to continue the scheme.

Following the debate ‘EU citizenship for sale’ held in the European Parliament on 15 January 2014,<sup>5</sup> whereby the concern was expressed ‘that this way of obtaining citizenship in Malta, as well as any other national scheme that may involve the direct or indirect outright sale of citizenship, undermines the very concept of European citizenship’, and after discussion with the European Commission, Malta amended

---

<sup>1</sup> Chapter 188 of the Laws of Malta, Maltese Citizenship Act, 21 September 1964, Act XXX of 1965 as last amended by Acts XV of 2103, XXIV of 2017 and XXVI of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1>. According to Article 22(1) of the Constitution of Malta, ‘[t]he acquisition, possession, renunciation and loss of Maltese citizenship shall be regulated by law.’ The Constitution of Malta is available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

<sup>2</sup> Legal Notice 450 of 2013, Individual Investor Programme of the Republic of Malta Regulations, 2013, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25863&l=1>

<sup>3</sup> Regulation 7 of Legal Notice 450 of 2013.

<sup>4</sup> During a stakeholder consultation on 8 March 2018, Identity Malta representatives confirmed that the cap has not yet been reached.

<sup>5</sup> European Parliament Resolution 2013/2995(RSP), M.1: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0015+0+DOC+XML+V0//EN>.

its IIP law in February 2014. On this basis, the IIP is regulated by subsidiary legislation issued under the Maltese Citizenship Act, namely, the Individual Investor Programme of the Republic of Malta Regulations, Legal Notice 47 of 2014 (LN 47/2014).<sup>6</sup> LN 47/2014 establishes the ‘Individual Investor Programme of the Republic of Malta’. This allows for the grant of citizenship by a certificate of naturalisation to foreign individuals and their families who contribute to the economic development of Malta as provided for by LN 47/2014.

Unlike the previous IIP law, LN 47/2014 contains an effective residence requirement of one year to attest a link between the applicant and the country and its people. In accordance with Regulation 7(12) of LN 47/2014 a certificate of naturalisation will not be issued ‘unless the main applicant provides proof that he has been a resident of Malta for a period of at least twelve months preceding the day of the issuing of the certificate if naturalisation’ (see point 2.2. of Section II below).

For the sake of completeness, it is noted that a correction<sup>7</sup> was made to LN 47/2014, due to differences in the Maltese and English versions of the law. These changes relate to the correction of typographical errors and have no impact on the substantive requirements, that have not been amended since the adoption of the law in 2014.

The onus of proving effective residence in Malta for one year is on the main applicant (prior residence is not required for dependants). Following the most recent amendment to the Citizenship Regulations<sup>8</sup> that is of relevance to the IIP, the applicant must confirm that s/he will ‘undertake to provide proof of residence in Malta prior to being granted a certificate of naturalisation as a citizen of Malta in accordance with the Individual Investor Programme of the Republic of Malta Regulations 2014’.<sup>9</sup> The Maltese authorities are to verify such effective residence in the course of the due diligence (see point 2.4 of Section II) preceding the granting of naturalisation. Methods used are to be the same as those used for ‘ordinary applicants’ and can include invoices, registration with schools, local mobile phone, a car, membership in local clubs or professional bodies, philanthropic initiatives, or professional bodies.<sup>10</sup>

Other conditions for obtaining the citizenship of Malta through investment include a successful due diligence (see point 2.4 of Section II), proof of the applicant’s moral standing, a clean criminal record, health certificate and insurance and an oath of allegiance. The language criterion, applicable to ordinary applicants, is waived. Moreover, Identity Malta stipulates that individuals, who are nationals or residents of Afghanistan, Iran and the Democratic People’s Republic of Korea, or with significant ties to these countries, are excluded from the IIP.<sup>11</sup>

#### ■ *Competent authorities*

The competent authority in relation to migration and residence permits is the Department of Citizenship and Expatriate Affairs within the Identity Malta Agency (Identity Malta).

---

<sup>6</sup> Subsidiary Legislation 188.013, Individual Investor Programme of the Republic of Malta Regulations, 4 February 2014, Legal Notice 47 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12141&l=1>.

<sup>7</sup> Legal Notice 59 of 2014, Correction of Laws Order, 2014 (Legal Notice 47 of 2014): <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25933&l=1>.

<sup>8</sup> Subsidiary Legislation 188.01, Citizenship Regulations, 1 August 1989, Legal Notice 106 of 1989 as last amended by Legal Notices 17 and 63 of 2014 and Act XIII of 2015: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9536&l=1>.

<sup>9</sup> Legal Notice 63 of 2014, Citizenship (Amendment No. 2) Regulations, 2014: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25937&l=1>.

<sup>10</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>; stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>11</sup> Identity Malta website: <http://iip.gov.mt/>.

Identity Malta was set up by the Identity Malta Agency (Establishment) Order, Legal Notice 269 of 2013 (LN 269/2013).<sup>12</sup> It is a government agency tasked with carrying out functions and duties of the public administration in a number of matters, *inter alia*:

- Citizenship, visas, residence permits, work permits and other administrative matters related to expatriates;
- Passports;
- Individual investment programmes for expatriates or for persons who acquire Maltese citizenship, including the administration of funds deriving from such programmes.<sup>13</sup>

This is in line with the Fourth Schedule to the Public Administration Act,<sup>14</sup> stating that Identity Malta's functions are to 'execute the functions and duties of the public administration in matters relating to passports, identity documents, work and residence permits for expatriates, land registration and registration of public deeds, acts of civil status and individual investment programmes'.

The Minister responsible for identity management - currently the Ministry of Justice, Culture and Local Government - is responsible for Identity Malta.<sup>15</sup> When these matters consist of or include the administration or investment of funds, the Minister responsible for identity management must act with the concurrence of the Minister responsible for finance.<sup>16</sup>

On 29 March 2018, LN 269/2013 was amended by Legal Notice 95 of 2018<sup>17</sup> to provide for the setting up of a five-member Board of Directors appointed by the Minister responsible for identity management.<sup>18</sup> The Directors are non-Executive Directors, each having one vote. One of the five Directors is a non-Executive Chairperson.<sup>19</sup> The amendments also set up the office of the 'Chief Executive Officer, Identity Management and Ancillary Services', appointed by the Minister and responsible for the performance, functions, duties and daily management of Identity Malta.<sup>20</sup> The Chief Executive Officer is answerable to the Board of Directors and is vested with the legal and judicial representation of Identity Malta.<sup>21</sup>

At the same time, the Malta Individual Investor Programme Agency (Establishment) Order, Legal Notice 96 of 2018 (LN 96/2018)<sup>22</sup> was adopted. It sets up the Malta Individual Investor Programme Agency (IIP Agency) to carry out functions and duties of public administration in the following matters:

- Administration of the IIP;
- Cooperation with Identity Malta in all matters, including the setup and implementation of strategies and policies;
- Performing all such matters 'ancillary, incidental or consequential' to the matters listed above as the Minister responsible for identity management may from time to time determine.<sup>23</sup>

---

<sup>12</sup> Subsidiary Legislation 497.07, Identity Malta Agency (Establishment) Order, 10 September 2103, Legal Notice 269 of 2013, as amended by Legal Notices 101 of 2016 and 95 of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12096&l=1>.

<sup>13</sup> Article 3(1) of LN 269/2013.

<sup>14</sup> Chapter 497 of the Laws of Malta, Public Administration Act, 27 November 2009, Act I of 2009 as last amended by Legal Notice 243 of 2017, Act II of 2018 and Legal Notice 96 of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963&l=1>.

<sup>15</sup> Article 4 of LN 269/2013.

<sup>16</sup> Article 3(1) of LN 269/2013.

<sup>17</sup> Identity Malta Agency (Establishment) (Amendment) Order, 29 March 2018, Legal Notice 95 of 2018: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28992&l=1>.

<sup>18</sup> Article 8(1 and (4) of LN 269/2013.

<sup>19</sup> Article 8(2) and (3) of LN 269/2013.

<sup>20</sup> Article 9(1) and (2) of LN 269/2013.

<sup>21</sup> Articles 9(3) and 10 of LN 269/2013.

<sup>22</sup> Subsidiary Legislation 497.25, Malta Individual Investor Programme Agency (Establishment) Order, 29 March 2018, Legal Notice 96 of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12809&l=1>.

<sup>23</sup> Article 3 of LN 96/2018.

The Minister responsible for identity management is responsible for the IIP Agency.<sup>24</sup> The IIP Agency is directed by a Board of Directors appointed by the Minister and some of the Board's members must be involved in the direction of Identity Malta.<sup>25</sup> The Board is composed of five Directors appointed by the Minister. One of the Directors is appointed by the Minister as the Chairperson of the Board.<sup>26</sup> The IIP Agency also has a Chief Executive Officer appointed by the Minister and responsible for the performance, functions, duties and daily management of the Agency and 'to give his recommendations to the Minister on applications presented, after due diligence checks are performed'.<sup>27</sup> The Chief Executive Officer is answerable to the Board of Directors and is vested with the legal and judicial representation of the IIP Agency.<sup>28</sup>

The IIP Agency was added to the list of agencies in the Fourth Schedule to the Public Administration Act that describes the Agency's functions as follows: 'to carry out functions and duties of public administration relating to the Individual Investor Programme of the Government of Malta, as established by and under the Maltese Citizenship Act and to cooperate with Identity Malta Agency in all matters including the setup and implementation of strategies and policies'.

It is noted that LN 47/2014 has not yet been amended to take into account the establishment of the IIP Agency. Therefore, the following Sections of this Report retain references to Identity Malta as the main competent authority. No references to the IIP Agency are currently found in LN 47/2014.

---

<sup>24</sup> Article 4 of LN 96/2018.

<sup>25</sup> Article 6(1) of LN 96/2018.

<sup>26</sup> Article 6(2) of LN 96/2018.

<sup>27</sup> Article 7(1) and (2) of LN 96/2018.

<sup>28</sup> Article 7(3) and (4) of LN 95/2018.



## II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

### 1 APPLICATION PHASE

#### 1.1 PROCEDURES

LN 47/2014 sets out a number of **qualifications and general requirements** that the main applicant must satisfy to apply for citizenship under the individual investor programme (IIP). Regulation 2 of LN 47/2014 defines the ‘main applicant’ as ‘the person who, either as a single applicant or as the head of a family, undertakes to make a contribution for the purposes of these regulations and signs the relevant agreement and undertakings on behalf of his dependants’.

The ‘applicant’ is defined as ‘the person who applies or on whose behalf it is being applied for his naturalisation as a citizen of Malta under the individual investor programme as a main applicant or as a dependant’.

In order to qualify for citizenship under the IIP, the **main applicant** must:

- (a) Be at least 18 years of age;
- (b) Propose to make a contribution<sup>29</sup> as determined in the Schedule to LN 47/2014 setting out the contribution requirements and schedule of fees;
- (c) Meet the application requirements, that is, the formal and substantial requirements set forth in LN 47/2014;<sup>30</sup>
- (d) Commit to provide proof of residence in Malta and to provide proof of title to residential property in Malta;
- (e) Commit to investing, amongst others, in stocks, bonds, debentures, special purpose vehicles or to make other investments as provided from time to time by Identity Malta by means of a notice in the Government Gazette.<sup>31</sup>

Identity Malta’s IIP checklist and guidelines refer to the **residency stage, application stage** and the **oath of allegiance and naturalisation** as the key milestones for a successful application.<sup>32</sup>

The **residency stage** starts with the signing of an agreement between the applicant and the concessionaire or accredited person/approved agent for the latter to act on the applicant’s behalf. This is followed by an application for an e-Residence Card issued by the Maltese authorities and payment of the initial part contribution – a EUR 5,000 non-refundable deposit. The applicant does not need to be physically present in Malta for submission of the application; physical presence is only required before the e-Residence Card is issued for the purposes of taking the applicant’s biometric data.<sup>33</sup> The residence related requirements are further explained in points 2.2 and 2.3 below.

The **application stage** involves the submission of the complete application pack by the concessionaire or accredited person/approved agent to Identity Malta.<sup>34</sup> In accordance with Regulation 4(2) of LN 47/2014, applications must be made on the forms prescribed under the Citizenship Regulations. Forms N, O and P of the Citizenship Regulations are the forms for ‘Application for Naturalisation as a Citizen of Malta (under Article 10(9)(b) of the Maltese Citizenship Act, Cap. 188 and relative subsidiary

---

<sup>29</sup> Regulation 2 of LN 47/2014 defines ‘contribution’ as ‘a contribution paid under these regulations seventy per cent of which shall be paid to the National Development and Social Fund, in accordance with these regulations’.

<sup>30</sup> As per the definition of ‘application requirements’ in Regulation 2 of LN 47/2014.

<sup>31</sup> Regulation 4(1) of LN 47/2014. Beneficiaries of the Global Residence Programme under the Income Tax Act can apply for the IIP subject to satisfying all additional eligibility requirements of the Programme.

<sup>32</sup> Identity Malta Agency, ‘Malta Individual Investor Programme Checklist and Guidelines’, Version 2.0 – 2015, p. 3: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>.

<sup>33</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>34</sup> Identity Malta Agency, ‘Malta Individual Investor Programme Checklist and Guidelines’, Version 2.0 – 2015, p. 3: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>.

legislation)’:

- Form N is for main applicants,<sup>35</sup>
- Form O for the spouse or other adult dependants<sup>36</sup> and
- Form P is for the main applicant or his or her spouse on behalf of a minor child or a legal guardian of a child.<sup>37</sup>

In addition to the application forms a number of administrative forms as described in point 2.4 below must be completed.

The application form must be completed by the applicant personally or if the applicant is unable to do so, by a legal representative and signed by each and every applicant.<sup>38</sup> The applicant does not need to be physically present in Malta.<sup>39</sup> The **application form must be accompanied** by the due diligence and bank charges fees (see point 2.4 below) and originals or certified copies<sup>40</sup> of:

- (a) Certification from a reputable health system to the satisfaction of Identity Malta that the main applicant and his/her dependants are not suffering from any contagious disease and that they are otherwise in good health;
- (b) Police certificate/s,<sup>41</sup> which may be submitted subsequently at a later date but in any case before the application is approved (see point 2.4 below);
- (c) Evidence, through due diligence processes, that the main applicant and his/her dependants are fit and proper persons to hold Maltese citizenship (see point 2.4 below);
- (d) An undertaking to remit the total of the required contribution, less the non-refundable payment already made at the time of submission of the application, of the amount specified in the Schedule to LN 47/2014, when called to do so by Identity Malta (see point 2.1 below);
- (e) An undertaking to purchase or take on lease immovable residential property in Malta (see point 2.1 below);
- (f) An undertaking to make other investments in Malta in accordance with LN 47/2014 (see point 2.1 below); and
- (g) Any other document as may be required from time to time by notice issued by Identity Malta.

Application forms and accompanying documents must be completed in English. If the original language of a document is not English, it must be accompanied by an authenticated translation.<sup>42</sup>

Once Identity Malta has formally accepted the application and supporting documentation, the remaining part of the non-refundable payment (EUR 5,000) and the relevant fees it issues a Letter of Approval in Principle to the main applicant informing him/her that s/he must provide:

---

<sup>35</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-N-Main-Applicant.pdf>

<sup>36</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-O.pdf>

<sup>37</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-P-Minor-Dependent1.pdf>

<sup>38</sup> Regulation 4(6) of LN 47/2014.

<sup>39</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>40</sup> Regulation 2 of LN 47/2014 defines ‘certified copy’ as ‘a photocopy of an original document certified by a duly licensed lawyer, or notary public, a Maltese consular or diplomatic officer or a senior officer of the concessionaire to be a true copy of the original’. According to Regulation 7(3) of LN 47/2014, where a lawyer or notary certifies a document to be a true copy of the original, that document must be authenticated by (a) an apostille in accordance with the provisions of the Hague Convention of 5 October 1961 abolishing the Requirement for Legislation for Foreign Public Documents, in the case of a jurisdiction that is a party to that Convention; or (b) a validation of the certificate of the lawyer or notary by the appropriate government department in the case of a jurisdiction that is not a party to that Convention; or (c) a validation of the certificate by a Maltese consular or diplomatic representation in the case of a jurisdiction that is not a party to that Convention.

<sup>41</sup> Regulation 2 of LN 47/2014 defines ‘police certificate’ as ‘a certificate of conduct, report or statement from a national law enforcement authority or other public authority in charge of criminal records on the status of an applicant’s criminal record’.

<sup>42</sup> Regulation 4(4) of LN 47/2014. Regulation 2 of LN 47/2014 defines ‘authenticated translation’ as ‘a translation done by either a professional translator who is officially accredited to a court of law, a government agency, an international organization, or similar official institution, or if done in a country where there are no accredited translators a translation, done by a company whose role or business is professional translation’.

- Evidence that the main applicant and dependants are covered by a global health insurance policy and a declaration that they are in a position to retain such a policy indefinitely;
- A written undertaking to either: (a) acquire and hold a residential immovable property in Malta having a minimum value of EUR 350,000; or (b) take on lease a residential immovable property for a minimum annual rent of EUR 16,000.<sup>43</sup>

If the conditions are satisfied, the Minister will issue the certificate of naturalisation within two years but not less than six months from the date of application.<sup>44</sup> The process normally takes a year to complete.<sup>45</sup> The time period between the application for the e-Residence Card and the issuance of the certificate of naturalisation constitutes a residence period. This period of time may be counted towards the one year effective residence requirement.<sup>46</sup> The time frames for the various stages are detailed in point 2.1 below as part of the verification procedures involved in the application process.

After the applicant takes an **oath of allegiance**, the **certificate of naturalisation** becomes effective and is made available to the applicant. At this point, the application for a passport may also proceed.<sup>47</sup> The applicant must be physically present in Malta to take the oath of allegiance. This means that the applicant must be present in Malta twice: once for the purposes of taking the applicant's biometric data for the e-Residence Card and once to take the oath of allegiance.<sup>48</sup>

**Applications may be turned down** for a number of reasons. Regulation 4(8) of LN 47/2014 provides that an application may be declined if the applicant makes a false statement or omits information requested.<sup>49</sup> In accordance with Regulation 4(9) of LN 47/2014, applications will not be accepted and processed if the forms are not properly completed, dated and signed and accompanied by all required documents, fees and undertakings including the undertaking to remit the required contribution following the approval in principle of the application.

Article 25A of the Maltese Citizenship Act requires the Office of the Regulator of the IIP (ORiIP) to investigate **complaints about the IIP**. According to the web portal of the Office of the Regulator 'this empowers the Regulator to carry out related investigations'.

However, a legal instrument prescribing the formalities for such complaints to the Regulator has not yet been adopted in Malta. Discussions on the complaints procedure have been underway between the Regulator, the Office of the Attorney General and related stakeholders ever since the programme started.<sup>50</sup> A draft of the Individual Investor Programme (Complaints Procedure) Regulations, 2015 is annexed to the Second Annual Report on the IIP Programme of the Government of Malta.<sup>51</sup> If adopted, these regulations would empower the ORiIP to receive complaints about the IIP from main applicants, approved agents, accredited persons, the concessionaire, an authority or agency that was involved in providing information to Identity Malta during the process, and any person aggrieved by the decision. According to Regulation 7 of the draft Regulations, the ORiIP 'shall not investigate any complaints in regard to which legal proceedings have been instituted or where the matter is *res judicata*' or where the complaint is being 'heard in a court of law and, or has been decided by a court of law'.

<sup>43</sup> Regulation 7(5) of LN 47/2014.

<sup>44</sup> Regulation 7(9) of LN 47/2014.

<sup>45</sup> Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p.3: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>.

<sup>46</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>47</sup> Regulation 7(11) of LN 47/2014.

<sup>48</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>49</sup> Regulation 4(8) of LN 47/2014.

<sup>50</sup> Office of the Regulator, 'Complaints': <https://oriip.gov.mt/en/Pages/complaints.aspx>.

<sup>51</sup> Office of the Regulator Individual Investor Programme (ORiIP), Second Annual Report on the IIP Programme of the Government of Malta, October 2015, Appendix II (Complaints Regulations): <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf>.

In particular, neither the draft Regulations nor the Maltese Citizenship Act provide for a possibility of judicial review of the Minister's decision. Rather, Article 19 of the Maltese Citizenship Act stipulates that the 'decision of the Minister on any such application shall not be subject to appeal to or review in any court'.

In its Fourth Annual Report on the IIP Programme of the Government of Malta, published in November 2017, the ORIIP stipulates that between the start of the programme and 30 June 2016, there were only 11 complaints where the Regulator's intervention was requested. While in the absence of regulation these cases could not be entertained, the key topic of complaints was due diligence. There is no further information on the details of these ad hoc complaints. Moreover, the same report notes that there are two ongoing cases against Identity Malta in relation to the IIP: case No. 144/2016 (*Mifsud Cedric L-Avukat Dr Noe v L-Agenzija Identity Malta Et*) and case No. 834/2016 (*Schembri Alexander L-Avukat Dottor Noe v L-Agenzija Identity Malta Et*).<sup>52</sup> The first case concerned a failed IIP application by a Russian millionaire Yury Sergeevich Danilov, who challenged the decision of Identity Malta on grounds of the agency's failure to provide him with an explanation for rejecting his application.<sup>53</sup> The details of the second case have not yet been released.

## 1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES

**Identity Malta** is a government agency set up by the Identity Malta (Establishment) Order. It is the main public body involved in the application procedure and is also tasked with issuing procedural guidelines 'to specify the operational aspects and interpretations' under LN 47/2014.<sup>54</sup>

IIP applications must be submitted by the main applicant to Identity Malta either through Approved Agents or the concessionaire.<sup>55</sup> These are non-public bodies that have a significant role throughout the application process.

Regulation 2 of LN 47/2014 defines '**Approved Agent**' as 'an audit firm, a law firm, a financial advisory firm, an intermediary firm or any other person or body which in all cases has been authorised to act as an authorised intermediary firm by Identity Malta for the purposes of these regulations'.

Approved Agents are licensed by Identity Malta after a due diligence process and are entitled to introduce prospective applicants to Identity Malta. They are required to pay an annual licence fee and must comply with the conditions of their licence.<sup>56</sup> The list of Approved Agents is available on Identity Malta's website: <http://iip.gov.mt/agents-list/>. As of March 2018, there are 168 Approved Agents.

Identity Malta can withdraw an Approved Agent's licence if, after investigation, it is satisfied that the Approved Agent acted in an unethical or unprofessional manner or substantially prejudiced the IIP or the Approved Agent committed a serious breach of guidelines, codes of conduct or codes of ethics issued by Identity Malta and made specifically applicable to Approved Agents.<sup>57</sup> The Accredited Person – Code of Conduct published by Identity Malta lists failure to report sub agents/sources as well as withdrawal from membership of professional associations as grounds for revocation of the licence.<sup>58</sup> The Code of Conduct also sets the standards and labels that Approved Agents are bound by, particularly

<sup>52</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 37: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>.

<sup>53</sup> Times of Malta, 'Russian millionaire sues Malta after failing passport test', 8 July 2016: <https://www.timesofmalta.com/articles/view/20160708/local/russian-millionaire-sues-malta-after-failing-passport-test.618081>

<sup>54</sup> Regulation 11 of LN 47/2014.

<sup>55</sup> Regulation 4(3) of LN 47/2014.

<sup>56</sup> Regulation 3(3) and (4) of LN 47/2014.

<sup>57</sup> Regulation 3(5) of LN 47/2014.

<sup>58</sup> Identity Malta, Accredited Person – Code of Conduct: <http://iip.gov.mt/wp-content/uploads/2014/02/Malta-IIP-Code-of-Conduct-2.pdf>

in terms of how the programme is referred to for marketing purposes, and stipulates the exact labelling of the different elements of the pecuniary contribution.<sup>59</sup>

According to Regulation 3(2) of LN 47/2014, the ‘**concessionaire**’ operates the IIP and is defined in Regulation 2 as ‘the entity awarded with the public service concession contract to design, implement, administer, operate and promote the programme, or any subsidiary of that entity, duly authorized by the public service concession contract’. In accordance with Regulation 7(1) of LN 47/2014, every application must be presented to, and examined by, Identity Malta, either directly or through the concessionaire. The concessionaire is Henley & Partners.<sup>60</sup>

The Fourth Annual Report of the ORIIP notes that the role of the concessionaire has consensually diminished since the start of the scheme, pursuant to an agreement between the Government, Identity Malta and Henley & Partners.<sup>61</sup> Originally, the concessionaire held a ‘public service concession to design, implement, administer, operate and promote the Programme’, including the exclusive rights to present and receive information on the outcome of every application.<sup>62</sup> However, in addition to the concessionaire, Approved Agents also have the right to operate and promote the programme, as well as to submit and receive information on the outcome of applications. At present, the role of Henley & Partners is mostly tied to the promotion of the programme in key global events, and organising conferences or events specifically on Malta. These are not tied only to the IIP but promote Malta as a business destination. Henley & Partners also advises Identity Malta on a needs basis on legal or technical aspects but is not involved in assessing or recommending applications. Therefore, Henley & Partners acts solely as any other agent meaning that its current role is limited to presenting applications on behalf of its clients to Identity Malta’s IIP unit.<sup>63</sup> The legislation has not been amended to reflect this agreement.

According to the concession contract (amended), Henley & Partners receives 4% of the ‘paid-in contribution’. The published version of the concession contract and its amendment, exclude the definition of the ‘paid-in contribution’.<sup>64</sup> This definition has been devised to compensate for any losses the concessionaire may have incurred through the contract amendment. The ORIIP’s Fourth Annual Report notes that Henley & Partners receives 4% of the contributions, and 4% of the ‘investment made under the Investment Requirement (at the minimum value prescribed by the Regulations, even if the actual investment in a particular case is higher’.<sup>65</sup> The due diligence process, which was originally supposed to be handled by the concessionaire, who was also to receive the respective fees, is now handled by the Government of Malta.<sup>66</sup> Through the Public Service Concession Contract, the Government of Malta has committed to promoting the scheme at events organised by Henley &

---

<sup>59</sup> The EUR 650,000 contribution to the National Development and Social Fund can only be referred to as ‘contribution’, while the EUR 150,000 investment requirement in stocks, bonds, debentures, special purpose vehicles or other investments as identified by Identity Malta Agency, or other, as ‘investment’. Identity Malta, Accredited Person – Code of Conduct: <http://iip.gov.mt/wp-content/uploads/2014/02/Malta-IIP-Code-of-Conduct-2.pdf>

<sup>60</sup> Henley & Partners, Citizenship by Investment in Malta: <https://www.henleyglobal.com/citizenship-malta-citizenship/>

<sup>61</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 37: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>62</sup> Regulation 3(2) of LN 47/2014.

<sup>63</sup> Information obtained through email correspondence with Identity Malta representative on 15 March 2018.

<sup>64</sup> Public Service Concession Contract between The Republic of Malta represented by the Ministry of Home Affairs and National Security and Henley & Partners Holdings Plc. Regarding The Malta Individual Investor Programme: <https://parlament.mt/media/90506/dok-105-160.pdf>; Amendment to Public Service Concession Contract between The Republic of Malta represented by the Ministry of Home Affairs and National Security and Henley & Partners Holdings Plc. Regarding The Malta Individual Investor Programme: <https://www.parlament.mt/media/82316/dok-106-160.pdf>

<sup>65</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 17: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>66</sup> Amendment to Public Service Concession Contract between The Republic of Malta represented by the Ministry of Home Affairs and National Security and Henley & Partners Holdings Plc. Regarding The Malta Individual Investor Programme, Article 7.5: <https://www.parlament.mt/media/82316/dok-106-160.pdf>



Partners. Article 7.4 of the said contract stipulates that

‘[f]rom time to time, and at Concessionaire discretion, the Concessionaire will, at its own costs and expense organize events to professionally promote the programme worldwide, and the government will ensure to send, whenever requested by the Concessionaire, appropriate, high-ranking government representatives, or other senior government officials, to speak at the events and represent the Programme and the Government.’<sup>67</sup>

Article 25 of the Maltese Citizenship Act places oversight and reporting obligations on the **ORiip**. The Regulator is responsible for the correct implementation, monitoring and keeping under review of all aspects of the IIP. The monitoring role of ORiip is explained in detail in point 1.3 of this Section.

As regards dissemination of information more generally, Regulation 9 of LN 47/2014 prohibits any person with the exception of Identity Malta, the concessionaire or an Approved Agent from advertising, publishing or disseminating publicly any information relating to the IIP for gain and without authorisation. Approved Agents can only advertise, publish or disseminate publicly information relating to the IIP in strict compliance with Identity Malta’s guidelines. In fact, Article 23(3) of the Maltese Citizenship Act, introduced by the 2013 amendments makes it an offence for any person to advertise, publish or disseminate publicly any information relating to the IIP for gain and without being duly authorised. Breaches are subject to a fine (*multa*) not exceeding EUR 20,000.

### 1.3 MONITORING OF THE PROCEEDINGS AND THE AUTHORITIES INVOLVED

Regulation 12 of LN 47/2014 sets out a **maximum number of admissions**. The number of successful main applicants, therefore excluding dependants, is capped at 1800 for the whole duration of the IIP. It is worth noting here that LN 47/2014 provides for a broad range of dependants including the spouse, minor children, adult children falling within a specific age group and subject to certain conditions, parents and grandparents of a specific age group and subject to certain conditions as explained in point 1.5 below. It is therefore possible for an excess of 1800 admissions to Maltese citizenship under the IIP. For example, in the July 2015 to June 2016 period, 450 applications were made and 1186 dependants were included in the 450 applications – on average each application contained one main applicant and three dependants.<sup>68</sup>

It is also noted that at a recent Global Residence and Citizenship Conference hosted by Henley & Partners, the Maltese Prime Minister put forward the government’s intention to renew the scheme with ‘more exclusive’ eligibility criteria stating that it had a strong mandate to renew the IIP.<sup>69</sup>

**Scrutiny on the number of successful applications** must be analysed in the context of Article 25 of the amended Maltese Citizenship Act that deals with the appointment of the Regulator for the IIP and monitoring of the IIP. The Regulator is responsible for keeping under review all aspects of the IIP, therefore, including the number of successful applicants. He must act in his individual judgment and is not subject to the discretion or control of any other person or authority. The Regulator may report to the Minister on any matter relating to his functions under the Maltese Citizenship Act at any time and is required at law to make an annual report on his functions to the Minister.<sup>70</sup> This report is subject to parliamentary scrutiny, as the Minister must present it to the House of Representatives.<sup>71</sup> The annual

<sup>67</sup> Public Service Concession Contract between The Republic of Malta represented by the Ministry of Home Affairs and National Security and Henley & Partners Holdings Plc. Regarding The Malta Individual Investor Programme, Article 7.4: <https://parlament.mt/media/90506/dok-105-160.pdf>

<sup>68</sup> Office of the Regulator Individual Investor Programme (ORiip), Third Annual Report on the Individual Investor Programme of the Government of Malta (1 July 2015 – 30 June 2016), October 2016: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf>

<sup>69</sup> Times of Malta, ‘Cash-for-passports scheme will become more exclusive’ – PM’, 15 November 2017: <https://www.timesofmalta.com/articles/view/20171115/local/cash-for-passports-scheme-will-become-more-exclusive-pm.663206>.

<sup>70</sup> Article 25(7) of the Maltese Citizenship Act.

<sup>71</sup> Article 25(9) of the Maltese Citizenship Act.

report must not include personal data relating to individuals who acquired Maltese citizenship under the IIP<sup>72</sup> (see point 1.4 below).

In addition to oversight and reporting obligations, the Regulator must also investigate complaints about the IIP in accordance with Article 25A of the Maltese Citizenship Act. Thus far, however, in the absence of a legal instrument enabling the Regulator to investigate complaints, this institution has been unable to do so (see point 1.1. above). The Ombudsman<sup>73</sup> deals with general complaints against administrative authorities.

A Monitoring Committee<sup>74</sup> consisting of the Prime Minister, the Minister and the Leader of the Opposition, monitors the workings of the IIP. It must meet at least once a year and can ask the Regulator to report to it at its meetings. Presumably it also monitors the number of applications on the basis of the Regulator's reports.

#### 1.4 INFORMATION ON APPLICATIONS

As stated in point 1.3 above, Article 25(8) of the Maltese Citizenship Act expressly states that the Regulator's annual report must not include personal data relating to individuals who acquired Maltese citizenship under the IIP. Therefore the reports of the ORIIP do not contain any names. The Regulator publishes information on the number of successful IIP applications and the geographical distribution of the applications.

On the other hand, Regulation 14 of LN 47/2014 contains a disclosure obligation. In accordance with Regulation 14(1), the IIP must be operated with the utmost consideration of Malta's international obligations and of preserving Malta's good reputation as a worthy, transparent and reputable financial centre and a jurisdiction for international business. Regulation 14(2) requires the Minister to publish every year in the Government Gazette the names of all persons who during the previous twelve calendar months were granted Maltese citizenship by registration or naturalisation including those persons who were granted Maltese citizenship under the IIP.

It is noteworthy that the published list does not distinguish between citizenship obtained under the IIP and other routes to citizenship. This is also mentioned in Identity Malta's checklist and guidelines that under the heading '[k]ey items to note', state that the names of persons granted citizenship under the IIP are published annually in the Government Gazette 'together with all the other names of persons granted citizenship under other provisions of Maltese citizenship legislation'.<sup>75</sup>

The government published the **list of persons naturalised as Maltese citizens** between July 2013 and December 2014 in the Government Gazette of 31 July 2015.<sup>76</sup> It is noted that in addition to making no distinction between persons who obtained citizenship under the IIP and persons who have been naturalised for other reasons such as marriage, the list is sorted in alphabetical order by first name meaning that it is not evident where whole families have obtained citizenship or where it is individual applicants.<sup>77</sup> It is also worth noting that the IIP scheme as originally envisioned would not have allowed

---

<sup>72</sup> Article 25(8) of the Maltese Citizenship Act.

<sup>73</sup> Malta Ombudsman: <https://www.ombudsman.org.mt>.

<sup>74</sup> Article 25B of the Maltese Citizenship Act.

<sup>75</sup> Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p. 5: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>

<sup>76</sup> The Malta Government Gazette, 31 July 2015, Government Notice 751 – Persons Naturalised/Registered as Citizens of Malta:

<https://govcms.gov.mt/en/Government/Government%20Gazette/Government%20Notices/Documents/Naturalised%20list.pdf>

<sup>77</sup> The Malta Government Gazette, 31 July 2015, Government Notice 751 – Persons Naturalised/Registered as Citizens of Malta:

<https://govcms.gov.mt/en/Government/Government%20Gazette/Government%20Notices/Documents/Naturalised%20list.pdf>

For further observations on this see Daphne Caruana Galizia's Running Commentary, 'Government publishes list of citizens

for the publication of names in the Government Gazette.<sup>78</sup>

Despite the requirement for yearly publication under Regulation 14(2) of LN 47/2014, the publication of lists after 31 July 2015 was delayed.<sup>79</sup> The list covering January to December 2016 was published in the Government Gazette of 22 December 2017.<sup>80</sup> The same issues identified in the previous paragraphs with respect to the 2015 list remain – the list is sorted in alphabetical order by first name and contains the names of 2,182 applicants granted citizenship through naturalisation with those who obtained citizenship through the IIP. It is reported that the government argues that publishing the names of the new Maltese citizens would affect the IIP scheme's success 'as many of the buyers preferred discretion'.<sup>81</sup>

The table below provides **statistical data** obtained from the Regulator's Annual Reports. It is noted that the statistics in these reports are not provided per calendar year. They only contain information on the number of applications for citizenship under the IIP, and not under other provisions for naturalisation.

Period	Total no. of requests for citizenship	No. of requests for citizenship by investors	No. of successful applications	No. of turned down applications	Sources
2012	N/A	N/A	N/A	N/A	N/A
2013	N/A	N/A	N/A	N/A	N/A
Feb 2014 - Jun 2014	N/A	173	0	0	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf</a>
Jul 2014 – Jun 2015	N/A	245	75	11	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf</a>
Jul 2015 – Jun 2016	N/A	450	241	52	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf</a>
Jul 2016 – Jun 2017	N/A	377	422	83	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf</a>

The data in the table above are based on the four Annual Reports of the ORiip covering the period from the inception of the programme in February 2014 until 31 June 2017. There is some inconsistency in the number of applications received, approved, and rejected across the reports. For instance, the Third Annual Report notes that with the 450 applications received between 1 July 2015 and 30 June 2016, the total number of submitted citizenship requests under the IIP amounted to 723.<sup>82</sup> When the information from the First Annual Report (173 applications)<sup>83</sup> is added to that from the Second Annual Report (245

naturalised last year', 1 August 2015: <https://daphnecaruanagalizia.com/2015/08/government-publishes-list-of-citizens-naturalised-last-year/>.

<sup>78</sup> Times of Malta, 'PM promises citizenship list 'in the coming days'', 19 December 2017: <https://www.timesofmalta.com/articles/view/20171219/local/pm-promises-citizenship-list-in-the-coming-days.666007>

<sup>79</sup> This has been commented upon in the media e.g. Times of Malta, 'Citizenship list yet to be published', 31 October 2017: <https://www.timesofmalta.com/articles/view/20171031/local/citizenship-list-yet-to-be-published.661858>

<sup>80</sup> The Malta Government Gazette, 22 December 2017, Government Notice 1434 – Persons Naturalised/registered as Citizens of Malta: <http://www.gov.mt/en/Government/Government%20Gazette/Documents/12/Government%20Gazette%20-%2022nd%20December.pdf>

<sup>81</sup> Times of Malta, 'Passport buyers hidden among 'new Maltese': Over 2,00 on Government Gazette list', 29 December 2017: <https://www.timesofmalta.com/articles/view/20171229/local/passport-buyers-hidden-among-new-maltese.666680>. This article also contains a link to an unofficial document sorting the list by surname.

<sup>82</sup> Office of the Regulator Individual Investor Programme (ORiip), Third Annual Report on the Individual Investor Programme of the Government of Malta (1<sup>st</sup> July 2015 – 30<sup>th</sup> June 2016), October 2016, p.3: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf>

<sup>83</sup> Office of the Regulator Individual Investor Programme (ORiip), First Annual Report on the IIP Programme of the Government of Malta, October 2014, p. 22: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf>



applications),<sup>84</sup> and the Third Annual Report (450 applications),<sup>85</sup> the total reached is 863 applications. The Fourth Annual Report does not account for this discrepancy and with the 377 applications from 1 July 2016 to 30 June 2017 it notes that the total number of applications is 1101. The same document stipulates that in the previous reporting period, the number of applications was 451 and not 450.<sup>86</sup>

During the three reporting periods, on average, each application contained one main applicant and three dependants. Only requests by main applicants are listed in the table.

The First Annual Report notes that in that reporting period there were no naturalisations or rejections of applications.<sup>87</sup> In the Second Annual Report, it is noted that between 1 July 2014 and 30 June 2015, a total of 75 applications received an approval in principle (i.e. applications for which the due diligence process was concluded and a letter of approval in principle issued), while a total of 44 naturalisations of main applicants (137 naturalisations overall) took place.<sup>88</sup> The Third Annual Report notes that the number of approvals in principle issued between 1 July 2015 and 30 June 2016 was 241, and that 134 main applicants were naturalised (477 naturalisations overall). Eight applications were withdrawn before the due diligence process was completed.<sup>89</sup> The number of approved applications increased significantly in the fourth reporting period, when 422 applications were approved, and 83 were rejected or withdrawn. During this period, 386 main applicants were naturalised.<sup>90</sup>

## 1.5 INFORMATION ON NATURALISATION OF FAMILY MEMBERS

### ■ *Measures concerning the naturalisation of family members*

LN 47/2014 distinguishes between the main applicant and dependants. As indicated in point 1.3 above, a broad range of family members qualify as dependants within the meaning of LN 47/2014:<sup>91</sup>

- The main applicant's spouse in a monogamous marriage or in another relationship having the same or similar status as marriage;
- Children under 18 years of age of the main applicant or of his/her spouse;
- Unmarried children of the main applicant or of his/her spouse who are between 18 and 26 years of age and who prove to the Minister's satisfaction that they are wholly maintained by the main applicant;
- Parents or grandparents above 55 years of age of the main applicant or of his/her spouse who prove to the Minister's satisfaction that they are wholly maintained or supported by the main applicant and form part of the main applicant's household;
- Physically or mentally challenged children who are at least 18 years of age of the main applicant or of his/her spouse and who live with and are fully supported by the main applicant. Such person must have the capacity to take an oath of allegiance.

---

<sup>84</sup> Office of the Regulator Individual Investor Programme (ORIIP), Second Annual Report on the IIP Programme of the Government of Malta, October 2015, p. 6: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf>

<sup>85</sup> Office of the Regulator Individual Investor Programme (ORIIP), Third Annual Report on the Individual Investor Programme of the Government of Malta (1<sup>st</sup> July 2015 – 30<sup>th</sup> June 2016), October 2016, p.3: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf>

<sup>86</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1<sup>st</sup> July 2016 – 30<sup>th</sup> June 2017), November 2017, p.9: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>87</sup> Office of the Regulator Individual Investor Programme (ORIIP), First Annual Report on the IIP Programme of the Government of Malta, October 2014, p. 22: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf>

<sup>88</sup> Office of the Regulator Individual Investor Programme (ORIIP), Second Annual Report on the IIP Programme of the Government of Malta, October 2015, p. 6: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf>

<sup>89</sup> Office of the Regulator Individual Investor Programme (ORIIP), Third Annual Report on the Individual Investor Programme of the Government of Malta (1<sup>st</sup> July 2015 – 30<sup>th</sup> June 2016), October 2016, p.3: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf>

<sup>90</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1<sup>st</sup> July 2016 – 30<sup>th</sup> June 2017), November 2017, p.9: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>91</sup> Regulation 2 of LN 47/2014.

In the case of dependants over 18 years of age, with the exception of the spouse, the main applicant must provide an affidavit of support with the application form.<sup>92</sup>

As regards dependants below 18 years of age:

- The forms must be signed by both parents on behalf of the dependant; and
- Where one parent has sole custody, or another person has legal guardianship, the appropriate legal documentation must be provided to demonstrate that a court of law of other relevant authority awarded sole custody or guardianship.<sup>93</sup>

Dependants must meet the eligibility criteria set out in Regulation 5 of LN 47/2014 as outlined in point 2.4 below. No separate investment is required from dependants and the contribution to be made on behalf of dependants is much lower than that required from the main applicant. The due diligence fees are also lower for dependants. Further details are provided in point 2.1 below.

- ***Statistical data on the number/percentage of successful applications for naturalisation of family members***

Period	Number/Percentage of successful applications for naturalisation of family members	Source
2012	N/A	N/A
2013	N/A	N/A
Feb 2014 – Jun 2014	0	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202014.pdf</a>
Jul 2014 – Jun 2015	166	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf</a>
Jul 2015 – Jun 2016	477	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202016.pdf</a>
Jul 2016 – Jun 2017	1,023	<a href="https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf">https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf</a>

<sup>92</sup> Regulation 4(5) of LN 47/2014.

<sup>93</sup> Regulation 4(7) of LN 47/2014.

## 2 APPLICABLE CRITERIA AND VERIFICATION PROCEDURES

### 2.1 TYPE OF INVESTMENT<sup>94</sup>

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<p><b>Main applicant:</b></p> <ul style="list-style-type: none"> <li>- Investment, among others, in stocks, bonds, debentures, special purpose vehicles or other investment as provided from time to time by Identity Malta by means of a notice in the Gazette (Regulation 4(1)(e) of LN 47/2014)</li> <li>- Acquisition or lease of immovable property (Regulation 7(5) of LN 47/2014)</li> </ul> <p><b>All applicants</b> (main applicant and each dependant):</p> <ul style="list-style-type: none"> <li>- Fulfilment of contribution requirement set out in point 1 of the Schedule to LN 47/2014</li> </ul>	<p>The main applicant must acquire and hold a <b>residential immovable property</b> in Malta having a minimum value of EUR 350,000; or (b) take on lease a residential immovable property for a minimum annual rent of EUR 16,000 (Regulation 7(5) of LN 47/2014).</p> <p>The main applicant (therefore excluding dependants) must make <b>investments</b> in Malta to an amount of EUR 150,000 (Regulation 7(6) of LN 47/2014).</p> <p>The <b>contribution requirements</b> set out in the Schedule to LN 47/2014 are as follows:</p> <ul style="list-style-type: none"> <li>■ Main applicant: EUR 650,000 of which non-refundable payment of EUR 10,000 to be remitted as a non-refundable deposit prior to submission of the application (see point 1.1 above regarding non-refundable deposit)</li> <li>■ Spouse: EUR 25,000</li> <li>■ Each child under 18 years of age: EUR 25,000</li> <li>■ Each unmarried child between 18 and 26 years of age: EUR 50,000</li> <li>■ Each dependant parent above 55 years of age: EUR 50,000 (it is noted that the Schedule does not mention dependant grandparents although these fall within the definition of dependants), The contribution is paid directly to Identity Malta.<sup>95</sup></li> </ul> <p>In addition the following <b>fees</b> are payable under each application:</p> <ol style="list-style-type: none"> <li>1. Due diligence fees:</li> </ol>	<p><b>Evidence in relation to immovable property</b> must be provided within four months from the issue of the Letter of Approval in Principle by the submission of a contract of purchase or of lease to Identity Malta. The property cannot be let or sublet and must be retained by the applicant for at least five years from the date of purchase or lease (Regulation 7(5) of LN 47/2014).</p> <p><b>Evidence as regards investment</b> must be provided within four months from the issue of the Letter of Approval in Principle by the submission to Identity Malta of proof that the said investments have been made. The investments must be retained for at least five years (Regulation 7(6) of LN 47/2014).</p> <p>The law does not specify the frequency at which checks in relation to the investment requirement and whether the immovable property is still held by the applicant or whether the applicant is physically present there are to be carried out. At present (March 2018), a compliance mechanism is not in place.</p>	<p>See points 1.1, 1.2 and 1.3 above.</p>

<sup>94</sup> For the purposes of this Table, the term ‘investment’ covers any pecuniary disbursement required as part of the process for obtaining citizenship under the investors’ citizenship scheme.

<sup>95</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

- Due diligence fees; passport and bank charges fees set out in point 2 of the Schedule to LN 47/2014.

As regards the refund of fees and contributions, Regulation 8 of LN 47/2014, provides that:

- The due diligence and bank charges fees are not refundable,
- The contribution balance, once received in Malta, is not refundable after the letter of approval in principle has been issued.

Passport fees are refundable if passports have not been applied for.

- Main applicant: EUR 7,500
- Spouse: EUR 5,000
- Each child between 13 and 18 years of age: EUR 3,000
- Each dependant unmarried child between 18 and 26 years of age: EUR 5,000
- Each dependant parent above 55 years of age: EUR 5,000 (it is noted that the Schedule does not mention dependant grandparents although these fall within the definition of dependants),

The legislation does not define what is covered by the due diligence fees. In practice, these fees cover Identity Malta's expenses in engaging third party service providers to carry out the due diligence processes described in point 2.4 below.<sup>96</sup>

2. Passport fees and bank charges fees:

- Passport: EUR 500 per person
- Bank charges: EUR 200 per application

The exact amount of money required to obtain Maltese citizenship through the IIP depends on the specific circumstances e.g. whether the application includes dependants or not and whether the property is owned or rented. By way of example, in the case of an application by a main applicant purchasing property in Malta and having no dependants, the total disbursement required would amount to EUR 1,158,200 (EUR 650,000 (contribution) + EUR 350,000 (property) + EUR 150,000 (investment) + EUR 7,500 (due diligence fees) + EUR 700 (passport fees and bank charges).

The applicant must also pay the Approved Agent's fees. These are determined by agreement between the agent and the client (applicant). It is therefore not possible to indicate the amount of these fees.<sup>97</sup>

The main applicant will receive instructions for **remittance of the contribution** less the non-refundable payment already received within five days of the approval in principle. The contribution must be received within twenty days from such instruction. Upon receipt, Identity Malta will, provided the conditions of the Letter of Approval in Principle have been satisfied, notify the Minister to issue a certificate of naturalisation (Regulation 7(8) of LN 47/2014). The provisions of the Anti-Money Laundering Directive are applied in verifying the source of funds for the contribution (see further details in point 2.4 below).

Regulation 7(10) of LN 47/2014 states that within five days of issuance of the certificates, the concessionaire must complete the necessary **disbursement of the contribution** to Identity Malta and must retain the amount due to the concessionaire (6 per cent Identity Malta and 4 per cent the concessionaire). In practice, given the more limited role now given to the concessionaire (as explained in point 1.2 above), the funds for the contribution are paid directly from the main applicant's account into Identity Malta's account<sup>98</sup> (see information in point 2.4. below).

Upon receipt of the contribution Identity Malta will pay 70 per cent of this into the National Development and Social Fund and the remainder into the Consolidated Fund (Regulation 7(10) of LN 47/2014).

<sup>96</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

<sup>97</sup> Information confirmed through consultation with Identity Malta representatives on 8 March 2018.

<sup>98</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

## 2.2 RESIDENCE OF THE INVESTOR IN THE COUNTRY

Residence criterion	Procedure	Competent authorities and non-public bodies
<p>Regulation 7(12) of LN 47/2014 requires proof that the <b>main applicant</b> has been a resident of Malta for at least twelve months preceding the day of the issuing of the certificate of naturalisation.</p> <p>As per an amendment to the Maltese Citizenship Regulations introduced by LN 63/2014, the applicant must submit '<b>proof of residence in Malta</b>' prior to being granted a certificate of naturalization as a citizen of Malta in accordance with the Individual Investor Programme of the Republic of Malta Regulations, 2014' (Form N in the First Schedule to the Maltese Citizenship Regulations).</p> <p>IIP applicants receive 'reinforced residency status' (RRS). RRS is considered an internal policy of Identity Malta, applicable only to IIP applicants.<sup>99</sup> The key objective of RRS is to grant the applicant an 'effective residence' status for the purposes of the acquisition of citizenship through the IIP. RRS 'is designed to facilitate an appropriate balance between freedom of movement and the compliance of effective residence in Malta for a period of twelve months prior to the acquisition of nationality for all applicants.'<sup>100</sup> It is valid during the IIP application assessment and cannot be converted into a different type of residence permit (e.g. permanent residence). It is subject to IIP requirements, including due diligence explained in point 2.4 below.<sup>101</sup></p> <p>The 'proof of residence' has not been defined in the Maltese citizenship legislation applicable to investors. The Attorney General of Malta advised that a valid Residence Card should be considered as proof of residency in Malta.<sup>102</sup> This is the</p>	<p>While the period of residence is at least twelve months, there are no clear guidelines or legal provisions specifying how this is to be assessed. In 2015, the ORIip noted '[p]hysical presence is usually recommended in three separate visits that include the milestones for applying and for taking the oath of allegiance as well as an interim visit'.<sup>104</sup></p> <p>The Fourth Annual Report of the ORIip refers to the advice of Dimitry Kochenov (a legal scholar and consultant for Henley &amp; Partners), to Identity Malta:</p> <ul style="list-style-type: none"> <li>■ 'residence is a legal status and that it therefore does not carry the same meaning as presence;</li> <li>■ the conditions for obtaining the legal status of residency do not include the requirement of physical presence; and</li> <li>■ as it is possible to hold a residence permit in more than one country, it is therefore a physical impossibility for an individual to be omni-present in all countries in which a residence permit is held'.<sup>105</sup></li> </ul> <p>The ORIip has listed the three most common types of evidence submitted regarding the residency period:</p>	<p>See points 1.1, 1.2 and 1.3 above.</p>

<sup>99</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>100</sup> Identity Malta, *Individual Investor Programme* brochure, received from Identity Malta in February 2018, p. 10

<sup>101</sup> Identity Malta, *Individual Investor Programme* brochure, received from Identity Malta in February 2018, p. 10

<sup>102</sup> Office of the Regulator Individual Investor Programme (ORIip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 31: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>104</sup> Office of the Regulator Individual Investor Programme (ORIip), Second Annual Report on the IIP Programme of the Government of Malta, October 2015, Appendix II: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202015.pdf>

<sup>105</sup> Office of the Regulator Individual Investor Programme (ORIip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 31: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

case, because the Residence Card is evidence of the RRS, designed for the purposes of the IIP.

Under the heading 'Frequently Asked Questions' Identity Malta's website stipulates that the first step in the IIP is a mandatory application for an **e-Residence Card** issued by the Maltese authorities and payment of the initial contribution of the non-refundable deposit equivalent to EUR 5,000.<sup>103</sup> The same website stipulates that while applicants are **not required to be physically present in Malta during the full 12 months** prior to the application, they are expected to explain how they intend to obtain residence status in Malta. The application for the e-Residence Card entails enrolment of biometric data and hence all applicants **must have entered Malta at least once** prior to becoming IIP beneficiaries.

The only other time that applicants must be physically present is for the taking of the oath of allegiance which is the last step in the application process prior to the issuance of the certificate of naturalisation (see point 1.1 above).

a) flight ticket print-outs, stubs, boarding passes, entry and/or VISA stamps on one's passport and also (in some cases) through a declaration made by the Agent in question ascertaining presence in Malta; b) local hotel bookings spanning different time periods and covering the main applicant and/or his/her dependants; c) transportation services (taxi or car rental).<sup>106</sup>

There are no legal requirements in LN 47/2014 to perform checks relating to physical presence at the address provided by the applicant. The applicant needs to be physically present in Malta on two occasions – to enrol biometric data for the e-Residence card at the beginning of the process and to take the oath of allegiance at the end of the process.<sup>107</sup>

<sup>103</sup> Identity Malta Agency, 'Frequently Asked Questions - Residency', available at <http://iip.gov.mt/faqs/>. See also Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p. 3: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>

<sup>106</sup> Office of the Regulator Individual Investor Programme (ORiip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 32: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>107</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

## 2.3 GENUINE LINK

Genuine link criterion	Procedure	Competent authorities and non-public bodies
<p>There are no legal definitions as to what qualitative criteria are used to assess an applicant's 'genuine link' with Malta and the requirement for a 'genuine link' is not set out in the Maltese legislation.</p> <p>Apart from obtaining a Residence Card, applicants are encouraged to establish further links with Malta, by for instance, donating to charitable organisations. The link established depends on the applicant's particular situation and the Approved Agents can make introductions to Maltese entities relevant to the applicant's experience e.g. an investor from the football world could be introduced to local football clubs.<sup>108</sup></p> <p>The pecuniary requirement under the IIP, consisting of elements described in point 2.1 above, alone is not considered enough to attest to a 'genuine link'. The absence of clarity on what constitutes such a link leaves a broad margin of discretion.</p>	<p>The check of the 'genuine link' takes place in the final stage of the process, after the issuance of the Letter of Approval in Principle.</p> <p>ORIIP reports refer to 'some form of genuine links with Malta as may have been identified or accepted by the IMA [Identity Malta Agency] and/or the Regulator'. These can be attested by evidence of residence (as above). Other commonly submitted evidence of links with Malta includes, <i>inter alia</i>: a) donating to various institutions (charitable, band clubs, football clubs, etc); b) membership in various institutions, including sports and social clubs; c) opening local bank accounts; d) subscribing to local operators (mobiles, television, internet); e) attending Maltese/English language courses; f) paying for local services (cleaning, architectural, supply services, etc); g) applying for a Maltese driving licence; h) paying income tax to the Maltese Inland Revenue Department; and i) purchasing/leasing additional properties in Malta.<sup>109</sup></p> <p>Malta does not have a customised programme for creating a link with the State (e.g., a language/culture course). Rather, evidence of residence and evidence of links as discussed in points 2.1 and 2.2 above are used to attest to the existence of a 'genuine link'.</p>	<p>See points 1.1, 1.2 and 1.3 above.</p>

<sup>108</sup> Information received during stakeholder consultation with Identity Malta representatives, 8 March 2018.

<sup>109</sup> Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 31: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>



## 2.4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS

Due diligence and security considerations	Procedure	Competent authorities and non-public bodies	Abuse and ex-post checks
<p>Regulation 5 of LN 47/2014 provides the eligibility criteria for applications under the IIP. In addition to the qualifications and general requirements set out in Regulation 4 (see point 1.1 above), <b>the applicant and any of his/her dependants are subject to a number of checks that constitute the due diligence requirements:</b></p> <ul style="list-style-type: none"> <li>■ A proper background verification of the applicant and his dependants over 12 years of age;</li> <li>■ A police certificate issued by the Malta police and a police certificate issued by the competent authorities in the country of origin and in the country or countries of residence where the applicant has resided for more than six months during the last ten years, or in exceptional circumstances where it is proved to Identity Malta's satisfaction that such a certificate is not obtainable, a sworn affidavit by the applicant and any dependants, declaring a clean criminal record;</li> <li>■ Verification that the applicant and/or any dependants are not listed with INTERPOL at the time of application. Checks in other EU or international databases are not required by LN 47/2014;</li> <li>■ Verification that the applicant and/or any dependant is not, or may not be a potential threat to national security, public policy or public health;</li> <li>■ The applicant and/or dependants must not have pending charges or have been found guilty of crimes related to terrorism, money laundering, funding of terrorism, crimes against humanity, war crimes, or crimes that infringe upon protection of human rights and fundamental freedoms;</li> <li>■ The applicant and/or dependants must not have been found guilty or have charges against them regarding any crimes that disturb the good order of the family including, without limitation, paedophilia, defilement of minors, rape, violent indecent assault, inducing minors to prostitution and abduction;</li> <li>■ The applicant and/or dependants must not have been found guilty or be in the process of being interrogated and suspected, to have criminal charges brought against them for any crime, other than an involuntary offence, punishable with more than one year imprisonment. The applicant must attach to the application a sworn declaration before a commissioner for oaths, lawyer or notary that the information provided is true and correct;</li> </ul>	<p>Regulation 7(4) of LN 47/2014, requires Identity Malta to <b>verify a number of elements within 90 days of an application for citizenship:</b></p> <ul style="list-style-type: none"> <li>■ The application is certified as formally correct;</li> <li>■ All relevant information provided by the applicant is verified by one or more independent due diligence agents;</li> <li>■ The background of the applicant and dependants is verified by one or more independent due diligence agents;</li> <li>■ All required due diligence fees, passport fees and bank charges fees as well as a non-refundable payment towards the contribution has been paid;</li> <li>■ The source of all funds is verified;</li> <li>■ An appropriate risk weighting is carried out.</li> </ul> <p><b>Within 30 days from this verification,</b> Identity Malta must further review the application and carry out further background checks if it deems necessary. It must then notify the concessionaire, and, where applicable, the Approved Agent in writing, in accordance with the Minister's instructions, that the application has been approved in principle, refused or delayed for the cause that it is still being</p>	<p>See points 1.1, 1.2 and 1.3 above.</p> <p>In accordance with Regulation 7(2) of LN 47/2014, Identity Malta must 'either directly or through the concessionaire cause due diligence checks to be performed by one or more internationally recognized specialised due diligence agents which in any case are to be approved by Identity Malta, in respect of every applicant.'</p>	<p>In terms of IIP beneficiaries, Regulation 10 of LN 47/2014 provides for the <b>deprivation of citizenship.</b> The Minister can deprive a person of Maltese citizenship granted under the IIP if the applicant fails to comply with any requirement to lease, purchase and retain property in Malta or to make and retain investments in Malta or</p>



- Required documents must be originals or certified copies and the persons certifying a document must provide their full name, capacity in which they are acting, residential or business address, telephone number and email address.

Identity Malta confirmed that a **four-tier due diligence process** is in place:<sup>110</sup>

(i) First Tier: standard know-your-client due diligence check through databases such as Worldcheck. This check is carried out by both the Approved Agent and by Identity Malta's IIP unit.

(ii) Second Tier: clearance by the police authorities through a number of databases including INTERPOL and EUROPOL who then send a report to the IIP unit stating whether or not there are any issues with the IIP applicant.

(iii) Third Tier: a two-stage check by Identity Malta. The first check is for the completeness and correctness of the application. This check would identify anomalies in the application form which highlight any potential risk. Where there are missing documents, problems of format or errors, a request for resubmission is made to the Approved Agent and the application is suspended until the problems are rectified. The second check consists of an online due diligence check and verification of documents submitted. This involves checking with international databases for sanctioned individuals and companies. Searches are conducted on all the main applicants and dependants applying for citizenship, their corporate affiliations, any one-time significant transactions, donations or inheritance, and any significant business partners or very close associates.

(iv) Fourth Tier: an outsourced due diligence check. Identity Malta commissions two reports from international companies on every IIP application. These checks include verification of all the information submitted, checks in international databases and local databases in each country of residence of the main applicant and his/her dependants.

Once the above checks have taken place, another member of Identity Malta's IIP due diligence team<sup>111</sup> reviews all the information collected both internally and externally and prepares an internal memorandum. Where necessary, Identity Malta will seek further information from the applicant and the due diligence companies. Once all questions are answered, every application is first discussed

processed (Regulation 7(5) of LN 47/2014).

A personal interview of the applicant is not mandatory. However, this can be recommended by the concessionaire and/or considered by Identity Malta on a case-by-case basis. The procedures for personal interviews are determined by Identity Malta (Regulation 7(7) of LN 47/2014),

The law does not stipulate further checks outside those specified as part of the application process under Regulation 7 of LN 47/2014. For the purposes of implementing these checks, Identity Malta has developed an **internal risk matrix** based on its experience since the start of the IIP. The matrix is based on seven elements: (i) identification and verification (how the applicant's identity has been established and verified); (ii) the applicant's business and corporate affiliations; (iii) whether the applicant is a politically exposed person or has been on a sanctions or watch list; (iv) establishing how the applicant has accumulated his/her wealth and from where the funds for financing the application originate; (v) the applicant's reputation (observed through open source intelligence, reports and on the ground intelligence); (vi) legal and regulatory matters such as charges or

Identity Malta is responsible for the proper carrying out of due diligence tests and must also carry out due diligence tests independently of the concessionaire (Regulation 7(2) of LN 47/2014).

has become a threat to national security or is involved in conduct that is seriously prejudicial to Malta's vital interests. The procedure for deprivation of citizenship of citizens by registration or naturalisation set out in Article 14 of the Maltese Citizenship Act will apply.

This implies that there is a system of **ex-post checks** but there is nothing in

<sup>110</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018. This is in line with Regulation 7(2) of LN 47/2014 that states that the 'due diligence checks shall be of a four tier nature' without further specification.

<sup>111</sup> This team is composed of eight individuals with a background in banking and audit and who are trained in anti-money laundering regulations – Information provided by Identity Malta representatives during the stakeholder consultation on 8 March 2018.

internally within the IIP due diligence team and subsequently with the IIP unit's senior management team. If it is considered that more information or clarification is required before a recommendation to the Minister is made, these are requested from the applicant. Finally, the senior management team takes a collective decision where a recommendation is prepared and submitted to the Minister with all supporting documentation of due diligence reports and findings. The Minister and his/her team review the findings and take a final decision.<sup>112</sup>

Identity Malta is also required to **verify the source of all funds** (Regulation 7(4) of LN 47/2014). When completing Form N (see point 1.1 above), entry C14 requires the main applicant to confirm that his/her 'wealth has been obtained from completely legitimate sources, and is not, whether directly or indirectly, derived from the proceeds of criminal activities of any kind'. The main applicant must also submit administrative 'Form SSFW – Statement of Source of Funds and Wealth'<sup>113</sup> accompanied by bank statements for the previous three months for the account from which funds for the IIP are being remitted. Funds must be remitted from a personal account registered in the main applicant's name. If funds are remitted from a corporate account, a board resolution must be submitted. Statements of bank accounts that have been recently opened, are not active, or that show a zero balance will not be accepted unless the main applicant's feeder accounts are also provided and a written declaration documenting the issue is appended to the SSFW form. If the contribution is funded by a person other than the main applicant (e.g. the spouse or an adult dependant), the Benefactor must complete Forms SSFW and PDFEE (Personal Details, Family Information, Education and Employment)<sup>114</sup> and provide a certified true copy of the original international passport and other due diligence documentation along with the bank statements and statements of bank accounts as described previously for the main applicant.<sup>115</sup>

convictions for offences; (vii) analysis of the applicant's activities and their impact on his/her immediate network and society in general.<sup>120</sup>

Identity Malta confirmed that to the extent possible the due diligence definitions and procedures of the Anti-Money Laundering Directive are followed. By way of example, the Identity Malta representatives consulted mentioned the Directive's requirement to have in place risk assessment measures including customer due diligence measures, record-keeping procedures and reporting procedures. It referred to the clearances obtained from local law enforcement agencies, the use of reports from international risk management databases commonly used in the financial industry and its internal record-keeping procedures.<sup>121</sup>

Regulation 6 of LN 47/2014 sets out a number of **criteria for turning down applications**. Certain applicants are ineligible for approval for citizenship under the IIP, namely, applicants who:

- Provide false information;

the legislation on this. Similarly, there is no publicly available information. There are no records of citizenship deprivation and ex-post checks for IIP applicants.

<sup>112</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>113</sup> Form SSFW: <http://iip.gov.mt/wp-content/uploads/2014/01/MIIP-Form-SSFW3.pdf>.

<sup>114</sup> Form PDFEE: <http://iip.gov.mt/wp-content/uploads/2014/01/MIIP-Form-PDFEE3.pdf>. In addition to Form SSFW and PDFEE, applicants must complete Form PSC (Photograph and Signature Creation: <http://iip.gov.mt/wp-content/uploads/2014/01/MIIP-Form-PSC2.pdf> and Form MRQ (Medical Report and Questionnaire): <http://iip.gov.mt/wp-content/uploads/2014/01/MIIP-Form-MRQ3.pdf>.

<sup>115</sup> Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p. 14/15: <http://iip.gov.mt/wp-content/uploads/2014/02/MIIP-Checklist-and-Guidelines-V2-1.pdf>.

<sup>120</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>121</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

All information in relation to the source of wealth must be triangulated to consider a piece of information as verified, Identity Malta seeks verification from three independent sources: the applicant and two independent service providers.<sup>116</sup>

The provisions of the Anti-Money Laundering Directive are applied in verifying the source of funds for the contribution, which is paid into Identity Malta's account. The remitting account that is used for the payment of the contribution must be the same account, which would have been declared in Form SSFW. Three months' worth of statements must be provided for this account. In the event that the account is a new one, three months' worth of statements must be provided for the feeder account. Furthermore, the remitting account must be either a personal account where the account holder is the main applicant (joint accounts are accepted on a case-by-case basis) or a business account for an entity where the main applicant owns 50 per cent plus 1 share of the shares.<sup>117</sup>

A personal confirmation needs to be provided confirming the remitting account, the crediting account, the date and time of the transaction and the amount. Any other payment related procedures such as returning a payment are executed in line with anti-money laundering procedures as per the implementing procedures of Malta's Financial Intelligence Analysis Unit (FIAU).<sup>118</sup> Details of all applicants are submitted to the FIAU, The FIAU therefore has full visibility of IIP applicants.<sup>119</sup>

- Have a criminal record;
- Are the subject of a criminal investigation;
- Are a potential national security threat to Malta;
- Are, or are likely to be, involved in any activity likely to cause disrepute to Malta; or
- Have been denied a visa to a country with which Malta has visa-free travel arrangements and has not subsequently obtained a visa to the country that issued the denial.

Nevertheless, Regulation 6 contains an exception whereby identity Malta can still consider the application worthy of being considered for approval due to special circumstances to be demonstrated by the applicant. In this case, Identity Malta must issue a reasoned opinion as to why the applicant should still be considered and must refer the application to the Minister, who will have the sole authority to grant such approval.

Identity Malta confirmed that where it considers that it does not have enough information on the applicant, the application will be rejected.<sup>122</sup>

<sup>116</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>117</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>118</sup> <http://www.fiumalta.org>

<sup>119</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>122</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

### 3 ECONOMIC AND FINANCIAL EFFICIENCY OF AWARDING CITIZENSHIP TO FOREIGN INVESTORS

Regulation 13 of LN 47/2014 establishes the National Development and Social Fund. This is a Fund set up by the Government of Malta to receive contributions.<sup>123</sup> Seventy per cent of the contributions received by Identity Malta under the IIP must be paid into this Fund and used in the public interest e.g. for the advancement of education, research, innovation, social purposes, justice and the rule of law, employment initiatives, the environment and public health.<sup>124</sup> So far, the Fund has been used for what Identity Malta describes as strategic investments, namely, the purchase of shares in Malta's Bank of Valletta and expenditure for technical equipment for Malta's national hospital.<sup>125</sup>

The Fund has a separate legal personality and is administered by a five-member Board of Governors, including a Chairman and Deputy Chairman appointed by the Prime Minister.<sup>126</sup> The Board of Governors must 'ensure the highest level of governance of the Fund and that the funds held in the Fund are used solely for the said intended purposes'.<sup>127</sup> The Fund must publish its audited accounts on an annual basis and report to the Minister responsible for finance on its activities as required but at least once a year. The Minister responsible for finance must present the Fund's audited accounts and annual report to the House of Representatives.<sup>128</sup> The Fund is subject to being audited by the Auditor General.<sup>129</sup>

The remaining part of the contribution goes to the Consolidated Fund established by Article 102 of the Constitution of Malta. All revenues and other moneys raised or received by Malta except for revenues or moneys payable into another fund established by law for a specific purpose are paid into the Consolidated Fund. Withdrawals from the Consolidated Fund are typically limited to those necessary to meet expenditure as set out in the Constitution or another law or authorised by an Appropriation Act.

Since 2015, the ORIIP has regularly covered the economic impact of IIP in its annual reports. The comparison of data from the three annual reports where figures are available (they were not published in the first annual report as no Letters of Approval were issued and hence no investments had been made) indicate that the IIP's contribution to the GDP of Malta increased from 0.75% of GDP in June 2015 to 3.72% of GDP in June 2017. In 2016, the media pointed to National Statistics Office data indicating that the IIP was the biggest contributor to the government's surplus. The Prime Minister denied that the Malta's economy is dependant on the programme,<sup>130</sup> despite the observation of the International Monetary Fund (IMF) that attainment of medium-term financial objectives depend 'partly on IIP revenues, which are temporary and hard to predict'.<sup>131</sup> The IMF report on Malta praises the overall economic growth of the country, but warns of two potential risks of the programme: 1) its potential to distort the country's housing market; and 2) risks associated with money laundering and thus the integrity of the financial system.<sup>132</sup>

---

<sup>123</sup> Regulation 2 of LN 47/2014.

<sup>124</sup> Regulation 13(1) and (2) of LN 47/2014.

<sup>125</sup> Information obtained through stakeholder consultation with Identity Malta representatives in 8 March 2018.

<sup>126</sup> Regulation 13(3) and (4) of LN 47/2014.

<sup>127</sup> Regulation 13(5) of LN 47/2014.

<sup>128</sup> Regulation 13(6) of LN 47/2014.

<sup>129</sup> Regulation 13(7) of LN 47/2014.

<sup>130</sup> Times of Malta, 'Cash-for-passports is not about making money, Prime Minister tells Dubai audience – Muscat says Malta's economy is strong even without the IIP scheme', 25 October 2017: <https://www.timesofmalta.com/articles/view/20171025/local/cash-for-passports-is-not-about-making-money-says-PM.661359>.

<sup>131</sup> Malta: Staff Concluding Statement of the 2017 Article IV Mission, International Monetary Fund, 17 November 2017: <http://www.imf.org/en/News/Articles/2017/11/17/ms111717-malta-staff-concluding-statement-of-the-2017-article-iv-mission>

<sup>132</sup> Malta: Staff Concluding Statement of the 2017 Article IV Mission, International Monetary Fund, 17 November 2017: <http://www.imf.org/en/News/Articles/2017/11/17/ms111717-malta-staff-concluding-statement-of-the-2017-article-iv-mission>

Regulation 7(5) of LN 47/2014 requires the IIP applicant to ‘acquire and hold a residential immovable property in Malta having a minimum value of EUR 350,000; or (b) take on lease a residential immovable property for a minimum annual rent of EUR 16,000’. Most applicants have chosen the second option, committing to five-year rentals, as stipulated by law. From the start of the IIP until June 2017, a total of 82 properties were purchased, while 484 properties were leased. The value of the 82 purchased properties amounted to EUR 71,190,233.31 (averaging EUR 868,173.58 per property), and it is estimated that the revenue from all 484 leased properties would add up to EUR 51,131,040.45, averaging EUR 105,642.64 per leased property (annual average rental value of EUR 21,128.53).<sup>133</sup> Media reports have indicated that the IIP has pushed the property prices upwards, and the IMF has warned Malta of the increased financial stability risks caused by this trend. The IMF has also recommended that periodic reviews of the IIP ‘including the minimum real estate investment or leasing values could help curb the housing demand pressure and may improve the predictability of fiscal values’.<sup>134</sup>

Further to this, Regulation 7(6) of LN 47/2017 requires an IIP applicant to make a minimum investment of EUR 150,000 in stocks of the Maltese government. The total investment made between the start of the programme and 30 June 2017 is EUR 85,873,164.71. All the pecuniary contributions to the IIP, including property purchases and rent, investments and contributions from the start of the programme until 30 June 2017 amounted to EUR 509,375,000, distributed as follows: EUR 249,328,799 the National Development and Social Fund; EUR 106,855,199 the Consolidated Fund; EUR 23,701,500 Identity Malta Agency; EUR 19,054,000 Henley & Partners, while the distribution of EUR 110,435,502 in the suspense account was pending in June 2017.<sup>135</sup>

---

<sup>133</sup> Office of the Regulator Individual Investor Programme (ORiip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, pp. 15-16: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>134</sup> The Malta Independent, ‘Strong increases in housing prices may raise financial stability risks, IMF says’, 28 November 2017: <http://www.independent.com.mt/articles/2017-11-28/local-news/Strong-increases-in-housing-prices-may-raise-financial-stability-risks-IMF-says-6736182008>

<sup>135</sup> The suspense account is the account in which IIP funds are held prior to their distribution. Office of the Regulator Individual Investor Programme (ORiip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1 July 2016 – 30 June 2017), pp. 15-16: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

### III. OTHER COMMENTS

While Regulations 5 and 7 of LN 47/2014 cover due diligence checks, public information on how these checks are performed and by which agencies is not available. Furthermore, as noted throughout this study, ORIip annual reports show discrepancies in terms of the number of applications and funds received. Indeed, the latest report stipulates that ‘that IIP statistics are dynamic and therefore are continuously susceptible to variations. In particular, changes may be registered in locality details and property prices since applicants might opt to terminate a lease and start a new one without informing IMA accordingly in good time before the final annual statistics are passed on to the ORIip or at least before the final draft of the Report is drawn. This proviso applies both in the case of current data (information listed in this report) and historical data (information pertaining to the period prior to July 2016)’.<sup>136</sup> Such fluctuations are possible in terms of property prices, but would need to be included in transparent statistical records. Discrepancies related to number of applications might cause concern, especially since reports clearly specify the periods of reference.

Due to the fact that the current IIP is capped at 1,800 successful applications, any additional naturalisations under the scheme would require legislative amendments. While there are no legal developments in the pipeline, and the cap has not yet been reached, the Maltese media have reported the possibility of extending the programme. Identity Malta recently held a ‘public consultation’ via an open online survey with the ‘main objective of the updating and revision of the Programme’.<sup>137</sup> Speaking at the Henley & Partners’ Residence and Citizenship by Investment Conference in Hong Kong in November 2017, the Maltese Prime Minister stated that the second iteration of the programme would be ‘even more exclusive’ than the current one, implying an increase in required investment.<sup>138</sup>

---

<sup>136</sup> Office of the Regulator Individual Investor Programme (ORIip), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 9: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>137</sup> Identity Malta, ‘Public Consultation: Enhancing the Individual Investor Programme’, <https://www.surveymonkey.com/r/IIPpublicconsultation>

<sup>138</sup> ‘Malta Raising the Price of its Citizenship Program? MIIP 2.0 To Be “More Exclusive” Says PM’, *Investment Migration Insider*, 17 November 2017: <https://imidaily.com/editors-picks/malta-raising-price-citizenship-program-miip-2-0-exclusive-says-pm/>; Times of Malta, ‘Cash-for-passports scheme will become more exclusive’ – PM’, 15 November 2017: <https://www.timesofmalta.com/articles/view/20171115/local/cash-for-passports-scheme-will-become-more-exclusive-pm.663206>.