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Malta Government establishes highly controversial Individual Investor Programme

November 2013

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On Friday 15 November 2013 the President of Malta gave his assent to Act XV of 2013 which amended the *Maltese Citizenship Act* by introducing the highly controversial Individual Investor Programme (IIP) enabling the purchase of Maltese citizenship.

Under this programme, individuals as well as their spouses and dependents can apply to be naturalised as Maltese citizens after successfully going through a rigorous due diligence process to be managed by a foreign company, Henley and Partners, meeting the prescribed requirements specified in regulations and paying €650,000 for applicants, €25,000 for spouses and dependent children under 18 years, and €50,000 for dependent children of applicants between 18 and 25 years.

On Tuesday 12 November 2013 the Maltese Parliament had approved Act XV of 2013 with 37 votes in favour and 30 against. Government MPs George Vella, Minister of Foreign Affairs, and Evarist Bartolo, Minister of Education, were absent for the vote.

During the parliamentary debate leading to the approval of the amendments to the Act, the government assured that the scheme would bring about a good amount of revenue. During the Second Reading debate Home Affairs Minister Dr Emmanuel Mallia explained that the aim of the programme is that one will acquire Maltese citizenship against an amount of money after having satisfied all the requested criteria. "Not only is this contribution paid by the applicant non-refundable but this will also help attract quality individuals to become Maltese citizens," he said. Dr Mallia said that those citizens of other countries who are wealthy but feel their



Malta Independent

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country’s economic situation is not too good, will have the choice of turning to Malta to invest in, adding that these are the kind of individuals this government is seeking to attract.

On the other hand, the Opposition accused the government of prostituting Malta for the paltry sum of €650,000 euros for each passport. A protest against the scheme was held outside Parliament that Tuesday evening by the PN’s youth movement.

Amendments to the *Maltese Citizenship Act*

Act XV of 2013 amends the *Maltese Citizenship Act*, Cap 188 (the Act) by introducing the **Individual Investor Programme (IIP)**. Under this program, 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 a spouse or an eligible dependant of such applicant, under the IIP, and satisfies the requirements as prescribed under the Act, provided that such person makes an application in such manner as may be prescribed and upon taking the oath of allegiance in Malta.

The requirements for eligibility are prescribed by regulations as under Article 24 (1) (i) just introduced, the President of Malta may by regulations make provision for prescribing the requirements for and administration of the IIP and for the granting of a certificate of naturalisation as a citizen of Malta to an applicant, and spouse and eligible dependants of such applicant, meeting the requirements as may be prescribed.

Secrecy provision

The secrecy relating to applications made under the IIP is enforced by means of a new Article 23 (3) which makes it an offence punishable with a fine not exceeding twenty thousand euro (€20,000) for any person, who, for gain and without being duly authorised, in violation of regulations made under the Act, advertises, publishes or disseminates publicly through any means whatsoever any information relating to the IIP.

Role of Regulator

Act XV of 2013 introduced the role of Regulator to be appointed by the Prime Minister, after consulting the Leader of the Opposition. The role of the Regulator is to oversee the correct implementation and monitoring of the IIP. The Regulator is also required to investigate complaints about the IIP in the manner prescribed under the Act.

Any person who has held the office of Judge or Magistrate, or who has held the office of Attorney General, or Permanent Secretary or who has practiced as an advocate in Malta for a period of at least twelve years is eligible to be appointed to the role. In addition to his functions under this Act and such other functions as may be assigned to him under any law the Regulator is required to keep under review all aspects of the IIP.

August 2018

News Archive

August 2018

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	
« Jul						

In the discharge of his functions under this Act, the Regulator is required to act in his individual judgment and shall not be subject to the direction or control of any other person or authority. Any person involved in the administration of the IIP is obliged to disclose or give to the Regulator such documents or information as he may require for the purpose of enabling him to discharge his functions.

The Regulator may at any time report to the Minister on any matter relating to the discharge of his functions under the Act. The Regulator is required to make an annual report on the discharge of his functions to the Minister which annual report shall not include personal data relating to individuals who have acquired Maltese citizenship under the IIP. The Minister is required to lay a copy of each annual report made by the Regulator on the Table of the House as soon as possible after the report is made to him.

Monitoring Committee

Act XV of 2013 also establishes a Committee, to be known as the Monitoring Committee, to monitor the workings of the IIP. This Committee will consist of the Prime Minister, the Minister responsible for matters relating to Maltese citizenship and the Leader of the Opposition. The meetings of the Committee shall be presided over by the Prime Minister and the Committee will regulate its own procedure. Committee must meet at least once a year, and it shall be entitled to call the Regulator to report to the Committee at its meetings.

Management of 'Rigorous four-tier due diligence' process

Henley & Partners expects that around 200 to 300 foreign individuals will be acquiring Maltese citizenship every year after the initial pilot phase of the project. Henley and Partners won a public tender to market and sell the Individual Investor Programme.

In an interview given to *The Malta Independent* online, Henley and Partners CEO Eric Major said that the exercise will not have a limit but costs and the rigorous due diligence process will naturally limit the number of people who apply and acquire Maltese citizenship.

Mr Major explained that its clients normally seek a foreign citizenship for any of five main factors; security reasons, the need for business mobility, education, to improve on their quality of life or tax reasons.

All clients will have to undergo a strict 4-tier personal background check to be deemed eligible for the programme. They would first have to approach Henley & Partners, either directly or through authorised intermediaries. They would then have to fill in no less than seven applications issued by the government of Malta. "During this step it is crucial that the right questions are asked, and Henley prides itself in being the most widely recognised and most experienced player in the sector. We know the right questions to ask," said Mr Major. "It is vital that we fully understand what the client's story is."

Next, the application forms will be submitted to Individual Investor Programme Malta Ltd, which will be led by Michael Lucas. The company will make sure that all the forms have been filled in properly before they reach the next step. The forms are then taken to IIP Processing Ltd, managed by Mark Stannard, where the applications will be scrutinised from scratch. The ‘World Check’ system is used here to perform detailed background checks on the applicants. “Basically, IIP Processing will confirm the legitimacy of the existing documentation.”

After this process is complete, secondary checks will be carried out by due diligence companies contracted by the government. Checks can also be done locally by “men on the ground” in the countries of residence of the applicants. Further checks will be done using specifically tailored software.

Finally, IIP Processing will present its recommendation to Identity Malta. The government agency will have the final say and it will not be required to agree to the firm’s recommendation. Identity Malta will also be able to do further checks using its access to information from Interpol and other law enforcement agencies.

“Programmes like these are not worth doing unless the proper due diligence and anti-money laundering measures are in place,” said Mr Major.

IIP scheme is ‘not cheap’

Mr Major said that the impression that the IIP scheme is cheap is incorrect. “In other countries clients might be required to invest in property, which is an asset in itself. In other countries you might be lending money to the government on the promise of getting it back after a number of years. The Malta scheme is different because clients will be paying €650,000. They will be parting with their money, so it’s definitely not cheap when compared to other schemes.”

The money generated by the IIP will go into a National Development Fund but according to Mr Major, the “real bang of the buck” is not the initial payment. It is the possibility of further investment in the country. Whilst acknowledging that many clients will probably not remain or invest in Malta, the few that remain are “the ones that count.” They may choose to invest directly in Malta and they will also contribute to an increase in consumption, which is one of the main driving forces of the GDP.

200-300 clients per year after pilot phase

Mr Major said that the IIP will not be a big programme. He expects the number of people who successfully apply to be anywhere between 200 and 300 a year. That is, after the IIP has passed its pilot phase. The figure of around fifty applicants per year, as given by the Prime Minister, refers to the initial years. It would take a couple of years for Henley to get that kind of market awareness and reach those numbers. If the number of applicants increases drastically, the asking price for a Maltese passport can always be “bumped up” to keep the numbers down.

Mr Major said that the government had not suggested any capping on the number of applicants because the programme was not expected to attract a phenomenal amount of applicants. Parliament is still to decide on the issue, with a vote expected tomorrow.

Estimated revenue stream from IIP

On Saturday 9 November 2013, *The Malta Independent* online reported that the Maltese government could start netting up to €155 million a year from the Individual Investor Programme after the initial pilot phase.

Prime Minister Dr Joseph Muscat had recently said that the government is expecting that around 50 individuals will be granted Maltese citizenship every year in the first few years. This would translate into around €30 million in revenue. But Henley and Partners CEO Eric Major told the paper that after the initial phase, the firm expects to have 200-300 successful applicants per year.

According to the paper, the Prime Minister's estimate is a rather conservative one, and probably only takes the main applicants into consideration. However, in reality, some of the applicants will have wives and children.

Main applicants will be required to pay €650,000 to the Maltese government. According to the contract signed between the government and Henley, 6% or €39,000 will be paid to Identity Malta as management fees, and a further 4% or €26,000 will be paid to Henley as a commission. The remaining 90%, or €585,000, will go to the government. Spouses and children under 18 years of age will be required to pay €25,000 each, from which Identity Malta and Henley's fees will be deducted.

On a conservative calculation of 50 applicants, with half having wives and a quarter having two children the government would net €31 million. If the same formula is applied to Henley's projection of having around 250 successful applicants per year, the amount would rise to €154 million.

In late October the Office of the Prime Minister had stressed to *The Malta Independent* that the "vast majority" of the funds raised from the IIP, estimated at €30 million in the first year alone, will go into a ring-fenced and accumulative National Development Fund that can be tapped for social projects over the years to come – and which will not be able to be used for general budget purposes. On 30 October, after repeated calls from the Opposition, the government published extracts of its contract with Henley, which confirmed as much.

The contract stipulates that the total amount generated from the IIP would be split in three parts. The Identity Malta Agency would get a six per cent contribution and Henley & Partners would receive a four per cent commission. The remaining 90 per cent, according to the contract, "shall be paid into an independent Investment Vehicle". The latter is understood to be the National Development Fund.

However, a spokesperson for the Office of the Prime Minister confirmed to *The Malta Independent* that “the government decided that part of the income goes to the National Budget and another part goes to the National Development Fund”. The amount going into the national budget will effectively show up as government revenue and, as such, will serve to merely reduce the public deficit.

Henley’s commission

Henley and Partners will be getting a €26,000 commission from the government for each successful applicant. It is not known if it will also be given a commission on citizenship granted to spouses and children. And apart from government commissions, Henley will also charge its own fees to its clients. According to The Malta Independent online, the company will reportedly be charging €70,000 to main applicants, €15,000 to spouses and €10,000 to children under 18.

On the same conservative estimates used to calculate government revenue, Henley will potentially net €5.7 million for 50 applicants with spouses and children included. When the firm reaches 250 clients per year, spouses and children included, it could potentially be pocketing up to €28 million from Malta alone.

PN reserves option to withdraw citizenships granted under IIP in the future

Following the passing of the Act through the Committee stage, Opposition Leader Dr Simon Busuttil said the PN will publish the names of people granted citizenships under the Act which it considers wrong in principle, and reserves the option to withdraw citizenships once elected to government.

Addressing a press conference outside The Palace on 9 November, Dr Busuttil said the Opposition was consistent till the end as it wanted to include criteria that link citizenships with investment, five years residency on the island and transparency. He said he was very disappointed that the government did not budge even an inch and instead it passed an amendment to set up a committee which will include members from the Opposition, to monitor the granting of citizenships. “This was a further insult,” he said. “How can we monitor something we don’t agree with in principle?”

On 12 November Prime Minister Dr Joseph Muscat said that persons granted citizenship through the government’s new scheme will be allowed to vote in Maltese elections. Dr Muscat published the Attorney General’s advice to the government on the scheme [[click here](#) to download AG’s advice].

Attorney General Dr Peter Grech made it clear that when the state grants a person citizenship, it cannot then treat such people in a different way to other naturalised citizens. Those same rights and obligations could not then be removed arbitrarily, Dr Grech wrote. Dr Muscat said that the Attorney General’s advice made it clear that Parliament can revoke the scheme, but it

could not repeal citizenships that have already been granted under it, unless there are serious grounds to do so due to some sort of misconduct by the individual.

Opposition Leader Dr Simon Busuttil said that the advice received by the Opposition on the citizenship scheme is sound, and citizenship can be withdrawn by a future Nationalist government. Speaking during a press conference held shortly after the final vote in Parliament on the scheme, Dr Busuttil insisted that the Attorney General's advice was that of the lawyer to the government, and should be treated as such. Dr Busuttil criticised the government for steamrolling over the Opposition at every stage of the citizenship scheme, calling it a "black day for democracy". Dr Busuttil said that the PN is not ruling out anything, including an abrogative referendum. He said that the next stage of the PN Opposition of the scheme will be to challenge the legal notice in Parliament.

During the debate in Parliament on 14 November, Opposition MP Dr Jason Azzopardi warned that foreign governments could use Malta's new citizenship scheme to buy passports for their secret agents. "Over the past few years, the Maltese government was approached by foreign governments to give passports to agents of their secret services," Dr Azzopardi said.

"We always without fail turned down these requests, even when good reasons were given. Lawrence Gonzi's government always turned them down. What is 650,000 euro to the secret services of certain countries," Dr Azzopardi asked. He said that these agents know how to bluff their way through a due diligence process in order to obtain a Maltese passport under the new citizenship scheme. "What they do with this passport will ultimately reflect on Malta," Dr Azzopardi warned.

Adverse reaction to Malta's IIP from international media

There was an extensive adverse reaction to the establishment of the IIP around the world. Media reports have even gone as far as saying that Malta has resorted to this tactic to fill its empty coffers. This is in stark contrast to what Prime Minister Dr Joseph Muscat stated in parliament last week when quoting the EU's projections on Malta's GDP growth, as well as the Finance Minister's declaration on reducing the deficit 2.1%.

The approval of the IIP was reported worldwide, from the USA to Australia, Russia, Africa, Chile, Italy, Germany and China. The news has been splashed on the front pages of top news sites, including *Reuters*, *The Telegraph*, *Der Spiegel*, *The Washington Post*, *The New York Times*, *Euronews*, *Corriere della Sera*, *Il Giornale*, *The Age* and *CBS News*.

Such stories have also attracted hostile comments from the readers, particularly in the UK, where the EU is mostly looked at with suspicion and the usual Maltese commentators also battling it out via comment posts on these foreign news websites.

Italian news website *La Notizia* reported: "Casse vuote, Malta mette in vendita pure la cittadinanza. Servono 650 mila euro per diventare maltesi." (Empty coffers. Malta is even selling its citizenship. You only need €650,000 to become Maltese.)

The website reports that the government intends to make €30 million a year from the scheme, and one can also acquire a Maltese passport for one's parents for €25,000. "With the scheme, Malta's coffers, which are strained by a heavy deficit, can start breathing again."

The Chilean news website *24horas*' headline reads "Malta selling citizenship to get out of crisis." *LaPresse.it* and *l'Unita*'s reports are on exactly the same lines.

Some say that a Maltese passport comes at a price of €650,000 with few strings attached; others say that Malta is selling citizenship to the rich while poor migrants drown off its shores. Others report that a Maltese passport comes with full EU benefits and US Visa perks – something which has raised eyebrows and could cost Malta its visa waiver with the US.

Italian influential newspaper *Il Giornale* called the government's scheme to sell passports to foreigners at €650,000 "[a scandal](#)".

"Are you a Chinese businessman ready to do everything just to get through the Customs barriers of the EU? Are you an international terrorist ready to take advantage of the Schengen zone? Are you a drug trafficker looking for a solid landing base in Europe? Then Malta is the place for you," *il Giornale* read.

It then went on to explain the happenings that led to Parliament's approval. "Is it a nightmare? No, it's reality, thanks to this small island of 420,000, all other European member states and their 733 million inhabitants have to adapt." But Maltese PM Joseph Muscat was just thinking of doing business. The newspaper described the government as being desperately seeking to give a boost to the economy.

It went on to criticise the position taken by Brussels, which washed its hands by saying that every state has a right to give citizenships to those it deems fit. But the newspaper argued that Malta's scheme is unprecedented as it does not bind the new citizens with residency or investment. It also questions why police authorities are not involved in the selection process.

The newspaper also slammed the idea that a private company will be responsible for promoting the scheme from which it will make a fortune.

The new future "Europeans made in Malta" will escape all security procedures guaranteed by Interpol and domestic police forces. "Malta's hunger for money is another hole in Fortress Europe making it hard to identify terrorists, delinquents and international speculators," *il-Giornale* concluded.

German influential media outlet, *Der Spiegel Online International*, reported the passing of the IIP in Parliament in [an article](#) published on 13 November under the heading "EU Passports for 650,000 Euros: Citizenship for Sale in Malta". The article concluded that "In fact, several EU member countries offer residence permits that include the right of movement within the Schengen Area in exchange for steep fees. Using these offers, which circumvent the EU's strict asylum and immigration rules, the governments of Greece, Spain and Hungary all seek to lure

investors from around the world. With the offer of citizenship, the Maltese government is going a step further.”

Facebook campaign against IIP

As was indicated by Opposition Leader Dr Simon Busuttil, the Nationalist Party seems to be considering a petition to force an abrogative referendum on the issue. But in the meantime many have taken to a Facebook campaigning against the Individual Investor Programme. A number of pages have sprung up on the social networking site over the past few days. One of them called on President George Abela not to sign the Bill to amend the Maltese Citizenship Act.

Henley proposed IIP as investment scheme, government changed it

During the 15 Nov edition of popular TV program Xarabank, Henley & Partners manager Daniela Bugeja stated that the Individual Investor Programme was initially planned as an investment programme but it was changed by the government.

Ms Bugeja said that Henley had been advising the Maltese government on the scheme, which was initially an investment scheme. “Hence the name Individual Investor Programme.”

Ms Bugeja said that “the name stuck but the terms of contribution/investment were changed”.

When pressed by PN Deputy Leader Dr Mario de Marco to say why the terms were changed, Ms Bugeja said that Henley had never changed its advice. It had always maintained its position that investment “should come first”. However, the government decided to turn it into a fee so that it would receive the contributions more quickly. At one point, Parliamentary Secretary for Justice Owen Bonnici was heard saying that this was a government decision.

Government to drop secrecy provision

Addressing the PN’s General Council on 15 November, PN Secretary General Dr Chris Said said that it was revealed that night that the Prime Minister instructed his deputy Louis Grech to inform the media that the secrecy clause will be dropped.

“The government has already back-tracked on its ‘citizenship for sale’ law. The Prime Minister was cornered after all the foreign media reports and had no choice but to drop the secrecy clause from the Individual Investor Programme. This means that the names of foreigners who will be granted Maltese citizenship will be made public,” said Dr Said.

Parliamentary Secretary Dr Edward Zammit Lewis confirmed on the same day that the government is open to amending the controversial individual investor programme that has just been approved in Parliament.

Asked whether the international reports that were published around the world on the IIP largely sharing the interpretation of critics were of concern, Dr Zammit Lewis said that the government was taking stock of what was being said, even though it did not necessarily agree with the media's interpretations and remained confident of the programme's eventual success. He also insisted that the media coverage was the result of the opposition's scaremongering.

But when the criticism of various social partners was pointed out, the parliamentary secretary added that the government had no problem in continuing to consult, whilst stressing that consultation on the programme had already taken place – even with the opposition.

Pressed further, Dr Zammit Lewis ruled out any imminent changes, but also emphasised that the government did not rule out fine-tuning the programme on the basis of the feedback received.

On 17 November the Maltese government confirmed it will be removing the secrecy clause from the citizenship scheme, saying it was doing so because it listened to the people. In a statement the government said it hoped the Opposition would be ready to make concessions to really show it is ready to come to terms. The government said that the Individual Investor Programme is part of the budget. It is not true that the law would need to be brought before Parliament again for the adjustment to be made, the government said.

German MEPs fuming over Malta's IIP scheme

Meanwhile, the government's announcement that the IIP secrecy clause will be dropped has not done much to calm down the foreign media frenzy or the lambasting by European politicians. German MEP Elmar Brok told the Frankfurter that Malta's 'citizenship for sale scheme' is "pathetic and vile". He called on the EU and the German Federal government to "resist" the scheme.

EPP Vice President and CSU politician Manfred Weber insisted that "passports for the Schengen area should not be sold off to the bazaar". Deputy Chairman of the Liberal FDP Alexander Lambsdorff accused Malta of "transforming citizenship into a national commodity".

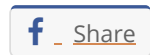
The three politicians called on the EU Commission to consider whether Malta's scheme is contrary to the spirit of the European treaties. Mr Weber insisted that "this is not a national affair" and Malta "should not be allowed to legally sell access to the EU".

Mr Brok said that that the EPP "wants to discuss the Maltese decision at the next meeting of the Committee of Internal Affairs".

The CSU is also urging Interior Minister Hans-Peter Friedrich to try and persuade the Maltese Home Affairs Minister not to implement the law during the next Home Affairs Council. The subject is also expected to be brought up at the next EU Foreign Affairs Council.

On Friday, the head of the Dutch EPP delegation, MEP Wim Van de Camp, also criticized the IIP, saying that it is contrary to EU principles and Schengen rules. “If Malta needs money, this is not the way to go about it. An EU investigation is warranted,” said Mr Van de Camp.

[Main source: www.independent.com.mt]



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