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EMBASSY OF
THE REPUBLIC OF MALTA

THE HAGUE

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The Embassy of the Republic of Malta in The Hague presents its compliments to the Ministry for Foreign Affairs of the Kingdom of the Netherlands and has the honour to enclose herewith a position paper by the Government of the Republic of Malta concerning the granting of Maltese Citizenship by Investment. The Embassy wishes to inform that this matter will be discussed at the European Parliament on 15th January 2014 and is therefore providing through this document information on the mechanism and the provisions on the procedures by which the Programme for granting Maltese Citizenship by Investment will be implemented and operated by the Government of Malta.

The Embassy would highly appreciate if this document is brought to the attention of the pertinent official/s at the Ministry of Foreign Affairs of the Netherlands that would be dealing with the subject-matter.

The Embassy of the Republic of Malta in The Hague avails itself of this opportunity to renew to the Ministry for Foreign Affairs of the Kingdom of the Netherlands the assurances of its highest consideration.



6th January 2014

Ministry for Foreign Affairs of the Kingdom of the Netherlands
The Hague

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DRAFT POSITION PAPER/BRIEFING ON CITIZENSHIP BY INVESTMENT

THE POSITION OF THE EUROPEAN COMMISSION AND ECJ

It has been repeatedly acknowledged by the European Commission¹ and widely recognised at law² that the grant of citizenship is exclusively the competence of the granting state [established in Micheletti case by the European Court of Justice³]. In its simplest terms, it is the exclusive sovereign right of a nation to determine how it should grant citizenship.

Interpretation: If any member state feels that Malta has acted illegally and wishes to establish that the grant of citizenship IS NOT the exclusive right of a member state, but that instead, they or other member states may IMPOSE their will upon others in this regard, they are free to test this principle at law.

THE FACTS SO FAR

It is factually incorrect to say that the Maltese Parliament has made any provision for the sale of citizenship. The Maltese Parliament made amendments to the Citizenship Act to make allowance for the possible introduction of a mechanism whereby those who make a significant and lasting contribution to Maltese economy and society may be granted citizenship. The conditions and regulations of this programme were published on December 24th 2013⁴. Bi-lateral discussions with the opposition Nationalist Party broke down, however the regulations are the result of a significant consultation with key national stakeholders including The Chamber of Commerce, Finance Malta and Malta Employers Association.

THE PROGRAMME

In essence, the programme requires three tiers of investment;

- A substantial non-refundable contribution to the National Development and Social Fund of €650,000; **and**
- A commitment to retain a residence in Malta for a period of at least 5 years (€350,000 purchase value or €16,000 annual rent value); **and**
- An investment of €150,000 in Government approved financial instruments

DUE DILIGENCE

Applicants will undergo four tiers of due diligence and will not be granted citizenship before at least 6 months have elapsed from the date their application is submitted to Identity Malta. These tiers include;

- Database and public search (including World Check)
- Independent due diligence and verification checks on the background of applicants
- Risk weighting assessment of applicants
- MFSA level background checks

¹ <http://ec.europa.eu/avservices/video/player.cfm?ref=I083551>

² see e.g. Brownlie: Principles of Public International Law, 7th Edition, pp 383-385; Donner: The Regulation of Nationality in International Law, 2nd Revised edition, p 17

³ ECJ C-369/90 (1992) ECR I-4239 see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61990J0369

⁴ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25863&l=1>

Identity Malta will be responsible for ensuring that all applicants are worthy of Maltese Citizenship. Additional checks are available to Government through forces of Law and Order, and Identity Malta has the option to interview applicants prior to reaching a decision.

MALTA'S INTENTIONS WITH THE MIIP

It is Malta's intention to attract and retain highly talented and successful individuals to make a lasting contribution to the Maltese economy and society. In this, we are not unlike any other member state or indeed any other nation who takes seriously the obligation of Government to create prosperity for its people and to attract global talent to its shores.

Through the creation of the National Development and Social Fund, Government intends to use the investment for the advancement of education, research, innovation, social purposes, justice and the rule of law, employment initiatives, the environment and public health.

Through the attraction of these individuals, it is intended that further jobs and direct investments will be brought to the Maltese economy as these new citizens introduce their networks, know-how and capital to our nation.

WHERE WILL THESE PEOPLE COME FROM?

It is anticipated that because of the existence of freedom of movement within the European Union, it is unlikely that applicants will come from other member states. It is expected therefore that applicants will more likely come from regions such as Asia, North and South America, and the Middle East and Gulf. We will respect international law with regard to sanctions that are imposed by the international community. We will not be drawn on specific answers to questions on individual countries – however our assessment of the potential risks associated with applications from any country will be an important feature of our consideration of any application.

WHAT KIND OF PEOPLE?

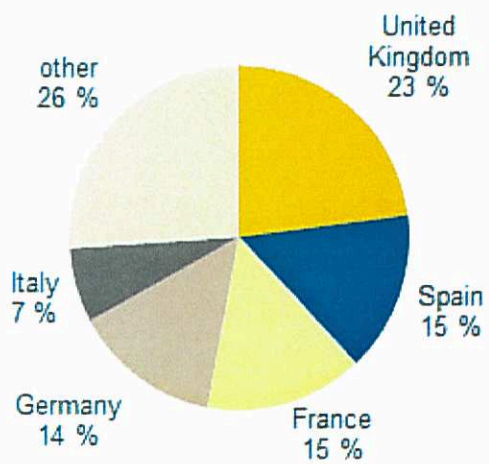
The programme is limited to a maximum of 1,800 applicants. Malta has the right to choose who may be granted citizenship. We will do so by reviewing and assessing a number of areas in relation to the applications received, including: criminal background checks, verification of source of wealth, commercial and political activities, health and general risk factors such as primary nationality, principal residence, occupation and business sector, etc.

The kinds of people who might apply would typically be financially independent, successful business people who are looking to have closer ties with Malta and may be wanting to invest and do business in the European Union using Malta as a gateway, and considering living in a beautiful, English speaking, neutral, peaceful and stable Mediterranean Island in the European Union.

ACQUISITION OF CITIZENSHIP IN EUROPE

Eurostat figures show that in 2011, 783,100 people obtained citizenship of an EU Member State⁵. The top five Member States granting citizenship were the United Kingdom (177,565), Spain (114,599), France (114,584), Germany (109,594) and Italy (56,153), as shown in the diagram below. The top five Member States accounted for 73% of new citizenships granted in the EU in 2011.

⁵ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Acquisition_of_citizenship_statistics



Top five Member States granting citizenship in 2011⁶

⁶ [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Five main EU Member states granting citizenship, 2011.png&filetimestamp=20131104110103](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Five_main_EU_Member_states_granting_citizenship,_2011.png&filetimestamp=20131104110103)

HOW IT WORKS

Potential applicants will approach either the concessionaire or carefully screened and approved local licensed agents of the programme to seek information and advice on the programme. These locally licensed agents or the concessionaire will make an initial assessment of the viability of an application to determine whether the potential applicant should proceed with a full application. This would include some preliminary screening by the concessionaire or locally licensed agents, through online database, such as World-Check, and specific internet search strings that would identify any immediate issues with the application.

The applicant would complete a number of application forms that elicit information on the following:

- Biographic and family information
- Nationality and previous residences
- Record of civil and criminal actions taken against them or pending
- Identification of source of wealth
- Commercial and political activity
- Health information, including screening for contagious diseases

At the point of application, the applicant would also make a non-refundable deposit, as well as payments for Identity Malta to complete due diligence investigations into their application.

Every application shall be presented to, and examined by, Identity Malta, either directly or through the concessionaire. If a complete application is received, the Government Agency Identity Malta would then request that a full due diligence investigation is conducted on the applicants through specialist Due Diligence companies who would have access to applicant information obtained via the application forms.

Upon receipt of Due Diligence reports, and together with the initial screening through international databases, Identity Malta would complete a risk analysis based on factors such as country of domicile and primary nationality, occupation and business sector, personal net worth level, etc.

Identity Malta would additionally and separately initiate processes internal to the state for conducting a parallel process that would allow for state-to-state investigation and using powers of Law and Order and financial intelligence gathering capabilities. The programme requires that applicants must be subjected to MFSA standard background checks.

Identity Malta also reserves the right to conduct an interview with the applicant before a recommendation is made on their application.

With a complete picture of the applicant, an informed decision would be taken as to whether the application would be acceptable. With the grant of citizenship, the applicant would be asked to take the Oath of Allegiance before the applicant is conferred with Maltese Citizenship.

Applicants would have to satisfy all investment and due diligence criteria for a recommendation to the Minister for Home Affairs and Security. If accepted, they would have to visit Malta to complete the process – potentially on more than one occasion.

The process would take at least six months and a maximum of two years. The grant of citizenship would be made public and the names of those being granted citizenship will be published. The programme is limited to a maximum of 1,800 applicants.

If it results that the applicant is found to have:

- made a false declaration during application; or
- failed to maintain the required investments in property and finances; or
- become a threat to law and order or national security

the grant of citizenship may be revoked without refund of the contributions made.

NATIONAL DEVELOPMENT AND SOCIAL FUND

If an applicant is granted citizenship, has met all required due diligence criteria and has made the required investments, the contributed investment (€650,000) funds would be disbursed 70% to the National Development and Social Fund.

The governance of the NDSF will be independent. The Fund will be administered by a Board of Governors consisting of five members of whom one shall be the Chairman and another shall be the Deputy Chairman appointed by the Prime Minister. The Fund will publish its audited accounts on an annual basis and will report to the Minister for Finance on its activities once a year.

The audited accounts and the annual report of the Fund will be laid on the table of the House of Representatives by the Minister for Finance and will be available for audit by the Auditor General.