

A Guide to the Registration of Companies



Mdina – Malta

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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INTRODUCTION

The Malta Financial Services Authority (MFSA) is an autonomous public authority entrusted with the regulation of financial services in Malta.

The MFSA also houses the Registry of Companies where all commercial partnerships including companies are registered irrespective of what type of activities they carry out. The Registry of Companies is a public registry and all registered information and documentation is available to the public. The Registrar of Companies is appointed in terms of the Companies Act 1995 and is entrusted with ensuring compliance with the provisions of the Act. Further information may be obtained from:

Registry of Companies
Malta Financial Services Authority,
Attard,
Malta

Telephone: (+356) 2144 1155
Fax: (+356) 2144 1195
Email: registry@mfsa.com.mt
Website: <http://registry.mfsa.com.mt>

FORMATION AND REGISTRATION OF COMPANIES

A limited liability company is the most common form of business entity in Malta. It may have the status of a public or private company.

A limited liability company is validly constituted in accordance with the Companies Act once a memorandum of association is entered into and subscribed by at least two persons and a certificate of registration is issued in respect thereof by the Registrar of Companies.

PRIVATE OR PUBLIC COMPANY

A private company is a company that must, by its memorandum or articles:

- a) restrict the right to transfer its shares;
- b) limit the number of members to fifty; and
- c) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

A public company is a company which does not qualify as a private company. A public company may offer shares or debentures to the public but it may not issue any form of application for its shares or debentures unless the company is registered and the issue is accompanied by a prospectus.

MEMORANDUM AND ARTICLES OF ASSOCIATION

The memorandum of association of every company shall contain the following information:

- (a) whether the company is a public company or a private company;
- (b) the name and residence of each of the subscribers thereto;
- (c) the name of the company;
- (d) the company's registered office in Malta;
- (e) the objects of the company;
- (f) the amount of share capital with which the company proposes to be registered (also referred to as the authorised capital), the division thereof into shares of a fixed amount, the number of shares taken up by each of the subscribers and the amount paid up in respect of each share and, where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;
- (g) the number of the directors, the name and residence of the first directors and, where any of the directors is a body corporate, the name and registered or principal office of the body corporate; the manner in which the representation of the company is to be exercised, and the name of the first person or persons vested with such representation;
- (h) the name and residence of the first company secretary or secretaries;
- (i) the period, if any, fixed for the duration of the company; and
- (j) in respect of each shareholder, director and company secretary, the number of an official identification document should also be given.

In the case of a public company, an additional document shall be annexed to the memorandum providing:

- (a) the total amount or an estimate of all the costs payable by the company or chargeable to it by reason of its formation up to the time it is authorised to commence business, and of all the costs relating to transactions leading to such authorisation; and

- (b) a description of any special advantage granted, prior to the time the company is authorized to commence business, to anyone who has taken part in the formation of the company or in transactions leading to such authorisation.

The memorandum of association may be accompanied by the articles of association, which is a document which prescribes the internal regulations of the company.

If articles of association are not registered, it is assumed that the model articles of association found in the First Schedule to the Companies Act have been adopted.

The memorandum and articles, if any, must be delivered to the Registrar of Companies who, being satisfied that all the requirements of law have been complied with, shall register them. A company comes into existence from the date of registration indicated in its Certificate of Registration.

WHO MAY INCORPORATE

A limited liability company may be registered by the shareholders or their authorised agent. A local firm of lawyers, accountants or consultants is normally engaged to carry out all necessary formalities. Subscribers may be individuals or corporate entities. The shares of a company may also be held by a trustee, who is duly authorised in accordance with Maltese Law.

TIME REQUIRED FOR INCORPORATION

The length of time to incorporate a company depends on the type of company being incorporated and on whether all information and documentation is available and in order. Once the Registrar has all necessary documentation and information, the process may take from as little as 24 hours.

REGISTERED OFFICE

Every company registered in Malta must have a registered office in Malta. This may be at the office of a firm of lawyers, accountants or other providers of corporate services. Any changes to the company's registered office must be notified to the Registrar of Companies.

OBJECTS

The Memorandum of Association must specify the objects for which the company is set up. The objects may not be simply stated to be any lawful purpose or trade in general.

CAPITAL REQUIREMENTS

The minimum authorised share capital of a public company is EUR 46,587.47. In the case of a private company, the minimum authorised share capital is EUR 1,164.69. The authorised share capital shall be subscribed by at least two persons.

Where the authorised share capital is equal to the minimum stipulated by law, as aforesaid, it must be fully subscribed in the memorandum. Where it exceeds such minimum, at least that minimum shall be subscribed in the memorandum.

In the case of a public company, not less than 25%, and in the case of a private company, not less than 20%, of the nominal value of each share taken up shall be paid up on the signing of the memorandum.

PRIVATE EXEMPT COMPANIES

A private company may have the status of an exempt company, and qualify for certain advantages if the following conditions are contained in its memorandum or articles of association:

- (a) the number of persons holding debentures of the company is not more than 50; and
- (b) no body corporate is the holder of, or has any interest in, any shares or debentures of the company or is a director of the company, and neither the company nor any of the directors is party to an arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members or debenture holders thereof.

SHAREHOLDING

The maximum number of shareholders for a private company is fifty, whereas there is no maximum number of shareholders in the case of a public company.

The minimum number of shareholders is normally two; however a “single member company” may also be registered under the Companies Act. A single member company is a private limited liability company, which qualifies as an exempt company and which is incorporated with one member or whose membership is reduced to one person after incorporation. In the case of a single member company, the Memorandum of Association should indicate the main trading activity of the company.

DIRECTORS AND COMPANY SECRETARY

Every public company must have at least two directors whereas every private company must have at least one director.

Every company must have a company secretary. No company may have:

- a) as company secretary its sole director unless the company is a private exempt company.
- b) as sole director of the company a body corporate, the sole director of which is company secretary to the company.

It shall be the duty of the directors of a company to take all reasonable steps to ensure that the company secretary is an individual who appears to them to have the requisite knowledge and experience to discharge the functions of company secretary. The law does not require that the company secretary be resident in Malta.

GENERAL DUTIES OF DIRECTORS

A director of a company is bound to act honestly and in good faith in the best interests of the company. Directors are bound by law to promote the well-being of the company and are responsible for:

- (a) the general governance of the company and its proper administration and management; and
- (b) the general supervision of the company's affairs.

In particular, the directors of a company:

- (a) are obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person who has both the knowledge, skill and experience which may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and the knowledge, skill and experience that the director has;

- (b) must not make secret or personal profits from their position without the consent of the company, nor make personal gain from confidential company information;
- (c) must ensure that their personal interests do not conflict with the interests of the company;
- (d) are not to use any property, information or opportunity of the company for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with the consent of the company in general meeting or except as permitted by the company's memorandum or articles of association;
- (e) must exercise the powers they have for the purposes for which the powers were conferred and shall not misuse such powers.

Furthermore, it is to be noted that the law prohibits any person to be appointed or to hold office as a director or as company secretary if -

- (a) he/she is interdicted or incapacitated or is an undischarged bankrupt;
- (b) he/she has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;
- (c) he/she is a minor who has not been emancipated; or
- (d) he/she is subject to a disqualification order by the Court.

MEETINGS

Every company must hold an Annual General Meeting. Every general meeting other than the annual general meeting is called an extraordinary general meeting.

COMPANY RETURNS & ANNUAL ACCOUNTS

All companies must prepare an annual return in the prescribed format to be made up, upon each anniversary of its registration. The return must be filed with the Registrar of Companies within 42 days after the date to which it is made up. A payment between EUR100 and EUR1,400 depending on the authorised capital is to be submitted along with the return.

Companies are also required to file a copy of the annual accounts. These must generally be accompanied by a copy of the auditors' report thereon, and the directors' report. The annual accounts must be filed within 10 months from the end of the financial year, with a grace period of 42 days.

The format of the accounts to be submitted depends on the size of the company. Small companies may draw up abridged balance sheets and abridged layouts of profit and loss accounts. A small company is a company which on its balance sheet dates does not exceed the limits of two of the three following criteria -

- balance sheet total: EUR 2,562,310.74;
- turnover: EUR 5,124,621.48
- average number of employees during the accounting period: 50.

Private companies which on their balance sheet date do not exceed the limits of two of the three following criteria:

- balance sheet total: EUR 46,587.47
- turnover: EUR 93,174.94
- average number of employees during the accounting period: 2;

shall be exempted from the requirements concerning, auditing of accounts and such companies may, draw up abridged balance sheets and abridged layouts of profit and loss account and abridged notes to the accounts.

OPENING A BANK ACCOUNT

When opening a bank account for a limited liability company, a bank would typically ask for the following documents. This information is being provided for guidance purposes only and every bank may have its own account opening procedures which may vary from what is being indicated hereunder:

1. A duly filled in Know-Your-Client ('KYC') form.
2. A completed request to open an account specifying the type of account, the currency and the preferred mode of payment of tax.
3. A Copy of the Memorandum and Articles of Association together with a certified copy of the Certificate of Registration issued by the Registry of Companies once the company is registered. The bank may also require a description of the activities of the company and the past and anticipated turnover thereof.
4. A Confirmation of the permanent address of the Directors through a completed identification statement certified by a Prime bank or Maltese Embassy in the country of residence. The bank also requires the authenticated identification documents for all the directors, signatories, beneficial owners and secretaries. An original copy of a utility bill to be certified by the bank may also be required.
5. Bankers' references on all foreign directors, foreign signatories, beneficial owners. The references should be issued in the personal capacity and should be addressed to the bank otherwise the bank will reserve the right to re-confirm the references with the said institutions.
6. Where the shareholder is a trustee or other fiduciary, the bank will require the disclosure of the identity of the beneficial owners accompanied by an authenticated copy of the beneficiary's passport.
7. Where the ultimate beneficial owner is a listed company, the bank will require a declaration to this effect from the company secretary.
8. A completed form signed by the directors of the company appointing the bankers.

OVERSEA COMPANIES

An overseas company is a body corporate which is constituted or incorporated outside Malta. Such a company is required by law to deliver to the Registrar for registration the following documentation, within one month of establishing a branch, or place of business in Malta:

- (a) an authentic copy of the charter, statutes or memorandum and articles of the overseas company or other instrument constituting or defining the constitution of the overseas company, and, if the instrument is not written in the English or Maltese language, a translation thereof into either of such languages, certified to be a correct translation in such manner as may be prescribed;
- (b) a list of the directors and company secretary, if any, or of the persons vested with the administration of the overseas company, or a list of the persons vested with the representation of the overseas company. Such lists shall include the following particulars:
 - i. in the case of an individual, his name, his usual residential address, his nationality and his business occupation; and
 - ii. in the case of a body corporate, its registered or corporate name and registered or principal office;
- (c) a return containing the following particulars:
 - i. the name under which the branch or place of business is carrying on its activities where different from the name of the overseas company;
 - ii. the address of the branch or place of business established in Malta by the overseas company, and where more than one branch or place of business has been established, there shall be indicated the address of the principal branch or place of business;
 - iii. the activities to be carried out by the branch or place of business established in Malta;
 - iv. the names and addresses of one or more individuals resident in Malta authorised to represent the overseas company for the activities of the branch or place of business established in Malta; and
 - v. the extent of the authority of any individual falling within subparagraph (iv), including whether that individual is authorised to act alone or jointly with others, and in the latter case, the name of any person with whom he is authorised to act;
- (d) unless disclosed by the document specified in paragraph (a), a return containing (i) the information about the legal form of the overseas company; and (ii) the identity of the register in which the overseas company is registered and the number with which it is so registered.

REDOMICILIATION OF COMPANIES

The Continuation of Companies Regulations (Legal Notice 344 of 2002 as amended by Legal Notice 352 of 2003 and 181 and 186 of 2006) provide for:

- a) the continuation in Malta of a foreign company; and
- b) the continuation outside Malta of a company incorporated in Malta.

CONTINUATION OF A FOREIGN COMPANY IN MALTA

A company formed and incorporated or registered under the laws of an approved foreign country, which is similar in nature to a company as known under the laws of Malta, may request the Registrar of Companies to be registered as continued in Malta, provided the laws of the foreign country so permit, and provided the company is authorised to do so by its constitutive documents.

The request to the Registrar of Companies must be accompanied by at least the following documents:

- (a) the resolution or equivalent document of the foreign company authorising it to be registered as being continued in Malta and a certified translation in the English language where appropriate;
- (b) a copy of the revised constitutive document of the foreign company;
- (c) a certificate of good standing in respect of the foreign company issued by the foreign competent authority;
- (d) a declaration signed by at least two directors of the foreign company confirming:
 - i. the name of the foreign company and the name under which it proposes to be continued;
 - ii. the jurisdiction under which it is incorporated;
 - iii. the date of incorporation;
 - iv. the decision to have the foreign company registered as continuing in Malta;
 - v. that the foreign company has given formal notice to the competent authority of the foreign country of its intention of continuing in Malta: evidence of such notice should be annexed to the declaration;
 - vi. that no proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign company ;
- (e) a declaration signed by at least two directors of the company confirming the solvency of the foreign company;
- (f) a list of directors of the foreign company as well as the company secretary, if any, or of the persons vested with the administration or the representation of the foreign company;
- (g) any other evidence or information which the Registrar may require;
- (h) the relative fees.

CONTINUATION OUTSIDE MALTA OF A COMPANY REGISTERED IN MALTA

A company registered under the Companies Act may, where the laws of an approved foreign country so permit and upon obtaining the consent of the Registrar of Companies, apply to the competent authority of the foreign country to have the company registered as continued as if it had been incorporated under the laws of that foreign country.

The request by the company for the consent of the Registrar to be continued as a company outside Malta must be accompanied by the following documents:

- (a) a declaration by at least two directors of the company confirming:

- i. the name of the foreign company and the name under which it proposes to be continued;
- ii. the place of proposed registration of the company and the name and address of the competent authority in the foreign country;
- iii. the date on which it is proposed to establish domicile in the relevant foreign country.

The company may request the Registrar for his consent only after having fulfilled the following requirements:

- (a) an extraordinary resolution of the shareholders of the company must be approved and delivered to the Registrar for registration;
- (b) the company must deliver to the Registrar for registration a declaration signed by at least two directors of the company confirming the solvency of the company;
- (c) where the company carries on in or from Malta any licensable activity, the company must provide evidence of the consent of the competent authority in Malta for the company to continue in another jurisdiction;
- (d) where the company is a public company quoted a recognised investment exchange, the company must provide to the Registrar evidence of the consent of the exchange and of the listing authority in Malta for the company to continue in another jurisdiction;
- (e) all fees and penalties due to the Registrar of Companies must be paid;
- (f) the fee prescribed for continuation must also be paid.

REGISTRATION AND FEE STRUCTURE

The Memorandum and Articles of Association, constituting the company are forwarded to the Registrar of Companies for registration. These should be accompanied by all relevant documentation, including certified copies of identification documents, references and declarations by trustees where applicable. Evidence of paid up share capital in the form of a bank deposit advice should also be produced.

Upon registration, the Registrar will issue a certificate of registration, showing that the company has been officially registered. A record of all company registrations is available for public inspection.

The fees payable to the Registrar of Companies for the registration of a company are calculated according to the company's authorised share capital as indicated in the table below. Registration can be made either in paper format or in electronic format and the fees levied vary accordingly:

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

Over €1,000,000 but not exceeding €2,500,000	€1,720 with the addition of €10 for each €50,000 or part thereof in excess of €1,000,000	€1,441 with the addition of €8 for each €50,000 or part thereof in excess of €1,000,000
Over €2,500,000	€2,250	€1,900

If a company subsequently increases its authorised share capital, the difference in registration fees would be levied.