



# Office of the Regulator

Individual Investor Programme (ORiip)

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## Second Annual Report on the IIP Programme of the Government of Malta

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October 2015



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## oreword by the Regulator

This Report - which is being drawn up by the Office of the Regulator Individual Investor Programme (ORIIP) in terms of subarticle 8 of Article 25 of the Maltese Citizenship Act, Cap. 188 – is the second such report.

In my introduction to the First Report, I had stated that “it is as yet too early to ‘keep under review’ individual applications given that the programme is in its first year of operation. A review of individual applications will be reported upon during the next calendar year”. My office is now in a position to report on the Programme in greater detail. I had also stated in last year’s report, that “the ORIIP intends to keep a low external profile (but focusing) on making a success of this initiative”. In this regard, I shall be tabling a few suggestions based on the experience garnered over the past months. These suggestions are **not** to be regarded as “recommendations” as such – the latter are spelt out in Appendix 1 of the report. Although I am still of the conviction that “a regulatory body should not meddle in policy or operational issues”, I feel the need to put forward some personal suggestions that could, in my opinion, further enhance the programme.

The suggestions I wish to make are three. One relates to the “Citizenship Department”, the other to the “publicity requirement” and a third refers to “Regulatory Governance”. One important caveat is this: the Report covers the period 1 July 2014 to 30 June 2015 whilst this foreword is dated mid August.

“The Citizenship Department (CEA)” – Unfortunately, at times, one does not distinguish between the IIP and residency permits issued to Third Country Nationals (TCNs) for work, study and related reasons. Few are aware that the two categories, IIP and the Residency Permits are not necessarily subjected to the same “due diligence”. This office is of the opinion that Identity Malta engages in a relatively rigorous due diligence process. There does not seem to be the same rigour with respect to issuance of eResidency cards to TCNs; this may be just a perception as this office has no real visibility of the CEA. Perception or not, given the numbers involved, in my opinion, it is time to provide for a body that monitors the CEA.

The law allows the Prime Minister to assign the IIP Regulator oversight into citizenship issues<sup>1</sup>. It is a moot point whether a strict interpretation of the law implies that the Prime Minister can assign the IIP Regulator additional oversight of the Citizenship department. But whatever, I feel that the time has come to widen the remit of the IIP Regulator to include the workings of the CEA as a whole. I am not tabling this proposal for my own benefit; I will be retiring due to age in the not too distant future. Mine is not a recommendation but still I strongly suggest that the Government appoints this office as overseer of the whole CEA department. If the current legal provision indicated above does not allow for this, an amendment should be tabled.

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<sup>1</sup> In terms of subarticle 4 of article 25 of the Maltese Citizenship Act, “The Prime Minister may by regulations assign to the Regulator any other function related to citizenship”.

Actually, if it comes to that, and the Maltese Citizenship Act (Cap. 188) has to be amended, my proposal is that the Government should also amend article 14 of the law, substituting the “committee of inquiry” established per article 14, subarticle 4 of the Maltese Citizenship Act<sup>2</sup> by the Regulator. The word “inquiry” is to my mind a misnomer; what the law lays down is a form of review and not an inquiry in the conventional meaning of the word. Should the Regulator assume this function, he should retain the same powers currently assigned to this “committee”, meaning that this office should never be empowered to overturn a Ministerial decision to grant citizenship of otherwise. Consolidation of all “regulatory” functions within one structure would also result in less bureaucracy.

“Publicity Requirement” – Whilst my first proposal is a relatively neutral one, I am well aware that the second suggestion is bound to be more controversial.

This time round, this office interviewed a number of Accredited Persons. Possibly the single most negative point raised by practically all interviewees was that related to publicity. As can be garnered from the Report, nearly all the interviewed agents are in agreement that the publication of names, even in its current format, that is annually along with those who obtained citizenship through other avenues, is possibly shying away applicants. Publication is particularly sensitive to those hailing from particular regions. I am not advocating doing away with transparency. But I do believe that there may be other ways of making the names “known”.

The first point to be kept in mind is that ever since the introduction of the Maltese Citizenship Act, it has been the policy (actually a legal requirement) to publish the names of those persons who acquire Maltese citizenship through naturalisation and registration. It seems that not all jurisdictions follow this rule. Malta has opted to publish the names of individuals who acquire citizenship through naturalisation and registration, a practice that has been with us for over 40 years. The argument being that it is in the public interest to do so.

However over the past 40 years, the legal regime has changed. Today we are more sensitive to data protection issues and to my mind the data protection argument cannot be swept under the carpet without further discussion. Moreover, how fair, or indeed legitimate, is it to publish names of persons registered as Maltese citizens given that they are citizens of this country of equal standing to those who are Maltese through, say, birth? Will this procedure withstand a legal challenge?

The names are published but not whether one became a citizen through, say, marriage or the IIP process. If my reading of the Parliamentary Debates is correct, one of the reasons why we are now publishing only the names is not to put a spotlight on the IIP; we are all aware of the discussion that preceded this position. However there is a manifest flaw. More often than not, IIP-based applications for Maltese citizenship involve households. Thus it might still be relatively easy to pinpoint individuals who have become a Maltese citizen through the IIP.

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<sup>2</sup> “Before making an order (for the deprivation of citizenship, the Minister shall give the person against whom the order is proposed to be made notice .....and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry.....”

If, as stated by a number of agents, some of these individuals are seeking to acquire citizenship for the safety of their children, particularly if they hail from certain regimes – and this truly seems to be the case in some cases – then a review of the current process is indicated.

Currently the Regulator is debarred from including in his report “personal data relating to individuals who have acquired Maltese citizenship under the individual investor programme”<sup>3</sup>. Given the preceding suggestion, namely that the remit of the Regulator should be widened, can the solution be that the Regulator is empowered to provide “personal data” with respect to all applications be they for residency cards and/or naturalisations and registrations, on a need basis, to the Monitoring Committee? There may be other ideas as to how best to balance the “public interest” and the right to privacy. I have to emphasise that I am not advocating discarding a long-standing tradition (policy?) that has been adopted since Independence. My proposal is to at least discuss this matter with the benefit of hindsight. If the preferred option is to retain the status quo, so be it.

“Regulatory Governance” – The country offers a range of services both for its own nationals as well as targeting “foreign direct investment”. Over the years, a number of offices with “regulatory” functions have been set up.

Perhaps the time has come to set up a forum for all Regulatory bodies to come together on a regular basis with a view to exchanging views, sharing good practices, developing standards, codes of practice and related matters.

I do not claim ownership of this idea. I am aware that a similar suggestion was made in the past, even though, unless I am mistaken, the idea then was to standardise and manage the powers of these regulatory bodies that were, at the time, budding on the scene. What, I believe, is required, is a formal network which, without creating an overarching structure, can bring together all the regulators, particularly those that have a direct bearing on Malta’s profile as a robust and serious jurisdiction.

In conclusion, whilst reiterating that the above suggestions are purely personal reflections, I wish to acknowledge the input of my staff in drawing up the report, not least Dr Kevin Gatt who is the focal point between this Office and the IMA. I would also like to show my gratitude to the Identity Malta top management, particularly their CEO, Mr Jonathan Cordona. IMA’s open door policy in regard to this office is truly appreciated. As will result from the Report the more important recommendations submitted in the First Report were duly taken on board. It is hoped that this year’s recommendations will likewise be implemented over time.

**Dr Godwin Grima**  
**Regulator**

18 August 2015

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<sup>3</sup> Art 25 (8), Cap. 188

**Annual Report on the Individual Investor Programme**

as on the 30 June 2015

In fulfilment of the provisions of Article 25(8) of the Maltese Citizenship Act (Cap. 188)

# Glossary

CEO	Chief Executive Officer
EU	European Union
GDP	Gross Domestic Product
Identity Malta / IM	Identity Malta Agency
IIP	Individual Investors Programme
MCC	Mediterranean Conference Centre
ORiip	Office of the Regulator (Individual Investor Programme)

## 1.0 Introduction

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01. This report represents the second, in a series of annual reports, required at law, in order to regulate the Individual Investor Programme in terms of Article 25(8) of the Maltese Citizenship Act (Cap. 188).
02. In line with last year's report, the timeline of this year's annual review will consider the period up to and including the 30 June 2015.
03. The First Annual Report was tabled in Parliament on Tuesday 17 February 2015.
04. The first meeting of the Monitoring Committee was also held.
05. The National Development and Social Fund to which funds from the IIP are to be directed as prescribed was set up as an Agency under the Public Administration Act on the 6 January 2015.
06. Throughout this calendar year we have started to witness the first applications which have been brought to fruition. To this effect, a considerable portion of the regulatory emphasis has been to assess the process which Identity Malta has adopted in processing these applications.
07. Last year's report made a number of recommendations, the most important of which, this office is pleased to note, have been agreed to. These recommendations together with the experience gained from the operational aspect of the programme have led to proposed revisions to Legal Notice 47 of 2014 (S.L. 188.03) – Individual Investor Programme of the Republic of Malta Regulations – with the aim of making these Regulations clearer and further improving the governance of the programme.
08. Identity Malta and this Office have continued to work closely together, meeting every month, with a view towards discussing issues arising as a result of the implementation of the programme.
09. This Office has drafted the necessary guidelines to cater for any eventual complaints that may arise from any person connected to the IIP. The guidelines have also been incorporated into a draft Legal Notice in terms of Article 25A of Cap.188. This draft is currently under consideration.
10. Of course, every year has its disappointments. Whilst the demarcation between regulatory and operational functions has long been resolved, recognition of the authority and status of this Office may not have permeated across all the public administration. There have been a few instances where the autonomy given to this Office by law was put into question. Notwithstanding, this Office decided to move on in the best interests of the programme even more so as these incidents were not showstoppers.

11. The findings contained in this report are indeed encouraging and reflect the experience that has accumulated over the past year as well as the diligence with which the process is carried out.

## 1.1 Follow-up from the First Annual Report

12. The First Annual Report was a landmark report wherein, for the first time, a regulatory review of the IIP was undertaken. It is considered that the First Annual Report received a positive response particularly in the light of the recommendations that were made and which will lead to changes in the current legislative framework in order to further improve the IIP.
13. What follows in this section is the identification of the salient external issues which the ORiip has noted. The external perspective is considered to be of great importance as it usually derives from different stakeholders all of whom have a direct or indirect relationship with the programme and whose input may serve to elicit issues which may positively contribute to the IIP's overall performance.

## 1.2 Statement of Adoption

14. The First Annual Report made 21 Regulatory Observations, the more important of which have been adopted by Identity Malta.
15. Identity Malta's response to each of these recommendations is provided in Table 1 in Appendix 1.

## 1.3 Public Reactions

16. This section is aimed at highlighting the salient issues which were reported in various public fora during the course of the year. These issues have transpired mainly from press reporting as well as parliamentary questions. It is important to qualify that the Regulator's remit is one which is limited to the operational dynamics of the IIP and which does not extend to the governance of the proceeds that result from this programme. Hence these reactions are being included solely for market research purposes by this Office.

### 1.3.1 Residency

17. Perhaps the most sensitive issues which have dominated the public debate on the IIP relate to the residency issue as a precondition for citizenship. The doubt that arises is whether the programme guarantees the establishment of real and genuine links to Malta prior to granting citizenship.
18. Public criticism has been leveraged against the term "proof of residence" in LN 47 of 2014 on the basis that its definition is poor. ORiip's First Annual Report had identified this potential gap and had recommended "to provide clear guidelines of

*what is to be considered as admissible proof of residence in Malta*" (ORiip First Annual Report, 2014, pg.11).

19. The criticism of the programme has therefore been at its real aim which was stated as one to attract talent and networks and which is now being felt to be one undermined by its financial contribution to Government. Moreover questions have been raised as to whether Malta's agreement with the EU on this programme are in fact being interpreted as intended.

### **1.3.2 The Concessionaire and Accredited Persons/Agents**

20. Another issue which continued to receive attention was related to the status of the Concessionaire. The Public Accounts Committee started discussing the contract that Government signed with the Concessionaire in February 2015 and the discussion is still ongoing. It has been reported in the media that, owing to commercial sensitivity issues, certain clauses have been blacked out.
21. Certain sections of the media have argued that this contract issue has also given rise to doubts as to whether accredited persons are on the same footing as the Concessionaire when it comes to the remuneration paid for the successful completion of an IIP application.
22. Others expressed the need for clarity on the role of the Concessionaire *vis a vis* Identity Malta.

### **1.3.3 Information and Communications**

23. The opportunities offered by the IIP have led to a number of statistics being released to the media. ORiip's First Annual Report had commented on the need for communications to be centralised within Identity Malta. However one notes that certain statistics and comments have been released by one of the accredited persons as well as by Henley & Partners.
24. The publication of the First Annual Report led to an extensive reporting in the media. The main aspects which were reported included the nationality of IIP applicants, the need for a residency matrix and for role clarity.
25. One newspaper provided a highly critical article in terms of the lack of information that was forthcoming on the programme following a request under the Freedom of Information Act.

### **1.3.4 The European Landscape**

26. Although much of the debate on the IIP centres around the issue of residency, it is interesting to note that other countries have their own arrangements to attract investment which may be in the form of golden visas, residency visas, residence permits. Although such 'residencies' may often be a Plan B, there is no doubt that they stimulate certain sectors of the economy.

27. The media have also reported that countries like Cyprus are now promoting the sale of citizenship as the fastest in the EU.

#### **1.3.5 *Impacts of the IIP***

28. Positive effects are being reported on the property market with part of the growth being attributed to the IIP.

#### **1.3.6 *Parliamentary Questions Raised***

29. A number of Parliamentary Questions were also raised. The main thrust of these were on the following themes:

- Number of IIP applicants;
- Nationality of successful IIP applicants;
- Remuneration received by Henley & Partners;
- Revenue from IIP;
- Identification of Accredited Agents.

## 2.0 The IIP in Practice

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30. This section aims to look at the IIP programme in figures, updating the figures provided in the First Annual Report. This is intended to show the level of interest and growth that has resulted from the programme metrics.

### 2.1 Accredited Persons

31. As at the 30 June 2015, only two (2) of the eighty five (85) accredited persons registered in 2014 failed to renew their authorisation to act as such. This represents a retention level of 97.6% which is considered to be outstanding and reflects accredited person perception that the programme can contribute to their business potential.
32. However, what is even more positive is the fact that the total number of accredited persons has risen by a further thirty two (32) new registrations to a total of one hundred and fifteen (115) which represent an increase of 35.3% over last year's numbers. This further demonstrates the positive atmosphere surrounding this programme and the direct and indirect opportunities it may offer.
33. The accredited persons were subdivided into four (4) main categories as follows:

<i>Type of Firm</i>	<i>Count</i>	<i>%</i>	<i>% Increase</i>
Law Firm	17	14.9	+3.1
Financial, Advisory & Audit + Law Firm	20	17.5	-6.0
Financial, Advisory & Audit	49	43.0	-14.6
Other	28	24.6	+17.5

34. No accredited person has so far been upgraded to the status of accredited agent.

## 2.2 Applications Received

35. For the period under review, a total of 245 applications were received. This represents an increase of 41.6% over the last period. Of these, 11 were rejected representing a rejection rate of 4.5%.
36. The number of applications subdivided by the geographical territory of the main applicant, was as follows:

<b>Geographical Region</b>	<b>Count</b>	<b>%</b>
Europe	157	61.6%
• of which 153 (60.0%) were from the former Soviet Republics		
North America	25	9.8%
Asia	22	8.6%
Middle East	22	8.6%
Gulf region	15	5.9%
Africa	13	5.1%
South America	1	0.4%

**Note:** The total is different from the 245 applications, to account for persons having more than one nationality

37. The 11 applications that were rejected originated from applicants from the following geographical regions:
- Former Soviet Republics (8)
  - Africa (2)
  - Europe (1)

### 2.2.1 Letters of Approval in Principle

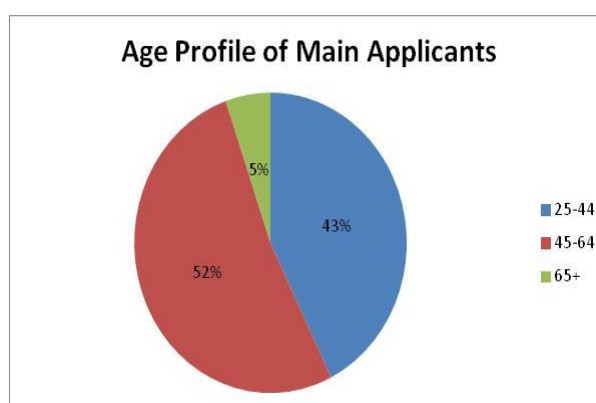
38. The first letters of approval in principle started to be issued during this review period. A Letter of Approval signifies the successful completion of the IIP process by applicants and their family members. At this stage, applicants would be expected to fulfil all outstanding commitments before the Oath of Allegiance may be taken.

39. A total of 75 Letters of Approval were issued during the period under review. Taken by geographical origin of the main applicant's current citizenship/s, the following distribution resulted.

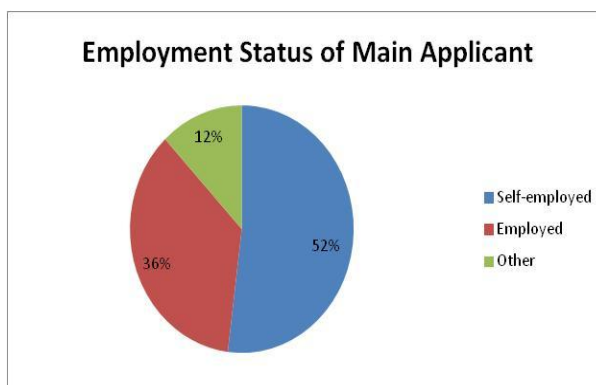
<b>Geographical Region</b>	<b>Count</b>	<b>%</b>
Europe	45	55.0%
• of which 44 (53.8%) were from the former Soviet Republics		
North America	13	15.9%
Asia	7	8.5%
Middle East	12	14.6%
Gulf region	2	2.4%
Africa	2	2.4%
South America	1	1.2%

**Note:** The total is different from the 75 Letters of Approval, to account for persons having more than one nationality

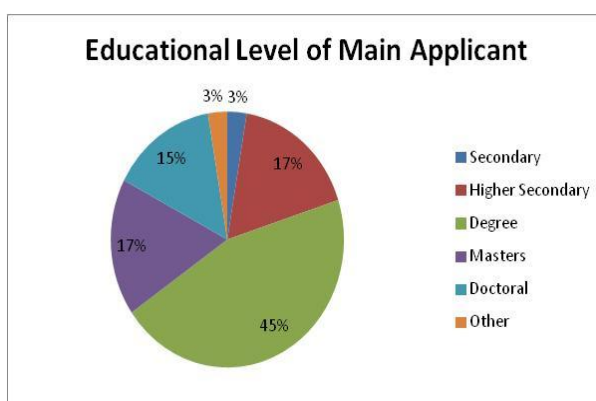
40. It has been thought appropriate to analyse the main applicants, spouses and dependants by their demographic characteristics with a view to better understand certain qualities of newly naturalised Maltese citizens.
41. Most of the main applicants (69) were males representing a 92% share of all Letters of Approval in Principle. As a result of the 75 main applicants, the Letters of Approval in Principle were generated for:
- 51 spouses;
  - 81 dependants under the age of 18 years;
  - 34 adult dependants (over 18 years of age).
42. As expected the majority of main applicants (52%) are in the 45-64 age group symptomatic with a person who is reaching or has reached business maturity. However, what is most encouraging is that 43% of approved main applicants are in the 25-44 age group with many years of business ahead of them and which, in turn, may mean a longer period in which Malta can benefit from the knock-on effects of granting citizenship to these high net worth individuals.



43. From an employment perspective, 52% of the main applicants were self employed whilst 36% were in employment. One can also notice a number of individuals of high net worth, who are retired and who have applied under the IIP. The fact that just over half of the main applicants are self employed implies the attraction of a number of successful business persons who, in the light of their Maltese citizenship status, may also opt to transfer some of their business locally thereby further contributing to Malta's economic growth.



44. It is also noted that 77.3% of all main applicants have a minimum level of education at Bachelors level. This augurs well as it implies that the related multiplier effects of the IIP may lean more towards high value added economic activities which would be in line with Malta's ongoing workforce positioning. In fact 17.3% of main applicants had a Masters degree with 14.7% in possession of a doctorate qualification.



45. Spouses of main applicants were in the ratio of 2:3 i.e. for every three main applicants, two of them had spouses. Spouse nationality distribution, in the main, is seen to be reflective of that of main applicants. Differences need to take into account that the spouse category consists of 24 individuals less than those under the main applicant category. Taken by geographical origin of the spouse's current citizenship/s, the following distribution resulted.

<b>Geographical Region</b>	<b>Count</b>	<b>%</b>
Europe	31	56.4%
• all of which were from the former Soviet Republics		
North America	7	12.7%
Asia	1	1.8%
Middle East	11	20.0%
Gulf region	2	3.6%
Africa	3	5.5%
South America	0	0.0%

**Note:** The total is different from the 51 spouse applications to account for persons having more than one nationality

46. Spouse age profile is equally distributed between the 25-44 (47.1%) and the 45-64 (51.0%) in line with that of the main applicants.
47. As a result of the 75 Letters of Approval in Principle issued, 81 minor dependants and 34 adult dependants were also included. Minor dependants hailed mainly from the Former Soviet Republics (51.6%), the Middle East (18.9%) and North America (11.6%). On their part, adult dependants were mainly from the Former Soviet Republics (66.7%) with an age profile mainly within the 18-24 age bracket (81.5%).
48. Interestingly, there were also 8 parent dependants included within the Letters of Approval in Principle, all of whom were from the Former Soviet Republics.

### 2.2.2 Naturalisations

49. The first naturalisations occurred during the period under review. These amounted to 137 individuals. On the basis of the 44 main applicants, this constitutes 2.4% of the pre-established target (1800 main applicants).
50. Taken by geographical origin of the naturalised main applicant's current citizenship/s, the following distribution resulted.

<b>Geographical Region</b>	<b>Count</b>	<b>%</b>
Europe	25	56.8%
• of which 24 (54.5%) were from the former Soviet Republics		
North America	6	13.6%
Asia	2	4.5%
Middle East	9	20.5%
Gulf region	0	0.0%
Africa	1	2.3%
South America	1	2.3%

**Note:** The total is different from the 75 Letters of Approval, to account for persons having more than one nationality

51. These naturalised main applicants fell mainly in the 45-64 age bracket (53.8%) followed by those in the 25-44 year bracket (38.5%). Most of the naturalised main applicants were self-employed (46.2%) followed by those in employment (33.3%) and those who were retired (17.9%). Educational level was also high with 69.2% having at least a Bachelors qualification.
52. 32 individuals were naturalised under the provision reserved for spouses. Of these the majority hail from the Former Soviet Republics (58.3%) followed by those from the Middle East (22.2%) and North America (11.1%). Ages were evenly distributed between the 45-64 year (50.0%) and the 24-44 year (43.8%) brackets.
53. 48 persons were naturalised as minor dependants to main applicants. Again nationality was in line with that of main applicants and spouses with 47.5% from the Former Soviet Republics, 23.7% from the Middle East followed by 11.9% from North America.

54. Under the provisions of the IIP, 15 adult, unmarried dependants between the ages of 18 and 27 were also naturalised. The majority of these were in the 18-24 age bracket (93.3%) with 73.3% originating from the Former Soviet Republics with the rest from North America and the Middle East.

### 2.2.3 *Financial Implications*

55. So far 8 properties have been purchased at a total cost of €6,292,244 which, on average, equates to an average property value of €786, 530. This is over twice the minimum value of property that has to be acquired by successful IIP applicants (€350,000) and is a positive indicator. Most properties were purchased in the locality of Sliema (62.5%) with one property in each of the localities of Mellieha, St. Julians and St. Paul's Bay.

56. Lease of residential premises seems to be the most popular option so far with a share of 81.8% of property-related obligations. Total annual leases amounted to 36 with a total lease value of €4,292,583 which equates to an average annual lease of €119,238, well above the minimum annual lease requirement stipulated in the regulations and which amounts to €16,000. This is also positive in terms of the high value added rentals that the IIP scheme is generating.

57. Total investments amounted to €6,613,332 which works out to the statutory €150,000 stipulated in the Regulations.

58. Total funds received from IIP applications by Identity Malta in respect of the IIP programme were as follows:

- Up till 30 June 2014 €1,003,900
- Between 1 July 2014 and 30 June 2015 €59,904,100

59. Funds retained by Identity Malta after deposits to Government accounts and expenses incurred in respect of the IIP programme were as follows:

- Up till 30 June 2014 €1,003,900
- Between 1 July 2014 and 30 June 2015 €44,743,600

60. Funds at paragraph 58 equate to 0.75% of GDP with this figure expected to grow as the programme reaches a more stable and mature level.

61. Taking all inputs from the IIP related to property purchases and rent, investments and contributions, these contributions from the IIP equate to approximately 1% of GDP.

## 3.0 Strengthening IIP Governance

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62. This section is characterised by the initiatives that were taken in order to further strengthening the governance framework characterising the IIP. Good governance requires, amongst others, that the legal framework permits the correct administration of the programme and that, to the extent possible, stakeholders are involved in improving the dynamics of the programme.

### 3.1 Legislative Provisions

63. During the current year new legislation was drafted to regulate the complaints procedure to be followed should such cases arise. Furthermore, during this same year, as a result of the experience gained to date in the administration of the programme as well as a result of last year's first regulatory review, the IIP Regulations were reviewed and proposed modifications put forward.

#### 3.1.1 Complaints Procedure

64. Article 25A of the Maltese Citizenship Act mandates the Regulator to investigate complaints about the IIP. Such complaints are not specified and may be related to any portion of the IIP Regulations. Complaints may emanate from any stakeholder, involved at some stage of the IIP process, as defined in the respective Regulation, and who deems to be impacted by the said Regulations.
65. To this effect the Office of the Regulator has drafted Regulations to legislate in favour of such complaints procedure that is to be adopted should any such case arise.
66. The spirit of these Regulations provides for complaints to be made in respect of the manner in which the IIP Regulations are being implemented.
67. In order to reflect the current *modus operandi* the Regulations allow a complainant to be represented by the Concessionaire, an Approved Agent or an Accredited Person. Moreover, in order to respect the rigour of the current IIP process, the complaint application will have to be sworn in front of a Commissioner for Oaths.
68. Care has been taken to ensure that, in the case of minors, both parents are obliged to sign the complaints application unless there is a custodial sentence.
69. The Regulator expects any complaints to be well motivated and detailed as provided for in the application itself. This will allow any subsequent investigation to be founded on an appreciable case history.

70. In line with the procedures adopted by the Ombudsman, the Regulator will not investigate complaints in which legal proceedings have been instituted.
71. The draft Legal Notice and Complaints Form drawn up by this Office is enclosed in Appendix I.

### 3.1.2 *Modifications to IIP Regulations*

72. The IIP Regulations are also to undergo some modifications aimed at reflecting the experience that Malta has had with the programme to date. Currently amendments to the Legal Notice governing the programme are in the pipeline. References to the "Regulations" in this section refer to the amendments that are being drawn up, unless the context otherwise requires.
73. This Office has worked closely with Identity Malta in the formulation of the amendments to the IIP Regulations. It is in this context that this Office wishes to extend its gratitude to Identity Malta for consulting it on this matter and for further cementing a mutual strong and collaborative working relationship.
74. The most important development is that the Regulations clarify, once and for all, the roles of Identity Malta and the Concessionaire. To date, the Regulations had, *de jure*, more or less reflected the initial *modus operandi* and had not reflected the, *de facto*, governance changes which have been implemented.
75. It seems that the role of the Concessionaire will be amended to reflect Identity Malta's current responsibility for implementation, administration and operation of the programme. The perception that the Concessionaire was involved in these aspects was a concern to many other stakeholders involved in the rollout of the programme. Similarly Regulation 7 will also reflect the fact that all applications will be submitted to, and examined by, Identity Malta with no involvement of the Concessionaire. Moreover this same Regulation also makes it clear that it shall be Identity Malta which shall directly carry out due diligence tests and that such checks are carried out independently of the Accredited Agent/Person or the Concessionaire. This Office notes with satisfaction that this legal amendment reflects one of the most important considerations that it had made in its First Annual Report.
76. In the case of minors, due provisions have been made so that custodial sentences, as established by a court of law, will govern who of the parents has the legal mandate to sign application forms related to minors. Current practice dictated that both parents were obliged to sign which, for example in the case of family breakdowns, gave rise to certain logistical difficulties, the consequences of which affected mostly the minor. Consequently the process is being aligned to reflect custodial sentences.
77. Identity Malta has, to date, registered 'agents' as Accredited Persons up till such time as they have three successful applications after which their status would be upgraded to an Approved Agent. Such status should be reflected in the amended Regulations.

78. In May 2015, Identity Malta also released a revised set of Guidelines. These are considered to be more comprehensive and detail the process and its associated requirements in a step by step manner.

## 3.2 Residency

79. The issue of residency has undoubtedly been the most controversial aspect of the IIP. Regulation 4 of the IIP Regulations commits the applicant to “*provide proof of residence*”. Furthermore, Regulation 7(12) requires that no certificate of naturalisation be issued “*unless the main applicant provides proof that he has been a resident of Malta for a period of at least twelve months preceding the day of the issuing of the certificate of naturalisation*”.
80. The question that many often try to answer is whether residency means that a person should be physically resident in Malta throughout the year, whether it should refer to the 182 days that are required for taxation purposes or any form of other configuration. In fact this Office’s First Annual Report had recommended that “*It is suggested that, over time, Identity Malta develops a procedural metric for residency. The metric needs to be robust but, at the same time, flexible enough such that Malta retains its competitive edge*”.
81. The updated Guidelines provided by Identity Malta specify that in order to obtain Maltese e-residency, an applicant must fulfil a number of criteria not least that of having a comprehensive health insurance, demonstrate economic self-sufficiency, a property lease or purchase agreement, an introduction letter and a Tier 1 due diligence check. The unwritten recommendations also include provisions to establish genuine links with Malta such as the opening of a bank account with a local bank, taking out a mobile phone number, joining a social club and making a donation to a charitable institution.
82. This Office considers that these options which demonstrate the establishment of genuine links should have been included in the guidelines.
83. Consequent to a call for clarity on the meaning of residence, Identity Malta sought the advice of Professor Dr Dimitry Kochenov who holds a Chair of EU Constitutional Law at the Department of European and Economic Law at the University of Groningen. His advice, which was forwarded to this Office by Identity Malta with his permission, is being summarised in the following paragraphs.
84. The first point that is made is that residence in an EU Member State is a legal status and that it therefore does not carry the same meaning as presence. Being a legal status, residence comes with rights and obligations and the conditions of its commencement and termination depend on the rules in force and not on the presence of a particular individual within that territory.
85. The conditions required for residency are stipulated by the competent authority or authorities. However the conditions for obtaining the legal status of residency do not include the requirement of physical presence even though common practice is that

an address in the Member State will be required together with evidence that the individual concerned will not be a burden on the finances of the host state.

86. European practice does not connect the possession of the address with a strict requirement of presence on that address, let alone checks of such presence. As it is possible to hold a residence permit in more than one country, it is therefore a physical impossibility for an individual to be omni-present in all countries in which a residence permit is held.
87. The most common types of residence permits are granted for the following purposes:
  - Tax residence;
  - Residence for family purposes;
  - Investment residence.
88. The expert advice also contends that European law on residence has moved legal residence further away from the concept of physical presence. The Schengen zone, for example, would make it very difficult to quantify the movements within the zone making the metric of physical presence impracticable. It is appropriate to quote Advocate General Sharpston in Case C-456/12 where it was opined that “*I do not think that residence requires constant physical presence in the territory of a single Member State (the third question asked in Case C-456/12). Otherwise, one could be found to be resident in a Member State only if one had not exercised the right to freedom of movement (by definition, prior to moving, one would have lived somewhere else)*”. Advocate General Sharpston further opines that “*It might reasonably, however, require a preponderance of presence*”. It is explained that “*In order to avoid this logical conundrum, most legal residence tests specify a fixed (and hence necessarily arbitrary) ‘qualifying’ period of presence before residence is achieved. There is no objective difference, however, between presence the day before and presence the day after the magic figure is attained*”.
89. It may also be argued that a ‘constant physical presence’ could impose an unjustifiable restriction to freedom of movement.
90. Professor Kochenov’s opinion concludes by making 5 key observations, namely:
  - Residence is not physical presence;
  - The essence of residence, legally speaking, consists in the status established by law and the rights connected to such a status;
  - The status usually acquired based on a residence permit issued by the competent authority;
  - The conditions to which such issuance is subjected are established by law and only mention physical presence in overwhelmingly exceptional cases;
  - The EU legal context with the Free Travel Area and the Schengen Zone made the connection between residence in law and physical presence in fact even more elusive.

91. If the underlying principle that residence does not equate to physical presence is correct, this should dispel the concerns being raised on the issue; provided that the current emphasis to establish genuine links with Malta as part of the IIP process is retained. Prior to naturalisation, the contribution itself, the commitment to the thresholds for leasing or purchasing property and the holding of a maximum investment further cement the person's link with Malta. Spinoffs such as the migration of portions of applicant business activities to Malta or the setting up of new business activities in Malta further consolidate and integrate the individual as one of Malta's citizens. Once the status of citizenship is acquired, residency issues with respect to the programme cease to exist altogether, even though residency may be important for other aspects, such as taxation and voting rights.
92. Having said this, it is important that Identity Malta secures that the due diligence process is carried out with utmost rigour in order to ensure that every successful application is in itself an advert of the robustness of the programme and the potential that Malta offers investors worldwide.

### 3.3 Stakeholder Participation

93. Ensuring stakeholder participation is key to securing good governance. Stakeholders have the advantage of having their feet firmly on the ground and can therefore provide valuable insights into the pulse of the programme as seen by its target audiences. To this effect, this Office conducted interviews with a sample of approximately 20% of accredited persons in order to elicit their views on the programme. The following paragraphs highlight the main issues which emerged.

#### 3.3.1 Programme Strengths

94. There is a general consensus amongst accredited persons that the programme is a positive experience all round. Malta's jurisdictional standing coupled with the approval secured from the European Commission are considered to have made the programme a winner. Accredited persons have also commented that the programme is not only well received by them from a business opportunity perspective but it is also well received by applicants, in general. Despite being expensive, it is considered to be a cut above the rest from other programmes related to the acquisition of citizenship or residency by investment. Other strong points mentioned were its fast track approach, the straightforward nature of the requirements, the timelines entrenched in the legal instrument governing the IIP and the seriousness with which it is implemented.

95. The level of contributions required by the programme were also considered to be such that they would attract a certain calibre of applicants whose success could be of benefit to Malta. However, some concerns on the nature of the contributions were expressed, and which shall be discussed later, mainly on the basis of the cultural orientation of certain geographical regions. Thus the relatively long timeframes required for the due diligence process were seen by some as positive in terms of sending the right message in terms of the rigour manifested by the programme itself.

96. A positive spin-off from the programme is the multiplier effect potential which it is seen to have and which has to be nurtured and facilitated. Agents consider that there is a substantial propensity to invest in Malta's economy. In fact some spin-offs have already been reported with a genuine interest from applicants to transfer part of their business to operate from Malta. Thus the value added brought about by applicants is considered to be a game changer in terms of the importance of the programme to the Maltese economy and investment climate.

#### 3.3.2 Areas for Improvement

97. Residency remains very much an area that requires understanding by all those concerned. The previous paragraphs dealing with the concept of residency should serve as an eye opener to all concerned with a view to understanding this concept and to frame the IIP requirements within this context.

98. Many agents lamented the lack of official guidance on the parameters required to satisfy residency conditions. This, in turn, implied that agents could not give cast iron advice to their clients on what definitive measures need to be taken to satisfy residency requirements. This vagueness has been reported to be, at times, an initial point of concern for applicants wishing to apply for citizenship under the IIP.
99. The absence of a firm and defined rule on residency places an onus upon agents to advise on how genuine links to Malta may be established, often balancing physical presence with actual links. In fact, some agents see this aspect of 'providing genuine links' as a flexible pathway to suit the individual circumstances of applicants whilst others see it as a disadvantage in terms of their inability to provide a definitive route to residency. Identity Malta has already provided an indication of what criteria may be used to demonstrate such genuine links but the informal nature of such advice still prevails.
100. Some agents have commented that the unwritten obligation to stay in Malta for a reasonable amount of time has, at times, worked in Malta's favour as applicants feel the programme is a serious one. Additionally they and their families are able to experience what the island has to offer first hand. Applicants tend to become so enamoured with the island and what it has to offer, that they immediately feel a sense of belonging and demonstrate a willingness to be active citizens.
101. Only one agent proposed that the residency requirement should be set at 182 days, the period required for taxation. This agent argued that a definitive number would provide certainty when agents advise their clients as to what is expected of the applicant. However there was consensus amongst interviewed accredited agents that an expectation for physical presence to be equated to that for the purpose of tax (i.e. 182 days) in order to gain residency is an illusion when dealing with the calibre of applicants the IIP is designed for. The agents emphasised that one needs to bear in mind that such individuals often have business interests in various geographical territories which, from a practical and business perspective, requires them to be on the move for appreciable portions of the calendar year.
102. It is in this context that, the unwritten general advice is for applicants to balance the number of days they stay in Malta with the creation of genuine links. Physical presence is usually recommended in three separate visits that include the milestones for applying and for taking the oath of allegiance as well as an interim visit. The genuine links are usually established through renting of property, opening a personal account with a local bank, obtaining a local mobile phone connection, taking out membership with a social organisation, making a donation to a charitable institution and, at times, establishing a relationship with a medical professional.
103. This matrix of links is considered to be reasonable as well as an inherent opportunity for applicants to familiarise themselves with Malta with a view to whet their appetite for establishing even stronger business ties thereby contributing to the further growth of the local economy, hence promoting more active citizenship prospects. It also offers the possibility for tax planning which, in itself, may lead to further business opportunities.

104. The IIP has a number of dependencies, or linkages, with other government functions not least those related to Residency, Passports, Public Registry and Police Departments. Identity Malta is not only responsible for the IIP but is also mandated as the competent authority for residency, passports and the public registry. Some agents have commented on the need for a seamless operation to be present within the wider structure of Identity Malta such that IIP applications are not delayed unnecessarily by requests from Identity Malta subsidiaries when the programme design and organisational procedures could have factored these *a priori*. An issue was also raised by a particular agent in that a complaint was made about technical matters that sometimes characterise biometric process and which do not portray the right image. It is incongruent for the IIP process to be delayed by procedures within the control of the same agency.
105. There is a general understanding by most agents of the need for the current level of bureaucracy to safeguard the programme itself. However, agents have expressed certain ideas as to how such bureaucracy could be eased. These include, but may not be limited to:
- the importance of reflecting programme requirements clearly in the guidelines provided (eg first marriage certificate of a woman in her second marriage);
  - the revision of guidelines to take into account the experience gained from a number of errors being made by applicants;
  - information requests conforming to the 'once only' principle;
  - a wider role for approved agents such as certifying copies of original documents;
  - the requirement for the original passport of separated spouse to be presented and/or the need for the passport of former spouse to be brought over to Malta in case of naturalisation of minors as this causes problems particularly as consent would have been given in other parts of the application process;
  - Honorary Consuls should be given the power to verify signatures for IIP purposes.
106. Agents have also highlighted that whilst there should be general rules for the IIP, certain practices and cultures prevailing in particular countries need to be taken into account as they otherwise risk the persistence of impracticalities associated with 'one size fits all' approaches. Such specificities need to be recognised and the IIP 'tailored' to deal with such particular circumstances with specific procedures reflected in the guidelines. Specific issues include:
- a marriage certificate does not exist in certain jurisdictions;
  - the acquisition of citizenship is seen as a personal matter and the publication of names is seen as a negative aspect for the programme;
  - unique cases such as those where only one birth certificate exists, and which is held by the individual, who would be unwilling to give it up as part of the IIP process;
  - cases where birth certificates do not exist due to birth at a time of transition or turmoil of the motherland;

- the outlook by certain nationals to the scheme's 'payment' requirement, whilst acceptable to some, may not be acceptable to others. In the case of the latter, variant schemes referred to earlier may be a solution;
  - transitional requirements that may be required in cases where dual citizenship is not allowed and/or where investments need to be relocated to the new home country.
107. One particular agent suggested that the due diligence process should be strengthened by establishing links with reputable firms in the country of the applicant to enhance the due diligence process. Moreover, an interview process was suggested by a multi-skilled board made up of police, psychologists and other professionals to be held in many more, if not all, cases.
108. The need for apostilles was also raised. Whilst many agents recognise its importance, particularly those having a legal background, there were specific comments to the effect that the apostille should be limited to certain countries and not to adopt a 'one size fits all' approach. Others commented on the fact that the procedure makes agents lean towards bringing everything to be done in Malta and that Malta's embassies need to be roped in to this process to facilitate matters.
109. Related to the preceding paragraph is the fact that some agents considered the programme as being document heavy. Moreover the verification of documents can, at times, pose certain burdens to the application process.
110. As far as possible a more automated application process is called for by agents such that an alternative to physical submission of forms may be available. This will reduce administrative burden and make the process more streamlined and efficient.
111. Another issue which was raised related to the issue of one's ID card upon naturalisation. Currently, applicants have to apply for an ID card and the agents' opinion, generally, is that the ID card should be issued automatically with passport and not on request<sup>4</sup>.

### **3.3.3 Experience with Identity Malta**

112. Identity Malta comes out with flying colours with the majority of all agents. Agents are very positive about their relationship with Identity Malta and how they are treated. Staff have been described as helpful and approachable, experienced and well trained, prompt in their response whilst adopting an 'open for business' attitude.
113. The IIP's most senior staff have also been showered with praise for the relationship they foster with agents as well as for their presence in the introductory meeting with prospective applicants which is well received. The personal touch provided by those who are in direct contact with agents and applicants was very much well received.
114. One particular aspect which was specifically mentioned was Identity Malta's contribution in assisting prospective applicants touch base with authorities where

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<sup>4</sup> Before any formal position is taken in this regard, one should recall that an eID card will serve as a basis for government services including registration in the Electoral Register.

there are niche interests. By acting as a facilitator with other government entities and channelling prospective applicants directly to the source of their requirements has provided an additional seamless dimension to the workings of government.

115. The major concern that was raised by agents related to Identity Malta's IIP arm becoming the victim of the programme's success. The increase in the number of applications has started to take a toll on the capacity of the IIP unit to the extent that certain slippages in timelines prescribed by law are being observed. Whilst certain minor slippages may be acceptable for some, the same may not be said of those applicants with heightened exigencies who expect the full value for their money to be realised not least in respected deadlines.
116. Whilst most agents insist that timelines should be met not least because they have been established by law, they have also suggested that Identity Malta should maintain constant contact with them during the 120 day period so as to keep them abreast of the progress registered. In the light of the programme dynamics such a practice would further add value to the process.
117. Timelines for the provision of the residency card have been highlighted as one of those areas where delays are being observed when compared to the early days of the programme. However, other slippages particularly those related to the legally established 120 days are becoming more frequent and measures to stem such delays should be forthcoming without further delay if the programme's reputation is not to be compromised.
118. Comments were also raised on the nature of the initial meeting which should avoid overselling and requesting too much personal information but should focus on Malta's history, culture and places of interest. Attempts to oversell Malta in this meeting should be avoided as it ridicules the country and the programme. Similarly, some of Identity Malta's staff need to constantly adopt a more business-like approach speaking properly and limiting discourse to the programme.
119. Some agents commented on the fact that Identity Malta staff do not come from a banking perspective and which limits, at times, their viewpoint on the applicant's financial standing. Whilst it is desirable for employees to have legal, financial and other competencies, it may be the case that a banking capacity may be developed through future recruitment such that this perspective is factored in the assessment process.

#### **3.3.4 Communication with Identity Malta**

120. Once again the feedback in respect of the communication with Identity Malta receives a very high accolade. IIP employees are considered to be responsive to agent feedback. Moreover their response time is considered to be very efficient. It is very positive to note that both the executive Chair as well as the CEO of the programme make themselves available and accessible to issues which need resolution. In fact the concern expressed was whether, as the success of the programme grows, current communication levels could be maintained.

121. A particular issue was raised in respect of confidentiality which is of paramount importance to applicants. Obligations to visit embassies for specific documentation raises concerns with a certain cadre of applicants as there are employees which are applicants' co-nationals and whom applicants do not trust in terms of the confidentiality of their pursuance of alternative citizenship. Although these issues are usually solved on a case by case basis with the highest officials, the issue should be taken note of.
122. One particular agent suggested that Identity Malta was pointing applicants in the direction of a specific charity or charities for donation purposes. This Office is not in a position to verify such a claim.

### 3.3.5 *Negative Aspects*

123. The negative aspect which stands out most is the banking experience. Although not a government, or indeed an Identity Malta function, the banking environment is a critical success factor to the programme. Some agents feel that Malta's strength as a centre for financial services is not being reflected in the banking facilities that are required for further business development to take place by successful applicants.
124. The general consensus amongst agents was that whilst no major difficulties are encountered in opening a personal bank account, the same may not be said for corporate structures which they define as 'impossible'. Having said this, some agents registered difficulties that their clients had encountered even with opening of personal bank accounts.
125. The banking panorama needs to be better geared for the IIP and its potential spin offs. Dovetailing the potential investment with the platforms banks could offer could have reaped more benefits for the banks themselves and the country. Whilst most agents recognised that the corporate aspect difficulties are similar to what is happening in other countries, they maintain that this conflicts with Malta's positioning as a financial services hub. The need for a 'boutique bank' servicing the needs of the IIP was also suggested.
126. The issue of culture was referred to earlier in the context of ensuring that the IIP can respect different cultural facets without compromising the integrity of the programme. In order to facilitate the banking requirements of applicants from the Middle East and Gulf region, due consideration was to be given to Malta's financial services portfolio embracing sharia banking. This type of banking need not be seen solely in the context of the IIP but also in the context of the opportunities it may offer Malta in expanding its financial services dimension.
127. Agents have also raised the issue of delays that are resulting from the requirement for police certificates particularly due to the requirement for original certificates to be provided from the applicant's country of origin. It seems that authenticated and apostilled translations of this certificate are not being allowed.
128. Changes in goalposts during a process are never seen in a good light. The €200 renewal fee for the residency card, at a time when the validity period was 12 months,

was seen as an unnecessary charge particularly in the light of the contributions that were being made. It is to be noted that Identity Malta has already responded by extending the validity period from the original 12 months to 18 months.

129. It was also pointed out that the biometrics are only valid for a period of one year. Consequently, should a renewal of the residency card be required, for whatever reason, the applicant and any dependents would be required to come to Malta once again for such renewal purposes.
130. The number of circulars which are issued by Identity Malta are also considered to constitute a change in goalposts midway through an application process. This can lead to an amount of re-work or delays which were not contemplated beforehand and which may also have an impact on the professional fees that agents charge to applicants. Bottom line, it is in Malta's interest that the whole experience is a positive one.
131. Perhaps a negative issue which has been raised by the absolute majority of agents and which has also been the subject of much public debate is the issue of the publication of the names of those who acquire citizenship.
132. Most agents are in agreement that the publication of names, even annually, together with those who obtained citizenship through other avenues, is not met well by most applicants. It seems that cultural issues characterise the matter of whether names are published or not with applicants, particularly those from the Middle East and the Gulf States, who are very sensitive to having their names published. Indeed, it seems that this requirement was, in some cases, a showstopper. Applicants from other geographical areas have mixed reactions to the publication of names but there have been reports of cases where publication was deemed to be a potential safety threat to the applicant and respective dependents.

#### **3.3.6 Other issues**

133. The issues which were contentious during the evolution of the IIP, to a certain extent, were raised by agents, albeit not necessarily mirroring the controversy in the argumentation.
134. A major talking point was related to the Concessionaire, its true role in the IIP and the achievement of a level playing field amongst all agents.
135. There are mixed views amongst agents with those who carry on with their business and are happy to be involved in this business opportunity and those who still expect to know the role of the Concessionaire and the benefits that it accrues from their applications.
136. There is a perception that the Concessionaire is still involved behind the scenes and that it can facilitate the approval of its own applications.
137. One agent complained that the Concessionaire portrays itself as a guarantee of success.

138. Although the role and involvement of the Concessionaire in the operational aspects of the Programme has been diluted over the past years, feedback from agents indicates that these changes have not filtered amongst the operators.
139. The competition faced from other jurisdictions, in particular Cyprus, was also raised. Some agents consider Cyprus to be a major competitor due to lack of residency requirement as well as the fact that Cyprus does not publish names of persons naturalised. The Cyprus alternative is considered by a significant portion of agents to be real and business is being lost to Cyprus on the basis of cost and possibly due to Malta's more stringent residency requirements. There are other agents who do not consider Cyprus to be a real threat whilst others have suggested that future IIP variants could take into account the investment rather than solely the contribution approach as this may appeal more to certain cultures.
140. Another issue related to the offices of the IIP which are currently situated at the Mediterranean Conference Centre, a building with a rich history and which served as the hospital of the Knights of Malta. There are two avenues to enter the building, one through the MCC itself (Evans Building side) and one from the rear end at the bottom of St. Paul's Street.
141. The opinion of the suitability of these offices is divided amongst those who see such a historic building as a statement of the importance of the IIP and those who highlight the uglier side of traffic jams, sense of neglect and shabbiness in the surrounding environs.
142. There are still agents who think that the experience needs to be upped and the flow seen from arrival at the Malta International Airport to the way they are taken through the IIP offices. Waiting times are not seen as being tolerable with options for red carpet treatment suggested to be explored to match the expectations from the programme.
143. This Office has been informed that, a particular social club, noticing the influx of membership requests from IIP applicants has created a different and more expensive fee than that applicable to Maltese nationals.
144. There is also a feeling that the target of 1800 main applicants may be too restrictive and this, in turn, is causing a degree of panic amongst potential applicants.

## 4.0 Regulatory Assessment

145. During the year under review, one of the most prominent developments of the programme was the approval of the first naturalisations. As at the 30 June 2015, Identity Malta had issued 75 Letters of Approval to main applicants, of which 44 had reached naturalisation stage.
146. Consequently, another main focus of this year's annual report was that related to the regulatory assessment of a sample of around 20% of those main applicants who were issued with a Letter of Approval up till the cut-off date of this report i.e. 30 June 2015.
147. There is evidence to suggest that Identity Malta has had to ramp up its capacity with a steep learning curve. As with any new initiative, there are bound to be initial difficulties and progressive corrections, tightening and rulings that continue to shape the assessment process adopted for the programme.
148. This is amply reflected both by the number of circulars that were issued as well as with the vastly improved and comprehensive second version of the Checklist and Guidelines which Identity Malta released in May 2015.
149. Thus early day administrative shortcomings in the assessment of applications have been, in the main, addressed through the new Checklist and Guidelines. Issues such as the use of correcting fluid, the inclusion of the Power of Attorney, the waiving of the need for passport photos, the need for one copy of birth or marriage certificates are all examples of defaults which were noted in some applications but which are now addressed in the Checklist and Guidelines. The Internal Quality Control function ensuring that file processing standards are upheld needs to remain active and, if and when necessary, strengthened.
150. Notwithstanding, new circulars are still being issued from time to time and it is important for these to be factored in regular annual or bi-annual updates of the Checklist and Guidelines document whilst, in the case of amended requirements, for a transition period to be established.
151. The impression is that Identity Malta has taken this programme very seriously and has not shied away from obtaining specialist advice on the implementation of the programme not least that related to the due diligence portion.
152. Notwithstanding, there are certain areas which could benefit from some additional attention with a view to further fine tuning the assessment process.

153. Perhaps one of the main issues is the need for a much better filing system than that which prevails today. The main shortcomings are related to the different forms of document filing that are submitted by agents on behalf of applicants, their completeness and cross referencing. Matters in this respect have already started to be taken into consideration as the initial applications that were reviewed were governed by the first version of the Checklist and Guidelines. It must be recognised that the new Checklist and Guidelines document provides a methodology as to how an application should be filed prior to being submitted. But there are other issues which need to be addressed not least to enhance the programme's corporate image. For example IM needs to improve the indexing of documents submitted at application stage and subsequent submissions to ensure a complete application history.
154. At times, minor amendments may be required to the application. These need to be effected through a Power of Attorney for the applicant's agent to act on their behalf in terms of the IIP. Whilst the applications reviewed not always contained the Power of Attorney, it is the nature of how the amendments are made that need to be structured in a better fashion. When the application is initially checked for compliance purposes a specific report is issued outlining any inconsistencies. Most of the time, the original set of forms submitted are amended by the applicant's agent. The main issue is that, particularly when amendments are made in the same colour of ink, the history of the application's development may not be that clear. When the agent replies to the inconsistencies raised, these are filed with the application form remaining in an 'incomplete' stage. Furthermore, the submission of new documents may not offer the desired degree of traceability.
155. The first stage of the IIP is the application for a residence permit. At this time, applicants are asked to pay half the non-refundable fee (€5,000) in order to demonstrate their commitment to the entire process. Applications for the residency permit as well as the financial transaction are not included in the documentation characterising the IIP process.
156. Similarly, a copy of the passport application is not held as a record within the applicant's file.
157. A minor detail relates to the physician's declaration in Form MRQ wherein it might be necessary to introduce an option which shows that no medical documents were presented to the physician completing the medical assessment.
158. It has also been noted that where bureaucracy is required for robustness purposes, Identity Malta has retained the relevant requirements. However, where experience has shown that administrative requirements could be lightened, Identity Malta has done so. This includes asking for only one copy of birth and marriage certificates as well as not requesting passport photos before that stage materialises.
159. It has also been noted that the forms that have to be completed as part of the application may be typed or filled in manually. A typed application form would be more professional.

160. The Regulations provide for certain standard commitments to be presented, such as those in Regulation 7. These include, for example, a statement confirming the financial commitment to be undertaken and to remit the necessary contributions. Often enough such commitments may come in various forms or, at times, overlooked. Templates are a convenient and straightforward way of not only ensuring that they are included as part of the application form but that they are also complete in content as required by the regulations.
161. In two of the sampled cases the twelve month residency period was calculated as one between the initial presence of the applicant in Malta and the Oath of Allegiance. The Agency sought the advice of the Attorney General who opined that the residency card is a means of proof but not an essential requirement. In these two cases, the IMA ascertained that the individual had in fact been resident in Malta and therefore whilst twelve months had not elapsed between the issuance of the e-residence card and the Oath of Allegiance, the applicant had in fact been resident for twelve months before the Oath of Allegiance was administered.

## 5.0 Recommendations<sup>5</sup>

162. It is evident that last year's mix in the types of firms registered as agents has been diluted by an increase in the 'Other' category. It transpires that this aggregated class consists of Management, Consultancy and Accounting/Financial firms. The Regulator draws the attention of Identity Malta to ensure that persons applying for accredited person status have the capacity to properly deal with the process the IIP demands of each application. Moreover, existing accredited persons should be made aware of the importance of dedicating sufficient capacity for IIP applications as well as to emphasise the obligation they have to train their staff to be able to work on the IIP process. Identity Malta is also invited to consider designing a mechanism which identifies poor applications and applies sanctions to accredited persons who persist in submitting poor quality applications. In this regard, Regulation 3(5)(b) of the current Regulations, though possibly good enough to allow IM to sanction accredited agents/persons, or indeed suspend their licence, should be beefed up.
163. The major economic indicators of the programme may be summarized as follows:
- 8 properties have been purchased at a total cost of €6,292,244 implying an average property value of €786, 530. This is over twice the minimum value of property that has to be acquired by successful IIP applicants (€350,000).
  - 36 annual leases were registered with a total lease value of €4,292,583 implying an average annual lease of €119,238, well above the minimum annual lease requirement stipulated in the regulations and which amounts to €16,000.
  - Total investments amounted to €6,613,332 which works out to the statutory €150,000 stipulated in the Regulations.
  - Total funds received from IIP applications equate to 0.75% of GDP.
  - Taking all inputs from the IIP related to property purchases and rent, investments and contributions, these contributions from the IIP equate to approximately 1% of GDP.
- Identity Malta should develop a set of performance indicators for the IIP that will enable the contribution to the Maltese economy to be estimated.
164. The adoption of the Complaints Procedures and their respective legislative framework is recommended for adoption by Government.
165. On the basis of Professor Kochenov's advice, it is this Office's opinion that the underlying principle that residence does not equate to physical presence could on its own merit, dispel the concerns being raised on the issue. On the other hand any aspiration to mirror physical stay to the 182 days applicable for taxation purposes should be accepted as a non-starter.

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<sup>5</sup> The Recommendations are not being grouped by "subject matter" but replicate the flow of the previous sections of this report.

166. But in the context of the aforementioned Identity Malta is encouraged to keep tabs on whether Accredited Agents appreciate the raison d'être adopted by it when evaluating what constitutes the establishment of genuine links with Malta. Identity Malta is encouraged to continue developing this area. Whilst appreciating the competitive sensitivity of the programme details, the concept of the points system being adopted to evaluate the establishment of genuine links could be outlined to stakeholders in order to demonstrate system robustness. This would also be in line with what had been recommended in the First Annual Report.
167. Reference is made to the section of this Report wherein feedback received from Accredited Agents was reproduced. It is reiterated that what is stated in paragraphs 94 to 144 do not represent the opinions of this office but clearly indicate that misconceptions persist. Such perceptions should be remedied at the earliest possible opportunity in order to further consolidate the robustness of the programme itself.
168. Identity Malta should continue, and possibly formalize, its current practice of assisting applicants who wish to invest in Malta by facilitating meetings with government officials. Identity Malta should, as far as possible, continue to give applicants this 'red carpet treatment' in order to foster an 'open for business' climate.
169. Agents are responsible for conducting the preliminary due diligence exercise. This is an area which may need to be improved as Identity Malta has often had cases where this due diligence was not deemed to have been done in a sufficiently robust manner. Identity Malta has also highlighted the fact that applications have, of recent, deteriorated in quality. This is attributed to the agent business setup wherein, although a person carries a licence to act as an agent, the work is subsequently delegated to junior staff who have had little training on the programme and who, consequently, find difficulty in responding as expected. To this effect it is proposed that Identity Malta includes a proviso in the revised regulations that will allow it to develop a 'penalty point' mechanism that sanctions poor quality applications, the consequences of which may lead to the temporary or permanent suspension of an agent.
170. Identity Malta should undertake a review of the operations of those functions which fall under its remit, example the Public Registry in regards to apostilles, with a view to dovetailing and harmonising procedures, establishing common platforms and securing a seamless in-house operation to counter any delays being manifested.
171. In this context, Identity Malta should also undertake a complementing exercise to determine the appropriate level and quality of resources required to service the programme in order to avoid slippages in timelines which are established by law. This becomes of particular urgency if it is anticipated that the rhythm with which applications are received be maintained at current levels if not experiencing growth as a result of the success of initial applications. Identity Malta should demonstrate that the direct and indirect financial benefits that the programme is bringing to the country supports the investment in the required capacity for the duration of the programme. These resource related stresses should be addressed at once.

172. It is important for Identity Malta to be able to realise when to absorb a certain cost in order not to detract from the programme's professional outlook. The change to an 18 month validity period in residency, which is a typical example, has ensured that, in a number of cases, this situation does not occur but even so, should such a situation arise, good judgement is called for in respect of levying any charges.
173. It is important, where fees are concerned, for a clear explanation to be available. Fees are considered to be very sensitive particularly in the light of the substantial contributions required under the IIP. Consequently Identity Malta needs to make sure that it does not only clearly explain the fee structure but in applying them it needs to ensure that it does not miss the wood for the trees particularly when asking for additional charges which are 'small' when compared to the total level of contributions and investment.
174. The issue of circulars amending existing procedures constitute changes in the rules of the game. As far as possible these should be introduced infrequently and when absolutely necessary. There should also be an appropriate timeline for adjustment to be factored into new applications.
175. Identity Malta should also explore the possibility of automating part of the process to enable electronic submission of documents whilst favouring typed rather than hand written applications. In this regard, the Regulatory Recommendation set out in the First Report wherein it was suggested that LN 278 of 2010, Regulation 5(a), which prescribes typewritten and A4 format be made applicable to applications submitted to IM can also be taken on board with respect to all relevant documentation. After all, LN 278 of 2010 applies to a service that is provided by one of the IM departments.
176. Whilst recognizing the work carried out in the development of a more comprehensive set of guidelines, it is recommended that, as far as possible, changes are introduced through a transition period which does not interfere with the timelines of those applications which are in assessment stage. This avoids re-work as well as mid-term changes in goalposts which do not look good for the programme.
177. Due consideration should be given as to whether Honorary Consuls could be delegated with the power to verify signatures for IIP purposes particularly in places where Malta does not have its own embassy.
178. Identity Malta needs to be sensitive to certain cultures and practices originating in different geographical regions. Senior management has, so far, shouldered certain decisions. However, the guidelines could be a vehicle that gives direction on specific cases thereby relieving senior management of *ad hoc* decision making.
179. In the light of the high volume of applications from the Former Soviet Republics, Identity Malta could consider piloting a more enhanced due diligence process by forming strategic alliances with reputable due diligence firms in this region such that they may contribute to this process. Should this prove to provide added value to the process, consideration should be given to rolling out the process to other regions. On the other hand, if it is found that the current due diligence process is capturing all

the required information, the pilot project would have served to set stakeholders' minds at rest.

180. Identity Malta should develop a training programme aimed at the employees of accredited agents. It transpires that the quality of applications is deteriorating, a factor which Identity Malta attributes to the fact that agents often delegate IIP work to their relatively untrained juniors. This is leading to increased timelines for Identity Malta in processing these applications. A one-off training course would send a strong message that whilst Identity Malta is offering such training for the benefit of agents, continuous lack of quality will be sanctioned. Such a training programme should also aim to cover 'grey areas' such as the Apostille Convention. At the same time, Identity Malta should have its own corporate training programme in place to ensure that the demeanour of its employees matches the image being projected as well as meets client expectations.
181. Despite the excellent communication between agents and the IIP staff, it is important for Identity Malta to acknowledge certain knowledge gaps that exist amongst agents on issues such as the importance of apostilles and the provisions of the Apostille Convention. Similarly, it needs to explain what are considered to be 'bureaucratic' requirements such as the need for the legalisation of the English translation. In order to address these issues as well as the issue related to the knowledge gap of agent employees who are delegated IIP-related work, Identity Malta needs to address its communications and knowledge plan with a view to addressing these issues.
182. Technological solutions to the problem regarding the validity of biometrics are recommended to lengthen their validity period.
183. Due consideration should be given to the creation of a framework that encourages certain procedures (e.g. translations, medical examinations etc.) to be done locally in order to avoid complications related to translation and the need for apostille and legalization. Moreover it will also contribute to the multiplier effects of the programme.
184. The feasibility of the introduction of sharia banking should also be looked into.
185. Biometrics are only valid for a period of one year. Consequently, should a renewal of the residency card be required, for whatever reason, the applicant and any dependents would be required to come to Malta once again for such renewal purposes. Technological solutions to this problem are recommended.
186. Fee structures should be explained in a clear and unambiguous manner. Moreover, Identity Malta should limit itself to charging supplementary fees when these are negligible compared to the contribution and investment levels being made.
187. Although it seems that legal amendments in the pipeline aim to clarify the role of the Concessionaire with respect to Identity Malta, it is also important that such a distinction is also visible in practice.

188. Identity Malta should, in consultation with the Commissioner for Voluntary Organisations, prepare a list of registered charities which should be made available on its website for applicants to have the widest possible choice of where to direct their donations. It should be recalled that at this early stage, applicants are not familiar to the local scenario and they may have a particular sector at heart. Similarly, if possible, a list of social clubs could be drawn up to give applicants the widest choice possible. Identity Malta should discourage any practice whereby membership fees are two-tiered for Maltese and IIP applicants (even under the guise of foreign nationals) as it will give the impression that these applicants are being taken advantage of, a message that is a far cry from the vision of the IIP and its long term prospects.
189. Consultation with the Police Authorities is a fundamental part of the process which is carried out three times – at application stage, at recommendation to Minister stage and at naturalisation stage. This Office has also had its meetings with the Police authorities in order to understand the prevailing processes and issues. In the light of the strategic importance of the police authorities' input, Identity Malta is encouraged to enter into a more profound dialogue with the police authorities so as to define processes common to both entities that may be strengthened with a view to easing the load on each entity.
190. Identity Malta should dialogue with MCC management as well as with other authorities with a view to ensuring that chaotic environments do not exist and to ensure that parallel activities at the MCC are properly segregated from the business of the IIP and that waiting and meeting areas are made more welcoming and enshrining the VIP culture. Similar discussions could also be held with MIA to determine what special treatment may be made available for such applicants and their dependents.
191. It would be very positive if Identity Malta were to update the market on a regular basis on the number of successful applicants, rejections, as well as the number of applications received and being processed.
192. Government, and Identity Malta in particular, should also consider the possibility of introducing an IIP variant which is more investment based and which may have more appeal to certain cultures than the current variant which is based, in part, on a 'payment'. In doing so, more favourable conditions could be introduced for those purchasing property or investing in Gozo.
193. As far as possible templates for standard commitments should be developed in order to provide a convenient and straightforward way of not only ensuring that they are included as part of the application form but that they are also complete in content as required by the regulations.
194. Identity Malta may wish to adjust its Guidelines to take into account those rare situations where it is established, beyond doubt, that an applicant had been resident in Malta before the residency card was issued; meaning that he would be eligible for citizenship even though twelve months have not elapsed between the residency card date of issue and the date of the Oath of Allegiance. The Agency should however

ensure that the twelve month residency benchmark is not compromised when it adjusts the Guidelines to cater for those one-off situations mentioned herein.

## **Appendix I**

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Statement of Adoption by Identity Malta

**Table 1 – Identity Malta position to First Annual Report Recommendations**

Regulatory Observation	Comments	Timeframe for Implementation
<p>Although Regulation 3(2) states that the operation of the programme shall be carried out by the concessionaire, the impression given by IM during meetings held with ORiip suggest that IM has taken more of a lead in the implementation of the programme. The Regulator feels that IM's stance will lend more credibility to the process but still it would be more prudent to amend the legal notice to reflect the true state of play.</p>	<p>Change in Legal Notice is in progress.</p>	<p>September 2015</p>
<p>The inclusion of the Global Residence Programme applicants under the provisions of the IIP is considered to be commendable in terms of the dovetailing of current policies.</p>	<p>Already included in Legal Notice LN47/2014.</p>	<p>September 2015</p>
<p>Regulation 2 defines the types of dependants. In the case of spouses the Regulations make specific reference to monogamous relationships. Identity Malta might soon have to face situations of polygamous relationships that are legitimate in certain cultures and as such should have the appropriate policy in place to handle such situations.</p>	<p>Identity Malta has already come across such applications where the main applicant will have to include only one person as his spouse.</p>	
<p>In the case of parents or grandparents of the main applicant a threshold age of 55 years has been established. Although a person may be a parent or a grandparent at the age of 55, there is still a generation between the two and, as such, a single age threshold for both types of status may be seen as being unrealistic.</p>	<p>Identity Malta abides to the Legal Notice which clearly stipulates the age threshold and does not see the need to change threshold.</p>	

Regulatory Observation	Comments	Timeframe for Implementation
<p>The issue of disability should be treated with greater sensitivity using more acceptable terms such as “special needs” and requiring such needs to be certified either in their home country or by the local national authority. This to avoid certain abuse that may be associated with such certification.</p>	<p>Identity Malta is in full agreement with this and the recommendation will be highlighted in the revised Legal Notice.</p>	
<p>Proof of age can be verified through the Photograph and Signature Certificate of Applicant Form (MIIP Form PSC). Due consideration should be given to allowing such forms to be verified by financial intermediaries.</p>	<p>At the moment Identity Malta does not wish to change the established procedure accepted by practitioners.</p>	
<p>Proof of residence, proof of title to residential property in Malta and commitment to invest in stocks, bonds or similar are all incorporated in the declaration on the Main Applicant Application Form.</p> <p>It is proposed that the commitment “to make a contribution as determined in the Schedule” (Regulation 4(1)(b) is included specifically, and in clearer terms, in the declaration portion of the form. The wording should reflect what is required to be paid upon submitting the application and what portion needs to be submitted upon receipt of a positive recommendation on the applicant’s application. Moreover the words of Regulation 4(1)(c) seem to require further clarification and what “meets the application requirements” be specified clearly.</p>	<p>The general definition is aimed to avoid potential amendments in the future. It provides important safeguards and flexibility to Identity Malta.</p>	
<p>Regulations 4(2)(e) and (f) are a replication of Regulations 4(1)(d) and (e) and could have been avoided or the provisions of the sub-regulations merged to provide a single, comprehensive list of obligations.</p>	<p>Change in Legal Notice is in progress.</p>	<p>September 2015</p>

Regulatory Observation	Comments	Timeframe for Implementation
<p>With respect to Regulation 4(2)(b) it is suggested that the necessary police certificates, which nature should also be specified, be made mandatorily required upon submission of the application.</p>	<p>Identity Malta agrees with this clause as it provides a certain level of flexibility to the agents. Moreover Identity Malta may require updated certificates during the application process. It is worth pointing out that the verification process of the application before the due diligence checks does not initiate if there isn't Police clearance at residence application stage.</p>	
<p>It is not clear how the requirement in Regulation 4(2) to submit fees for due diligence and sub regulation (c) "requiring evidence, through due diligence processes, that the main applicant and his dependants are fit and proper persons to hold Maltese citizenship" can co-exist as whilst the introductory paragraph seems to suggest the payment of fees for the due diligence exercise to be submitted, sub-regulation (c) seems to assume that the same due diligence process has already been conducted.</p>	<p>Change in Legal Notice is in progress.</p>	<p>September 2015</p>
<p>Regulation 4(2)(d) replicates the suggestions put forward for Regulation 4(1)(b) above in order to facilitate the aggregation of committed declarations.</p> <p>All in all Regulation 4 may be streamlined and consolidated to eliminate repetition and facilitate the validation of applications.</p>	<p>Change in Legal Notice is in progress.</p>	<p>September 2015</p>
<p>The wording of Regulation 7(2) can lead to a degree of confusion in ensuring that IM is observing all its obligations. This is because whilst the phrase</p> <p>"Identity Malta shall either directly or through the concessionaire cause due diligence checks to be performed by one or more internationally recognized specialised due diligence agents which in any case are to be approved by Identity Malta, in respect of every applicant. Such due diligence checks shall be of a four tier nature. Identity Malta shall in any case be</p>	<p>Change in Legal Notice is in progress.</p>	<p>September 2015</p>

Regulatory Observation	Comments	Timeframe for Implementation
<p>responsible for the proper carrying out of due diligence tests.....”</p> <p>indicates that the Concessionaire or IM can carry out due diligence tests, and in the case of them being undertaken by the former, IM will still retain responsibility for such tests, the latter part of the phrase stating</p> <p>“and (IM) shall also carry out due diligence tests independently of the concessionaire”</p> <p>may be interpreted as requiring IM to carry out such due diligence exercises in parallel with those carried out by the same IM or the Concessionaire.</p> <p>Whilst the Regulator is convinced that it is not meant to be such, more accurate wording in the Regulations may place IM’s obligations on a more clear and unequivocal standing.</p>		
<p>Independence is a crucial determinant of any regulatory function. Current legislation provides for such independence. It is important for the Regulator to consolidate the jurisdictional independence given to him by the Act which independence should not be limited in any way not least by administrative, financial or logistical constraints. Whilst the Office of the Regulator was asked to vacate its premises to allow for an expanded operation of the eID card rollout process, the allocation of premises shared with Identity Malta does not send the right governance message as the Office of the Regulator should be kept distinct from that of the operator which it regulates. Hopefully the move of the remaining Identity Malta staff on the second floor of the Evans building will proceed as planned.</p>	<p>Identity Malta agrees with this suggestion and will continue with the process to complete the move of the remaining Identity Malta staff currently working on the second floor of Evans building. Plans are at hand to reallocate personnel to new premises.</p>	<p>Around December 2015</p>

Regulatory Observation	Comments	Timeframe for Implementation
<p>Prima facie the roles of the Regulator and the Monitoring Committee may seem to overlap. Notwithstanding, it is important, even from the composition and appointment of these structures that whilst the former has a regulatory technical role, the latter has more of a political focus. To this effect it is important that the Monitoring Committee considers the Regulator as its Technical arm where administrative and technical considerations on the IIP are required.</p>	<p>Identity Malta agrees with this observation.</p>	
<p>In the light of the debate on the minimum residence period required for a person to qualify as a beneficiary of the IIP, it is important for Identity Malta to provide clear guidelines of what is to be considered as admissible proof of residence in Malta. This so that actual or potential applicants will know up front the onus upon them to prove their residence requirements in Malta.</p>	<p>Identity Malta is using a numerical metric to evaluate the residence-related proposals submitted by the main applicant. Subsequently, main applicants are given a decision regarding their intentions in order to achieve the fulfilment of the 12-month-residence requirement.</p>	
<p>The Regulator also notes that the IIP procedures provide for the parallel application on behalf of applicants for e-Residence. Whilst this is considered to be a positive approach in terms of its one stop shop nature, it is important to distinguish between the popularly known as “long term residence” and “family-reunification” provisions applicable across the European Union and the desire within the same block of attracting “high-end” individuals. Meaning that a Third Country National in possession of an eRes document automatically satisfies the residence requirement but not having an eRes document does not, per se, disqualify someone from applying under the Individual Investor Programme.</p>	<p>Identity Malta agrees with this observation and is already making such distinctions.</p>	

Regulatory Observation	Comments	Timeframe for Implementation
<p>Whilst it is understandable that operational matters may be in a state of flux during the initial year, it is strongly recommended that, given the importance of the IIP, the operation is governed by a professional business plan which sets out its mission, vision, mandate and key performance indicators together with a detailed HR plan and a distinct line item budget within that allocated to Identity Malta.</p>	<p>Identity Malta is currently working on a business plan which will cover the next financial year.</p>	
<p>It is also reiterated that the position of CEO IIP is not contemplated in the Identity Malta Agency Order which should therefore be amended to reflect the current structure since it makes sense to have a CEO appointed within this Agency.</p>	<p>To be addressed in the future.</p>	
<p>For the sake of transparency, Identity Malta should clarify to all the role of the concessionaire and delineate the functions which are being carried out in-house by the IIP function and those which are being carried out by the concessionaire.</p>	<p>These clarifications will be addressed by the updated Legal Notice.</p>	
<p>The IIP function has been housed at the Mediterranean Conference Centre which is close to but distinctly separate from the Identity Malta building at Evans Building. Such a choice of office space is considered to be justified as the IIP needs to give the right impression to its clients.</p> <p>Equally important is the need to reflect this corporate identity in the regulatory structure (ORiip) set up for this programme. The location of the ORiip's office within the same building as that of Identity Malta is not considered to be a positive sign of good governance as the Regulator should be housed separately from that entity which it, in part, regulates.</p>	<p>Identity Malta agrees with this observation.</p>	

Regulatory Observation	Comments	Timeframe for Implementation
<p>There should be only one source of information for any communications with the public including the media. Such source of information should lie entirely with Identity Malta who should provide any such data to Government.</p>	<p>Such procedure is already being implemented. Furthermore the information provided to the media by Identity Malta is always the latest published information either by the Office of the Regulator or by the Minister himself. No other data is given to the media.</p>	
<p>It may be easily inferred that most of the applications (54.3%) were submitted from Russia. Whilst Russia may be defined as a European country, it also forms part of the BRICS grouping of emerging economies where there is potential for growth and which may therefore have positive secondary impacts on Malta. Taking these applications out of the equation, one notes that Malta received 79 other applications, mainly from Asia, but with an interesting distribution across Middle East and Gulf states.</p> <p>Perceptions are at times more formidable than reality. Hence Identity Malta needs to quash any negative perceptions that may apply to certain regions and/or individual countries.</p>	<p>Noted. The promotion of the IIP is carried out by the accredited agents under strict guidelines following the general approval by Identity Malta. The percentage has gone down to 35% and the market diversification is expected to continue over the rest of the programme.</p>	
<p>IM-IIP have demonstrated that they also use a checklist for screening purposes which is very much in line with that designed by ORiip. IM-IIP is welcomed to adopt ORiip's checklist as a means for facilitating applicant compliance and for screening all applications that are submitted particularly as renewals will be based on the entire set of requirements stipulated in terms of the necessary documentation to be submitted.</p> <p>Moreover, it also suggested that the checklist to be used for screening purposes by IM-IIP will also be included in any revised M7 Application Form to facilitate the process for both applicants and IM-IIP.</p>	<p>Identity Malta has taken on-board such suggestion which will be finalised completely through the M7 Application Form by September or October 2015.</p>	<p>September/October 2015</p>

Regulatory Observation	Comments	Timeframe for Implementation
<p>IM-IIP is encouraged to amend the current application form to either:</p> <ul style="list-style-type: none"> <li>• Have 2 separate application forms for Corporate and Individual applicants;</li> <li>• Insert a note at the top of the application form stating that Corporate applicants need to complete Parts A, B and C and adhere to all the requirements thereto whilst individual applicants are to complete and adhere to Part A only.</li> </ul>	<p>Identity Malta is currently working on the amendments of the mentioned application.</p>	
<p>Prescribe, within revised IIP Regulations, or else within the Application Form itself the obligatory requirement for typewritten and A4 format submissions.</p>	<p>Identity Malta agrees with such suggestion and has already taken the necessary steps and circulated the same suggestion to all agents.</p>	
<p>It is suggested that IM-IIP considers the following parameters for proof of identity and proof of residence:</p> <p>Proof of residence – one of the following - a water and electricity, bank, telephone, mobile or television statement.</p> <p>Proof of identity – for Third Country Nationals a document which has photographic and signature credentials and is issued by the Government of the country in which that person is resident or a national thereof. These could include the passport, identity card or any other official document that can serve to identify an individual in terms of local legislation.</p> <p>Likewise, in the case where there is an obligation of proof of being a Maltese national. In this case a driving licence issued by Transport Malta should also suffice.</p>	<p>All of these identification documents are considered as proof of identity and of residence by Identity Malta.</p>	



## **Appendix II**

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Complaints Regulations

**L.N. of 2015**

**MALTESE CITIZENSHIP  
ACT (CAP. 188)  
Individual Investor Programme (Complaints  
Procedure) Regulations, 2015**

IN exercise of the powers conferred by article 25A of the Maltese Citizenship Act, the Minister has made the following regulations:-

1. The title of these regulations is the Individual Investor Programme, (Complaints Procedure) Regulations, 2015.

2. In these regulations, unless the context otherwise requires -

"Act" means the Maltese Citizenship Act;

"Agency" means the Identity Malta Agency established by the Identity Malta Agency (Establishment Order);

"Approved Agent", "Accredited Agent" and "Concessionaire" have the same meaning as assigned to them in the main regulations;

"Complaints Form" means the Complaints Form set out in the Schedule attached to these regulations;

"complainant" means any person who is filing the complaint or on whose behalf a complaint is being filed;

"dependant" has the same meaning as assigned to it in the main regulations;

"guidelines" mean guidelines which are issued by the Agency from time to time in its implementation of the programme;

"main applicant" has the same meaning as assigned to it in the main regulations;

"main regulations" mean the Individual Investor Programme of the Republic of Malta Regulations, 2014;

"Minister" has the same meaning as assigned to it in the Act;

"programme" means the Individual Investor Programme of the Republic of Malta;

"Regulator" means the Regulator appointed in terms of the Act;

**3.** (1) Any person who feels aggrieved as to how the provisions of the main regulations have been implemented may apply to the Regulator on the Complaints Form set out in the Schedule attached to these regulations.

- (2) A complainant can be, either:
- (i) a main applicant in his own name or acting on behalf of the spouse, minor dependent, adult dependants or dependant parents included in the main applicant's application; or
  - (ii) an Approved Agent in his own capacity or on behalf of a main applicant as referred to in paragraph (i) above; or
  - (iii) an Accredited Person in his own capacity or on behalf of a main applicant as referred to in paragraph (i) above; or
  - (iv) the Concessionaire limitedly in his role when filing an application under the programme; or
  - (v) an authority or entity involved in the provision of information to the Agency as part of the application process; or
  - (vi) any person who feels aggrieved by a decision, emanating from the Regulations, taken by the Agency.
- (3) Where the complaint refers to a dependant, the complainant shall specify such fact on the Complaints Form.
- (4) A complainant may file the Complaints Form in person by providing the details specified in the Complaints Form. The identification document is to be submitted on application unless the Complaints Form is submitted through the post in which case a certified true copy of the identification document is to be attached to the Complaint Form.
- (5) The relative complainant's identification documentation and power to act in such capacity must be submitted as part of the documentation when the complaint is filed by the persons mentioned in paragraph (ii), (iii) and (iv) of subregulation (2) of this regulation.

**4.** If the complainant feels aggrieved by the actions of other parties involved in the programme and wishes to file a complaint against a third party not being the Agency, he shall clearly identify the person against whom the complaint is being made, in such a way as to allow the Regulator to contact the person against whom the complaint is being made.

**5.** The person filing the complaint shall attach with his application a sworn declaration before a commissioner for oaths, lawyer or notary public that the information he has provided is true and correct as at time of filing.

**6.** (1) The Regulator shall hear both the complainant filing the complaint as well as the person against whom the complaint is filed unless the person filing the complaint requests that his application is considered without reference to the person against whom the application is filed.

(2) Save the provisions of sub-regulation (1), the Regulator shall otherwise regulate his own procedure including the format in which he may require documents or information in terms of article 25(6) of the Act.

7. (i) The Regulator shall not investigate any complaints in regard to which legal proceedings have been instituted or where the matter is *res judicata*.

(ii) Where it results that a complainant has failed to inform the Regulator that his complaint is being heard in a court of law and, or has been decided by a court of law, the Regulator shall no longer take cognizance of the complaint.

8. (1) The Regulator will only review issues which fall under the provisions of the main regulations and in this regard, the Regulator will, in his response, indicate which portion, if any, of the complaint falls outside the scope of the Regulator's competence.

(2) In particular the Regulator cannot review the Minister's decision to grant or refuse any application under the Act in terms of Article 19 of the said Act.

9. A complainant shall pay a fee of ..... euros with every application.

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## Schedule

### Office of the Regulator Individual Investor Programme (ORiip)

## Complaints Form

# 1. Complainant

- a. Surname \_\_\_\_\_
- b. Name/s \_\_\_\_\_
- c. Address \_\_\_\_\_  
\_\_\_\_\_
- d. Town/City \_\_\_\_\_
- e. County/State \_\_\_\_\_
- f. Postcode \_\_\_\_\_
- g. Country \_\_\_\_\_
- h. Phone \_\_\_\_\_
- i. Mobile \_\_\_\_\_
- j. Email \_\_\_\_\_

*Applicants should provide a certified copy of their identification document confirming the details above*

If application is being submitted by a representative of the applicant:

- k. Surname (Representative) \_\_\_\_\_
- l. Name/s (Representative) \_\_\_\_\_
- m. Signature (Representative) \_\_\_\_\_

*Attach:*

- 1. a mandate letter from Applicant to Representative;*
- 2. a certified copy of the Applicant's identification document*
- 3. a certified copy of the Representative's identification document*

In the case where the Complainant is filing the complaint on behalf of a Minor

## Guardian/s Details

- a. Surname \_\_\_\_\_
- b. Name/s \_\_\_\_\_
- c. Address \_\_\_\_\_  
\_\_\_\_\_
- d. Town/City \_\_\_\_\_
- e. County/State \_\_\_\_\_
- f. Postcode \_\_\_\_\_
- g. Country \_\_\_\_\_
- h. Phone \_\_\_\_\_
- i. Mobile \_\_\_\_\_
- j. Email \_\_\_\_\_

## Guardian/s Details

- a. Surname \_\_\_\_\_
- b. Name/s \_\_\_\_\_
- c. Address \_\_\_\_\_  
\_\_\_\_\_
- d. Town/City \_\_\_\_\_
- e. County/State \_\_\_\_\_
- f. Postcode \_\_\_\_\_
- g. Country \_\_\_\_\_
- h. Phone \_\_\_\_\_
- i. Mobile \_\_\_\_\_
- j. Email \_\_\_\_\_

*Attach:*

1. *a certified copy of each Guardian's identification document*

## 2. Complaint

- a. Is this complaint related solely to the provisions of Legal Notice 47 of 2014 (S.L. 188.03) of the Laws of Malta which regulate the Individual Investor Programme of the Republic of Malta?

Yes                       No

- b. If No, explain what portion/s of the complaint fall outside of the scope of the said Regulations.

- c. Is this complaint due to any action, or lack thereof, on the part of Identity Malta as the entity administering the IIP?

Yes                       No

- d. If No, indicate against whom this complaint is directed (entity, organisation or individual citing his/her official capacity).

### 3. Complaint Details

- a. Explain the decision you are contesting making specific reference to the Regulations, application form/s submitted and any collateral information.

## 4. Operational Details

- a. What do you consider Identity Malta or the entity/individual mentioned at paragraph 2d hereof to have done wrong in implementing the provisions of the Regulations?

- b. What, in your view, should Identity Malta or the entity/individual mentioned at paragraph 2d hereof have done to put things right?

- c. Have you already contacted Identity Malta or the entity/individual mentioned at paragraph 2d hereof on this issue?

Yes                       No

If yes, what was the outcome? (*provide any correspondence exchanged*)

## 5. Court Procedures

a. Have you initiated any legal proceedings on this issue before any court of law?

Yes                       No

b. If yes

Maltese Court of Law

Other Court of Law (*specify*)

*Applicants should provide a certified copy of the appointed case in from of any Court of Law*

## 6. Confidentiality

a. Do you agree, if so required, that the Regulator discusses the specific details of your complaint with Identity Malta with a view to verifying further the information submitted?

Yes                       No

## 7. Declaration

I hereby declare that the details I have provided are accurate and that I have understood the powers conferred to the Regulator under the Laws of Malta.

I hereby attach a cheque covering the standard fee of €..... with the following details:

Bank	
Cheque Number	

Signature \_\_\_\_\_

Date \_\_\_\_\_