

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

## ***Investors' Citizenship and Residence 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.

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## EXECUTIVE SUMMARY

### *General background*

Malta's **Individual Investor Programme (IIP)** provides for **granting of citizenship** by a certificate of naturalisation to foreign individuals who make a financial investment in Malta. It was established in 2014 by the Individual Investor Programme of the Republic of Malta Regulations (LN 47/2014)<sup>1</sup> - subsidiary legislation issued under the Maltese Citizenship Act.<sup>2</sup>

The **Malta Residence and Visa Programme (MRVP)** provides for the **acquisition of Maltese residency** by investment. The MRVP was established in 2015 by the Malta Residence and Visa Programme Regulations (LN 288/2015)<sup>3</sup> - subsidiary legislation issued under the Immigration Act.<sup>4</sup>

The **competent authority under LN 47/2014 and for migration and residence permits** is the Department of Citizenship and Expatriate Affairs within the **Identity Malta Agency (Identity Malta)**.<sup>5</sup> On 29 March 2018, the Maltese government set up the **Malta Individual Investor Programme Agency (IIP Agency)** to administer the IIP and cooperate with Identity Malta.<sup>6</sup> LN 47/2014 still refers to Identity Malta as the main competent authority.

The **competent authority for the MRVP is the Malta Residence and Visa Agency (MRVA)** established in 2017.<sup>7</sup> In practice, the MRVA is responsible for all MRVP matters except for the **issuance of the residence permit that falls within Identity Malta's competences**.

The **Minister responsible for identity management** is responsible for Identity Malta, the MRVA and the IIP Agency. This Minister must act with the concurrence of the Minister for finance in matters involving administration or investment of funds.

In addition to the competent authorities, **non-public bodies - agents licensed by Identity Malta** - act on behalf of applicants throughout the process and **interact directly for the applicant with the competent authorities**. The **same agents can act for the purposes of the IIP and MRVP**. LN 47/2014 also provides for the design, promotion and operation of the IIP by a concessionaire - Henley & Partners. This role has changed over time and currently, Henley & Partners' involvement is mostly tied to promoting the IIP, organising events on Malta and advising Identity Malta on legal or technical aspects as needed. In addition, it presents applications on behalf of its clients, as any other agent.<sup>8</sup> The Maltese legislation does not reflect this change in its role.

### *Investors' Citizenship Schemes*

**Third-country nationals meeting the formal and substantial eligibility requirements under LN 47/2014 can apply for the IIP. Main applicants** must be at least 18 years of age and commit to: make

<sup>1</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>2</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>.

<sup>3</sup> Subsidiary Legislation 217.18, Malta Residence and Visa Programme Regulations, 25 August 2015, Legal Notice 288 of 2015, as amended by Legal Notice 189 of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12397&l=1>.

<sup>4</sup> Chapter 217 of the Laws of Malta, Immigration Act, 21 September 1970, Act IX of 1970 as last amended by Act XXXVI of 2015: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>.

<sup>5</sup> Subsidiary Legislation 497.07, Identity Malta Agency (Establishment) Order, 10 September 2013, 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>6</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>7</sup> Subsidiary Legislation 497.21, Malta Residency Visa (Establishment of an Agency) Order, 21 April 2017, Legal Notice 107 of 2017 as amended by Legal Notice 201 of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12655&l=1>.

<sup>8</sup> Information obtained through email correspondence with Identity Malta representative on 15 March 2018.

a contribution; provide proof of residence and of title to residential property in Malta; invest in stocks, bonds, debentures or special purpose vehicles.<sup>9</sup> A broad range of family members - **dependants** - can be included in the application, provided they meet the eligibility criteria under LN 47/2014. Dependants are defined as the main applicant's spouse/partner; children under 18 years of age; unmarried children between 18 and 26 years of age maintained by the main applicant; parents or grandparents above 55 years of age maintained or supported by the main applicant and forming part of the household; physically or mentally challenged children of at least 18 years of age living with and supported by the main applicant. **No separate investment is required from dependants and the contribution required on their behalf is much lower** than that for the main applicant. The due diligence fees are also lower for dependants. The **IIP is capped** at 1800 main applicants (**excluding dependants**).

The IIP process consists of several stages: application for e-Residence Card, application for citizenship, oath of allegiance and naturalisation.<sup>10</sup> The applicant first mandates the agent to submit an **application for an e-Residence Card** (application form, supporting documents, initial due diligence) and pay the initial part contribution – a EUR 5,000 non-refundable deposit. The agent sets up an appointment for the applicant at Identity Malta at least one week after the submission of the documents. Applicants **must be physically present in Malta** for this appointment and their biometric data are taken. The e-Residence Card valid for 18 months is issued within one to five working days. Main applicants must prove that they have **been resident in Malta for at least 12 months** preceding the issuance of the certificate of naturalisation.<sup>11</sup> The date on the card denotes the start of the residency period for the purposes of the IIP. **During the residency period, the applicant is not required to be physically present in Malta, and there is no minimum number of days of mandatory physical presence.**

Once the applicant receives the e-Residence Card the citizenship application stage can be initiated. The agent submits the **complete application pack for citizenship** to Identity Malta along with: due diligence fees and bank charges; proof that the main applicant and dependants are not suffering from any contagious disease and are in good health; police certificates; evidence, through due diligence processes,<sup>12</sup> that the main applicant and dependants are fit and proper persons to hold Maltese citizenship; undertakings to remit the required contribution, purchase or lease immovable property in Malta, make other investments in Malta. Once Identity Malta formally accepts the application and receives the remaining part of the non-refundable payment (EUR 5,000) it issues a **Letter of Approval in Principle** to the main applicant who must then provide evidence of global health insurance and a written undertaking to buy or take on lease residential immovable property. If the conditions are satisfied, Identity Malta invites applicants to take the oath of allegiance. **The main applicant and the dependants must be physically present to take the oath of allegiance to Malta.** Following this, the **certificate of naturalisation** becomes effective.<sup>13</sup> The passports are issued within five working days from the date of taking the oath of allegiance and **must be collected in person.**<sup>14</sup> The whole process, from the submission of the e-Residence Card application to the collection of the passport normally takes about a year to complete.<sup>15</sup>

The **financial disbursement** consists of an **investment** by the main applicant in stocks, bonds, debentures or special purpose vehicles to an amount of EUR 150,000; acquisition of **residential immovable property** of a minimum value of EUR 350,000 or lease of residential immovable property for a minimum annual rent of EUR 16,000; a **contribution** for the main applicant and each dependant as follows: EUR 650,000 of which EUR 10,000 is remitted as a non-refundable deposit prior to submission of the application (main applicant); EUR 25,000 (spouse; child under 18 years of age); EUR 50,000 (unmarried child between 18 and 26 years of age; dependant parent above 55 years of age).<sup>16</sup>

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<sup>9</sup> Regulation 4(1) of LN 47/2014.

<sup>10</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>11</sup> Regulation 7(12) of LN 47/2014.

<sup>12</sup> This covers a number of checks on the applicant's background and the source of funds done by the agent.

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

<sup>14</sup> Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p.28.

<sup>15</sup> Identity Malta Agency, 'Malta Individual Investor Programme Checklist and Guidelines', Version 2.0 – 2015, p.3.

<sup>16</sup> Regulations 4(1)(e), 7(5) and 7(6) of LN 47/2014 and Schedule to LN 47/2014.

**The investment and the immovable property must be kept for at least five years.**<sup>17</sup>

In addition, **due diligence fees** are payable to Identity Malta per person as follows: EUR 7,500 (main applicant); EUR 5,000 (all dependants except children between 13 and 18 years of age); EUR 3,000 (children between 13 and 18 years of age). These fees cover Identity Malta's expenses in engaging third party service providers to carry out the due diligence processes.<sup>18</sup> **Passport fees** (EUR 500 per person) **and bank charges** (EUR 200 per application) are also payable. The **amount required to obtain Maltese citizenship through the IIP therefore depends on the circumstances**. The **minimum cost incurred for an IIP application by a main applicant purchasing property** in Malta and having no dependants 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)). Applicants must also pay the **agent's fees** as per agreement between the agent and applicant.

There are no legal definitions as to what qualitative criteria are used to assess an applicant's '**genuine link**' with Malta and there is no requirement for a 'genuine link' in the Maltese legislation. Similarly, there are no language or integration requirements.

**IIP applications may be turned down** if they are formally incomplete or if the applicant makes a false statement or omits information or on the basis of a negative outcome of the **checks** referred to by LN 47/2014 and the Maltese authorities as due diligence processes. These consist of background checks, **criminal conduct checks** through national and international databases such as INTERPOL and EUROPOL and verification that the applicant is not a threat to national security, public policy or public health. The provisions of the Anti-Money Laundering Directive are applied to the verification of the **source of funds** for the contribution which is paid directly into Identity Malta's account. Information on the source of wealth is verified through the applicant and two third party service providers.<sup>19</sup> The non-public bodies involved in the acquisition of stocks and of immovable property are obliged entities under the Anti-Money Laundering Directive and are therefore bound by its requirements.

The **IIP Regulator (ORIIP)** reviews all aspects of the IIP and annually reports on his functions to the Minister. These reports are public and subject to parliamentary scrutiny.<sup>20</sup> The Regulator must also investigate **complaints about the IIP** but a legal instrument prescribing the formalities for complaints has not yet been adopted. A Monitoring Committee<sup>21</sup> consisting of the Prime Minister, Minister and Leader of the Opposition, monitors the IIP and can ask the Regulator to report at its meetings.

### *Investors' Residence Schemes*

**MRVP is open to third-country nationals meeting the programme's eligibility requirements.** There is **no cap** on the number of applicants. **Main applicants** must be at least 18 years of age; commit to provide proof of title to qualifying property in Malta; invest in a qualifying investment; pay in full the contribution.<sup>22</sup> **Dependants** that can be included in the application are the main applicant's spouse/partner; children under 18 years of age; unmarried children over 18 years of age and parents or grandparents who are not economically active and are principally dependant on the main applicant; adult children with a disability. Dependants must meet the eligibility criteria but **no separate investment is required**. The **required contribution is lower** than that of the main applicant and **applies only in the case of parents and grandparents**.

**MRVP applications are submitted to the MRVA through agents** and must be accompanied by a non-refundable administrative fee of EUR 5,500 (plus EUR 5,000 per dependant) and the following supporting documents: police certificates; a preliminary due diligence carried out by the agent attesting that there is no *a priori* evidence that the main applicant and dependants are not fit and proper persons; undertakings to purchase or lease property in Malta, make an investment and remit the contribution;

<sup>17</sup> Regulation 7(5) and (6) of LN 47/2014.

<sup>18</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

<sup>19</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

<sup>20</sup> Article 25 of the Maltese Citizenship Act.

<sup>21</sup> Article 25B of the Maltese Citizenship Act.

<sup>22</sup> Regulation 6(1) of LN 288/2015.

and a certification that the main applicant and dependants are not suffering from a contagious disease and are otherwise in good health and will not be an unreasonable burden on Malta's health system. Where the individual qualifies as a beneficiary, the **MRVA will determine in writing that he/she is to be issued a certificate** under the regulations.<sup>23</sup> Following this, and **prior to issuance of the certificate**, the main applicant must: pay the contribution, less the non-refundable administrative fee; present title to a qualifying property; present a certificate to a qualifying investment. The application process takes five to six months.<sup>24</sup> If all conditions are satisfied a **residence certificate is issued**. **MRVP applications may be turned down** if they are formally incomplete or if the applicant makes a false statement or omits information. MRVP applications are subject to a **number of checks** as described above in relation to the IIP. If these checks have a negative outcome, the application will be unsuccessful.

The **financial disbursement** consists of an **investment** of EUR 250,000 in government bonds; acquisition of **immovable property** of a minimum value of EUR 320,000 or EUR 270,000 (if in the south of Malta or Gozo) or lease of immovable property for a minimum annual rent of EUR 12,000 or EUR 10,000 (if in south of Malta or Gozo); payment of the **contribution** of EUR 30,000 and where applicable, EUR 5,000 per parent or grandparent of the main applicant or of his/her spouse.<sup>25</sup> The contribution is paid by bank transfer to MRVA's bank account. The **amount required to obtain the residence certificate therefore depends on the circumstances**. The **minimum cost incurred** under MRVP by a main applicant with qualifying owned property in the south of Malta and no dependants would amount to EUR 550,000 (EUR 30,000 (contribution) + EUR 270,000 (property) + EUR 250,000 (investment)). Applicants must also pay the **agent's fees** as per agreement between the agent and applicant.

The applicant must present a **certificate proving the investment** and the **document of title to an owned or rented qualifying property**. The investment and property must be held for a **minimum of five years from the date of issuance of the residence certificate**. Once the certificate is issued it is **monitored** annually for the first five years and every five years thereafter.<sup>26</sup> After five years, beneficiaries are no longer bound to retain the investment and property.

MRVP certificates constitute a **residence permit** in terms of Malta's Immigration Act.<sup>27</sup> The application for the e-Residence Card entails the taking of biometric data and hence all **applicants must have entered Malta at least once** prior to becoming MRVP beneficiaries. The national law does not provide for checks on the fulfilment of the residence criterion. There is **nothing requiring the continuous physical presence of the investor in Malta**. The residence permit is permanent (not time bound), but the **e-Residence Card is renewed every five years**. To renew it, each applicant over the age of 14 needs to have their biometric data taken in Malta. Each applicant is subject to a **renewal fee of EUR 27.50**. Renewals are handled by the same agents who act on behalf of the applicant throughout the application process.

No specific **monitoring mechanisms** are in place and the MRVA has absolute discretion – its decisions are final and not subject to appeal.<sup>28</sup> As a public body, the MRVA is subject to the scrutiny of any Member of Parliament, the National Audit Office and the Public Accounts Committee. Unlike for the IIP, no regulator exists and there is no annual reporting exercise.

MRVP beneficiaries and their dependants are granted the **right to reside, settle or stay indefinitely in Malta** and to **move around the countries in the Schengen Area** without a visa for 90 days in any 180-day period, subject to conditions.<sup>29</sup> Beneficiaries and their spouses can **apply for an employment**

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<sup>23</sup> Regulation 5 of LN 288/2015.

<sup>24</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>25</sup> Regulations 2 and 5(3) of LN 288/2015.

<sup>26</sup> Regulations 4(a), 8(1)(c) and (d) of LN 288/2015.

<sup>27</sup> Regulation 3 of LN 288/2015.

<sup>28</sup> Regulation 11(1) of LN 288/2015.

<sup>29</sup> Article 21, paragraph 1, Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.



**licence** and dependants can obtain free **access to educational institutions** in Malta once the beneficiary obtains the employment licence.<sup>30</sup> Dependants other than the spouse cannot take up employment as they would no longer be considered ‘economically inactive’ under LN 288/2015.

Investors may also benefit from a **special tax status through Malta’s Global Residence Programme (GRP)**<sup>31</sup> falling within the competence of the **Commissioner for Revenue**. GRP applicants must have: stable and regular resources sufficient for maintaining themselves and dependants without recourse to Malta’s social assistance system; a valid travel document; sickness insurance with coverage in the EU; knowledge of one of Malta’s official languages; and proof they are fit and proper persons.<sup>32</sup> Investment requirements for the GRP consist of the purchase of immovable property for at least EUR 275,000 (or EUR 220,000 if in Gozo or in the south of Malta) or annual rent of property for at least EUR 9,600 (or EUR 8,750 if in Gozo or in the south of Malta). Through the GRP, investors obtain the right to pay tax at the rate of 15 percent but the GRP **does not in itself grant residence rights** to its beneficiaries. No residence card is issued under the GRP itself. **GRP beneficiaries can apply for a residence certificate under the MRVP** if they satisfy the additional eligibility requirements of LN 288/2015.<sup>33</sup> Alternatively, GRP beneficiaries may apply for a uniform residence permit issued for a specific purpose under the Immigration Regulations.<sup>34</sup>

### *Economic impact of the schemes*

Since 2015, the **ORiip’s annual reports cover the IIP’s economic impact**. The comparison of data from the three reports where figures are available indicates that the IIP’s contribution to Malta’s GDP increased from 0.75% in June 2015 to 3.72% in June 2017. In 2016, the media pointed to data indicating that the IIP was the largest contributor to the government’s surplus. The International Monetary Fund observed that attaining medium-term financial objectives depends partly on IIP revenues and warned of the IIP’s potential to distort the housing market and of risks associated with money laundering.<sup>35</sup>

Seventy per cent of the IIP contributions received by Identity Malta must be paid into the **National Development and Social Fund (NDSF)**, established by LN 47/2014) and used in the public interest e.g. for the advancement of education, the environment and public health.<sup>36</sup> The remaining part goes to the Consolidated Fund established by the Constitution of Malta. This Fund also receives the net surplus of funds from the MRVP contributions.<sup>37</sup>

IIP applicants must invest at least EUR 150,000 in government stocks meaning a total of **EUR 85,873,164.71** between the start of the IIP and 30 June 2017. All the **pecuniary contributions to the IIP**, including property purchases and rent, investments and contributions from the start of the IIP until 30 June 2017 amounted to **EUR 509,375,000**, distributed as follows: EUR 249,328,799 the NDSF; EUR 106,855,199 the Consolidated Fund; EUR 23,701,500 Identity Malta; EUR 19,054,000 Henley & Partners (the concessionaire), while EUR 110,435,502 was pending distribution in June 2017.<sup>38</sup>

**Based on the number of successful MRVP applications in 2016 and 2017 it is possible to make certain calculations** taking the hypothetical scenario that the applications in question involved a main

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<sup>30</sup> MRVP, Frequently Asked Questions - Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>31</sup> Subsidiary Legislation 123.148, Global Residence Programme Rules, 1 July 2013, Legal Notice 167 of 2013, as amended by Legal Notice 267 of 2014 (LN 167/2013): <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12062&l=1> adopted under Chapter 123 of the Laws of Malta, Income Tax Act, 1 January 1949, Act LIV of 1949 as last amended by Act VII of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658&l=1>.

<sup>32</sup> Rule 4 of LN 167/2013.

<sup>33</sup> Regulation 6(1) of LN 288/2015.

<sup>34</sup> Subsidiary Legislation 217.04, Immigration Regulations, 1 May 2004, Legal Notice 205 of 2004 as amended by Legal Notices 307 and 426 of 2012: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9559&l=1>.

<sup>35</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>36</sup> Regulation 13(1) and (2) of LN 47/2014.

<sup>37</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>38</sup> ORiip, Fourth Annual Report (1 July 2016 – 30 June 2017), pp. 15-16.

applicant with a qualifying owned property in Malta and no dependants - meaning a total disbursement of EUR 600,000 (EUR 30,000 (contribution) + EUR 320,000 (property) + EUR 250,000 (investment)). Taking this example, and based on the 29 successful applications from **2016**, the total disbursement is **EUR 17,400,000** (contribution: EUR 30,000 x 29 = EUR 870,000; property: EUR 320,000 x 29 = EUR 9,280,000; investment: EUR 250,000 x 29 = EUR 7,250,000). The 83 successful applications from the **2017** applications considered to date give the amount of **EUR 49,800,000** (contribution: EUR 30,000 x 83 = EUR 2,490,000; property: EUR 320,000 x 83 = EUR 26,560,000; investment: EUR 250,000 x 83 = EUR 20,750,000).

The MRVA representative consulted stated that the **funds collected through the MRVP** in 2016 amounted to EUR 521,000; in 2017, EUR 3,776,000 and in January 2018, EUR 586,000. From the start of the MRVP to 31 January 2018 a total of EUR 4,883,000 has been collected.

### *Link between the residence and citizenship investor schemes*

The **MRVP alone does not suffice for attaining citizenship** under the ordinary naturalisation procedure. The status of an MRVP beneficiary is terminated when the beneficiary no longer meets the MRVP requirements. This includes cases where, for example, because of an extended period of legal and continuous residence in Malta the individual acquires a different status (e.g. long-term residence).

In practice, the qualifying investment of EUR 250,000 under the MRVP can be retained for the purposes of an application under the IIP. To date, there are no cases of MRVP beneficiaries who applied for the IIP.<sup>39</sup> MRVP targets applicants interested in residence rights and not in citizenship. These commonly come from countries that do not accept dual citizenship, e.g. China.<sup>40</sup>

As with MRVP, **GRP beneficiaries can apply for the IIP if they satisfy its additional eligibility requirements.**<sup>41</sup>

### *Numbers involved*

Between February 2014 and June 2017, **1245 IIP applications for citizenship** were submitted – 738 successful; 146 unsuccessful; 346 under consideration.<sup>42</sup> On average, each application contained one main applicant and three dependants. Insufficient information on the applicant was the most common ground for refusal.<sup>43</sup> ORiip annual reports show **discrepancies in terms of the number of IIP applications** received, approved, and rejected. Discrepancies related to number of applications might cause concern, especially since reports clearly specify the periods of reference.

In 2016 and 2017, there were **415 MRVP applications for residence** - 122 successful; 3 unsuccessful; and 290 under consideration. There were an additional 82 applications in January 2018 that are pending review as of March 2018. The most common reason for rejected applications was failed due diligence.<sup>44</sup>

While the limit of 1,800 successful applications under the IIP has not yet been reached, the Maltese media have reported the **possibility of extending the IIP**. Identity Malta recently held a public consultation via an open online survey with a view to updating and revising the IIP. **LN 47/2014 would also need to be amended to take into account the new IIP Agency and LN 288/2015 needs to be amended to reflect the separation of the MRVA from Identity Malta** in 2017.

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<sup>39</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>40</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>41</sup> Regulation 4 of LN 47/2014.

<sup>42</sup> Statistics obtained from ORiip annual reports.

<sup>43</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>44</sup> Statistics obtained through stakeholder consultation with MRVA representative on 7 March 2018.

# PART I: INVESTORS' CITIZENSHIP SCHEMES IN MALTA

## I. GENERAL BACKGROUND

### ■ *Legal background*

The Maltese Citizenship Act provides for the acquisition, deprivation and renunciation of Maltese citizenship.<sup>45</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>46</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>47</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>48</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>49</sup>

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<sup>45</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>46</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>47</sup> Regulation 7 of Legal Notice 450 of 2013.

<sup>48</sup> During a stakeholder consultation on 8 March 2018, Identity Malta representatives confirmed that the cap has not yet been reached.

<sup>49</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>.

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 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>50</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>51</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>52</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>53</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>54</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>55</sup>

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<sup>50</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>51</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>52</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>53</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>54</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>55</sup> Identity Malta website: <http://iip.gov.mt/>.

## ■ *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).

Identity Malta was set up by the Identity Malta Agency (Establishment) Order, Legal Notice 269 of 2013 (LN 269/2013).<sup>56</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>57</sup>

This is in line with the Fourth Schedule to the Public Administration Act,<sup>58</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>59</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>60</sup>

On 29 March 2018, LN 269/2013 was amended by Legal Notice 95 of 2018<sup>61</sup> to provide for the setting up of a five-member Board of Directors appointed by the Minister responsible for identity management.<sup>62</sup> The Directors are non-Executive Directors, each having one vote. One of the five Directors is a non-Executive Chairperson.<sup>63</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>64</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>65</sup>

At the same time, the Malta Individual Investor Programme Agency (Establishment) Order, Legal Notice 96 of 2018 (LN 96/2018)<sup>66</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;

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<sup>56</sup> Subsidiary Legislation 497.07, Identity Malta Agency (Establishment) Order, 10 September 2013, 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>57</sup> Article 3(1) of LN 269/2013.

<sup>58</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>59</sup> Article 4 of LN 269/2013.

<sup>60</sup> Article 3(1) of LN 269/2013.

<sup>61</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>62</sup> Article 8(1) and (4) of LN 269/2013.

<sup>63</sup> Article 8(2) and (3) of LN 269/2013.

<sup>64</sup> Article 9(1) and (2) of LN 269/2013.

<sup>65</sup> Articles 9(3) and 10 of LN 269/2013.

<sup>66</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>.

- 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>67</sup>

The Minister responsible for identity management is responsible for the IIP Agency.<sup>68</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>69</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>70</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>71</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>72</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.

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<sup>67</sup> Article 3 of LN 96/2018.

<sup>68</sup> Article 4 of LN 96/2018.

<sup>69</sup> Article 6(1) of LN 96/2018.

<sup>70</sup> Article 6(2) of LN 96/2018.

<sup>71</sup> Article 7(1) and (2) of LN 96/2018.

<sup>72</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>73</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>74</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>75</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>76</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>77</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>78</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

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<sup>73</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>74</sup> As per the definition of ‘application requirements’ in Regulation 2 of LN 47/2014.

<sup>75</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>76</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>77</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>78</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>79</sup>
- Form O for the spouse or other adult dependants<sup>80</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>81</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>82</sup> The applicant does not need to be physically present in Malta.<sup>83</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>84</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>85</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>86</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:

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<sup>79</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-N-Main-Applicant.pdf>

<sup>80</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-O.pdf>

<sup>81</sup> Available at: <http://iip.gov.mt/wp-content/uploads/2014/01/Form-P-Minor-Dependent1.pdf>

<sup>82</sup> Regulation 4(6) of LN 47/2014.

<sup>83</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>84</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>85</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>86</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>87</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>88</sup> The process normally takes a year to complete.<sup>89</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>90</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>91</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>92</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>93</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>94</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>95</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>87</sup> Regulation 7(5) of LN 47/2014.

<sup>88</sup> Regulation 7(9) of LN 47/2014.

<sup>89</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>90</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>91</sup> Regulation 7(11) of LN 47/2014.

<sup>92</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>93</sup> Regulation 4(8) of LN 47/2014.

<sup>94</sup> Office of the Regulator, 'Complaints': <https://oriip.gov.mt/en/Pages/complaints.aspx>.

<sup>95</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>96</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>97</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>98</sup>

IIP applications must be submitted by the main applicant to Identity Malta either through Approved Agents or the concessionaire.<sup>99</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>100</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>101</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>102</sup> The Code of Conduct also sets the standards and labels that Approved Agents are bound by, particularly

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<sup>96</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>97</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>98</sup> Regulation 11 of LN 47/2014.

<sup>99</sup> Regulation 4(3) of LN 47/2014.

<sup>100</sup> Regulation 3(3) and (4) of LN 47/2014.

<sup>101</sup> Regulation 3(5) of LN 47/2014.

<sup>102</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>103</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>104</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>105</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>106</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>107</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>108</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>109</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>110</sup> Through the Public Service Concession Contract, the Government of Malta has committed to promoting the scheme at events organised by Henley &

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<sup>103</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>104</sup> Henley & Partners, Citizenship by Investment in Malta: <https://www.henleyglobal.com/citizenship-malta-citizenship/>

<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. 37: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>106</sup> Regulation 3(2) of LN 47/2014.

<sup>107</sup> Information obtained through email correspondence with Identity Malta representative on 15 March 2018.

<sup>108</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>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. 17: <https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

<sup>110</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>111</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>112</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>113</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>114</sup> This report is subject to parliamentary scrutiny, as the Minister must present it to the House of Representatives.<sup>115</sup> The annual

<sup>111</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>112</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>113</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>114</sup> Article 25(7) of the Maltese Citizenship Act.

<sup>115</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>116</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>117</sup> deals with general complaints against administrative authorities.

A Monitoring Committee<sup>118</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>119</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>120</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>121</sup> It is also worth noting that the IIP scheme as originally envisioned would not have allowed

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<sup>116</sup> Article 25(8) of the Maltese Citizenship Act.

<sup>117</sup> Malta Ombudsman: <https://www.ombudsman.org.mt>.

<sup>118</sup> Article 25B of the Maltese Citizenship Act.

<sup>119</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>120</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>121</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>122</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>123</sup> The list covering January to December 2016 was published in the Government Gazette of 22 December 2017.<sup>124</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>125</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>126</sup> When the information from the First Annual Report (173 applications)<sup>127</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>122</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>123</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>124</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>125</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>126</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>127</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>128</sup> and the Third Annual Report (450 applications),<sup>129</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>130</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>131</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>132</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>133</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>134</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>135</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.

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<sup>128</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>129</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>130</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>131</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>132</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>133</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>134</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>135</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>136</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>137</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>136</sup> Regulation 4(5) of LN 47/2014.

<sup>137</sup> Regulation 4(7) of LN 47/2014.



## 2 APPLICABLE CRITERIA AND VERIFICATION PROCEDURES

### 2.1 TYPE OF INVESTMENT<sup>138</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>139</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>138</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>139</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>140</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>141</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>142</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>140</sup> Information obtained through consultation with Identity Malta representatives on 8 March 2018.

<sup>141</sup> Information confirmed through consultation with Identity Malta representatives on 8 March 2018.

<sup>142</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>143</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>144</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>145</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>146</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>148</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>149</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>143</sup> Information confirmed through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>144</sup> Identity Malta, *Individual Investor Programme* brochure, received from Identity Malta in February 2018, p. 10

<sup>145</sup> Identity Malta, *Individual Investor Programme* brochure, received from Identity Malta in February 2018, p. 10

<sup>146</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>148</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>149</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>147</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>150</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>151</sup>

<sup>147</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>150</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>151</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>152</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>153</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>152</sup> Information received during stakeholder consultation with Identity Malta representatives, 8 March 2018.

<sup>153</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>154</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>155</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>154</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>155</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>156</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>157</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>158</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>159</sup>

convictions for offences; (vii) analysis of the applicant's activities and their impact on his/her immediate network and society in general.<sup>164</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>165</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>156</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>157</sup> Form SSFW: <http://iip.gov.mt/wp-content/uploads/2014/01/MIIP-Form-SSFW3.pdf>.

<sup>158</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>159</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>164</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>165</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>160</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>161</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>162</sup> Details of all applicants are submitted to the FIAU, The FIAU therefore has full visibility of IIP applicants.<sup>163</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>166</sup>

<sup>160</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>161</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>162</sup> <http://www.fiumalta.org>

<sup>163</sup> Information obtained through stakeholder consultation with Identity Malta representatives on 8 March 2018.

<sup>166</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>167</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>168</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>169</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>170</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>171</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>172</sup> The Fund is subject to being audited by the Auditor General.<sup>173</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>174</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>175</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>176</sup>

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<sup>167</sup> Regulation 2 of LN 47/2014.

<sup>168</sup> Regulation 13(1) and (2) of LN 47/2014.

<sup>169</sup> Information obtained through stakeholder consultation with Identity Malta representatives in 8 March 2018.

<sup>170</sup> Regulation 13(3) and (4) of LN 47/2014.

<sup>171</sup> Regulation 13(5) of LN 47/2014.

<sup>172</sup> Regulation 13(6) of LN 47/2014.

<sup>173</sup> Regulation 13(7) of LN 47/2014.

<sup>174</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>175</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>176</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>177</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>178</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>179</sup>

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<sup>177</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>178</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>179</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>180</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>181</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>182</sup>

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<sup>180</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>181</sup> Identity Malta, ‘Public Consultation: Enhancing the Individual Investor Programme’, <https://www.surveymonkey.com/r/IIPpublicconsultation>

<sup>182</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>.

## PART II: INVESTORS' RESIDENCE SCHEMES IN MALTA

### I. GENERAL BACKGROUND

#### ■ *Legal background*

The legal basis for the acquisition of Maltese residency by investment is Legal Notice 288 of 2015, the Malta Residence and Visa Programme Regulations (LN 288/2015)<sup>183</sup> adopted under Malta's Immigration Act.<sup>184</sup> The adoption of the regulations followed the standard procedures for the issuance of Legal Notices in Malta, including discussion of the draft legislation with the opposition, stakeholders and parliamentary deliberation. Unlike in the case of the 2014 Individual Investor Programme, there was no major public debate related to the **Malta Residence and Visa Programme (MRVP)** within Malta, or internationally.<sup>185</sup>

Beneficiaries of the MRVP obtain a certificate entitling them to reside, settle, or stay indefinitely in Malta. In the first five years, the applicant's entitlement to reside in Malta in view of the programme's conditions is monitored annually. Thereafter, it is monitored every five years.

MRVP is open to individuals who do not have a nationality of the European Economic Area (hence excluding citizens of the European Union, Iceland, Norway, Lichtenstein) or Switzerland. Due to security reasons, the scheme is not open to nationals of Afghanistan and the Democratic People's Republic of Korea and 'applications from other countries may also be excluded in accordance with Government policies'.<sup>186</sup>

While the MRVP is the main focus of this report, the provisions of Legal Notice 167 of 2013, the Global Residence Programme Rules (LN 167/2013)<sup>187</sup> are also described. LN 167/2013 was adopted under Malta's Income Tax Act.<sup>188</sup> It introduced the **Global Residence Programme (GRP)** that results in a **special tax status** for third country national beneficiaries. The GRP **does not in itself grant residence rights** to its beneficiaries, even though the programme's official title contains the word 'residence' that is misleading.

Beneficiaries of the GRP can apply for a residence certificate under the MRVP if they satisfy the additional eligibility requirements of LN 288/2015.<sup>189</sup> Alternatively, beneficiaries of the GRP may apply for a uniform residence permit under Regulation 12 of the Immigration Regulations<sup>190</sup> - subsidiary legislation issued under the Immigration Act. In accordance with Regulation 12(1) of the Immigration Regulations, a third country national can reside in Malta if a uniform residence permit for a specific purpose is issued in his or her regard. Article 7 of the Immigration Act deals with the issuance of residence permits. Further information is provided in point 3 of Section II below.

Finally, it is noted that Regulation 4 of Legal Notice 47 of 2014, the Individual Investor Programme of

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<sup>183</sup> Subsidiary Legislation 217.18, Malta Residence and Visa Programme Regulations, 25 August 2015. Legal Notice 288 of 2015, as amended by Legal Notice 189 of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12397&l=1>

<sup>184</sup> Chapter 217 of the Laws of Malta, Immigration Act, 21 September 1970, Act IX of 1970 as last amended by Act XXXVI of 2015: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>

<sup>185</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>186</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>187</sup> Subsidiary Legislation 123.148, Global Residence Programme Rules, 1 July 2013, Legal Notice 167 of 2013, as amended by Legal Notice 267 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12062&l=1>

<sup>188</sup> Chapter 123 of the Laws of Malta, Income Tax Act, 1 January 1949, Act LIV of 1949 as last amended by Act VII of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658&l=1>

<sup>189</sup> Regulation 6(1) of LN 288/2015.

<sup>190</sup> Subsidiary Legislation 217.04, Immigration Regulations, 1 May 2004, Legal Notice 205 of 2004 as amended by Legal Notices 307 and 426 of 2012: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9559&l=1>.

the Republic of Malta Regulations (LN 47/2014)<sup>191</sup> stipulates that ‘beneficiaries of the Global Residence Programme provided for under the Income Tax Act shall be allowed to apply for the Individual Investor Programme subject to satisfying all the additional eligibility requirements of the Programme’. The Individual Investor Programme is explained in detail in Deliverable BI for Malta.

## ■ *Competent authorities*

### (i) **MRVP**

The Parliamentary Secretary for Competitiveness and Economic Growth launched the MRVP in 2015. As of 2017, the **Malta Residence and Visa Agency (MRVA)** is entrusted with the regulation and running of the MRVP.<sup>192</sup>

The MRVA was originally set up by Legal Notice 107 of 2017, the Malta Residency Visa (Establishment of an Agency) Order (LN 107/2017).<sup>193</sup> On 29 March 2018, LN 107/2017 was replaced by Legal Notice 97 of 2018, the Malta Residency Visa (Establishment) Order (LN 97/2018).<sup>194</sup> LN 97/2018 repeals LN 107/2017<sup>195</sup> and provides for the setting up of a five-member Board of Directors and a Secretary of the Board appointed by the Minister responsible for identity management.<sup>196</sup> One of the five Directors is the Chairperson of the Board.<sup>197</sup> LN 97/2018 does not specify the functions of the Board of Directors and given its recent adoption it is not possible to specify what role it fulfils in practice.

LN 97/2018 also sets up the office of Chief Executive Officer, appointed by the Minister and responsible for the performance, functions, duties and daily management of the MRVA.<sup>198</sup> The Chief Executive Officer is answerable to the Board of Directors and is vested with the legal and judicial representation of the MRVA.<sup>199</sup> No further specification of the role of the Chief Executive Officer is provided.

The MRVA carries out functions and duties of public administration in relation to a number of matters, *inter alia*:

- Issuing residence certificates by investment and other administrative matters related to those wishing to stay or settle indefinitely in Malta or Gozo;
- Working and collaborating with the Identity Malta Agency with regards to the issuance of residency documents;
- Establishing accredited agents;
- Performing due diligence checks on all applications;
- Implementing and maintaining internal standard operating procedures;
- Timely issuance of the indefinite certificate of residence and residence documents;
- Remaining abreast of other international residence schemes by investment whilst ensuring that the MRVA remains competitive;
- Meeting, monitoring and managing MRVA concessionaires and providing them with the

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<sup>191</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>192</sup> See Identity Malta webpage: Malta Residency & Visa Programme (MRVP) guidelines and applications: <https://identitymalta.com/new/malta-residency-visa-program-mrvp-guidelines-and-applications/>.

<sup>193</sup> Subsidiary Legislation 497.21, Malta Residency Visa (Establishment of an Agency) Order, 21 April 2017, Legal Notice 107 of 2017 as amended by Legal Notice 201 of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12655&l=1>.

<sup>194</sup> Subsidiary Legislation 497.26, Malta Residency Visa (Establishment) Order, 29 March 2018, Legal Notice 97 of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12810&l=1>

<sup>195</sup> Article 9 of LN 97/2018: ‘The Malta Residency Agency (Establishment) Order’ is hereby repealed.’

<sup>196</sup> Article 6 of LN 97/2018

<sup>197</sup> Article 6 of LN 97/2018

<sup>198</sup> Article 7(1) of LN 97/2018.

<sup>199</sup> Article 7(3) and (4) of LN 97/2018.



required support and guidance whilst ensuring compliance with the conditions of the agreements in force.<sup>200</sup>

This is in line with the Fourth Schedule to the Public Administration Act,<sup>201</sup> stating that MRVA's functions are to 'execute the functions and duties of the public administration in matters relating to issuing of residence visas by investment and other administrative matters related to individuals wishing to stay or settle indefinitely in Malta or Gozo'.

Article 8 of LN 97/2018 sets up an Approvals Board composed of four Directors – one of whom is the Chairperson of the Board – appointed by the Minister responsible for identity management. The Approvals Board is a separate Board of the MRVA tasked with the recommendation of approvals or rejection of residence certificates presented to it by the Chief Executive Officer. As of March 2018, the Approvals Board is therefore the decision-making body.

In addition to the MRVA, the **Identity Malta Agency** also plays a key role. Identity Malta was set up by Legal Notice 269 of 2013, the Identity Malta Agency (Establishment) Order (LN 269/2013).<sup>202</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>203</sup>

This is in line with the Fourth Schedule to the Public Administration Act,<sup>204</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 both the MRVA and Identity Malta.<sup>205</sup> When the matters the MRVA or Identity Malta is responsible for 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>206</sup> What these actions include is not specified in the legislation.

On 29 March 2018, LN 269/2013 was amended by Legal Notice 95 of 2018<sup>207</sup> to provide for the setting up of a five-member Board of Directors appointed by the Minister responsible for identity management.<sup>208</sup> The Directors are non-Executive Directors, each having one vote. One of the five

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<sup>200</sup> Article 3 of LN 97/2018.

<sup>201</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>202</sup> Subsidiary Legislation 497.07, Identity Malta Agency (Establishment) Order, 10 September 2013, Legal Notice 269 of 2013, as amended by Legal Notice 101 of 2016: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12096&l=1>.

<sup>203</sup> Article 3(1) of LN 269/2013.

<sup>204</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>205</sup> Article 4 of LN 97/2018 Article 4 of LN 269/2013.

<sup>206</sup> Article 3 of LN 97/2018 and Article 3(1) of LN 269/2013.

<sup>207</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>208</sup> Article 8(1 and (4) of LN 269/2013.

Directors is a non-Executive Chairperson.<sup>209</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>210</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>211</sup>

At the same time, the Malta Individual Investor Programme Agency (Establishment) Order, Legal Notice 96 of 2018 (LN 96/2018)<sup>212</sup> was adopted to set up the Malta Individual Investor Programme Agency (IIP Agency). The functions of the IIP Agency relate to the acquisition of citizenship by investment and are described in Deliverable BI.

The MRVA formed part of Identity Malta until April 2017.<sup>213</sup> Being a new agency, MRVA is still fine-tuning its procedures. **LN 288/2015 is yet to be amended to reflect the separation of these agencies.** In practice, the MRVA is responsible for all aspects of the MRVP with the exception of the issuance of the residence permit that falls within Identity Malta’s competences.

In accordance with Article 6(1) of LN 97/2018 some of the members of the MRVA’s Board of Directors must also be involved in the direction of Identity Malta. Similarly, Article 6(1) of LN 96/2018 requires some of the members of the IIP Agency’s Board of Directors to be involved in the direction of Identity Malta. The rationale for this involvement is not self-evident but it has been reported that to ‘ensure coordination in policy-setting, some of the directors will be common to all three agencies’.<sup>214</sup>

The purpose of the changes to the competent authorities introduced on 29 March 2018, appears to be solely the setting up of these posts within the MRVA, Identity Malta and a new IIP Agency. There was no call for applications for these posts.

To sum up, the MRVA is the main competent authority with respect to the MRVA and the new IIP Agency is the competent authority with respect to the IIP.<sup>215</sup> Identity Malta is responsible for the issuance of residence permits and the registration of agents acting on behalf of MRVA or IIP applicants as described in point 1.2 of Section II below.

## (ii) GRP

The Parliamentary Secretary for Competitiveness and Economic Growth launched the GRP in 2013.

The **Commissioner for Revenue** within the Inland Revenue Department is the competent authority for the purposes of the GRP and falls within the responsibility of the Minister responsible for finance and the Minister responsible for the economy, investment and small business. The Commissioner for Revenue is responsible for the administration of the Income Tax Act and the Income Tax Management Act.<sup>216</sup>

The Second Schedule to the Public Administration Act attributes the following functions to the Commissioner for Revenue: the administration of fiscal legislation in relation to income and other taxes;

<sup>209</sup> Article 8(2) and (3) of LN 269/2013.

<sup>210</sup> Article 9(1) and (2) of LN 269/2013.

<sup>211</sup> Articles 9(3) and 10 of LN 269/2013.

<sup>212</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>213</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>214</sup> Times of Malta, ‘Residence agencies split into three’, 29 March 2018: <https://www.timesofmalta.com/articles/view/20180329/local/residence-agencies-split-into-three.674864>.

<sup>215</sup> Further details are provided in Deliverable BI for Malta.

<sup>216</sup> Article 3(1) of Chapter 372 of the Laws of Malta, Income Tax Management Act, 23 September 1994, Act XVIII of 1994 as last amended by Act VII of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8841&l=1>.



ensuring that all persons performing an economic activity for consideration duly register under the VAT Act<sup>217</sup> and collecting dues. There is no reference to the Commissioner for Revenue having any competences in relation to residency. The Commissioner for Revenue's role in terms of the GRP and as described in Section II below is provided for solely by LN 167/2013 as subsidiary legislation issued under the Income Tax Act.

Rights of entry and residence of GRP beneficiaries depend on whether they decide to meet the MRVP requirements, or apply for a uniform residence permit. Competent authorities in the case of the MRVP are described above. If GRP beneficiaries opt for a uniform residence permit under Article 12 of the Immigration Act and Immigration Regulations, the competent authority is the **Department for Citizenship and Expatriate Affairs at Identity Malta**.

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<sup>217</sup> Chapter 406 of the Laws of Malta, Value Added Tax Act, 1 January 1999, Act XXIII of 1998 as last amended by Legal Notice 9 of 2018: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8872&l=1>.

## II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

### 1 APPLICATION PHASE

#### 1.1 PROCEDURES

##### (i) MRVP

Regulation 2 of LN 288/2015 defines the ‘main applicant’ as an individual who has filed an **application** in terms of Regulation 5. In accordance with Regulation 5, **individuals duly represented by a registered approved agent and/or registered accredited person**<sup>218</sup> may apply to the MRVA for the issuance of a residence certificate under the regulations.

Regulation 6 of LN 288/2015 sets out the **qualifications and general requirements** for a person to be issued a certificate under the regulations. In addition to being at least 18 years of age and meeting the application requirements, the person must make commitments to: provide proof of title to a qualifying property in Malta; invest in a qualifying investment; pay in full the contribution.<sup>219</sup> Further details are provided in point 2 of Section II below.

Applications must be accompanied by the **non-refundable administrative fee** and by **originals or certified copies**<sup>220</sup> of:<sup>221</sup>

- A police certificate in relation to the main applicant and any dependant<sup>222</sup> over 14 years of age at the time of application, issued by the competent authorities in the country of origin and in the country or countries of residence where such a person resided for more than six months during the last ten years. In exceptional cases, where it is proved to MRVA’s satisfaction that this certificate is not obtainable, a sworn affidavit by the main applicant on his own behalf or on behalf of each minor dependant over 14 years of age, and any adult dependant, on his own behalf, declaring a clean criminal record can be submitted. In certain circumstances the MRVA may accept that such certificates are submitted at a later date but in any case before the application is approved in principle.
- Evidence, through a ‘know your customer’ basis, due diligence processes, carried out by the registered approved agent and/or registered accredited person that there is no *a priori* evidence that the main applicant and dependants are not fit and proper persons.
- Undertaking to purchase or lease a qualifying immovable property in Malta.
- Undertaking, if necessary, to make other investments in Malta in accordance with LN 288/2015.
- Undertaking to remit the total of the required contribution, less the non-refundable administrative fee.
- A certificate from a reputable health system that the main applicant and dependants are not suffering from any contagious disease and are otherwise in good health and will not be, in terms of the medical review carried out by the MRVA, of an unreasonable burden on the national health system.
- Any other document as the MRVA may require from time to time. This grants the MRVA

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<sup>218</sup> See point 1.2 of Section II below.

<sup>219</sup> Regulation 6(1) of LN 288/2015.

<sup>220</sup> Regulation 2 of LN 288/2015 defines ‘certified copy’ as ‘a photocopy of an original document certified by a duly warranted lawyer, or notary public, a Maltese consular or diplomatic officer, Malta Residence and Visa Agency or a senior officer of an authority appointed by Malta Residence and Visa Agency in terms of regulation 11(2)’. Regulation 11(2) of LN 288/2015 grants the MRVA the right to delegate any of its functions under the regulation, other than the issuance of the certificate, to another authority duly constituted under any other law and capable of exercising such functions.

<sup>221</sup> Regulation 6(2) of LN 288/2015.

<sup>222</sup> Dependants are a broad range of family members and the relevant legal provisions are described in point 1.5 of Section II below.

discretion to ask for other documents, but it is not stated what these might be nor were any other documents mentioned by the MRVA representative consulted.<sup>223</sup>

Applications must be done in the **form prescribed by the MRVA** and require a **payment of a non-refundable administrative fee**<sup>224</sup> of EUR 5,500.<sup>225</sup> Application forms and accompanying documents must be completed in English. If the original language of the document is not English, it must be accompanied by an authenticated translation.<sup>226</sup> It is noted that the application forms are not readily available on the MRVA's website – a password is necessary in order to obtain access. The website does not provide details on how to obtain a password.

Where the individual qualifies as a beneficiary,<sup>227</sup> the **MRVA will determine in writing that s/he is to be issued a certificate** under the regulations.<sup>228</sup>

Following this determination in writing and **prior to issuance of the certificate**, the main applicant (as represented by a registered approved agent and/or registered accredited person in accordance with Regulation 12(1) of LN 288/2015) must:

- **Pay the contribution** less the non-refundable administrative fee paid when presenting the application. Regulation 2 of LN 288/2015 defines the contribution and further details are provided in point 2 of Section II below.
- **Present the necessary title to a qualifying property** (a qualifying owned property or a qualifying rented property). Regulation 2 of LN 288/2015 defines 'qualifying owned property' and 'qualifying rented property' and further details are provided in point 2 of Section II below.
- **Present a certificate to a qualifying investment**. Regulation 2 defines 'qualifying investment' as explained in point 2 of Section II below.
- **Present any other document as may be required** from time to time by notice issued by the MRVA.<sup>229</sup>

The application process takes five to six months.<sup>230</sup>

A **certificate will not be issued** to the main applicant or any of his/her dependants even if the MRVA issued an approval in principle, unless the above conditions are fulfilled to MRVA's 'full satisfaction'.<sup>231</sup>

If an applicant makes a false statement or omits information requested, the **application may be declined** solely on that basis.<sup>232</sup> In addition, Regulation 7 of LN 288/2015 sets out the minimum eligibility criteria as further explained in point 4 of Section II below. If these criteria are not met, the application will be turned down.

Regulation 8(1) of LN 288/2015 sets out **further conditions to be proved** to MRVA's satisfaction by beneficiaries from the date on which the MRVA determines in writing that they are issued a residence

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<sup>223</sup> Stakeholder consultation with MRVA representative on 7 March 2018.

<sup>224</sup> Regulation 2 of LN 288/2015 defines 'non-refundable administrative fee' as 'the portion of the contribution paid up front at the time of submission of the application'.

<sup>225</sup> Regulation 5(1) of LN 288/2015.

<sup>226</sup> Regulation 6(3) of LN 288/2015.

<sup>227</sup> Regulation 2 of LN 288/2015 defines 'beneficiary' as 'a third-country national who has been issued a certificate in terms of these regulations' and 'third-country national' as 'any person who is not a citizen of the European Union within the meaning of Article 20 of the Treaty of the European Union and the Treaty on the Functioning of the European Union: Provided that, for the purposes of these regulations, EEA nationals and Swiss nationals shall not be considered to be third-country nationals'.

<sup>228</sup> Regulation 5(2) of LN 288/2015.

<sup>229</sup> Regulation 5(3) of LN 288/2015.

<sup>230</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>231</sup> Regulation 5(3), proviso of LN 288/2015.

<sup>232</sup> Regulation 6(6) of LN 288/2015.

certificate and **for the entire duration and persistence of the certificate. Beneficiaries must prove that they:**

- Are third country nationals and are not Maltese, EEA or Swiss nationals;
- Do not benefit from the Residence Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rules;<sup>233</sup>
- Hold qualifying property and a qualifying investment for a minimum period of five years from the date of issuance of the certificate;
- Receive stable and regular resources that are sufficient to maintain themselves and their dependants without recourse to Malta’s social assistance system;
- Have a valid travel document for themselves and for their dependants;
- Have sickness insurance in respect of all risks normally covered for Maltese nationals for themselves and their dependants, across the whole Schengen Area and states associated with the EU’s Schengen activities;
- Provide an affidavit declaring that from the date of application onwards they have either an annual income of not less than EUR 100,000 arising outside Malta or a capital of not less than EUR 500,000.

LN 288/2015 also provides for the **cessation of the certificate** in the circumstances stipulated by Regulation 9. With effect from the date of issuing of the certificate, **a beneficiary will cease to benefit from a certificate if s/he:**

- Becomes a Maltese, EEA or Swiss national;
- At any time after the date on which the MRVA determines in writing that a beneficiary is issued a residence certificate, does not satisfy the conditions set out in Regulation 8 or no longer remains eligible in terms of Regulation 7 or does not fulfil any commitment contemplated in LN 288/2015, in particular a commitment referred to in Regulation 6 (qualifications and general requirements);
- The stay is not in the public interest (this includes the interests of public safety, the protection of public order, national security, territorial integrity, public health or morals<sup>234</sup>).

Individuals who cease to benefit from a certificate for any of these reasons must notify the MRVA within four weeks from the date when they become aware of such event. Where the notification is not made within the time limit an administrative penalty of EUR 15,000 will apply.<sup>235</sup> The competent

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<sup>233</sup> These schemes are set up by subsidiary legislation issued under the Income Tax Act, Chapter 123 of the Laws of Malta: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658&l=1>. They entitle their holders to a special tax status. Subsidiary Legislation 123.79, Residents Scheme Regulations, 1 May 2004, Legal Notice 428 of 2004, as last amended by Legal Notice 271 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9386&l=1>; Subsidiary Legislation 123.126, Highly Qualified Persons Rules, 1 January 2010, Legal Notice 106 of 2011 as last amended by Legal Notice 192 of 2017: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11643&l=1>; Subsidiary Legislation 123.129, High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, 1 January 2012, Legal Notice 400 of 2011, as last amended by Legal Notice 268 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11761&l=1>; Subsidiary Legislation 123.134, Malta Retirement Programme Rules, 28 September 2012, Legal Notice 317 of 2012, as amended by Legal Notice 269 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11939&l=1>; Subsidiary Legislation 123.141, Qualifying Employment in Innovation and Creativity (Personal Tax) Rules, 1 January 2013, Legal Notice 106 of 2013, as amended by Legal Notice 462 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12004&l=1>; Subsidiary Legislation 123.160, Residence Programme Rules, 1 July 2013, Legal Notice 270 of 2014: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12219&l=1>;

<sup>234</sup> Regulation 2 of LN 288/2015.

<sup>235</sup> Regulation 9(2) of LN 288/2015.

Ministers<sup>236</sup> can however condone failure to satisfy the conditions listed above if the failure was due to unforeseen circumstances beyond the individual's control, the individual notifies the Ministers of such failure and exercised his/her best efforts to remedy the failure.<sup>237</sup> This means that in the aforementioned circumstances, the competent Ministers can decide to depart from the conditions set out in the law. Details on the procedures to follow for notifying the Ministers are not stipulated in the law nor are there specific provisions on monitoring such decisions by the Ministers.

An individual will also cease to benefit from a certificate if s/he notifies the MRVA of his/her intention not to remain a beneficiary.<sup>238</sup>

LN 288/2015 **does not prescribe any legal remedies** in the case of refusal of residence. Moreover, as explained in point 1.3 below, the MRVA has absolute discretion. Its decisions are final and not subject to appeal.<sup>239</sup>

## (ii) GRP

Rule 2 of LN 167/2013 defines the 'beneficiary' as a third-country national<sup>240</sup> who has been granted special tax status in terms of the GRP rules. In accordance with Rule 3(1), **individuals duly represented by an authorised registered mandatory**<sup>241</sup> may apply to the Commissioner for Revenue for special tax status under the GRP rules.

Rule 4 of LN 167/2013 sets out the **general requirements** for a person to qualify as a GRP beneficiary. A beneficiary is an individual who is not a long-term resident<sup>242</sup> and who proves to the Commissioner's satisfaction that s/he:

- Is a third-country national and is not a Maltese, EEA or Swiss national;
- Is not a person who benefits under the Residents Scheme Regulations, the High Net Worth Individuals EU/EEA/Swiss Nationals Rules, the High Net Worth Individuals – Non-EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Qualifying Employment in Innovation and Creativity (Personal Tax) Rules or the Highly Qualified Persons Rules;
- Holds a qualifying property holding as described in point 2 of this Section below;
- Has stable and regular resources which are sufficient to maintain the beneficiary and his or her dependants without recourse to Malta's social assistance system;
- Has a valid travel document;
- Has sickness insurance in respect of all risks across the EU normally covered for Maltese nationals for the beneficiary and his or her dependants;
- Can adequately communicate in one of Malta's official languages (English or Maltese);
- Is a fit and proper person.

Applications must be done in the **form prescribed by the Commissioner for Revenue** and require a **payment of a non-refundable administrative fee** of EUR 6,000.<sup>243</sup> For applications where the qualifying property is a qualifying owned property situated in the south of Malta or Gozo, a lower non-

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<sup>236</sup> Regulation 2 of LN 288/2015 defines the Ministers as the Minister responsible for Finance and the Minister responsible for the Economy, Investment and Small Business.

<sup>237</sup> Regulation 9(4) of LN 288/2015.

<sup>238</sup> Regulation 9(3) of LN 288/2015.

<sup>239</sup> Regulation 11(1) of LN 288/2015.

<sup>240</sup> Rule 2 of LN 167/2013 defines 'third-country national' as any person who is not an EU citizen and specifies that EEA nationals and Swiss nationals will not be considered as third-country nationals for the purposes of the GRP rules.

<sup>241</sup> See point 1.2 of Section II below.

<sup>242</sup> Rule 2 of LN 167/2013 defines 'long-term resident' as a person who has or a person who applies for long-term resident status under the Status of Long-Term Residents (Third Country Nationals) Regulations.

<sup>243</sup> Rule 3(1) of LN 167/2013.

refundable administrative fee of EUR 5,500 applies (see point 2 below).<sup>244</sup> The application form is available on the Commissioner for Revenue's website.<sup>245</sup> Applicants must also complete a questionnaire.<sup>246</sup>

Where the individual qualifies as a beneficiary, the **Commissioner for Revenue will determine in writing that s/he is to be granted special tax status** under the GRP rules.<sup>247</sup> The procedure for making such a determination is not further specified in the legislation. However, non-binding Guidance Notes<sup>248</sup> are available on the Commissioner for Revenue's website and these specify that the written determination to grant special tax status is preceded by a **letter of intent** that is valid for 12 months. Further details from the Guidance Notes are provided in the relevant Sections of this report, in particular, points 2, 3 and 4 of Section II.

LN 167/2013 provides for the **cessation of the special tax status** in the circumstances stipulated by Rule 6(1). With effect from the appointed day, that is, the date on which the Commissioner for Revenue determines in writing that an individual is granted special tax status under the GRP rules,<sup>249</sup> **a beneficiary will cease to benefit from special tax status if s/he:**

- Becomes a Maltese, EEA or Swiss national;
- At any time after the appointed day, does not hold a qualifying property, including in the case where the individual lets or sublets the property;
- Becomes a long-term resident;
- No longer has sickness insurance in respect of all risks normally covered for Maltese nationals for him/herself and his/her dependants;
- Stays in any other jurisdiction for more than 183 days in a calendar year (it is noted that this is not equivalent to a requirement to stay in Malta for 183 days - for further details see point 3 below).

Individuals who cease to possess special tax status for any of these reasons must notify the Commissioner for Revenue within four weeks from the date when they become aware of such event. Where the notification is not made within the time limit an administrative penalty of EUR 5,000 will apply.<sup>250</sup> Individuals also cease to have special tax status if they notify the Commissioner for Revenue of their intention not to remain in possession of special tax status. The cessation has immediate effect from the relevant year of assessment.<sup>251</sup> The special tax status will also cease where the individual breaches the Income Tax Act or of the Income Tax Management Act.<sup>252</sup>

As with failure to satisfy the conditions under the MRVP, the competent Ministers<sup>253</sup> can however jointly condone failure to satisfy the GRP conditions if the failure was due to unforeseen circumstances beyond the individual's control, the individual notifies the Ministers of such failure and exercised his/her best efforts to remedy the failure.<sup>254</sup> As explained for the MRVP above, this means that the competent Ministers can decide to depart from the conditions set out in the law.

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<sup>244</sup> Rule 3(1) of LN 167/2013.

<sup>245</sup> 'Application for special tax status: Global Residence Programme': [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_form\\_application.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_form_application.pdf)

<sup>246</sup> Questionnaire in connection with the Global Residence Programme: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_questionnaire.doc](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_questionnaire.doc)

<sup>247</sup> Rule 3(2) of LN 167/2013.

<sup>248</sup> The Global Residence Programme, 2013 Guidance Notes: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_guidelines.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_guidelines.pdf)

<sup>249</sup> As per definition of 'appointed day' in Rule 2 of LN 167/2013. It is also noted that Rule 2 defines 'these rules' to include the provisions of Article 56(23) of the Income Tax Act and the rules contained in LN 167/2013.

<sup>250</sup> Rule 6(2) of LN 167/2013.

<sup>251</sup> Rule 6(3) of LN 167/2013.

<sup>252</sup> Rule 3(4) of LN 167/2013.

<sup>253</sup> Regulation 2 of LN 167/2013 defines the Ministers as the Minister responsible for Finance and the Minister responsible for the Economy, Investment and Small Business. These are the same as the competent Ministers for the purposes of the MRVP.

<sup>254</sup> Rule 6(5) of LN 167/2013.



LN 167/2013 **does not prescribe any legal remedies** in the case of refusal of special tax status.

To regulate their rights of entry and stay in Malta GRP beneficiaries may apply for a **uniform residence permit** under Regulation 12 of the Immigration Regulations. A uniform residence permit is an authorisation giving the right of residence within the territory of Malta to a third country national who is not dependent on an EU citizen.<sup>255</sup> Further details are provided in point 3 below.

## 1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES

### (i) MRVP

The competent authorities for the MRVP are the **MRVA** and **Identity Malta**. These are government agencies established by the Malta Residence and Visa Agency (Establishment) Order and the Identity Malta Agency (Establishment) Order respectively as outlined in Section I above.

The MRVA's role in the application process is described in point 1.1 above.

Applications must be submitted to the MRVA through approved agents or accredited persons.<sup>256</sup> These are non-public bodies that have a significant role throughout the application process.

Regulation 12(1) of LN 288/2015 requires individuals to authorise in such form as Identity Malta may require, a **registered approved agent and/or registered accredited person** to act on his behalf in respect of all applications, correspondence, submissions, filings, declarations and notifications under the regulations. The said registered approved agent and/or registered accredited person must file these acts, as **only they can submit applications**. The MRVA does not have direct contact with the MRVP applicants – all contacts take place through these agents.<sup>257</sup>

Regulation 2 of LN 288/2015 defines 'approved agent and, or accredited person' as a person who:

- Has a warrant to practice as an advocate, a legal procurator or an accountant;
- Is an appointed notary public;
- Is a member of the Malta Institute of Taxation, the Malta Institute of Accountants or the Institute of Management.

Legal persons having at least 75% of their shareholders, partners or other members who have the warrants mentioned above or are members of these institutes are also eligible to be an approved agent and/or accredited person.

To act for the purposes of LN 288/2015, approved agents and accredited persons must be registered. Regulation 2 of LN 288/2015 defines 'registered approved agent and, or registered accredited person' as 'a person or entity who has satisfied the criteria set by Identity Malta and which in any case is already registered as an authorised registered mandatory with the Inland Revenue Department or is already registered as an approved agent and, or registered as an accredited person with Identity Malta under any other scheme or regulation'. This means that agents registered for the purposes of Malta's Individual Investor Programme (IIP) through which third country nationals can obtain Maltese citizenship can also act on behalf of applicants under the MRVP. In fact, registration is made by filling in and delivering the requisite form to Identity Malta and is subject to terms and conditions determined by Identity Malta (that is competent for the IIP).<sup>258</sup> Identity Malta must notify acceptance of the registration to the person

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<sup>255</sup> Regulation 2 of the Immigration Regulations.

<sup>256</sup> Regulation 12(1) of LN 288/2015.

<sup>257</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>258</sup> Regulation 12(4) and (5) of LN 288/2015.

requesting it.<sup>259</sup>

The MRVA's website states that the list of agents is available upon a request in writing.<sup>260</sup> To date, the MRVA website is still temporary and contains very scarce information about the scheme and the agency, and a contact form: <https://www.maltaresidencevisaprogramme.com>. On the other hand, the list of approved agents for the IIP is available on Identity Malta's website: <http://iip.gov.mt/agents-list/>. As of March 2018, there are 168 approved agents. Currently, these agents act also on behalf of MRVP applicants.

The terms and conditions for the purposes of the IIP are set out in the 'Accredited Person – Code of Conduct'. The Code lists failure to report sub agents/sources as well as withdrawal from membership of professional associations as grounds for revocation of the licence.<sup>261</sup> The Code of Conduct also sets the standards and labels that agents are bound by, particularly 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>262</sup> There is no such Code for MRVA agents. However, since IIP agents can also act as MRVA agents, the same Code presumably applies. The MRVA plans to establish its own list of agents.<sup>263</sup>

Approved agents and accredited persons can cancel their registration by submitting a request to Identity Malta.<sup>264</sup> In addition, Identity Malta can terminate the appointment of a registered approved agent or accredited person if s/he repeatedly fails to carry out a function required under LN 288/2015.<sup>265</sup>

Approved agents can be certified to promote the programme in specific regions, but they can submit applications from nationals of any country.<sup>266</sup> One of the accredited agents, Discus Holding Limited, has published on its website the Certificate of Accreditation for MRVP issued by Identity Malta. The certificate attests that the company 'is entrusted with the marketing and promotion of the Malta Residence Visa Programme in the following regions: The Republic of Turkey; The Russian Federation'.<sup>267</sup>

In accordance with Regulation 12(9) of LN 288/2015, Identity Malta may, by notice issued from time to time, prescribe that a portion of the contribution paid by an applicant be paid to the approved agent and/or accredited person appointed by the applicant. This portion cannot exceed ten percent of the contribution payable. To date, there is no such notice in force and agents' fees are determined solely on the basis of agreement between agents and their clients.<sup>268</sup>

## (ii) GRP

The competent authority for the GRP is the **Commissioner for Revenue**.

The Commissioner for Revenue's role in the application process is described in point 1.1 above.

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<sup>259</sup> Regulation 12(6) of LN 288/2015.

<sup>260</sup> To date, the MRVA website is still temporary and contains very scarce information about the scheme and the agency, and a contact form: <https://www.maltaresidencevisaprogramme.com>

<sup>261</sup> Identity Malta, Accredited Person – Code of Conduct: <http://iip.gov.mt/wp-content/uploads/2014/02/Malta-IIP-Code-of-Conduct-2.pdf>

<sup>262</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>263</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>264</sup> Regulation 12(7) of LN 288/2015.

<sup>265</sup> Regulation 12(8) of LN 288/2015.

<sup>266</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>267</sup> Discus Holdings Limited, About us: <http://www.discusholdings.com/wp-content/themes/discus/img/certificate.jpg>

<sup>268</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

As with the MRVP, non-public bodies have a significant role throughout the application process as GRP applications must be submitted to the Commissioner for Revenue through authorised registered mandatories.<sup>269</sup>

Rule 10(1) of LN 167/2013 requires individuals to authorise, an **authorised registered mandatory** to act on their behalf in respect of all applications, correspondence, submissions, filings, declarations and notifications under the GRP rules. As with registered approved agents and/or registered accredited persons under the MRVP, for the purposes of GRP applications it is authorised registered mandatories that must file these acts, as **only they can submit applications**. Similar to the MRVA, the Commissioner for Revenue, does not have direct contact with the GRP applicants – all contacts take place through these mandatories. Unless the Commissioner for Revenue specifically authorises this in writing, a person may not authorise more than one authorised mandatory.<sup>270</sup>

Rule 2 of LN 167/2013 defines ‘authorised mandatory’ in very similar terms to the definition of ‘approved agent and, or accredited person’ under Regulation 2 of LN 288/2015 as a person who:

- Has a warrant to practice as an advocate, a legal procurator or an accountant;
- Is an appointed notary public;
- Is a member of the Institute of Financial Services Practitioners, Malta Institute of Taxation, the Malta Institute of Accountants or the Institute of Management.

Legal persons having at least 75% of their shareholders, partners or other members who have the warrants mentioned above or are members of these institutes are also eligible as authorised mandatories.

To act for the purposes of LN 167/2013, authorised mandatories must be registered with the Commissioner for Revenue by filling in and delivering a form to the Commissioner for Revenue.<sup>271</sup> Registration is subject to terms and conditions determined by the Commissioner for Revenue and acceptance of the registration must be notified by the Commissioner for Revenue to the person requesting registration.<sup>272</sup>

Authorised mandatories can cancel their registration by submitting a request to the Commissioner for Revenue.<sup>273</sup> In addition, the Commissioner for Revenue can terminate the appointment of a registered authorised mandatory if s/he repeatedly (defined as ‘more than two failures’) fails to carry out a function required under LN 167/2013.<sup>274</sup>

As explained above for the MRVP, agents registered for the purposes of Malta’s Individual Investor Programme can also act on behalf of applicants under the MRVP. Given the similar definitions and legal requirements these same agents are also eligible for registration as authorised mandatories for the purposes of the GRP.

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

Neither LN 167/2013 nor LN 288/2015 set out any cap for the GRP and MRVP schemes nor do they establish a system of scrutiny by Parliament or other bodies. They do however provide for some form of monitoring by the Commissioner for Revenue and the MRVA themselves through the right of these authorities to request information in terms of Rule 7 of LN 167/2013 and Regulation 10 of LN 288/2015

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<sup>269</sup> Rule 3(1) of LN 167/2013.

<sup>270</sup> Rule 10(3) of LN 167/2013. Further information on authorised mandatories is available on the Commissioner for Revenue’s website: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/hnwi\\_guide\\_arm.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/hnwi_guide_arm.pdf).

<sup>271</sup> Rules 2 and 10(4) of LN 167/2013.

<sup>272</sup> Rule 10(5) and (6) of LN167/2013.

<sup>273</sup> Rule 10(7) of LN 167/2013.

<sup>274</sup> Rule 10(8) of LN 167/2013.

respectively.

The MRVA can require the individual or the relevant registered approved agent and/or registered accredited person to produce, within a specified time limit, information and documents it considers necessary for the purpose of ascertaining an individual's entitlement to rights acquired under LN 288/2015 and ensuring the proper application of LN 288/2015.<sup>275</sup> The Commissioner for Revenue is granted exactly the same power to request information from the relevant authorised registered mandatory.<sup>276</sup>

The MRVA can also exchange information it has concerning an applicant, a beneficiary, or a person that has long-term residence status in terms of the Status of Long-term Residents (Third Country Nationals) Regulations. Such information may be exchanged only for the purposes of LN 288/2015 and for the purposes of the long-term residence status in terms of the Status of Long-term Residents (Third Country Nationals) Regulations.<sup>277</sup> The Commissioner for Revenue is granted the same power for the purposes of the GRP.<sup>278</sup>

LN 288/2015 grants the MRVA absolute discretion – any decision, determination or verification falling within its competence is to 'be made at that agency's absolute discretion', is final and not subject to appeal.<sup>279</sup> No similar provision is made with respect to the Commissioner for Revenue.

In any case, as with all public bodies, the MRVA is subject to the scrutiny of any Member of Parliament, the National Audit Office and the Public Accounts Committee.<sup>280</sup> The Commissioner for Revenue would also be subject to such scrutiny.

#### 1.4 INFORMATION ON APPLICATIONS

Neither LN 167/2013 nor LN 288/2015 contain any obligation to disclose information about successful applicants nor is this information published in practice.

The MRVP was only launched in October 2015 and therefore the 2012 to 2014 reference dates are not relevant in the Maltese context. No statistical data is publicly available for 2015, 2016, and 2017 and the table below is completed on the basis of information obtained directly from the MRVA.<sup>281</sup>

As the programme started in late 2015, there were no applications in that calendar year. In addition to the data presented in the table below, it should be noted that there have been an additional 82 applications under the MRVP in January 2018. All of these new applications are pending review as of March 2018. The stakeholder consultation with an MRVA representative confirmed that the most common reason for rejected applications was failed due diligence.<sup>282</sup>

Year	Total no. of requests for residence	No. of requests for residence 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
2014	N/A	N/A	N/A	N/A	N/A
2015	N/A	0	0	0	MRVA
2016	N/A	68	29	2	MRVA

<sup>275</sup> Regulation 10(1) of LN 288/2015.

<sup>276</sup> Rule 7(1) of LN 167/2013.

<sup>277</sup> Regulation 10(2) of LN 288/2015.

<sup>278</sup> Rule 7(2) of LN 167/2013.

<sup>279</sup> Regulation 11(1) of LN 288/2015.

<sup>280</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>281</sup> Statistics obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>282</sup> Statistics obtained through stakeholder consultation with MRVA representative on 7 March 2018.

2017	N/A	347 (263 of which are still under consideration)	83	1	MRVA
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The GRP does not involve applications for residence. GRP beneficiaries apply for entry and stay in Malta either through the MRVP or by requesting residence under Regulation 12 of the Immigration Regulations. Disaggregated data are not available.

## 1.5 INFORMATION ON APPLICATIONS BY FAMILY MEMBERS

### (i) MRVP

LN 288/2015 distinguishes between main applicants and dependants.

A **broad range of family members qualify as dependants** within the meaning of LN 288/2015:<sup>283</sup>

- The main applicant's spouse in a monogamous marriage or in another relationship having the same or similar status to marriage, unless the Minister authorises otherwise on a case-by-case basis.
- A child, including an adopted child of the main applicant or of his/her spouse, who at the time of application is:
  - under 18 years of age;
  - not yet born or not yet adopted, and is born or adopted after the 'appointed day'<sup>284</sup>, that is, the date on which the MRVA determines in writing that a beneficiary is issued a certificate under LN 288/2015;
  - over 18 years of age, not married, and who proves to the Minister's satisfaction that s/he is not economically active<sup>285</sup> and is principally dependant on the main applicant.
- A parent or grandparent of the main applicant or of his/her spouse who proves to the Minister's satisfaction that at the time of application s/he is not economically active and is principally dependant on the main applicant.
- An adult child of the main applicant or of his/her spouse who has been certified by a recognised medical professional/authority as having a disability in terms of the Equal Opportunities (Persons with Disability) Act.<sup>286</sup>

In any case, the **person must not be a beneficiary under** the Residents Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rule and must reside with the beneficiary in the qualifying property.

The beneficiary, as represented by a registered approved agent and/or accredited person may also apply to the MRVA for a residence certificate for any dependant child, including an adopted child, of the main applicant or of his/her spouse, who at the time of application is not yet born or not yet adopted and is born or adopted after the date on which the MRVA determines in writing that a residence certificate is to be issued. This is subject to a successful due diligence check.<sup>287</sup>

Similarly, the beneficiary as represented by a registered approved agent and/or accredited person can

<sup>283</sup> Regulation 2 of LN 288/2015.

<sup>284</sup> Regulation 2 of LN 288/2015.

<sup>285</sup> Regulation 2 of LN 288/2015 defines 'not economically active' as 'a person who is not working and not seeking work or not available for work'.

<sup>286</sup> Chapter 413 of the Laws of Malta, Equal Opportunities (Persons with Disability) Act, 10 February 2000, Act I of 2000 as last amended by Act XXIV of 2016: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>.

<sup>287</sup> Regulation 5(5) of LN 288/2015.

apply to the MRVA to include on the main beneficiary certificate, against a **non-refundable supplementary administration fee of EUR 5,000 and subject to a successful due diligence check:**

- The spouse or minor (under 18 years of age) child of a dependant;<sup>288</sup>
- The beneficiary’s spouse or his/her spouse’s approved child who would have been previously accepted as a dependant in the residence certificate;<sup>289</sup>
- Any dependant who, after the date on which the MRVA determines in writing that a residence certificate is to be issued, is born to, or adopted by an approved child or his/her spouse, where such spouse is already a beneficiary under LN 288/2015.<sup>290</sup>

The direct dependants of an approved dependant child of the main applicant or spouse, who gets married, will not derive residency rights under LN 288/2015 automatically. The MRVA will consider residency under the MRVP against a **non-refundable supplementary administration fee of EUR 5,000 per dependant and subject to a successful due diligence check.**<sup>291</sup>

Regulation 6(4) of LN 288/2015 requires applicants to provide **an affidavit of support for each dependant over 18 years of age.** In addition, both parents must sign the forms on behalf of the dependant. Where one parent has sole custody of a dependant, or another person has legal guardianship of a dependant, the appropriate legal documentation must be provided to demonstrate that a court of law or other relevant authority awarded sole custody or guardianship.<sup>292</sup>

**Individuals will be deemed to be approved dependants as included on the residence certificate only if** from the date on which the MRVA determines in writing that a residence certificate is to be issued and throughout the entire duration and persistence of the certificate, they **prove to the MRVA’s satisfaction that:**

- They are third country nationals and are not Maltese, EEA or Swiss nationals;
- They do not benefit from the Residence Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules or the Highly Qualified Persons Rules;
- They have sickness insurance in respect of all risks normally covered for Maltese nationals across the whole Schengen Area and states associated with the EU’s Schengen activities.<sup>293</sup>

The MRVP was only launched in 2015 and therefore the 2012 to 2014 reference dates are not relevant in the Maltese context. No statistical data is publicly available for 2015, 2016, and 2017 and the table below is completed on the basis of information obtained directly from the MRVA.<sup>294</sup>

Year	Number/Percentage of successful applications for residence permits for family members	Source
2012	N/A	N/A
2013	N/A	N/A
2014	N/A	N/A
2015	0	MRVA
2016	101	MRVA
2017	284	MRVA

<sup>288</sup> Regulation 5(8) of LN 288/2015.

<sup>289</sup> Regulation 5(6) of LN 288/2015.

<sup>290</sup> Regulation 5(7) of LN 288/2015.

<sup>291</sup> Regulation 5(7), proviso of LN 288/2015.

<sup>292</sup> Regulation 6(5) of LN 288/2015.

<sup>293</sup> Regulation 8(2) of LN 288/2015.

<sup>294</sup> Statistics obtained through stakeholder consultation with MRVA representative on 7 March 2018.



(ii) **GRP**

LN 167/2013 distinguishes between main beneficiaries and dependants.

Similar to the MRVP, a **broad range of family members qualify as dependants** within the meaning of LN 167/2013. While there are some overlaps between the persons qualifying as dependants for the purposes of the MRVP and the GRP, the definitions are not exactly the same. Rule 2 of LN 167/2013 defines the following persons as dependants:

- The beneficiary's spouse or person with whom the beneficiary is in a stable and durable relationship;
- Minor children, including adopted minor children and children who are in the care and custody of the beneficiary or of the beneficiary's spouse or person with whom s/he is in a stable and durable relationship;
- Children under 25 years of age, including adopted children and children who are in the care and custody of the beneficiary or of the beneficiary's spouse or person with whom s/he is in a stable and durable relationship, provided that such children are not economically active;<sup>295</sup>
- Adult children including adopted adult children and children who are in the care and custody of the beneficiary or of the beneficiary's spouse or person with whom s/he is in a stable and durable relationship, who because of serious illness or disability are unable to maintain themselves;
- Dependant brothers, sisters and direct relatives in the ascending line of the beneficiary or of the person with whom the beneficiary is in a stable and durable relationship.

The **dependant must reside with the beneficiary in the qualifying property**.<sup>296</sup>

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<sup>295</sup> Rule 2 of LN 167/2013 defines 'not economically active' as 'a person who is not working and not seeking work or not available for work'. This is the same as the definition provided by Regulation 2 of LN 288/2015.

<sup>296</sup> Rule 2 of LN 167/2013.

## 2 TYPE OF INVESTMENT<sup>297</sup>

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<b>MRVP</b>			
<p><b>Payment of the contribution</b>, that is, EUR 30,000, and, where applicable, EUR 5,000 per parent or grandparent of the main applicant or of the spouse (Regulations 2 and 5(3) of LN 288/2015). The contribution is paid by bank transfer to MRVA's bank account.<sup>298</sup></p> <p>And</p> <p><b>Purchase or lease of qualifying property (either a qualifying owned property or a qualifying rented property):</b></p> <p>- Qualifying owned property is an immovable property situated in Malta purchased for not less than EUR 320,000 <b>or</b> an immovable property situated in the south of Malta<sup>299</sup> or in Gozo for not less than EUR 270,000. Immovable property purchased before the entry into force of LN 288/2015 (25 August 2015) for lower amounts is considered to be a 'qualifying owned property' if its value, as declared on the date of application by the main applicant is not less than these amounts as supported by a separate and independent architect valuation including architect's plan delivered to the MRVA upon application. The MRVA Executive Chairman must authorise an MRVA</p>	<p>The financial thresholds are set out in the first column of this table.</p> <p>The <b>exact amount of money required to obtain the residence certificate depends on the specific circumstances</b> e.g. whether the application includes dependants or not and whether the qualifying property is owned or rented as well as the location of this property. By way of example, in the case of an application by a main applicant with a qualifying owned property in Malta and no dependants the total disbursement required would amount to EUR 600,000 (EUR 30,000 (contribution) + EUR 320,000 (property) + EUR 250,000 (investment)).</p> <p>The applicant must also pay the <b>approved agent's fees</b>. These are determined by agreement between the agent and the client (applicant). It is therefore</p>	<p><b>After the MRVA has issued the written determination to issue a residence certificate and before the certificate itself is issued</b>, the main applicant must:</p> <ul style="list-style-type: none"> <li>- pay the contribution less the non-refundable administrative fee (see point 1.1 of Section II above – this fee is EUR 5,500 (of the EUR 30,000 contribution) that is paid up front when the application is submitted) and</li> <li>- fulfill the property and investment criteria.</li> </ul> <p>The applicant must present a <b>certificate proving the investment</b> and the <b>document of title</b> to a qualifying property.</p> <p>The qualifying property and qualifying investment must be held for a <b>minimum of five years from the date of issuance of the residence certificate</b> (Regulation 8(1)(c) and (d) of LN 288/2015).</p> <p>The law does not provide for checks. There is only a general statement that once the certificate is issued it is <b>monitored</b> annually for the first five years and every five years thereafter (Regulation 4(a) of LN 288/2015). In practice, this is implemented through an <b>official compliance form</b> whereby applicants show that they continue to satisfy the MRVP requirements.<sup>302</sup></p>	<p>The competent authorities and non-public bodies involved are described in points 1.1, 1.2 and 1.3 of Section II above. A registered approved agent and/or registered accredited person must represent the main applicant. The MRVA must check that all requirements are satisfied and determine whether or not a certificate can be issued.</p>

<sup>297</sup> For the purposes of this Table, the term 'investment' covers any pecuniary disbursement required as part of the process for obtaining residence under the investors' residence scheme.

<sup>298</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018. For further information see point 4 below.

<sup>299</sup> Regulation 2 of LN 288/2015 defines 'south of Malta' as the areas within set boundaries as designated in the Second Schedule to the Local Councils Act of the localities listed in the Schedule to LN 288/2015. The Schedule to LN 288/2015 lists 23 localities in Malta for the purposes of the definition of 'south of Malta'.

<sup>302</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<p>Officer and/or third party, architect or surveyor to have full and free access to the property to the extent that this access is likely to assist him in determining the property's value (Regulation 2 of LN 288/2015).</p> <p>- Qualifying rented property is property taken on lease for a rent of not less than EUR 12,000 per annum for a property situated in Malta <b>or</b> not less than EUR 10,000 per annum for a property situated in the south of Malta or in Gozo (Regulations 2 and 5(3) of LN 288/2015).</p> <p>And</p> <p><b>Qualifying investment</b>, of an initial value of EUR 250,000 (Regulations 2 and 5(3) of LN 288/2015). A qualifying investment consists of Malta Government Bonds in the amount of EUR 250,000 (market value), purchased from a suitable stockbroker. Stock brokers/banking institutions handle the procedure for the purchase of the qualifying investment.<sup>300</sup></p>	<p>not possible to indicate the amount of these fees.<sup>301</sup></p>	<p>The approved agent is responsible for presenting the official compliance form - Form MRVP5 - to the MRVA every year from the date of the issuance of the residence certificate. This Form must be filled in and signed by the beneficiary. The agent's responsibility is to ensure that the Form is provided to the MRVA on time and together with all the supporting documentation.<sup>303</sup></p> <p>It is submitted to the MRVA on an annual basis for the first five years and every five years thereafter. With respect to the qualifying investment, a confirmation letter from the stockbroker and/or the Malta Stock Exchange certificate must be submitted as evidence that the main applicant has retained the investment for five years. As regards the qualifying property, the agent must submit the evidence that the lease agreement has been renewed together with proof of payment of rent signed by the landlord. In the case of purchase, the applicant must declare that s/he still holds the property. The MRVA reserves the right to run checks on site to verify the information.<sup>304</sup></p>	
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<sup>300</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>. Confirmed through stakeholder consultation with MRVA representative on 7 March 2018 – the investment is made in Malta Government stocks or funds that invest exclusively in Malta Government stocks.

<sup>301</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>303</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>304</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

GRP			
<p><b>Purchase or lease of qualifying property (either a qualifying owned property or a qualifying rented property):</b></p> <p>- Qualifying owned property is an immovable property situated in Malta purchased for not less than EUR 275,000 <b>or</b> an immovable property situated in the south of Malta<sup>305</sup> or in Gozo for not less than EUR 220,000. Immovable property purchased before the entry into force of LN 167/2013 (1 July 2013) for lower amounts is considered to be a 'qualifying owned property' if its value, as declared on the date of application by the applicant is not less than these amounts as supported by a separate and independent architect valuation including architect's plan delivered to the Commissioner for Revenue upon application. The Commissioner for Revenue, any officer authorised by him in writing, architect or surveyor will have full and free access to the property to the extent that this access is likely to assist him in determining the property's value (Rule 2 of LN 167/2013).</p> <p>- Qualifying rented property is property taken on lease for a rent of not less than EUR 9,600 per annum for a property situated in Malta <b>or</b> not less than EUR 8,750 per annum for a property situated in the south of Malta or in Gozo (Rule 2 of LN 167/2013). Rule 2 of LN 167/2013 defines 'lease' to include sub-lease.</p>	<p>The financial thresholds for the qualifying property are set out in the first column of this table. The thresholds for the qualifying property are lower than those under the MRVP.</p> <p>The applicant must also pay a <b>non-refundable administrative fee</b> of EUR 6,000 (if the qualifying property is situated in Malta) or EUR 5,500 (if the qualifying property is a qualifying owned property situated in the south of Malta or Gozo) (Rule 3(1) of LN 167/2013).</p> <p><b>There is no contribution requirement nor is there an investment requirement similar to that required by the MRVP.</b></p> <p>There are <b>no additional costs for dependants.</b></p> <p>The <b>exact amount of money required to obtain special tax status under the GRP depends on the specific circumstances</b> namely, where the qualifying property is situated and whether it is a qualifying owned property</p>	<p>The procedure for verification is not specified in LN 167/2013. The GRP Guidance Notes<sup>306</sup> specify that fulfilment of the requirement to hold a qualifying property is proved through a <b>final deed of purchase or a lease agreement</b>. Applicants must also declare that they occupy the qualifying property as their principal place of residence worldwide.</p> <p>The Guidance Notes also state that GRP applicants need not be the owner or lessee of a qualifying property at the time of application and may submit the certified final deed or lease agreement, as the case may be, at a later stage. However:</p> <ul style="list-style-type: none"> <li>• in order for an applicant to benefit from the reduced administrative fee, in the case of an owned immovable property situated in the south of Malta, the certified final deed of purchase needs to be submitted at application stage;</li> <li>• <b>special tax status will not be confirmed unless and until the certified final deed or lease agreement, as the case may be, is submitted.</b><sup>307</sup></li> </ul> <p>Where the applicant would have already acquired or rented a qualifying property by the application date, an authenticated copy of the contract providing evidence of such acquisition and title or lease, as the case may be, needs to be attached to the application.<sup>308</sup></p>	<p>The competent authorities and non-public bodies involved are described in points 1.1, 1.2 and 1.3 of Section II above. An authorised registered mandatory must represent the applicant. The Commissioner for Revenue must check that all requirements are satisfied and determine whether or not special tax status can be granted.</p>

<sup>305</sup> Regulation 2 of LN 167/2013 defines 'south of Malta' as the areas within set boundaries as designated in the Second Schedule to the Local Councils Act of the localities listed in the Schedule to LN 167/2013. The Schedule to LN 167/2013 lists the same 23 localities in Malta as the Schedule to LN 288/2015 for the purposes of defining 'south of Malta'.

<sup>306</sup> The Global Residence Programme, 2013 Guidance Notes: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_guidelines.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_guidelines.pdf)

<sup>307</sup> The Global Residence Programme, 2013 Guidance Notes: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_guidelines.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_guidelines.pdf)

<sup>308</sup> The Global Residence Programme, 2013 Guidance Notes: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_guidelines.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_guidelines.pdf)

or a qualifying rented property. By way of example, in the case of an application by a beneficiary with a qualifying owned property in Malta, the total disbursement required would amount to EUR 281,000 (EUR 275,000 (property) + EUR 6,000 (administrative fee)).

The applicant must also pay the **authorised mandatory's fees**. These are determined by agreement between the mandatory and the client.

### 3 RESIDENCE PHASE

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit
<b>MRVP</b>			
<p>Certificates issued under LN 288/2015 are deemed to constitute a <b>residence permit</b> issued in terms of Article 7 of the Immigration Act (Regulation 3 of LN 288/2015).</p> <p>Article 2 of the Immigration Act defines 'residence permit' as a permit issued under its Article 7(1),</p> <p>In accordance with Article 7(1) of the Immigration Act a residence permit is issued by the Minister responsible for immigration to any person who applies for retirement, settlement or indefinite stay in Malta. According to Article 7(2) of the Immigration Act, a residence permit confers the right to land and remain <b>permanently or indefinitely</b> in Malta, that is, it is not time bound.</p> <p>The application for the e-Residence Card entails enrolment of biometric data and hence all applicants <b>must have entered Malta at least once</b> prior to becoming MRVP beneficiaries.</p>	<p>The national law does not foresee checks on the fulfilment of the residence criterion beyond the requirement to hold property in Malta for at least five years from the issuance of the certificate. This would presumably be one of the factors checked as part of the annual monitoring in the first five years and every five years thereafter (Regulation 4(a) of LN 288/2015).</p> <p>Title to a qualifying property must be presented following the MRVA's written determination to issue a residence certificate and prior to the actual issuance of the certificate. However, there is nothing requiring the continuous physical presence of the investor in Malta. The investor needs to be physically present at least once to enrol biometric data for an e-Residence Card.</p>	<p>The <b>processing of applications</b> is handled by MRVA. The competent authorities and non-public bodies involved are described in Section I and points 1.1, 1.2 and 1.3 of Section II above. The competent authority for the <b>issuance</b> of Residence Cards is Identity Malta. The applicant is represented through the approved agent in the application process for a Residence Card.</p>	<p>The certificate (residence permit) granted under the MRVP has <b>no expiry date</b>. The residence permit is permanent, but the Residence Card is <b>renewed every five years</b>. To renew the Residence Card, each applicant over the age of 14 needs to have their biometric data taken in Malta. Each applicant is subject to a Residence Card renewal fee of EUR 27.50.<sup>309</sup></p> <p>Renewals are handled by approved agents or accredited persons. To renew a residence card after five years, the applicant is bound to submit annual compliance forms (five forms, one for each year since the residence certificate was issued).<sup>310</sup> For further information see point 2 above.</p> <p>After the first five years the official compliance form is submitted every five years (instead of each year). Additionally, after five years, beneficiaries are no longer bound to retain the qualifying investment, qualifying property or meet the capital income requirement. Beneficiaries need to provide Identity Malta with a residential address in Malta.<sup>311</sup></p>
<b>GRP</b>			

<sup>309</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>310</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>311</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>



<p>LN 167/2013 makes no mention of a residence permit. The 'rights acquired under this law' are defined as 'the right to pay tax at the rate of tax contemplated in article 56(23) of the Act and these rules' (Rule 2 of LN 167/2013).</p> <p>One of the requirements the beneficiary must satisfy for the purposes of the GRP is to hold a <b>'qualifying property holding'</b> (Rule 4(c) of LN 167/2013). Rule 2 of LN 167/2013 defines 'qualifying property holding' as a holding which arises where the beneficiary either owns qualifying owned property or rents qualifying owned property as lessee <b>and</b> in either case, <b>occupies such property as his primary residence</b>. The persons who reside in the qualifying property must not be persons other than the beneficiary and his/her dependants or household staff. In addition, the Commissioner for Revenue must have been notified that the dependants or household staff will be residing in the property.</p> <p>Rule 2 of LN 167/2013 defines <b>'primary residence'</b> as 'the dwelling house in which an individual habitually resides in as his principal place of abode worldwide'.</p>	<p>The requirement for a 'qualifying property holding' as explained in the previous column, presupposes that GRP beneficiaries have a right to reside in Malta.</p> <p>There is nothing in LN 167/2013 that requires a minimum stay or continuous physical presence of the beneficiary in Malta.<sup>312</sup> Rule 6(1)(f) of LN 167/2013 states that if the beneficiary stays 'in any other jurisdiction' for more than 183 days in a calendar year the special tax status granted under the GRP ceases. This is not equivalent to a requirement to be present in Malta for 183 days but only not to be in any other single jurisdiction for more than 183 days.<sup>313</sup></p> <p>If the GRP beneficiary obtains residence rights through the MRVP, the information provided above applies.</p> <p>If the GRP beneficiary applies for a uniform residence permit, s/he needs to be physically present in Malta to enrol biometric data for the Residence Card as explained for the MRVP above.</p> <p>The national law does not foresee checks on the physical presence of the</p>	<p>The Commissioner for Revenue is the competent authority for the GRP.</p> <p>Should the GRP beneficiary eventually apply for a residence certificate under the MRVP, the authorities mentioned above for the MRVP would be competent.</p> <p>If GRP beneficiaries apply for a uniform residence permit, the competent authority is Identity Malta.</p>	<p>The special tax status granted by the GRP rules has no expiry date. There is no residence permit attached to the GRP. Should the GRP beneficiary eventually apply for a residence certificate under the MRVP the information provided above applies.</p> <p>If GRP applicants opt for a uniform residence permit, the <b>first permit is valid for one year</b>. Permits can be renewed for two years following their first year of legal residence in Malta and upon confirmation of the latest tax payments by the Inland Revenue Department.<sup>314</sup> Applications are made on the designated form and require a payment of a non-refundable administrative fee of EUR 27.50.<sup>315</sup> Identity Malta issues a residence permit, which can be renewed for two years following the applicant's first year of legal residence in Malta and upon confirmation of the latest tax payments by the Inland Revenue Department.<sup>316</sup></p>
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<sup>312</sup> See e.g. 'Article by Finance Malta': <https://economy.gov.mt/en/globalresidence/Pages/Article-by-Finance-Malta.aspx>.

<sup>313</sup> 'Article by Finance Malta': <https://economy.gov.mt/en/globalresidence/Pages/Article-by-Finance-Malta.aspx>.

<sup>314</sup> Checklist for Third-Country Nationals applying for a residence permit on the basis of economic self-sufficiency, Identity Malta: <https://identitymalta.com/wp-content/uploads/2017/10/Checklist-for-Third-Country-Nationals-applying-for-a-residence-permit-on-the-basis-of-economic-self-sufficiency.pdf>

<sup>315</sup> CEA form K (non-EU nationals), <https://identitymalta.com/wp-content/uploads/2014/07/CEA-Form-K.pdf>

<sup>316</sup> Checklist for Third-Country Nationals applying for a residence permit on the basis of economic self-sufficiency, Identity Malta: <https://identitymalta.com/wp-content/uploads/2017/10/Checklist-for-Third-Country-Nationals-applying-for-a-residence-permit-on-the-basis-of-economic-self-sufficiency.pdf>

GRP beneficiaries may obtain a residence permit either through MRVP (information provided above) or by applying for a uniform residence permit.

applicant, but 'qualifying property holding' and 'primary residence' should be maintained. (LN 167/2013).

## 4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS

Due diligence and security considerations	Procedure to verify due diligence and security considerations	Competent authorities and non-public bodies	Ex-post checks
<b>MRVP</b>			
<p>Regulation 7 of LN 288/2015 provides the eligibility criteria for MRVP applications. In addition to the qualifications and general requirements set out in Regulation 6 (see point 1.1 of Section II above), <b>the main applicant and any of his/her dependants are subject to a number of checks:</b></p> <ul style="list-style-type: none"> <li>■ A proper background verification of the main applicant and his dependants over 14 years of age;</li> <li>■ A police certificate in relation to the main applicant and any dependant over 14 years of age, issued by the competent authorities in the country of origin and in the country or countries of residence where the person has resided for more than six months during the last ten years, or in exceptional cases, where it is proved to the MRVA's satisfaction that such a certificate is not obtainable, a sworn affidavit by the main applicant (on his own behalf or on behalf of each minor dependant over 14 years of age) and any adult dependant on his own behalf, declaring a clean criminal record; in certain circumstances the MRVA may accept that such certificates are submitted at a later date but in any case before the application is approved in principle;</li> <li>■ Verification that the main applicant and/or any dependants are not individuals indicted before or who appeared at any time before an International Criminal Court;</li> <li>■ Verification that the main 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 288/2015;</li> <li>■ Verification that the main 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 main applicant and/or dependants must not at any time have had 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 main 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> </ul>	<p>Due diligence screening is first conducted by the approved agents or accredited persons. Printed reports regarding the main applicant and any dependants are forwarded to the MRVA together with the application. Approved agents or accredited persons are required to keep evidence of investigations.</p> <p>The second stage of due diligence checks is performed by the MRVA, after the receipt of the application and the payment of the initial fee of EUR 5,500. MRVA checks are carried out over the three to four months following the submission of the application.<sup>321</sup></p> <p>Requirements for the conferral of the residence certificate as stipulated in</p>	<p>The competent authorities and non-public bodies involved are described in points 1.1, 1.2 and 1.3 of Section II above. The MRVA and approved agents are involved in the due diligence checks as described in the first column of this table. In addition, the MRVA engages the services of internationally recognized due diligence companies (third party</p>	<p>The residence certificate is monitored annually for the first five years from its issue and every five years thereafter; it is <i>ipso jure</i> withdrawn as soon as the beneficiary infringes any of the provisions of LN 288/2015 (Regulation 4(a) of LN 288/2015). For further information see point 2 above.</p> <p>To date no cases of misuse have</p>

<sup>321</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

- The main applicant and/or dependants must not have been found guilty or be in the process of being interrogated and suspected, or have criminal charges brought against them for any crime, other than an involuntary offence, punishable with more than two years' imprisonment. The main 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;

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,

The application must not be deemed to be against public interest. Regulation 2 of LN 288/2015 defines public interest to include the interests of public safety, the protection of public order, national security, territorial integrity, public health or morals.

The checks described above are implemented through a **four-tier due diligence process**:<sup>317</sup>

(i) First Tier: the agent conducts an initial know-your-client check on the applicants and provides a declaration that there is no prior evidence that the applicants are not fit and proper persons to apply for the MRVP

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

(iii) Third Tier: upon receiving police clearance, all the forms and documentation provided as part of the application pack are assessed by the MRVA for completeness and correctness, including required document certification and corroboration of the information provided. In addition, the MRVA conducts an online due diligence check using third party databases.

(iv) Fourth Tier: an outsourced due diligence check by third party service providers independently appointed by the MRVA to prepare a background verification report with respect to the main applicant and any dependant.

A **final report assessing the possible risks and based on the findings of the previous stages** is compiled. This report is then presented to the Advisory Board for the final decision.<sup>318</sup>

LN 288/2015 does not expressly require prior checks on the **origin of the money** invested. However, the non-public bodies involved in the acquisition of stocks and of immovable

Regulation 6 of LN 288/2015 (see point 1.1 of Section II above) include: a) due diligence on the applicant and any dependants over the age of 12; b) police certificate of a clean criminal record in Malta and any other country where the applicant has lived for more than six months in the last ten years; c) no indictment before the International Criminal Court; d) that the applicant or any of his or her dependants are not listed with INTERPOL; e) that the applicant does not pose a threat to public security or health; f) that they have not been charged with or declared guilty of terrorism, money laundering, war crimes, crimes against humanity, funding of terrorism, or crimes that infringe human rights and freedoms; g) absence of crimes such as paedophilia, defilement of minors, rape, violent indecent assault, inducing to prostitution, abduction; and h) absence of charges punishable with more than

service providers).<sup>322</sup>

been reported.

<sup>317</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>318</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>322</sup> Information confirmed through stakeholder consultation with MRVA representative on 7 March 2018.

property are obliged entities under the Anti-Money Laundering Directive and are therefore bound by its requirements. The source of money in the case of the qualifying investment is verified by the respective stockbroker and/or financial institution from whom the said investment is purchased. The source of money in the case of property leased or purchased is verified by the respective landlord and/or real estate agent from whom the property is leased or purchased.<sup>319</sup>

Applicants are required to transfer the contribution from a previously declared bank account held in their name to the bank account of the MRVA. Documentary evidence of this transfer, including any intermediate steps such as SWIFT transfer records, must be provided by the applicants. The provisions of the Anti-Money Laundering Directive are applied in verifying the source of money of the contribution. In the case of the initial contribution – the non-refundable administrative fee of EUR 5,500 (see point 1.1. of Section II above), MRVA accepts this from either the main applicant or from the agent through a bank transfer. The agent must have received this initial payment from the main applicant. For the remaining part of the contribution (EUR 24,500 or more in steps of EUR 5,000 if dependants are included in the application), the MRVA requires a full payment trail if the payment is not done directly from the main applicant's declared bank account to MRVA's bank account. MRVA's bankers are authorised credit institutions bound by all EU regulations. In Form MRVP2, the main applicant is required to declare the account from which the funds will be transferred. Checks are in place to ensure that this account is used and if not used partially or fully, a full explanation, accompanied by copies of SWIFT payment must be presented to the MRVA. In the case of missing information, the funds are returned to the remitter.<sup>320</sup>

two years imprisonment. Existence of any of these constitutes grounds for refusal.

#### GRP

Rule 4 of LN 167/2013 sets out the requirements that the beneficiary must fulfil but does not stipulate how fulfilment of these requirement is proved or checked.

Authorised registered mandatories need to carry out certain checks on the applicant as part of **know-your-client** requirements aimed at properly identifying their clients and ascertaining that the information relevant to the application is correct.<sup>323</sup> These checks would go towards the proof required by Rule 4(h) of LN 167/2013 that the beneficiary is 'a fit and proper person'. In fact, Part 6 of the GRP application form<sup>324</sup> contains a declaration to be made by the authorised registered mandatory whereby the mandatory must 'having taken all reasonable and necessary measures, ...declare that, to the best of my knowledge, the applicant:'. The

Due diligence screening is **first conducted by the authorised mandatories** in the context of preparing and submitting the application form.

Once the **Commissioner for Revenue** receives the application form and

The competent authorities and non-public bodies involved are the Commissioner for Revenue and the

Rule 8 of LN 167/2013 provides for situations of abuse of rights. If an individual benefits under the GRP rules

<sup>319</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>320</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>323</sup> Authorised Registered Mandatory: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/hnwi\\_guide\\_arm.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/hnwi_guide_arm.pdf)

<sup>324</sup> 'Application for special tax status: Global Residence Programme': [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_form\\_application.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_form_application.pdf)

application form then lists the requirements in line with Rule 4 of LN 167/2013. The mandatory must also declare that the information in the application is to the best of his knowledge 'true, complete and correct' and that the applicant is aware of the relevant rules and obligations.

A number of documents must be attached to the application form to prove fulfilment of the Rule 4 requirements including a **conduct certificate** issued not earlier than six months prior to the date of submission of the application by the country in which the applicant was last resident. If police authorities of the individual's last country of residence do not issue any conduct certificates, **character references** from any three of the following must be submitted: the individual's bankers, lawyers, doctors, employers, accounts or 'other person of similar standing'.<sup>325</sup>

Presumably, as with the MRVP, the **source of money** used for the lease or purchase of the qualifying property is verified by the respective landlord and/or real estate agent from whom the property is leased or purchased.

Rule 5(4)(b) of LN 167/2013 requires the authorised registered mandatory to:

(i) Enquire and obtain information from the relevant beneficiary as to whether s/he or any of his/her dependants fall under the definition of 'long-term resident' as at the 31 December of each year from the year of the date on which the Commissioner for Revenue determines in writing that an individual is granted special tax status under the GRP onwards **and**

(ii) Notify the Commissioner for Revenue of any individual that is a beneficiary or dependant that falls under the definition of 'long-term resident' by not later than 30 April following the 31 December of the year mentioned above. Where the authorised registered mandatory is not able to obtain this information, he must notify the Commissioner for Revenue by the 30 April date and provide proof that at least two attempts at enquiry were made. Where the notifications are not made within the time specified, the mandatory will be liable to an administrative penalty of EUR 10,000.

accompanying documentation, the completed questionnaire in connection with the GRP<sup>326</sup> and the non-refundable administrative fee, it is **checked for completeness** and an acknowledgment of receipt is sent to the authorised mandatory. If information or documents are missing, these omissions must be rectified before proceeding further. Once the application is considered to be complete, the Commissioner for Revenue carries out a **due diligence process** and the mandatory is notified of the outcome.

If the outcome is positive, a **face-to-face meeting** with the applicant and the mandatory is scheduled, following which, a **letter of intent** is issued along with a notice of primary residence to be completed and signed by the applicant and submitted in original. The letter of intent is valid for 12 months from the date of issue, within which time the

authorised registered mandatories as described in points 1.1, 1.2 and 1.3 of Section II above.

when s/he was not so entitled the Commissioner for Revenue may issue an assessment in terms of Article 31 of the Income Tax Management Act dealing with the assessment of chargeable income, the tax chargeable thereon and the tax payable by or repayable to the person in question for the relevant assessment year.

In addition to the income tax return required by Article 10 of the Income

<sup>325</sup> 'Application for special tax status: Global Residence Programme': [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_form\\_application.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_form_application.pdf)

<sup>326</sup> Questionnaire in connection with the Global Residence Programme: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_questionnaire.doc](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_questionnaire.doc)



	<p>certified lease agreement or final deed of purchase (see information provided in point 2 above), must be submitted in order for the <b>confirmation letter</b> to be issued.</p> <p>If the due diligence outcome is negative the mandatory is notified of the main issues and the mandatory and applicant may provide an explanation. It is in the Commissioner's discretion whether to refuse or proceed with the application process.<sup>327</sup></p>	<p>Tax Management Act, GRP beneficiaries must also include such form as the Commissioner may require (Rule 9 of LN 167/2013).</p> <p>To date no cases of misuse have been reported.</p>
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<sup>327</sup> The Global Residence Programme, 2013 Guidance Notes: [https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp\\_guidelines.pdf](https://cfr.gov.mt/en/inlandrevenue/itu/Documents/grp_guidelines.pdf)

### III. RIGHTS GRANTED BY THE PERMITS

#### 1 RIGHTS GRANTED TO INVESTORS

##### (i) MRVP

As stated in point 3 of Section II above, residence certificates issued by the MRVA under LN 288/2015 are deemed to constitute a residence permit issued in terms of Article 7 of the Immigration Act.<sup>328</sup> It entitles the beneficiary and his or her registered dependants **to reside, settle or stay indefinitely in Malta**, provided that:

- The certificate must be monitored annually for the first five years from its issue, and every five years thereafter. It is considered *ipso jure* withdrawn as soon as the beneficiary infringes any provisions of LN 288/2015.
- The **certificate does not by itself entitle the holder to any other rights mentioned in the Immigration Regulations.**<sup>329</sup>

The certificate also allows the beneficiary and his/her spouse to **apply for an employment licence** (work permit) in Malta and his or her dependants to gain free **access to educational institutions** in Malta but only once the beneficiary obtains the employment licence via regular channels.<sup>330</sup> Dependants other than the spouse are not allowed to take up employment as they would no longer be considered 'economically inactive' under the scope of LN 288/2015. By taking up employment they would no longer benefit from the MRVP status.<sup>331</sup>

An employment licence is issued by Jobsplus<sup>332</sup> following an application by the prospective employer. All non-EU nationals who wish to take up employment in Malta must obtain this licence. Licences are non-transferrable and applicants are not allowed to take up a different job. To receive the licence, the beneficiary must have an employer who can prove that the vacancy cannot be filled by a candidate from the EU, EEA or Switzerland.<sup>333</sup> Only an MRVP beneficiary who has successfully obtained an employment licence and is therefore within the scope of Article 3(1)(b) of the Single Permit Directive<sup>334</sup> would be able to benefit from the right to equal treatment stipulated in Article 12 of the same Directive. These rights include: equal treatment regarding working conditions, freedom of association and affiliation and membership of an organisation representing workers or employers, education and vocational training, recognition of diplomas and other professional certificates in accordance with the relevant national procedure, branches of social security in line with Regulation (EC) No 883/2004, tax benefits (for tax residents), access to public goods, advice services offered by employment offices.<sup>335</sup>

While currently the beneficiary can apply for an employment licence, it is noted that Regulation 12(3) of the Immigration Regulations specifies that third country nationals cannot apply for a licence or a uniform residence permit for employment purposes, nor may they apply to change the nature of the residence permit into one empowering them to seek or take up employment, while they are already in

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<sup>328</sup> Regulation 3 of LN 288/2015.

<sup>329</sup> Regulation 4 of LN 288/2015.

<sup>330</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>331</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>332</sup> <https://jobsplus.gov.mt/employers-mt-MT-en-GB/employing-persons/third-country-nationals>

<sup>333</sup> MRVP, Frequently Asked Questions – Identity Malta: <https://identitymalta.com/wp-content/uploads/2016/05/FAQ-V5.0.pdf>

<sup>334</sup> Directive 2011/98/EU of the European parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0098&from=EN>.

<sup>335</sup> Article 12 of Directive 2011/98/EU.

Malta, save as the Minister may direct in exceptional circumstances. Regulation 12(3) is not yet in force and it is not specified when it will enter into force. If and when it enters into force, third country nationals will no longer be able to obtain an employment licence while maintaining their MRVP status, except in exceptional circumstances that are not further defined in legislation.

While the Identity Malta website claims that the certificate also allows the beneficiary to **freely move around the countries in the Schengen Area** without a visa,<sup>336</sup> this information is misleading as movement is limited by the Convention implementing the Schengen Agreement to 90 days in any 180-day period and subject to conditions.<sup>337</sup>

## (ii) GRP

Rule 2 of LN 167/2013 defines ‘**rights acquired under this law**’ as ‘the right to pay tax at the rate of tax contemplated in Article 56(23) of the [Income Tax] Act and these rules’. Article 56(23) sets out the tax rate of 15 percent for individuals who were granted a special tax status after 1 January 2011. This includes GRP beneficiaries.

Rule 5(1) of LN 167/2013 states that the rate of fifteen cents (0.15) on every euro will apply on any income arising outside Malta in the year immediately preceding the year of assessment which is received in Malta (including income arising outside Malta and received in Malta during the whole of the year in which the special tax status was granted). The **following persons will benefit** from this special tax rate as well as the possibility to claim relief from double taxation:

- the beneficiary;
- the beneficiary’s spouse;
- the beneficiary’s minor children including adopted minor children and children in the care and custody of the beneficiary or of the beneficiary’s spouse or person with whom s/he is in a stable and durable relationship;
- adult children including adult adopted children and children who are in the beneficiary’s care and custody or in the care and custody of the beneficiary’s spouse or the person s/he is in a stable and durable relationship, who because of serious illness are unable to maintain themselves.

Income of the persons listed above, that is not chargeable at the special rate of 15 percent is charged as separate income at the rate of 35 cents on every euro.<sup>338</sup>

In any case, the **minimum amount of tax payable** in terms of the GRP rules in respect of the income arising outside Malta must be EUR 15,000 for any year of assessment. This minimum amount is payable in full in both the year when the special tax status was granted and in the year when the individual ceases to possess the special tax status.<sup>339</sup> In accordance with Rule 5(3)(a) of LN 167/2013, this minimum tax must be paid by the 30 April of the year immediately preceding the relevant year of assessment. The payment must be accompanied by a return made to the Commissioner for Revenue that provides proof that all the requirements of Rule 4 of LN 167/2013 (described in point 1.1 of Section II

<sup>336</sup> See Identity Malta webpage: Malta Residency & Visa Programme (MRVP) guidelines and applications: <https://identitymalta.com/new/malta-residency-visa-program-mrvp-guidelines-and-applications/>.

<sup>337</sup> Article 21, paragraph 1, Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council.

<sup>338</sup> Rule 5(2) of LN 167/2013.

<sup>339</sup> Rule 5(1) of LN 167/2013.

above) continue to be satisfied. The return does not need to be submitted in the year in which the special tax status is granted. Rule 5(3)(b) of LN 167/2013 states that in the case of the year in which the special tax status is granted, where it is evident that the special tax status will not be granted before 30 April, the minimum tax must be paid before the special tax status is granted. In accordance with Rule 5(3)(c) any tax paid is non-refundable.

GRP beneficiaries who apply for the MRVP in line with the requirements of LN 288/2015 or for a uniform residence permit in terms of the Immigration Regulations would benefit from the rights emanating from Article 7 of the Immigration Act as described for the MRVP above.

## 2 RIGHTS GRANTED TO THE INVESTORS' FAMILY MEMBERS

Dependants **under the MRVP** as defined by Regulation 2 of LN 288/2015 are granted the same rights (mentioned in point 1 above) as the main beneficiary. Dependants as defined in Rule 2 of LN 167/2013 that benefit from the same rights as the main beneficiary **under the GRP** are listed in point 1 above.

In addition, as regards **the MRVP**, Regulation 5(4) of LN 288/2015 grants certain rights to dependants following the death of a beneficiary. In exceptional circumstances, the MRVA can determine that the residence certificate will be issued to a dependant of the deceased beneficiary. The dependant must first prove that to the MRVA that all the requirements of LN 288/2015 are satisfied.

As regards **the GRP**, Rule 3(3) of Regulation 167/2013 states that following the beneficiary's death, the special tax status is granted to the dependant of the deceased beneficiary who inherited the property that was the deceased beneficiary's primary residence, or who rents a qualifying rented property immediately after the beneficiary's death and satisfies all the other requirements set out in Rule 4 of LN 167/2013 (as described in point 1.1 of Section II above). The special tax status can only be transferred once the said dependant proves to the Commissioner for Revenue that the GRP requirements are satisfied.

## 3 OTHER BENEFITS

The **MRVP beneficiary** may benefit from special tax regimes. Taxation of MRVP beneficiaries depends on whether the individual is resident in Malta for the country's income tax purposes. Under the Income Tax Act (Article 4), an individual is not tax resident in the country if he or she spends less than 183 days in Malta.<sup>340</sup> They are however deemed resident for tax purposes if their spouse is ordinarily resident and domiciled in Malta.

If resident, the individual will be subject to tax on income and capital gains arising in Malta and on foreign income that is remitted to Malta. Progressive tax rates of 0 - 35% apply for income over EUR 60,000 and individuals may claim relief to avoid double taxation.

If the MRVP beneficiary is not tax resident in Malta, they are subject to a tax on capital gains arising in Malta at a flat rate of 35%.<sup>341</sup> Capital gains under Article 5 of the Income Tax Act include gains or profits arising from (1) any transfer of the ownership or use of real estate; (2) the sale of any rights over any securities, business, goodwill, business permits, copyright, patents, trademarks and trade-names and any other intellectual property; 3) a transfer of the beneficial interest in a trust.<sup>342</sup> Any foreign income remitted to Malta is taxed at a flat rate of 15%.

No benefits additional to those mentioned in points 1 and 2 of this Section apply for **GRP beneficiaries**.

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<sup>340</sup> Income Tax Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658>

<sup>341</sup> Advisory Corporate Tax, Residence Programmes in Malta: A comparative analysis: [http://act.com.mt/media/images/active/downloads/Comparative%20Analysis\\_inc.%20MRVP\\_Final.pdf](http://act.com.mt/media/images/active/downloads/Comparative%20Analysis_inc.%20MRVP_Final.pdf)

<sup>342</sup> Income Tax Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8658>

#### IV. INTERACTION BETWEEN RESIDENCE AND CITIZENSHIP SCHEMES

MRVP targets applicants who are interested in residence rights and not in citizenship. Such applicants commonly come from countries that do not accept dual citizenship, e.g. China.<sup>343</sup>

Given that the requirement for ordinary naturalisation in Malta is five years, the MRVP alone does not suffice for attaining citizenship under the ordinary naturalisation procedure.<sup>344</sup> The status of an MRVP beneficiary is terminated when the beneficiary no longer meets the MRVP requirements. This includes cases where the termination of status occurs because the beneficiary becomes a Maltese, EEA or Swiss national or because an extended period of legal and continuous residence in Malta may lead the individual to acquiring a different status (e.g. long-term residence).<sup>345</sup> Hence the beneficiary's MRVP status is discontinued. The newly acquired status, along with lawful and continuous residence, could potentially complement the length of time spent under MRVP for the purposes of ordinary naturalisation.

There is no formal link between the MRVP managed and administered by the MRVA and Malta's Individual Investor Programme that is managed and administered by Identity Malta. Beyond the fact that accredited agents can act for the purposes of both programmes,<sup>346</sup> the two programmes are completely separate and distinct. In practice, the qualifying investment of EUR 250,000 under the MRVP (see point 2 above) can be retained for the purposes of an application under the Individual Investor Programme described in Deliverable B1 for Malta.<sup>347</sup>

Statistical data on the number or percentage of third country nationals who obtained citizenship on the basis of investors' residence permits is not available as there is no such link between the MRVP and the Individual Investor Programme. There are no cases of MRVP beneficiaries who applied for the Individual Investor Programme.<sup>348</sup>

Regulation 6 of LN 288/2015 and Regulation 4 of LN 47/2014 respectively stipulate that GRP beneficiaries can apply for the MRVP and the Individual Investor Programme subject to satisfying all the additional eligibility requirements<sup>349</sup> of the programme in question. There is no information as to how many GRP beneficiaries, if any, have applied or been granted citizenship under the Individual Investor Programme.

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<sup>343</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>344</sup> Advisory Corporate Tax, Residence Programmes in Malta: A comparative analysis, [http://act.com.mt/media/images/active/downloads/Comparative%20Analysis\\_inc.%20MRVP\\_Final.pdf](http://act.com.mt/media/images/active/downloads/Comparative%20Analysis_inc.%20MRVP_Final.pdf)

<sup>345</sup> Regulation 9 of LN 288/2015.

<sup>346</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>347</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>348</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>349</sup> The additional requirements with respect to the Individual Investor Programme are described in Deliverable BI.

## V. ECONOMIC AND FINANCIAL EFFICIENCY OF RESIDENCE PERMITS FOR FOREIGN INVESTORS

There are no mechanisms in place to monitor the economic impact and financial revenues from investors who have been granted residence.

There is no publicly available information that would allow a determination of whether the MRVP and GRP have met the expectations for which they were created. There are no studies assessing their economic and financial efficiency.

The **financial disbursements required** for the purposes of the MRVP and GRP are described in detail in point 2 of Section II above and the examples provided there are repeated below:

- The exact amount of money required to obtain the residence certificate **under the MRVP** depends on the specific circumstances e.g. whether the application includes dependants or not and whether the qualifying property is owned or rented as well as the location of this property. By way of example, in the case of an application by a main applicant with a qualifying owned property in Malta and no dependants the total disbursement required would amount to EUR 600,000 (EUR 30,000 (contribution) + EUR 320,000 (property) + EUR 250,000 (investment)). Taking this example, and based on the 29 successful applications from **2016** it is possible to state that this entails a total expenditure of **EUR 17,400,000** broken down as follows:
  - Contribution: EUR 30,000 x 29 = EUR 870,000
  - Property: EUR 320,000 x 29 = EUR 9,280,000
  - Investment: EUR 250,000 x 29 = EUR 7,250,000

The 83 successful applications from the **2017** applications that have been considered to date entail a total expenditure of **EUR 49,800,000** broken down as follows:

- Contribution: EUR 30,000 x 83 = EUR 2,490,000
  - Property: EUR 320,000 x 83 = EUR 26,560,000
  - Investment: EUR 250,000 x 83 = EUR 20,750,000
- The exact amount of money required to obtain special tax status **under the GRP** also depends on the specific circumstances namely, where the qualifying property is situated and whether it is a qualifying owned property or a qualifying rented property. By way of example, in the case of an application by a beneficiary with a qualifying owned property in Malta, the total disbursement required would amount to EUR 281,000 (EUR 275,000 (property) + EUR 6,000 (administrative fee)).

The total amount of **funds collected through the MRVP** in 2016 amounted to EUR 521,000; in 2017, EUR 3,776,000 and in January 2018 (1 – 31 January), EUR 586,000. Hence from the start of the programme to 31 January 2018 a total of EUR 4,883,000 has been collected.<sup>350</sup>

Any net surplus of funds from the contribution are transferred to the Consolidated Fund (established by Article 102 of the Constitution of Malta) every quarter.<sup>351</sup> 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.<sup>352</sup> 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.

As regards the **GRP** it is noted that the Press Release announcing the launch of the programme to

<sup>350</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>351</sup> Information obtained through stakeholder consultation with MRVA representative on 7 March 2018.

<sup>352</sup> Article 102(1) of the Constitution of Malta.



stakeholders was accompanied by the caption ‘**A Programme that will give a strong boost to various economic sectors of Malta**’.<sup>353</sup> The Minister responsible for the economy stated that the GRP

‘gives a strong boost to various economic sectors leading to Economic Growth. The Global Residence Programme will be revitalizing the property sector by increase property purchase in our country, especially that of a certain value, allowing the country to get more money in taxes, increasing work, even to professionals in this sector such as lawyers and tax consultants and it will also help the Financial Services industry, the leisure and hospitality industry.’<sup>354</sup>

The GRP was also presented as a programme that would incentivise investments in the south of Malta and Gozo. This is done by setting lower thresholds in relation to the cost of the qualifying property and a lower administrative fee (see point 2 of Section II above) and through promotional material.<sup>355</sup>

While there is **no data on the financial impact of the GRP** it is reasonable to assume that it has a considerable impact on the property market. Immovable property in Malta has steadily increased in price and presumably the GRP, MRVP and the Individual Investor Programme (described in Deliverable BI) are driving forces behind this. These programmes also have an impact in terms of a revenue stream for real estate agents, lawyers, accountants and other non-public bodies that act as approved agents or mandatories of the applicants.

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<sup>353</sup> Ministry for the economy, ‘Global Residence Programme is Launched’: <https://economy.gov.mt/en/globalresidence/Pages/home.aspx>

<sup>354</sup> Ministry for the economy, ‘Global Residence Programme is Launched’: <https://economy.gov.mt/en/globalresidence/Pages/home.aspx>

<sup>355</sup> See e.g. ‘The Global Residence Programme - Gozo as an Exclusive Residence Destination’: <https://economy.gov.mt/en/globalresidence/Documents/Gozo%20as%20an%20Exclusive%20Residence%20Destination.pdf>