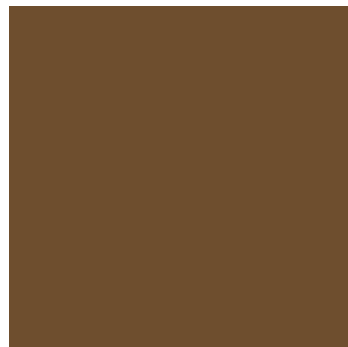


THE MALTESE COMPANIES

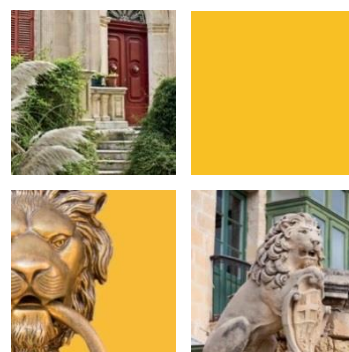
AN OVERVIEW



mandaris 

Although the smallest member of the European Union (EU), Malta is a leading European financial centre and is one of the most cost-effective onshore jurisdictions in Europe to form a company. Malta is fully OECD and FATF compliant, has a robust regulatory and legal system and boasts one of the lowest effective corporate tax rates in Europe. In Malta, business entities are typically structured either by forming a limited liability company or as a partnership.

TYPES OF COMPANY: THE PRIVATE LIMITED AND THE PUBLIC COMPANY



A company may be established as a private company or a public company. In both cases the shareholders liability will be limited to the amount they contribute to the formation of the company. The Companies Act, 1995, sets out the governing law and all companies are formed by being registered with the Malta Business Registry.

Private Limited Company

A private limited company is most frequently used by investors in Malta, and has the suffix 'Limited' or 'Ltd'. This type of company normally has a minimum of two and not more than fifty (50) shareholders and a minimum registered share capital of EUR 1,164.69, which shall be at least 20% paid up.

A private limited company is required to appoint auditors and have their annual accounts audited. Where all individual shareholders of a private limited company are qualifying shareholders, i.e. having completed their educational studies at least at MQF Level 3 or an equivalent level as recognised by the Malta Qualifications Recognition Information Centre on a date being not earlier than three years from the date of the registration of the company, and the annual turnover of the company does not exceed EUR 80,000 or a pro-rata amount if the relevant accounting period is a period other than twelve months, the private limited company is eligible to apply for an audit exemption for the first two accounting periods after its incorporation.

A private limited company may also be formed with only one shareholder and is then known as a 'Single Member Company'. Such companies may also qualify as a private exempt company under certain conditions: having a specific trading activity, having restrictions on the number of persons holding debentures of the company and ensuring that no corporate bodies are appointed as directors. The sole director and company secretary of a single member company may be the same person. Private exempt companies shall be able to produce abridged balance sheets and profit and loss accounts, and are not required to have audited accounts, they are therefore exempt from

producing an auditors' report. The directors of the company may deliver to the Malta Business Registry abridged annual accounts in respect of an accounting period.

The shares of the private limited company may be held through a licenced Trustee & Fiduciary, such as Mandaris Trustees (Malta) Ltd. as nominee shareholders. Otherwise the shareholder's information must be registered with the Malta Business Registry. There shall also be at least one director, either a natural person or a corporation licensed as Corporate Director and at least one company secretary who shall be a natural person. The directors may or may not be shareholders of the company.

There are no restrictions on the nationality, residence or domicile of the directors, company secretary or shareholders of a Maltese company, but we generally recommend to have a majority of local directors.

Public Company

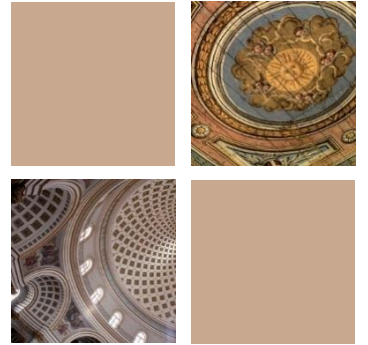
This type of company has the suffix plc and may trade its shares or bonds to members of the public, but must be registered in order to do so and the issue accompanied by a prospectus. The articles of the company shall set out the rights to transfer shares (which shall not be restricted) and other conditions, such as how members of the public may purchase such shares. Public companies must have a minimum of two directors and a company secretary, who is a natural person. The directors may or may not be shareholders of the company. The share capital of a PLC must be at least EUR 46,587.47, and at least 25% of that capital should be paid up on formation.

All Maltese companies must have their registered office address situated in Malta and must produce annual audited financial statements, which are to be filed with the Malta Business Registry. As of 1st January 2018, all companies, including private companies, registered in Malta, are required to maintain a Register of Beneficial Ownership in accordance with EU Directive 2015/849. As from 1st January 2020, the request for access to information on the beneficial owner of a company

shall be made only to the Malta Business Registry by national competent authorities with designated responsibilities for combating money laundering and terrorist financing; subject persons in terms of PMLFT and any person or organisation that upon written request can demonstrate a legitimate interest in accordance with data protection requirements. The general public may also have access to the beneficial ownership register of companies however they are privy only to the name, the month and year of birth, the nationality, the country of residence and the nature and extent of the beneficial interest of the beneficial owner. Access may be partially or fully restricted where it is shown by means of documentary evidence that the release of information to the general public on the beneficial owner would endanger the beneficial owner for example

exposing them to disproportionate risk, risk of kidnapping, extortion etc. or where the beneficial owners are minors or legally incapable. When incorporating a company, at least two directors (with the exception when only one director is appointed) shall identify the Ultimate Beneficial Owner and indicate the beneficial interest in the company, reporting it to the Registrar of Companies, who in turn proceed with the registration. Any person who believes himself to be an ultimate beneficial owner of a company must communicate the necessary information to the company without delay and prior to the submission of the form to the Registrar of Companies. The registrar will hold the information regarding the beneficial ownership for a period of 5 years after the company has been dissolved or otherwise struck off the register.

THE HOLDING COMPANY OR TRADING COMPANY



Aside from the formalities of private limited or public company, it is also necessary to determine, within the objects clause, whether the company shall be constituted as a holding or trading company.

to allow for tax grouping, minimize exposure to double taxation and to avail itself of other incentives including the participation exemption (see section Taxation).

A holding company is formed with the purpose of holding shares in other companies or other assets such as real estate, cash, moveable property, securities or intellectual property either within or outside of Malta. The advantage of a Malta holding company is that it may be used for a variety of fiscal and non-fiscal objectives for example, to distribute the income generated to the shareholders at a tax effective rate, to separate certain assets from the trading operations of group, implement repatriation strategies,

A trading company, on the other hand, may conduct business anywhere in the world, including of course Malta and may carry out any activity including buying and selling commodities, acting as agent or representatives, providing consultancy or advisory services, ecommerce, i-gaming, financial services or investments services etc. Some activities may however be regulated and licensable by the Malta Financial Services Authority (MFSA) or Malta Gaming Authority (MGA).



PARTNERSHIPS

It is possible for a business structure to take the form of a partnership in Malta, whereby two or more members own and operate a business with the purpose of generating a profit. Under Maltese law, a commercial partnership may be either a partnership en nom collectif (general partnership) or a partnership en commandite (limited partnership).

The partnership is created via a Deed of Partnership which sets out the names of the partners, as well as, the objects of activity. An en nom collectif (general) partnership may be formed by two or more partners, individual persons and/or a corporate body, having all general obligations guaranteed by the unlimited, joint and several liability of all general partners. Provided that none of the general partners is either an individual, nor a limited liability company, it is no longer necessary for the obligations of the general partners to be guaranteed by unlimited liability.

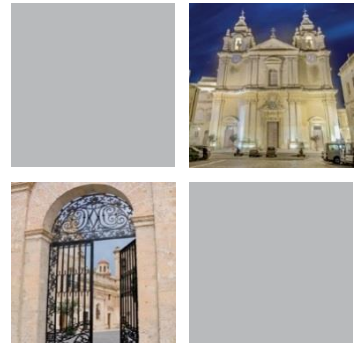
An en commandite (limited) partnership shall appoint general partners and limited partners, being individual persons or corporate bodies. The limited partners shall have their liability limited to the amount of their unpaid contributions, whereas the general partners shall be unlimited, joint and severally liable. Where a general partner is a body corporate, at least one shareholder in the company would be required to guarantee, with unlimited liability, all

of the obligations of the general partner with regard to the undertakings of the partnership. In the event that none of the partners is either an individual, nor limited liability company, it is no longer necessary for the obligations of the general partners to be guaranteed by unlimited liability. A partnership deed for a limited partnership must also specify who are the general partners and who are the limited partners. In default, the partnership shall resolve itself into a partnership en nom collectif (general partnership). Such partnerships must draw up yearly accounting records but are usually not subject to audit.

It should be noted that, if all the partners in an en nom collectif or all the partners in an en commandite are corporate bodies with limited liability, the partnership must notify the Registrar of Companies and such a partnership shall be subject to the obligation of drawing up audited accounts, similar to a limited liability company. Upon dissolution, such partnerships, must appoint a liquidator, and the procedure of dissolution and winding up follows that applicable to limited liability companies.

The capital of a limited partnership may be divided into shares. Both types of partnership must have an office in Malta, if they are to be registered in Malta.

EUROPEAN ECONOMIC INTEREST GROUPING (EEIG)



Aside from your typical company, small to medium enterprises may take advantage of business opportunities via a European Economic Interest Grouping (EEIG) granting easier access to the European Single Market. SMEs can pool resources, knowledge and capital through an EEIG to approach more customers and diversify risk.

Key features:

- Separate legal personality
- Operate anywhere within any EU member state
- Two formation requirements:
- Contract of Formation
- Registration with the authority in the designated Member State
- Registration does not require the deposit of share capital
- Regulated in Malta, by Malta Financial Services Authority under Subsidiary Legislation 386.08 Companies Act (European Economic Interest Grouping) Regulations (2004)

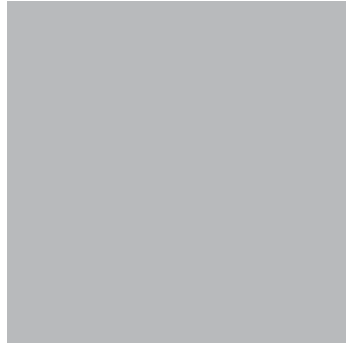
- Can redomicile easily to another EU Member State.
- Must have a cross-border element, involving activity in different Member States.
- Formation fee of EUR 245 payable to the MFSA.

The EEIG enables businesses to operate throughout Europe via a legal contract through Council Regulation (EEC) No 2137/85 and as such interest in the EEIG is increasing.

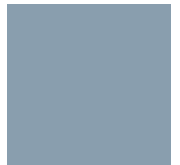
The EEIG is formed by a contract of formation and is registered locally with the MFSA. The grouping has separate legal personality, whose purpose is to support the economic activities of its members. The EEIG can operate in any EU Member State. Similar in nature to a partnership the EEIG members have 'unlimited joint and several liability for its debts and other liabilities'. However since the members may be either individuals or legal entities (or both) the use of an interposing vehicle such as limited liability company between the EEIG and the individuals can reduce this risk. When an EEIG involves only natural persons as members those members must be providing a service or carrying out an activity in different member states.

The process of redomiciling an EEIG to another Member State is swift and involves submitting a transfer application to the authorities, which is usually processed within two months. This is

a significant advantage, which allows the grouping to quickly take advantage of economic developments elsewhere within the EU.



TAXATION OF MALTESE COMPANIES



Corporate Tax

Since May 2004, the Maltese Islands have been a full EU member state. Naturally, this means that the Maltese company is a superb vehicle for international business. Malta has an extensive network of over 70 double taxation treaties, and as an EU Member State Malta has adopted the EU Parent-Subsidiary Directive and the Interest and Royalties Directive.

In terms of Maltese law, a company which is registered in Malta is automatically deemed to be 'ordinarily resident and domiciled' here for Maltese tax purposes and would therefore be subject to tax on its income and chargeable gains in Malta on a worldwide basis, at a rate of 35%, irrespective of where the management and control is located. A company which is formed outside of Malta, but which is managed and controlled in or from Malta, may be considered as a tax resident in Malta (though not ordinarily resident or domiciled). In these circumstances the tax liability is limited to chargeable income or gains earned, derived or realised in Malta; foreign sourced gains would not be taxed in Malta.

This gives rise to favourable tax planning opportunities for dividends received from a participating holding, capital gains arising from the disposal of a participating holding, dividends from non-participating holdings, and trading income and passive income (interest, royalties etc.).

The shareholders of a Maltese company (which includes a Maltese holding company) may be able to benefit from significant tax refunds based on the imputation tax system, the refunds may be claimed as soon as the company distributes a dividend to its shareholders.

The following types of tax refund may be claimed by the

shareholders:

1. full Malta tax refund
2. 6/7ths Malta tax refund
3. 5/7ths Malta tax refund
4. 2/3rds Malta tax refund

In essence, the tax rate in Malta can be effectively reduced to between 0-5%. Passive interests in royalties would amount to an applicable rate of 10%. When utilising double taxation relief or Flat Rate Foreign Tax Credit (FRFTC), the income will be subject to a refund of 2/3rds.

100% Refund for participating holdings and participating exemptions.

The Budget Measures Implementation Act, 2018 (the 'Act') allows for a Maltese company that derives income and capital gains from a participating holding, to qualify for a full refund of the tax paid in Malta when distributions are made to the shareholders. The legislation also includes a participation holding in other entities, such as companies including domestic holding of shares and capital gains, derived from the transfer of a participation holding in a Malta company as well as collective investment schemes, European Economic Interest Grouping (EEIG), partnership en nom collectif and en commandite whether or not such entities elect for tax purposes to be treated as companies.

Participation Holdings

A Malta holding company would qualify as having a 'participation holding' in a subsidiary where the following conditions are met:

1. The Maltese company holds at least 5% of the shares of a subsidiary, which confers an entitlement on 5% of any two of the following criteria:
 - a. Right to vote; and /or
 - b. Right to profits on distribution and/or
 - c. Right to available assets for distribution on winding up of the company, partnership, CIS or EEIG; and
2. The subsidiary does not own or have rights over immovable property situated in Malta and does not directly or indirectly own interests or shares in an entity which owns immovable property situated in Malta; and
3. At least one of the following additional conditions are satisfied:
 - a. The Maltese entity holding the equity holding also has a right to acquire the remaining share capital of the subsidiary; or
 - b. The Malta entity holding the equity in the subsidiary has pre-exemption rights in the case of disposal, cancellation or redemption of the remaining shares; or
 - c. The Maltese entity holding the equity in the subsidiary is entitled to sit on the board of the subsidiary or appoint one member of the board of the subsidiary; or
 - d. The equity holding represents a total value of €1,164,000 (or foreign equivalent) and that holding is for an uninterrupted period of not less than 183 days; or
 - e. The holding is an equity holding, the purpose of which is for the furtherance of its own business and not held as trading stock or for trading purposes.

Claiming the participation exemption on capital gains

A company registered in Malta that derives a capital gain from a qualifying participation holding in a company (whether or not a resident in Malta), CIS, partnership or EEIG which arises from the transfer or disposal (in whole or part) of the said holding may claim an exemption on that gain. Therefore, a company electing for a participation exemption shall not pay any income tax on that gain.

Claiming the participation exemption on dividends

A Malta holding company shall be entitled to an exemption from income tax on any dividends received from a participation holding in a non-resident subsidiary, provided it qualifies under one of the following conditions:

1. The holding is in an entity or individual resident or incorporated in an EU country; or
2. The dividend has been subject to foreign tax of at least 15%; or
3. The holding does not derive more than 50% of its income from passive interest or royalties; and

If the above three conditions are not met, then the following two criteria must be satisfied cumulatively:

1. The holding is not a portfolio investment and the non-Malta resident entity has been subject to tax of at least 5% (for this purpose a holding of shares by a company registered

in Malta in a non-Maltese entity which derives more than 50% of its income from portfolio investments is deemed to be a portfolio investments);

2. The entity in which the participation holding is held or the said entities passive interest or royalties have been subject to foreign tax at a rate of not less than 5%.

Non-qualifying holdings

In situations where a holding does not qualify as a participation holding then any gains or dividends shall be taxed at a rate of 35%. Nevertheless, the shareholder may claim a refund of 6/7ths upon distribution of a dividend, giving rise to an effective tax rate of 5%.

6/7ths Refund for active income

In cases where a dividend is paid to the shareholders from a trading company, such shareholders are entitled to claim a refund of 6/7ths of the Malta tax, paid by the company which resultantly makes for an effective rate of tax in Malta of 5%. Shareholding can be held by individuals directly or through a Maltese parent.

The scope of qualifying under such a refund system has been widened somewhat, to include overseas branches established in Malta, non-Maltese resident companies carrying out activities in Malta and also companies which are neither incorporated nor resident in Malta, provided that such companies are registered with the local tax authorities.

5/7ths Refund for passive interest and royalties

In cases where the underlying profits from which a dividend is distributed are derived from passive interest or royalties, the shareholders may apply for a refund of 5/7ths of the Maltese tax paid.

The six-sevenths and five-sevenths refunds shall be applicable only if the distributions are made by the company which did not claim any form of double tax relief.

2/3rds Refund

A Malta registered company may claim a refund of 2/3rds of the tax paid on distributions that are made out of the Foreign Income Account (consisting of income principally derived from investments outside of Malta) and the profits are subject to a claim of double taxation relief. The refund is dependent upon the type of double taxation relief applied and relates only to tax paid in Malta.

This refund is usually relevant in situations where the Malta Company distributing the dividends has taken advantage of one of the forms of double taxation relief such as treaty relief, unilateral relief or the Flat Rate Foreign Tax Credit (FRFTC).

Processing of Refunds

The registered shareholder may claim a refund not less than 14 days following the end of the month in which the refund is due. Usually, the shareholders shall receive the refund between 2-4 months after tax has been paid by the underlying company.

Beneficial owners may wish to defer the receipt of dividends and tax refunds and in doing so, usually, incorporate a two-tier company structure, involving a Malta Holding Company and a

Malta Trading Company. The dividends and refunds from the Malta Trading Company are received by the Malta Holding Company and no further taxes are applied. The beneficial owners may then choose to retain the funds in the Malta Holding company, re-allocate the funds back into the Malta Trading Company, or distribute as dividends to the ultimate beneficial owners as may be required.

Further tax benefits

Apart from the tax refund incentives above, companies registered in Malta can enjoy the following benefits:

- No withholding taxes on interest and royalties to non-residents
- No withholding tax on dividend payment
- No capital duties or wealth taxes
- No transfer pricing rules

Taxation of Partnerships

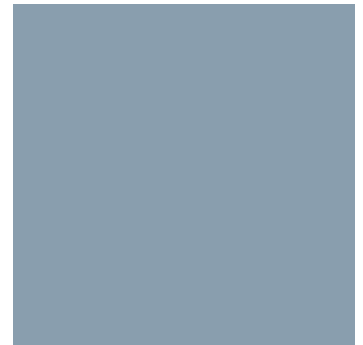
In general, partnerships, are considered tax transparent

entities. However, a partnership en commandite (limited partnership) with its capital divided into shares shall be treated as if it were a company for Maltese income tax purposes.

A partnership en nom collectif (general partnership) is considered transparent for tax purposes. The partners shall each declare their profit in their personal tax returns. Tax is therefore chargeable according to the applicable personal tax rates.

Taxation of a European Economic Interest Grouping (EEIG)

The taxation of an EEIG is transparent. The grouping itself is not subject to tax but rather net income is taxed at member level. Accordingly, national tax laws apply and members need only consider the tax implications in their place of domicile or establishment. The EEIG may however opt to be taxed as a company in which case the local Maltese corporate tax rates and conditions would apply



CONTINUATION OF FOREIGN COMPANIES IN MALTA

The Companies Act, 1995 permits foreign companies to migrate to Malta and can therefore benefit from the favourable corporate tax regime. The continuation in Malta enables access to a variety of attractive incentives, including the Maltese tax refund system, participation exemption, Malta's extensive double tax treaty network and access to a flourishing and regulated financial market.

As long as the existing jurisdiction, as well as the company's charter, memorandum or statute allow for the transfer of domicile of a company, any company can migrate to Malta. Thus consideration of the applicable laws in the current jurisdiction should be made prior to any application being made. The Redomiciliation, Continuation and Migration is regulated by the Continuation of Companies Regulations, 2002.

The following documents should be prepared and submitted in original:

A formal request of the directors to the Registrar of Companies that the company wishes to redomicile to Malta, accompanied by the following documentation:

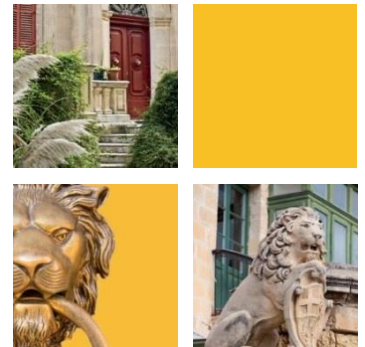
1. An extraordinary resolution of the members of the foreign company authorising it to be continued in Malta;
2. A revised copy of the Memorandum and Articles of Association in terms of the Companies Act, 1995;
3. A current Certificate of Good standing or equivalent which shows that the company is in compliance with the existing registry requirements;
4. A declaration signed by at least two directors (or by the sole director) which must contain
 - a. the name of the foreign company and the name under which is to be continued in Malta;
 - b. The jurisdiction under which it is incorporated;
 - c. the date of incorporation;
 - d. the decision of the members of the company to be

- continued in Malta;
 - e. that notice has been given by the foreign company to the relevant Authority of its intention to continue in Malta, in accordance with the foreign law, an evidence of such notification is to be attached;
 - f. Confirmation that no proceedings for breach of foreign law have commenced against the foreign company unless such proceedings have arisen out of an event which on the date of its occurrence did not constitute such breach;
 - g. A declaration signed by at least two directors confirming the solvency of the foreign company and that they are not aware of any circumstances which would negatively affect the solvency of the company within a period of twelve months;
5. A list of directors and of the secretary (if any);

- 6. Legal opinion confirming that re-domiciliation is allowed by the laws of the foreign jurisdiction;
- 7. Documentary evidence confirming that the consent of the creditors has been sought.

The Registrar of Companies will review the submitted documentation and in the case these are to their satisfaction, will issue a Provisional Certificate of Registration. Once the Provisional Certificate is issued, this would need to be submitted to the Foreign Authority who subsequently issues a Deletion Certificate. This Certificate then has to be provided to the Register of Companies for permanent registration in Malta. Mandaris supports companies in the application procedure providing advice to the migrating company in its existing jurisdiction, as well as in Malta.

INHERITANCE OF SHARES AND PROBATE



The inheritance of shares in a company, not listed on the Malta Stock Exchange, requires a *causa mortis* declaration, via public deed which is created by a Notary Public, who registers the declaration in the Public Registry in Malta. A share transfer in a Maltese company following a death shall always be registered with the Register of Companies in Malta (MFSA); this is a formality which needs to be followed irrespective of whether a person has a will or is intestate. Further, there is also no difference as to whether the shares in a Maltese company are owned by a Maltese resident or not.

When a trust is holding the shares of a company, the advantage of a trust is that it may be used to negate the expense and lengthy exercise relating to the process of probate in Malta or overseas, to preserve the assets until a minor is of an age of majority and/or allow for the disposition of assets to the settlor's heirs without those assets being transferred immediately upon the settlor's death. In the case of holding of shares in a Maltese company, ideally a Maltese trust or Will shall be put in place, clearly stipulating to whom the shareholder is bequeathing the shares. A Will or Testament is a legal declaration by a person, the testator, which provides for the transfer and distribution of his/her property upon death. A Will may contain dispositions by universal title and dispositions by singular titles. A disposition by universal title indicates that the testator bequeaths to one or more persons the whole of his/her property or a portion thereof and has nominated his heirs. All other dispositions are referred

to as singular title and those receiving such property are known as a Legatee. Upon the demise of the shareholder, a testamentary search will show that this Will has been made to regulate the said shares. Ideally, any other Will in other jurisdictions should also have dispositions reflecting the same intention (to avoid conflicting dispositions in Wills).

Probate is the judicial process assessing the validity of a deceased's Will in court and is the process by which the claims over the estate of the deceased are resolved and distributed under a valid Will or Testament. A probate court shall interpret the Will or Testament and determine whether it is valid and if so shall grant approval known as granting of probate to the executor (as legal representatives empowered to dispose of the testator's estate). The probated Will shall be classified as a legal instrument under the courts of law.

EU Regulation 650/2012 on international successions provides a framework for those persons who have private and financial interests in at least two countries, within and outside the European Union. This regulation applies only to successions opened from 17 August 2015 and regulates all aspects of a succession, including administration and disposition of property. The regulation proposes that unless provided for in the Regulation, the law of the last habitual residence of the deceased at the time of death shall designate both the competent jurisdiction to preside on the entire succession and

the applicable law to a succession. However a person may decide the law to govern his/her succession as the whole law of the State, whose nationality he/she possess during the time at which the Will is created or at the time of death. In the case that the person possess multiple nationalities, the validity of the determination of law of the State shall be expressly stated in a Will drawn up and produced validly in the country where it is created. The regulation provides for the creation of a European

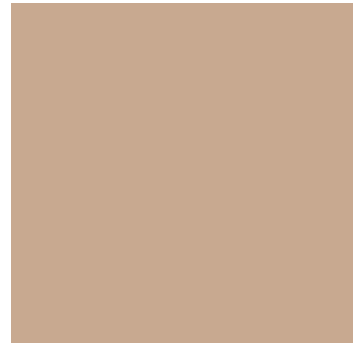
Certificate of Succession, intended to simplify the process of succession for heirs and as such the European Certificate of Succession is recognised in all Member States. It should be noted that the regulation expressly prohibits succession relating to donations, life insurance contracts, tontines, trusts, matrimonial property regimes, maintenance obligations and the nature of rights in rem and taxation.

GOVERNMENTAL COSTS

The fees levied by the Malta Business Registry for a company registration are depending on the authorised capital or total contributions starting with EUR 245 when the authorised capital or total contributions do not exceed EUR 1'500. The registration of an EEIG costs EUR 1'000. In addition to the one time registration fee, the authority also charges annual return fees, which are based on the share capital of the company, starting at EUR 100, EUR 2'400

for companies with a share capital exceeding EUR 2'500'00. The schedule of fees can be found in the Companies Act (Fees) Regulations, 2009.

For the continuation of a company in Malta, the Registrar charges EUR 1'000.00 for the issuance of the Continuation Certificate as well as the relative fees based upon the share capital of the company.



MANDARIS' SERVICES

Mandaris offers a wide range of services for your business needs including:

- Turn-key setup of the company for holding, trading and licensing purposes, as well as back office and administration of the same
- Domiciliation, directorship, shareholding and corporate secretary, liquidation services, as well as provision of a liquidator
- Corporate governance advice
- Asset monitoring, consolidation of bank reporting, asset managers etc.
- Accounting and Corporate Tax, VAT registration and refunding
- Redomiciliation or establishing a branch in Malta

In addition, Mandaris also provides support and advise with regards to tax, legal and compliance tailored to the specific needs of your company.

Please do not hesitate to contact us if you have any questions or queries.