



**COUNTRY
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Malta

CORPORATE IMMIGRATION

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This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in Malta.

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MALTA

CORPORATE IMMIGRATION



1. What are the relevant government entities relating to immigration in your jurisdiction?

The government entities which administer Malta's laws and regulations relating to immigration, residency and citizenship in Malta are Identity Malta Agency, Residency Malta Agency and Community Malta Agency (Aġenzija Kommunita Malta) respectively. Identity Malta Agency ("Identity Malta") is responsible for identity management and implementation of migration processes, and it offers services in matters which relate to visas and expatriate affairs. It is the main government entity where corporate immigration is concerned. Meanwhile, the Residency Malta Agency is responsible for administering Malta's residency programmes, such as the Malta Permanent Residence Programme, the Nomad Residence Permit scheme and the Startup Residence Programme, whilst Community Malta Agency is responsible for administering applications for citizenship and related matters.

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

EU/EEA/Swiss nationals benefit from the right of freedom of movement and establishment in terms of the Treaty on the Functioning of the European Union. Accordingly, said nationals benefit inter alia from free access to the labour market in Malta and do not require an employment licence to work in Malta.

On the other hand, generally all third-country nationals ("TCNs") require an employment licence to work in Malta, with the most commonly availed of route being the Single Permit Application. As the holder of a Single Permit, a TCN may legally reside and work in Malta. A Single Permit Application must be endorsed and submitted by a local employer – on behalf of the TCN – and, once issued, said Single Permit allows the holder of same to work solely for said employer in a specific role

for a fixed period of time (typically a Single Permit is issued for a maximum period of 1 year). Standard Single Permit Applications take roughly 4 months to be processed and are typically subject to labour market considerations, unless the particular role is exempt from same in terms of the Malta Vacancy Exemption List.

Identity Malta also offers a 'fast tracked' Single Permit Application process, referred to as the 'Key Employee Initiative' (the "KEI"). Applications made under the KEI are exempt from labour market considerations – i.e. the employer does not need to justify why it is employing a TCN as opposed to an EU/EEA/Swiss national for the particular role. TCNs who are highly qualified or hold a managerial position and in either case earn a gross salary of at least €30,000 per annum qualify under the KEI. In terms of the KEI rules, applications should be processed within roughly 10 working days of submission; whereas the TCN will initially be issued with a Single Permit for a 1-year period, on renewal the Single Permit may (at the discretion of Identity Malta) be issued for a 3- year period.

3. What are the primary options available for unsponsored work and investment in your jurisdiction?

EU/EEA/Swiss nationals have free access to the labour market and may therefore relocate to Malta and take up self-employment in Malta or set up a business that employs them like any Maltese citizen.

On the other hand, TCNs wishing to relocate to Malta on the basis of self-employment or by employing themselves with a company they are a shareholder of must follow very rigorous rules which may require a cash outlay on their part of at least €500,000 in capital expenditure or share capital respectively, to be retained for a fixed period of 2 years. In view of these onerous conditions, in practice few TCNs wishing to relocate to Malta do so on this basis.

In 2021, Government also launched the Nomad Residence Permit, applicable to TCNs – whether

employed or self-employed – who may work remotely from Malta, subject to the satisfaction of a number of criteria. The Nomad Residence Permit is administered by Residency Malta Agency and in terms of current policy may be renewed twice for a maximum residence period of three years.

Towards the end of last year, Residency Malta Agency launched the Malta Startup Residence Programme which applies to TCNs looking to establish highly innovative start-ups and scale-ups to set up their business in Malta and relocate to the country. The programme offers a residence route to TCNs, who are either founders, co-founders or core employees of a start-up, and who are looking to establish themselves and the start-up in Malta.

The start-up must be engaged in an eligible activity which include software development, manufacturing and eco-start-ups involved in sustainable industries. Additionally, the start-up must meet a number of criteria established by Malta Enterprise, such as proposing products and/or services that are new, innovative or substantially improved compared with similar products on the market. The start-up would need to set out the manner in which the criteria will be satisfied through the submission of a detailed business plan to Malta Enterprise. Should the startup be approved by Malta Enterprise, ongoing monitoring will be carried out.

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

Unlike other jurisdictions, there are no requirements which employers need to meet prior to submitting a Single Permit Application on behalf of a TCN. Employers are required to ensure that the Single Permit is issued prior to the employee concerned commencing work and, furthermore, on termination of the employment, Identity Malta and Jobsplus – being the authority responsible for employment in Malta – must both be notified by the employer of said termination.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

A Single Permit Applications for a TCN is to be submitted online by the employer via an online portal. Once said application is approved, and the Letter of Approval in Principle is issued in electronic format to the employer

and the prospective employee, the prospective employee is required to attend at Identity Malta to submit a number of documents in hard copy and have his/her biometric data captured for the issue of a physical residence card.

6. Is an in-person attendance/interview required as part of the visa/work permit application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as part of the visa/work permit process?

An interview with Identity Malta is not required for the issue of a Single Permit. This being said, as indicated in 5. above, in the final stages of the process the prospective employee is to attend at Identity Malta to submit a number of documents in hard copy and have his/her biometric data (in terms of current rules, the employee's fingerprints, photo and signature are captured) captured for the issue of a physical residence card.

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

By way of general principle, the right of family members of TCNs to join their sponsor emanates from the Family Reunification Rules (S.L 217.06), which Rules are quite onerous in terms of requiring the sponsor to prove that he/she has reasonable prospects of residing permanently in Malta going forward. In the case of TCN sponsors who relocate to work in Malta, it is generally difficult to prove that the sponsor has such prospects since a Single Permit is typically issued for a 1-year period, subject to renewal. Due to these difficulties in applying the Family Reunification Rules in practice, Identity Malta recently updated its policy for families which do not qualify under the Family Reunification Rules. Said policy sets out a number of conditions e.g. the sponsor TCN is to have 'stable resources' for the purposes of maintaining his/her family in Malta, currently set at the equivalent of the local median wage plus an additional 20% of the said median wage for each family member. Family Member Applications in terms of said new policy will only be considered if the sponsor TCN shall have legally resided and worked in Malta for at least 1 year, during which period the sponsor TCN is to have held a valid residence card; said Family Member Applications are to be submitted whilst the family members of the sponsor TCN are still overseas.

In terms of this policy, the following individuals qualify as dependants for residence purposes:

- i. the sponsor TCN's spouse, in a monogamous marriage with the sponsor TCN, being at least twenty-one years of age;
- ii. the unmarried minor children of the sponsor TCN and of his/her spouse, including children adopted in a manner recognized by Maltese law;
- iii. the unmarried minor children, including adopted children, of the sponsor TCN or of his/her spouse, as the case may be, where the sponsor TCN or the spouse has custody of the children who are dependent on him;
- iv. in the case of children whose custody is shared between the sponsor TCN and his/her spouse, the Director of the Department of Citizenship and Expatriates may authorize their reunification, provided that the other spouse sharing custody has given his or her agreement.

Family members who are issued with a residence card on the basis of their dependency on the sponsor TCN cannot work in Malta. Should a family member of the sponsor TCN wish to work in Malta, he/she is to apply for a Single Permit in his/her own name.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored and unsponsored business-related immigration?

EU/EEA/Swiss nationals and TCNs alike may only obtain long term residence or permanent residence status respectively after a continuous period of residence of at least 5 years; this is subject to application and is at the discretion of the authorities. The acquisition of either status may also impact the individual's tax status in Malta.

An individual may apply for citizenship by naturalisation if he/she has physically resided in Malta for an aggregate period of five years in the previous six-year period. In practice, however, it is understood that the authorities have not been as forthcoming as one might wish in the processing of such applications, with residents having at times only managed to secure citizenship after significantly longer periods of residence.

9. What productive type activities can a

business visitor undertake and for how long?

Currently, Maltese law does not define what constitutes a 'business visitor' for TCN visa purposes. Having said that, in terms of current policy, business visitors are generally regarded individuals who travel to and stay in Malta for very short periods of time e.g. to attend a meeting or receive brief training, without becoming operational or engaging in an economic activity whilst in Malta.

In terms of current law and policy, there is no list of permitted and non-permitted activities which a business visitor may engage in. A business visitor is effectively permitted to engage in activities which do not result in him/her becoming operational or engaging in economic activities in Malta.

10. Can remote work be carried out from your country?

Following the shift to remote working during the COVID-19 pandemic, the Government launched a set of rules regulating applications for a Nomad Residence Permit, which permit effectively allows TCNs to work remotely from Malta, subject to a number of conditions and the issue of the relevant visa or residence permit. Applications for a Nomad Residence Permit are to be submitted to the Residency Malta Agency.

11. Are there any productive work / revenue generating activities that can be carried out as a visitor and without the need for a work permit? If so, what activities and for how long?

In terms of current law and policy, there is no list of permitted and non-permitted activities which a business visitor may engage in. A business visitor is effectively permitted to engage in activities which do not result in him/her becoming operational or engaging in economic activities in Malta.

12. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

As indicated above, TCNs may apply for a Nomad Residence Permit which allows TCNs who can work remotely using telecoms and who fall in one of the below categories to work remotely from Malta, subject to

several conditions:

- i. The TCN works for a company registered in a foreign country and is in possession of a valid employment contract; or
- ii. The TCN conducts business activities for a company/partnership registered in a foreign country and of which company the applicant is a partner/shareholder; or
- iii. The TCN offers freelance or consulting services, mostly to clients whose permanent establishments are in a foreign country, and with whom the applicant has contracts.

Applicants must also earn a monthly gross income of at least €2,700.

A Nomad Residence Permit is issued for a period of one year and can be renewed, upon application, at the discretion of the Residency Malta Agency if the applicant still meets the criteria for eligibility. In terms of current policy, a Nomad Residence Permit may only be extended twice for a maximum residence period of 3 years.

Nomad workers may also bring family members with them to Malta, subject to the satisfaction of several conditions.

13. How easy is it to switch visa categories/jobs/employer from within country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

TCNs who work and reside in Malta on the basis of a Single Permit may apply for a new Single Permit on the basis of a new job during their then current employment or on termination of their employment. In the latter case, when a TCN's employment is terminated or should the TCN's Single Permit not be renewed, the TCN has 10 days to submit a new Single Permit Application – after this period the TCN is deemed to be residing in Malta illegally. In terms of current policy, if the TCN manages to secure a new job and submit a new Single Permit Application during that period, he/she should be in a position to remain in Malta pending processing of this application.

TCNs who originally relocate to Malta on the basis of study may, on completion of their studies and subject to the satisfaction of a number of conditions, apply for work in Malta via the Single Permit route. Having said that, if a TCN relocates to Malta on the basis of employment, it is not generally accepted that the TCN shall, on

termination of employment, subsequently apply for residence on the basis of study.

14. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

Single Permit Applications submitted other than under the KEI rules may take months to be processed by the Expatriates Unit, during which period the TCN may not legally commence work in Malta. The processing time of applications is a burden on employers wishing to engage new recruits. In addition, as a rule Single Permits must be renewed on an annual basis and, accordingly, the employer must handle an additional administration process, the renewal application (albeit simpler than the initial application). The initial application and the renewal application are both subject to a fee.

15. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

As indicated above, the KEI is a fast track Single Permit Application process. Its availability is however limited to prospective employees who are highly qualified or hold a managerial position and earn a gross salary of at least €30,000 per annum. In terms of the KEI rules, applications are to be processed within 10 working days and, whereas in the first year, the TCN will be issued with a Single Permit for a 1-year period, on renewal the Single Permit may (at the discretion of Identity Malta) be issued for a 3-year period.

16. What are the recent trends, both political and social (including COVID-19 pandemic), that have impacted your jurisdiction with regard to immigration policy and law? How will this shape the immigration landscape moving forward?

As in other countries in Europe, the COVID-19 pandemic and related restrictions on travel and various lockdowns imposed around the world resulted in an exodus of a large number expatriates who were working and living in Malta and who chose to wait the situation out, in practice, in their home countries. Concurrently, it became extremely difficult for local employers to obtain visas for entry of prospective or current employees wishing to travel to Malta for work from countries with high levels of COVID-19 infections, border restrictions etc. Whilst there are still certain difficulties in this

regard, we are now seeing a gradual reversal of both these trends.

17. How is the COVID-19 pandemic shaping the immigration landscape in your jurisdiction?

Following the Covid-19 pandemic there remains a shortage of employees in Malta which is affecting employers locally.

On a positive note, the Covid-19 pandemic did bring about the introduction of the Nomad Residence Permit which filled a 'gap' in the immigration landscape for TCNs who wished to work remotely from Malta.

18. Are there any anticipated changes in the immigration laws of your jurisdiction?

Over past few years, Malta updated several pieces of legislation regulating residence and citizenship.

Government introduced the 'Malta Permanent Residency Programme', replacing the 'Malta Residency and Visa Programme'. This Programme is targeted at TCNs wishing to relocate to Malta on the basis of economic self-sufficiency; it is not targeted at individuals wishing to relocate to Malta in order to work here.

Another key development is the Nomad Residence Permit which regime should serve to increase Malta's attractiveness for TCNs wishing to work from Malta.

There was also an overhaul of sorts of local residency rules, with rules being prescribed to provide a clear route from residence to citizenship. A key piece of legislation in this regard is the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment Regulations.

The 'Start-Up Residence Permit Programme' was recently launched and effectively allows TCNs who wish to take up residence here on the basis of owning their own start-up business to apply for a residence permit, subject to a number of requirements and approval of the proposed start-up by Malta Enterprise.

19. How do you see technology developing and evolving to support immigration process in the future?

Until fairly recently, all Single Permit Applications were wholly paper based, with applicants being required to attend at Identity Malta in person and submit physical

documents in order to initiate the application process. Due to the COVID-19 pandemic, Identity Malta was forced to move online and launched the Single Permit Portal; this Portal has proven to be very successful, having effectively done away with a significant amount of paperwork and simplified the application process tremendously, with applicants now only being required to attend at Identity Malta in the final stages of processing, and generally for collection of their biometric data.

Over the past year, Identity Malta have moved further applications online, such as non-EU family member applications, student applications, amongst others.

20. What are the Right to Work requirements in your jurisdiction?

TCNs wishing to take up employment in Malta require an employment licence to legally work in Malta, typically a Single Permit. Engaging TCNs who are not in a possession of a valid employment licence to work is illegal.

In addition, the application process is subject to several conditions that both the prospective employee and employer need to fulfil, such as any applicable labour market considerations (subject to exceptions), i.e. the employer is required to justify why it is employing a TCN as opposed to an EU/EEA/Swiss national, providing evidence that the prospective employee is indeed suitability qualified for the role, where relevant, and so forth.

21. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

Any employer who takes in his employment, or gives work to, any person, not being an exempt person, who is not in possession of a licence allowing him to take up employment or work with said employer, shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates, to a fine not exceeding €11,646.87 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless a greater punishment is established for such offence by another law.

22. Are there any quota and / or labour

market testing requirements in your jurisdiction and if so, what do they involve?

Yes, a Single Permit Application is subject to labour market considerations, save for any applicable exceptions, which considerations include reference to the national situation in respect of a surplus or shortage in the given occupation and sector; the employer's history and situation in terms of recruitment and redundancy patterns; business investments; and contractual commitments, amongst others. The TCN's skills level, relevant experience, and overall suitability for the job in question, are also taken into account.

23. Are there quota requirements, restrictions or a cap on the numbers of foreign nationals hired per company in your jurisdiction?

Identity Malta Agency does not currently impose any quota requirements, restrictions or caps on the number of foreign individuals hired per company. Having said that, from a labour market perspective the employer is required to justify why it is employing a TCN over an EU/EEA/ Swu

24. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

In the case of employees who are no longer in employment in Malta, employers are required to submit a Termination Form to Jobsplus within a number of days from termination of said employment and to inform the Identity Malta Agency of said termination. Furthermore, the TCN should return his/her residence card to Identity Malta Agency after departing Malta.

The TCN should also handle the closing of his/her tax file with the Malta Commissioner for Tax and Customs Office.

25. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

The Single Permit Application does require certain individuals, such as those coming from countries with a high incidence of tuberculosis, to submit to medical checks and vaccination procedures for a defined period of time. Evidence that the medical checks have been undertaken, being approved by the Infectious Diseases Unit, is to be included in the Single Permit Application.

In addition, TCNs wishing to renew their Single Permit must now provide evidence that they have been vaccinated against COVID-19.

26. Are there any language requirements for your jurisdiction?

There are currently no language requirements when applying for a Single Permit, save for those imposed by the employer and required for the specific role.

27. What are the government costs associated with a typical employment based visa?

A Single Permit is submitted against a non-refundable fee of €280.50.

28. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

With regards to a Single Permit Application, TCNs cannot submit such an application without having an employment offer in Malta since applications have to be endorsed by a local employer. An executed employment contract must be included in the application.

With regards to applications under the KEI, a contract of employment signed by the applicant and employer indicating a minimum annual gross salary of €30,000 is to be included in the relevant application.

29. What are the maximum periods of stay for individuals on an employment based visa / work permit?

Single Permits are typically issued for a maximum period of 1 year, subject to renewal. TCNs who benefit under the KEI may be issued with a Single Permit for a 3-year period, on renewal; this is however, at the discretion of the Expatriates Unit.

Nomad workers who qualify for a Nomad Residence Permit may either be issued with a residence card for a maximum period of 1 year, subject to renewal, or, alternatively, with a National Visa issued for a period of less than 6 months.

30. Does your jurisdiction allow dual nationality?

Dual citizenship is allowed in terms of the Citizenship Act.

administering the various aspects of the Maltese immigration system also have a considerable amount of flexibility put to good use in the drafting of the relevant rules and guidelines supplementing same. This means it is robust but flexible, allowing for adjustment and adaption to change more readily.

31. What are the most positive aspects of your immigration system compared to the rest of the world?

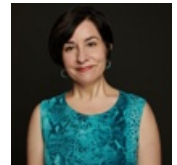
Whilst being law based, the government entities

The fact that the immigration rules are also supplemented by various tax incentives, such as lower personal tax rates on employment income paid to highly skilled professionals in key industry sectors such as financial services, gaming, aviation, maritime, make the Maltese system one of the more attractive ones around.

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