
Chapter 5

Regulatory Environment

Regulation of business

The Ministry of Finance, Economy and Investment is responsible for regulating economic policy, external trade and industry, while the Ministry for Fair Competition, Small Business and Consumers is responsible for competition and consumer affairs, trade services and intellectual property. Businesses may require licenses from various departments including the police, the public health authorities and the department of trade in relevant cases. Authorisation for conducting financial services is issued by the Malta Financial Services Authority.

Competition policy

Price controls

The price of most commodities is set according to market forces, although there are regulatory structures to protect the consumer and ensure fair pricing. The price of public utilities is set by the government.

Monopolies and antitrust

Because of the size of the country, leading firms often have a virtual monopoly in certain lines. The state itself maintains a monopoly in certain fields considered to require a national base in a small island like Malta, although post-EU membership and with a sustained process of privatisation taking place, such monopolies (and indeed even Government's direct participation in industry) are diminishing.

The national competition authority is the Office for Competition within the Malta Competition and Consumer Affairs Authority (MCCAA). The Office for Competition is responsible, among other things, for investigating, determining and suppressing restrictive practices and for carrying out sector enquiries.

The Competition Act prohibits agreements, decisions by associations of undertakings and concerted practices that prevent, restrict or distort competition in Malta. This prohibition, however, does not apply to any such agreements, decisions or concerted practices which contribute towards the objective of improving production or distribution of goods or services or promoting technical or economic progress; while allowing consumers a fair share of the resultant benefit; and do not impose on undertakings concerned any restriction which is not indispensable to the attainment of these objectives; nor give the undertakings concerned the possibility of eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement, decision or concerted practice refers.

Furthermore, the prohibition does not apply to agreements, decisions or concerted practices that do not have an appreciable impact on competition, taking into account all relevant circumstances, including the aggregate share of all the undertakings concerned of the relevant markets.

The Competition Act also prohibits the abuse by one or more undertakings of a dominant position. Failure to comply with the competition rules may result in criminal action, civil action for damages and/or an administrative fine.

Acquisitions and mergers

The Companies Act lays down the legal requirements and procedures for mergers. A merger must also satisfy the rules on fair competition under the Control of Concentrations Regulations and may require the prior approval of the Office for Competition.

The EU Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies has been transposed into Maltese law. This has created a legal framework within which cross-border mergers with other Member States may take place as long as the applicable conditions are satisfied.

Furthermore, Maltese law also implemented the EU Directive on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (90/434/EEC as amended by 2005/19/EC), which aims at eliminating tax obstacles with respect to mergers, divisions and other similar operations between companies of different Member States.

Securities market

Malta has a small stock exchange which is regulated by the Financial Markets Act.

Imports and exports

Imports are generally unrestricted. In particular, there are no difficulties concerning the importation of raw material and equipment required by industry. However, import licenses may be required for some products for the protection of domestic production and public-health reasons. In addition, imports from certain countries may be prohibited in accordance with restrictions set by the Security Council of the United Nations and/or by the European Union.

Exports are free of controls with some exceptions, primarily items of cultural value including antiques and works of art.

Consumer protection

The Consumer Affairs Act regulates various aspects of trading in the market place. Among other things, the law provides for the responsibilities of the Director General (Consumer Affairs), and establishes a Consumer Affairs Council and a Consumer Claims Tribunal. The Director General (Consumer Affairs) heads the Office for Consumer Affairs within the MCCA. The MCCA Act provides the Office for Consumer Affairs with a number of responsibilities, including the provision of advice and guidelines on consumer issues, investigation of complaints made by consumers about goods or services provided by traders, monitoring of trading practices and taking measures to suppress or prevent any practices that may be detrimental to consumers.

Another entity within the MCCA is the Standards and Metrology Institute, which adopts standards and co-ordinates standardisation and related activities to meet the needs of the Maltese community in accordance with European and internationally recognised standards and practices. It is also responsible for matters related to metrology.

Other departments may be responsible for better regulation of a specific sector, such as the Department of Health Information and Research, the Commerce Department and Agriculture Department, which are actively engaged in regulating the drug and food areas. Matters such as additives, ingredients, quality, hygiene, processing, labelling, and packaging are subject to stringent regulations.

Pollution control

Any installation that may cause air or water pollution or that carries the risk of environmental damage is subject to state control and regulation. If pollution norms are exceeded, sanctions may be imposed, including criminal action and the imposition of high penalties. The Environment and Development Planning Act gives the competent authority the power to grant or refuse to grant a development permit or licence. . The Authority may also impose certain conditions it deems appropriate when granting such permit or licence.

Special industries

Financial services

The Malta Financial Services Authority (MFSA) is the single regulator for financial services in Malta and is responsible for the licensing, regulation and supervision of all financial services activities including banking, investment services, collective investment schemes and insurance. The MFSA also manages the Registry of Companies. The MFSA is also responsible for consumer education and consumer protection in the financial services sector.

The principal legislation regulating financial activity in Malta include among others the Banking Act, the Financial Institutions Act, the Investment Services Act and the Insurance Business Act. Reference should also be made to subsidiary legislation, MFSA directives and MFSA rules which are issued in respect of specific financial services activities. (see Chapter 3).

Apart from setting up the legislative framework for the provision of financial services, the government has also ensured that Malta is not used for illicit activities. In this respect, the Prevention of Money Laundering Act prohibits the concealment, transfer, disguise, retention, and acquisition of property derived from criminal activity. Furthermore, the Prevention of Financial Markets Abuse Act safeguards the integrity of Maltese and Community financial markets and enhances investor confidence in those markets. .

Shipping

The Merchant Shipping Act regulates the registration of ships, including yachts in the Maltese registry and related matters. It entitles owners of ships carrying the Maltese flag to various advantages (see Chapter 3).

Patents, trademarks and copyrights

The normal safeguards and protection of trademarks, patents and copyright are available in Malta under the Trademarks Act, Patents and Designs Act and Copyright Act respectively. In terms of the former Act, trademarks are to be registered for a period of 10 years. Such registration may be renewed for further periods of 10 years, as long as the prescribed renewal fee is satisfied in accordance with the Act.. Trademarks can be registered for a variety of manufactured goods and of services. New inventions which involve an inventive step and are susceptible of industrial applications are patentable. Copyright protection is conferred automatically (i.e. without the necessity of application or registration) on artistic works, audiovisual works, databases, literary works and musical works. Amongst other works, computer software is eligible for copyright under the Copyright Act.

Malta has been a member of the Convention for the Protection of Industrial Property since 1899. Malta also adheres to the World Intellectual Property Organisation (Geneva) and to the Berne Convention for the Protection of Literary and Artistic Works.