



Office of the Regulator

Individual Investor Programme (ORiip)

First Annual Report on the IIP Programme of the Government of Malta

October 2014

Foreword by the Regulator

This is the first 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. The IIP being a new programme both to Identity Malta and its Regulator, during the past months this Office focused on chartering its own future with a view to implementing its official mandate in the context of the developments surrounding the Programme. Therefore the initial challenge, besides those normally associated with the setting up of a new office, including identification of staff and logistics, was to set out the operational parameters which would govern its operations and regulatory assessments.

As a Regulator, I have consciously decided to retain only a very small team. A large team of “investigating officers” is not what the Regulator was after nor appropriate at this juncture. The ORIIP is intended to be a firm authority which whilst keeping a low external profile focuses on making a success of this initiative. Whether additional personnel will be required is dependent on the work load that may or may not increase in the coming years. From a logistics point of view there was fortunately a somewhat seamless transition from the time I had been heading the eID Task Force, except for the premises issue which is referred to in the Report.

The other more demanding challenge was putting into practice the main task identified in the Maltese Citizenship Act, Cap. 188 whereby Parliament decreed that the Regulator was to “keep under review all aspects of the Individual Investor Programme” [art 25 (3)].

The Regulator’s philosophy is that a regulatory body should not meddle in policy or operational issues. These are the purview of the Government of the day and its operational arms tasked with the particular business of Government, in this case Identity Malta. The Regulator on the other hand would be doing itself and the country a disservice if it did not carry out the task of “keeping under review”, meaning overseeing and monitoring, the operational component to ensure that it is in line with the legal provisions and to ensure a fair administration of procedure.

The law as it stands gives the Regulator practically unfettered powers. However the Regulator feels that the principles of Good Governance should also apply to a regulatory body. The first major task undertaken was therefore that of drawing up a set of “Operational Guidelines”. This document is attached to this report for general information and is to represent the yardstick by which the Regulator’s performance is to be measured.

This first report is focused on the administrative aspects of the IIP. 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. This does not mean that the Office was idle. Indeed a comprehensive review of the administrative processes adopted by Identity Malta was carried out. Subsequently a review of the Accredited Person procedure and applications was undertaken wherein a sample of 20% of all applications was reviewed. As stated in the report, this Office is highly appreciative of the collaboration shown by Identity Malta management and officials. The collaborative stance adopted by the operator facilitated the Regulator’s task particularly taking into account that both the operator and the regulator were charting untested territory. Through such reviews this Office can assist the operator in refining existing procedures always with a view to promote good governance as well as to benefit Malta’s image in the rollout of this Programme.

A secondary but just as important function of the Regulator is set out in article 25 A of Cap. 188. The Regulator “shall also investigate complaints about the Individual Investor Programme in the manner prescribed under this Act”. Here also the parameters are to be spelt out. The Office is therefore drawing up a set of administrative rules in this regard. However it has to be stated up front that the Regulator’s Office is not a “court” of appeal or review that can determine whether an individual should be granted citizenship (under the IIP) or not. The law clearly places this final decision in the hands of the Minister responsible for the Programme because Citizenship is always a matter of “public interest”.

As the IIP matures and continues to roll out this Office foresees interesting challenges which will be pursued in the same spirit as has been done to date. This Office’s main interest is that the Programme yields the maximum socio-economic benefit to the Maltese islands without in any way jeopardising any aspect thereof.

Dr Godwin Grima
Regulator

October 2014

Annual Report on the Individual Investor Programme

as on the 30 June 2014

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

1. Introduction

The new Government of Malta elected in the March 2013 general elections made sustainable and real economic growth a keystone of its policy. Government committed itself to take a number of measures that would stimulate the economy enabling businesses to grow and create additional jobs thereby making Malta an attractive investment proposition for both local as well as foreign investors. This headline economic goal was also echoed in the Speech from the Throne which inaugurated the 12th Legislature.

One of the major programmes embarked upon by Government was the creation of an Individual Investor Programme (IIP) *“which allows for the granting of citizenship by a certificate of naturalisation to individuals and their families who contribute to the economic and social development of Malta¹”*. This initiative was met with mixed views to the extent that its legitimacy was also raised at an EU level. Notwithstanding, today’s IIP initiative comes with the EU’s approval following a meeting held between the Commission and the Government of Malta on the 29 January 2014 after the latter committed to *“include genuine links to Malta through the introduction of an effective residence status in Malta prior to the possibility to acquire Maltese naturalisation²”*.

As a result of this initiative, Government created a new entity, Identity Malta (IM), set up as an Agency under the Public Administration Act, to assume responsibilities for:

- citizenship, residence permits, work permits and other administrative matters related to expatriates;
- passports;
- identity cards and other identity documents;
- acts of civil status;
- land registration and registration of public deeds;
- individual investment programmes for expatriates or for persons who acquire Maltese citizenship, including the administration of funds deriving from such programmes³.

Thus Identity Malta is to be considered, for all intents and purposes, as assuming the function of an operator for governance purposes.

Government’s sensitivity towards citizenship related matters prompted an amendment in the Maltese Citizenship Act to create a Regulator *“for the purposes of the correct implementation and monitoring of the individual investor programme”* as well as to *“investigate complaints about the Individual Investor Programme in the manner prescribed”* under the Act. Moreover, the Regulator was given the authority to *“act in his individual judgement”* and *“not be subject to the direction or control of any other person or authority”⁴*.

Through the creation of these structures Government ensured good governance in clearly separating policy, regulatory and operational matters by identifying the Ministry, the Regulator and Identity Malta respectively as the specific structures responsible for the implementation of these functions.

¹ Legal Notice 47 of 2014 (S.L. 188.03) - Individual Investor Programme of the Republic of Malta Regulations

² Joint Press Statement by the European Commission and the Maltese Authorities on Malta’s Individual Investor Programme (IIP), Brussels, 29 January 2014

³ Legal Notice 269 of 2013 (S.L. 497.07) - Identity Malta Agency (Establishment Order)

⁴ Maltese Citizenship Act, Cap. 188

The Maltese Citizenship Act obliges the Regulator (ORiip) to submit an annual report on the discharge of his functions to the Minister which annual report shall be laid on the Table of the House. Consequently, this is the first report being prepared in terms of this obligation and covers the period from the launch of the IIP till the end of September 2014⁵. This report aims to summarise the developments that have occurred in the implementation of the IIP and, in particular, the capacity development of the structures set up to implement and regulate the programme. This first report is not intended to evaluate the administrative/procedural correctness, or otherwise, of any of the applications submitted as it is considered to be too premature to do so. The assessment of a sample of applications submitted and concluded by Identity Malta will, in fact, form the main scope of the second ORiip report.

1.1 Future Metrics

The Regulator will act on the following governance principles:

- a. Outcome focused – activities will be:
 - i. focussed on the underlying regulatory objectives;
 - ii. represent the most effective and efficient course of action;
 - iii. coherent, working towards common purposes and objectives;
 - iv. flexible, innovative and practical;
- b. Proportionality and efficiency:
 - i. scope and nature of regulatory measures should match the benefits that may be achieved;
 - ii. generate the greatest benefits from the resources employed;
- c. Responsive:
 - i. responsive to the particular circumstances that may prevail;
 - ii. tailoring their approach to account for the circumstances of each individual case;
- d. Transparent and accountable:
 - i. actions should be open and transparent to encourage public confidence and provide certainty and assurance for Identity Malta;
 - ii. legislation should be fairly and consistently administered and enforced;
- e. Independent:
 - i. integrity and objectivity of regulatory actions;
 - ii. eliminate actual or perceived conflicts of interest that may impinge, or be seen to impinge, upon objective decision-making;
- f. Communicative:
 - i. operate in a dynamic context made up of effected stakeholders both public and private;
 - ii. exchanging operational information with other government agencies;
 - iii. develop appropriate relationships with the regulated sector.

The Regulator intends to develop an ongoing collaborative working relationship with Identity Malta on matters of procedure whilst remaining separate, and be seen to be such, in respect of any operational activities for which Identity Malta is responsible. This, with a view to establish a clear understanding of the procedures, interpretations and any other rulings to be adopted in the implementation of the IIP.

⁵ Statistics, however reflect the position as at the end of June 2014.

In general, the Regulator will not regulate the IIP by undertaking parallel studies (e.g. due diligence) forming part of the IIP procedure or by verifying their substance. Notwithstanding, in the case of a complaint from an applicant, the Regulator may opt to commission any number of studies to establish the legitimacy, or otherwise, of such complaint and which may include the repeating of certain studies (e.g. due diligence) or the verification of part or the whole of the application process.

In setting up the Office for the Regulator, Government decreed that “The Regulator shall also investigate complaints about the Individual Investor Programme”.⁶ The Office of the Regulator intends to draw up a procedure as to how any complaints are investigated. This procedure will very much inspire itself from procedures which are already in place at the Office of the Ombudsman for tackling complaints. This makes sense as in cases where a Regulator is not in place the Ombudsman shall act *ex officio* as the Regulator. The Regulator however, cannot and will not act as an appellate court on matters relating to the grant or otherwise of citizenship.

The Office of the Regulator aims to operate in a transparent manner. Although the law gives the Regulator leeway in his operations, he felt that the first step in setting up the Office would be the promulgation of a set of Guidelines which bind his Office. The Regulator is operating within these parameters even though these Guidelines now need to be given an administrative footing.⁷

The Regulator shall practice a risk-based approach to regulation. This means that samples checked for compliance will reflect their potential inherent risk. It is envisaged that the percentage of applications checked for compliance will, initially, start at a higher rate and eventually taper to a more modest one as compliance is seen to achieve steady rates. Regulatory interventions are envisaged to be of two main types:

- a. overall compliance – that is ensuring, through a risk management approach, the checking of a fixed percentage of all applications received by Identity Malta which percentage shall decrease as compliance rates are found to be consistently high;
- b. specific compliance – in respect to specific cases where a complaint with the Regulator in respect of an application is filed.

Routine Regulatory Operations (RROs) are those regulatory functions which shall be carried out on a regular basis and which are meant to demonstrate compliance to the Regulation. RROs include the assessment of the operational capacity and infrastructure of Identity Malta to implement the Regulation. Such an assessment will be conducted in consultation with Identity Malta. RROs include:

- asking for, and being provided with, any information that the ORiip may request from any natural or legal person referred to in the Act or Regulation, public or private, in connection with the IIP;
- sampling applications received, processed and concluded to ensure that they have been processed in conformity with the Regulation;
- compiling of statistics of applications received, approved and rejected as well as the origin of the applicant and the nature of the investment made in conformity with the Regulation;
- preparing an annual report for presentation to the Minister for laying in Parliament;
- keeping up to date with the development of similar schemes, their terms and conditions, in other EU or International States;

⁶ Art 25A, Cap. 188

⁷ The Guidelines are attached as a schedule to this Report

- Putting forward advice to Government, the Minister and the Monitoring Committee on any aspect of the IIP and its administration.

Specific Regulatory Operations (SROs) are those regulatory functions which shall be carried out in response to an official complaint against the administrators of the Individual Investor Programme of the Republic of Malta Regulations (LN 47 of 2014). Such administrators may be Identity Malta or its concessionaire or agent. Upon receipt of such complaint, the ORIip shall notify Identity Malta and request its position in respect of that particular case. Should the complaint not be sufficiently motivated by the complainant, the ORIip shall ask the same complainant to make his case in writing and in more detail.

2. Legal Framework

The introduction of the IIP required a legal framework governing the scheme as well as certain amendments to existing portions of legislation not least the Maltese Citizenship Act. This section aims to highlight the main legal changes that were made.

2.1 Individual Investor Programme of the Republic of Malta Regulations

Legal Notice 47 of 2014 (SL 188.03) is the governing legal instrument for the IIP falling under the provisions of the Maltese Citizenship Act (Cap. 188). The main aim of these regulations are to “*allow for the grant of citizenship by a certificate of naturalization to foreign individuals and their families who contribute to the economic development of Malta*”. The Regulations provide for the setting up of the capacity aspect of the operational framework through:

1. The setting up of **Identity Malta**;
2. The appointment of a **Concessionaire** with a public service concession contract to design, implement, administer, operate and promote the programme, or any subsidiary of that entity, duly authorized by the public service concession contract;
3. **Approved Agents** in the form of audit, law, financial advisory or intermediary firms or any other person or body which in all cases has been authorised to act as an authorised intermediary firm by Identity Malta for the purposes of these regulations.

Regulatory Observation

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.

The IIP provides for citizenship to be granted to a main applicant and his/her dependents. Eligibility of the main applicant is based on the following criteria:

1. is at least eighteen years of age;
2. proposes to make a contribution as determined in the Schedule to the Regulations;
3. meets the application requirements;
4. commits himself to provide proof of residence in Malta, and to provide proof of title to residential property in Malta;
5. commits himself to invest, amongst others, in stocks, bonds, debentures, special purpose vehicles or to make other investments as provided from time to time by Identity Malta by means of a notice in the Gazette.

Beneficiaries of the Global Residence Programme provided for under the Income Tax Act are also allowed to apply for the IIP subject to satisfying all the additional eligibility requirements of the Programme.

Regulatory Observation

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.

The Regulations also define the nature of dependents as follows:

1. the spouse of the main applicant in a monogamous marriage or in another relationship having the same or a similar status to marriage, unless the Minister authorises otherwise on a case by case basis;
2. a child, including an adopted child, of the main applicant or of his spouse who is less than eighteen years of age;
3. a child of the main applicant or of his spouse who is between the age of eighteen and twenty-six years and who is not married and who proves, to the satisfaction of the Minister, that he is wholly maintained by the main applicant;
4. a parent or grandparent of the main applicant or of his spouse above the age of fifty-five years who prove to the satisfaction of the Minister that they are wholly maintained or supported by the main applicant and form part of the household of the main applicant;
5. a child of the main applicant or of the spouse of the main applicant who is at least eighteen years of age, is physically or mentally challenged, and who is living with and is fully supported by the main applicant.

Regulatory Observation

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. 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. 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.

Regulation 4(1) sets out the general requirements for a person to be a main applicant for citizenship under the programme. In summary these are:

- a. is at least eighteen years of age;
- b. proposes to make a contribution as determined in the Schedule;
- c. meets the application requirements;
- d. commits himself to provide proof of residence in Malta, and to provide proof of title to residential property in Malta in accordance with these regulations;
- e. commits himself to invest, amongst others, in stocks, bonds, debentures, special purpose vehicles or to make
- f. other investments as provided from time to time by Identity Malta by means of a notice in the Gazette.

Regulatory Observation

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.

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*.

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.

Regulations 4(2) – 4(9) outline the required documentation to accompany the main applicant’s application as well as other procedural aspects.

Regulatory Observation

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.

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.

It is not clear how the requirement in Regulation 4(2) to submit fees for due diligence and subregulation (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.

Regulation 4(2)(d) replicates the suggestions put forward for Regulation 4(1)(b) above in order to facilitate the aggregation of committed declarations.

All in all Regulation 4 may be streamlined and consolidated to eliminate repetition and facilitate the validation of applications.

Regulation 5 provides for the Eligibility Criteria for the IIP which are also the core of the due diligence process which is to be carried out. Regulation 7(2) specifies who may carry out the due diligence exercise.

Regulatory Observation

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

“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 responsible for the proper carrying out of due diligence tests.....”

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

“and (IM) shall also carry out due diligence tests independently of the concessionaire”

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.

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.

Regulations 7(4) – 7(12) encapsulate the timelines for the deliverables that both Identity Malta and the applicant will have to observe in processing and finalising the application process. These timelines will form the basis of the administrative checks that the Regulator will be undertaking in order to ensure that the applications have been dealt with in compliance of the regulations.

Regulation 8 specifies the fees which are refundable and those which are not. Regulation (10) empowers the Minister to deprive successful applicants under the IIP of their citizenship in the case of specific defaults. On its part Regulation 12 limits the number of successful main applicants, excluding dependants, to 1800 for the whole duration of the programme.

In conclusion, Regulation 13 creates a National development and Social Fund into which 70% of contributions received by Identity Malta under the programme shall be paid. These funds shall be used for the advancement of education, research, innovation, social purposes, justice and the rule of law, employment initiatives, the environment and public health.

Regulatory Observation

The Regulator’s remit is not considered to extend to the verification of funds deposited and expended nor to the governance of such Fund. This is on the basis of Article 25 of the Maltese Citizenship Act which summarised the Regulator’s role as that *“for the purposes of the correct implementation and monitoring of the Individual Investor Programme”*. In this context the Regulator has interpreted this as referring to the IIP application and approval/refusal procedure and not to any matter relating to the Fund. Public announcements have been made to the effect that the Fund will not be managed or regulated by the ORIIP notwithstanding Government has the power to appoint the Regulator to regulate the Fund under the provisions of Article 25(3) of the principal Act.

2.2 Amendments to Maltese Citizenship Act

In the light of the IIP a number of amendments were carried out to the Maltese Citizenship Act. These are summarised hereunder:

1. the introduction of the IIP in the definitions;
2. to provide for the naturalisation as a citizen of Malta to person who is an applicant, or is a spouse or an eligible dependant of such applicant, under the IIP;
3. to provide for the violation of regulations made under this Act, in terms of unlawful or unauthorised public advertising, publication or dissemination any information relating to the IIP;
4. legitimisation of IIP fees;
5. the setting up of the Regulator and the regulatory function;
6. the setting up of the Monitoring Committee, to monitor the workings of the IIP and its constitution.

These amendments were approved by the House of Representatives on the 12 November 2013.

2.3 The Role of Identity Malta

Identity Malta was established as an Agency through Legal Notice 269 of 2013 (S.L. 497.07) on the 10 September 2013. This subsidiary legislation falls under the provisions of the Public Administration Act.

Identity Malta was tasked with the functions related to:

- citizenship, residence permits, work permits and other administrative matters related to expatriates;
- passports;
- identity cards and other identity documents;
- acts of civil status;
- land registration and registration of public deeds;
- individual investment programmes for expatriates or for persons who acquire Maltese citizenship, including the administration of funds deriving from such programmes.

Such functions emanate from the provisions of the following Acts and subsidiary legislation:

- Maltese Citizenship Act;
- Identity Card and Other Identity Documents Act;
- Passports Ordinance;
- Civil Code and the Public Registry Act;
- Land Registration Act.

The Regulations provide for the Agency to be headed by the Executive Chairperson who shall perform all the functions and duties of the Chief Executive Officer of the Agency as stipulated in the Act.

2.4 The Role of the Regulator

A regulatory function for the IIP was set up by means of amendments to the Maltese Citizenship Act. The Regulator's overall objective is to "*for the purposes of the correct implementation and monitoring*" of the IIP. The Act provides for the assignment of additional functions to the regulator. The independence of the Regulator is also secured in terms of the provisions of Article 24(5) which empowers the Regulator to "*act in his individual judgment and shall not be subject to the direction or control of any other person or authority*". Moreover, the status of the Regulator is empowered by the onus on others involved in the administration of the IIP (or on any other matter in relation to which the Regulator is assigned further functions) "*to disclose or give to the Regulator such documents or information as he may require for the purpose of enabling him to discharge his functions*".

Regulatory Observation

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. Hope fully the move of the remaining Identity Malta staff on the second floor of the Evans building will proceed as planned.

2.5 The Monitoring Committee

The Monitoring Committee was also set up by virtue of the amendments to the Maltese Citizenship Act. The Monitoring Committee draws its mandate from Article 25B of the principal Act and tasked with monitoring the workings of the IIP. The Monitoring Committee is made up of the Prime Minister, who shall preside all meetings, the Minister responsible for the IIP and the Leader of the Opposition. The Committee is also mandated to regulate its own procedure and may summon the Regulator to report to the Committee at its meetings.

Regulatory Observation

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.

2.6 Other Legal Considerations

The Regulator positively notes the following developments:

- The inclusion of applicants for the Global Residence Programme within the framework of the IIP. This is because recipients of the former can consider the IIP as the next logical step having satisfied a number of conditions as beneficiaries of the GRP. The GRP is also considered to have the same economic principles and goals of the IIP.
- The Joint Press Statement by the European Commission and the Maltese Authorities on Malta's Individual Investor Programme (IIP) done at Brussels on 29 January 2014. This press statement re-affirms the Maltese Government's intention to introduce an effective residence status in Malta prior to the possibility to acquire Maltese naturalisation and that no certificate of naturalisation will be issued unless the applicant provides proof that he/she has resided in Malta for a period of at least twelve months immediately preceding the day of issuing of the certificate of naturalisation.

Regulatory Observation

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.

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.

3. Review of IIP Operations

The aim of this section is to record the salient developments in the operational structure of the IIP within the structure of Identity Malta. It is recognised that this report covers the initial operational development and that, as a consequence, the situation might not be as crystallised as that of another entity which has been in operation for a number of years.

The IIP forms part of Identity Malta, a government agency set up under the provisions of the Public Administration Act. Apart from the IIP, Identity Malta is responsible for the following functions:

- issuing electronic identity cards for Maltese Citizens and as the Registration Authority for eID (virtual) accounts in the case of all citizens;
- keeping acts of birth, marriage, civil unions and death and adoption registrations, issuance of such certificates and issuance of Free Status Certificates;
- registration of immovable property;
- implementing the mechanism for the acquisition of citizenship by naturalization, for the renunciation/loss of Maltese citizenship and for the deprivation of Maltese citizenship;
- managing the legal migration process;
- managing Government's immigration central authority responsible for the provisions of the Schengen acquis, ensuring that the EU visa policy is implemented through the proper functioning of the visa issuing procedures in all of Malta's Diplomatic missions and Consular posts;
- registering legal organisations both Maltese or foreign and international;
- issuing of Maltese passports to Maltese citizens.

Identity Malta is the recipient of a €250,000 allocation from the Ministry's recurrent budget as well as the recurrent and capital budget associated with the Land and Public Registry Division.

3.1 Budget

The budget allocated for IIP forms part of overall budget allocated to Identity Malta. It has been confirmed that the IIP does not have a specific line item. The IIP is of the opinion that it is difficult to have a separate budget for the current year. Moreover, given the novelty of the programme, the IIP considers it difficult at this stage to have an estimate for the coming three years citing the experience being gained in this year as a basis for preparing a proper budgetary estimate for the following three years.

3.2 Human Resources

The IIP unit is currently composed of seven employees who are responsible for carrying out the day-to-day running of the Programme as well as contribute to the long-term objectives of the unit. Although a significant part of the unit's work is dedicated to the processing of individual applications, especially the Due Diligence aspect, all the staff's efforts are directed towards maximizing the positive externalities associated with the Programme.

The CEO heads the IIP unit, works in continuous liaison with the Chairman of Identity Malta, and is answerable to the Minister and Prime Minister on the running of the Programme. The CEO is responsible of the evaluation of applications and the analysis of the due diligence checks and for presenting to the Minister the findings for each and every application, making recommendations as to whether the certificate of naturalisation should be granted or

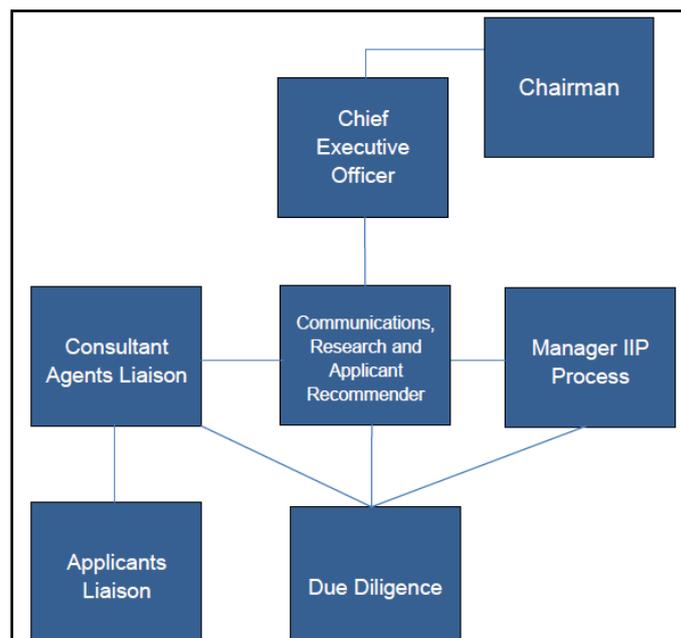
otherwise. The CEO meets prospective applicants together with their agents to discuss potential initiatives which they plan to undertake in Malta before acquiring citizenship. The CEO is also responsible for the marketing of the programme and liaises with the concessionaire for the promotion of the IIP in other countries and other related matters.

The IIP also has the following functions resourced namely:

- Research and Communications – responsible for managing the public relations of the IIP and also covers the public relations of Identity Malta. Moreover it provides assistance to the CEO in conducting the relevant research on applicants, their commercial background and their investments.
- Agents Coordination - to liaise with all accredited persons and to deal with queries that may be raised by the agents and to provide them with individual assistance during the application stage. This function is also responsible for the delivery of training sessions to potential accredited persons before they acquire their formal license from Identity Malta to carry out IIP operations.
- Processing - responsible for receiving applications and managing the evaluation process.
- Due Diligence - performs Tier 1 and Tier 4 due diligence checks. Using sophisticated software and market intelligence, risk intelligence and risk assessment checks are conducted to compliment other detailed evaluations presented by the international service providers and the Police.
- Liaison - assists the Agent's coordinator in the day to day operations, as well as taking care of the applicants' needs once they are in contact with IIP unit. Additionally responsible for collecting the biometrics data of each IIP applicant before the latter are issued with a Maltese E-Residence Card.

The organigram of the IIP function within Identity Malta is shown in Figure 1.

Figure 1: Organigram of the IIP Function within Identity Malta



All of the IIP team is in possession of tertiary education level. It is envisaged that the IIP will be strengthening the due diligence unit in the near future with a compliment of two more specialised employees.

Regulatory Observation

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.

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.

3.3 External Assistance

The Individual Investor Programme Regulations identified the concessionaire as “*the entity awarded with the public service concession contract to design, implement, administer, operate and promote the programme, or any subsidiary of that entity, duly authorized by the public service concession contract*”. However whilst the Regulations deem the concessionaire as being responsible for the operation of the IIP, the reality on the ground suggests that the IIP structure within IM has taken on more of a leading role.

Regulatory Observation

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.

The number of Accredited Persons (Agents) currently stands at eightyfive. The list which is constantly updated is found at <http://iip.gov.mt/agents-list/>. All of these Accredited Persons have gone through briefing seminars before becoming authorised. They have all Authorised Registered Mandatories by MFSA, and have submitted the proper application form and met the necessary requirements. These are subdivided as follows:

• Law Firm	10
• Financial, Advisory & Audit + Law Firm	20
• Financial, Advisory & Audit	49
• Other	06

3.4 The Regulator

The Regulator was formally appointed on the 18 March 2014. The Office of the Regulator is a very lean organisation supported by one professional and one senior administrative member of staff. The Regulator operates from Level 2 of the Evans Building, which premises is also shared by other staff from within Identity Malta.

Regulatory Observation

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.

Equally important is the need to reflect this corporate identity in the regulatory structure (ORip) set up for this programme. The location of the ORip'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.

4. Regulatory Assessment

There is no doubt that ever since Government announced its intention to develop the Individual Investor Programme, the debate on this issue has always been in the limelight. Opinions on the IIP have been aired both locally and abroad. However, we are now at a juncture where there exists a Regulation that governs the programme which has been consolidated to reflect the developments that have ensued. Moreover, in the light of the events that characterised the IIP, Malta's Regulations governing this programme have also been given the European Commission's endorsement. Notwithstanding, it would be professionally unwise to consider the past as being simply water under the bridge. Government's intention, in the development of the IIP, was to transform Malta's economy into a more modern one that could harness the potential of successful business-persons whilst ensuring that the latter's contribution for Maltese citizenship would be translated into a socio-economic benefit for the people of Malta. To this effect, it is opportune to undertake a PESTEL analysis with a view to elicit the programme's strengths, and consolidate them, as well as to identify any ensuing weaknesses such that they may be corrected lest they mitigate against the success of the IIP itself.

4.1 Strategic Assessment

Political

There is no doubt that the political element of the IIP is by far the most critical element of this analysis. Government set out to develop this programme with the intention of granting citizenship by a certificate of naturalisation to foreigners and their families who contribute to the economic development of Malta. While other countries associate citizenship with the level of investment a person made in the country, Malta would be asking for payment over and above a level of investment. Government considered that Malta's IIP was not simply a citizenship scheme but a programme aimed at making a generational transformation of the country placing it at the top of the ladder. Besides the investment in bonds and property, the programme would also aim at bringing to Malta €1,000 million to be invested in children, innovation, health, new social programmes, training and competitiveness. This would further contribute to enhancing Malta's quality of life.

The main political issues and arguments that followed Government's announcement of the IIP were given ample coverage in the media and may be summarised as having been the following:

- Residency:
 - an effective residency period, for both applicants and their dependents, prior to being eligible for naturalisation in order to establish a genuine link between applicants for citizenship and the country;
- Transparency:
 - the non-publication of the concessionaire's contract;
 - the identification of persons acquiring citizenship through the IIP by publishing their names and places of origin;
- Citizenship implications:
 - Member State immigration controls could be in danger of being sidestepped by those with sufficient wealth;
 - the selling of something Malta does not own – EU citizenship and life in other Member States;

- Consultation:
 - not enough consultation leading to successive revisions to the IIP Regulations.

However it is opportune to recall that the main mitigation measure that Government secured was the agreement reached with the European Commission on the 29 January 2014. The agreement hinged on the modification of the Regulations prevailing at the time to:

“include genuine links to Malta through the introduction of an effective residence status in Malta prior to the possibility to acquire Maltese naturalisation. No certificate of naturalisation will be issued unless the applicant provides proof that he/she has resided in Malta for a period of at least 12 months immediately preceding the day of issuing of the certificate of naturalisation.”

The current Regulations do not prescribe specific metrics upon which residency is based. This has also been confirmed by Identity Malta which labelled the definition as “grey” but insisted that the spirit of the definition was more important. It is understood that the spirit of the definition is taken as the establishment of a strong link with Malta more so since the local administration has a track record of consistently applying the “residence” element for legal purposes.

Another element which could have been handled in a neater way relates to the publication of information. There have been statements in the press which indicated a number of figures and which do not seem to be related. Such figures have been released by Government and the concessionaire. It is felt that Government, through Identity Malta, should be the sole source of information. The other stakeholders, including the Concessionaire and the Agents should not engage with the media.

Regulatory Observation

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.

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.

Of concern remain the perceptions of other Member States as to Malta’s stance on the award of citizenship on the basis of a person’s investment in the Maltese economy. Citizenship by naturalisation will remain inherently linked to the concept of long-term residence and the provisions of Directive 2003/1009 which has been transposed into Maltese law. The debate, both locally and abroad, but more importantly abroad, have focused on the perception of “purchase” of European citizenship as the implication of Maltese citizenship will also mean European citizenship.

One needs to bear in mind that the IIP was created as an instrument to boost economic activity in Malta by harnessing the potential of third country nationals who are already successful and who may wish to use Malta as a base for continuing their investment. Whilst this will bring in additional investment to the advantage of the Maltese economy and labour market, Malta should ensure that any wrongful perceptions that may have arisen during the development of the IIP are corrected. This effort should be sustained.

Economic

IIP applicants would be required to make an investment of €1.15m, including a contribution of €650,000 of which 70 per cent would go into a national development with the rest directed to the consolidated fund. They must also pay €25,000 for their spouse to acquire citizenship and a further €25,000 for each child under eighteen. Applicants would also be required to make a property investment of €350,000 or take a €16,000 annual rental, both on five-year contracts plus €150,000 investment in bonds or shares kept for five years in Malta.

The direct benefits of the IIP can be summarised as:

- the direct contribution requirements set out in the Schedule to the Regulations;
- the acquisition or lease of high value property;
- a significant investment in local financial instruments.

However there exist a number of indirect, or multiplier, benefits that may include, but not be limited to:

- increased boost to a sustainable construction industry and its contribution to GDP and employment;
- increased boost to the Maltese financial services industry through the acquisition of securities as well as private medical insurance;
- the possible ofshoot of the applicants' businesses onto the Maltese economy and the labour market;
- increased consumption from the naturalised wealthier cohort;
- an increase to Malta's industrial and services industry as a result of the applicants' business and related links;
- a resultant increase in human capital as a result of the business opportunities afforded by these new applicants.

A local economist has estimated that, *"from each approved applicant, the economy stands to gain €1.67 million in nominal growth, additional to that planned from the IIP. If 600 applications are approved each year for three years until the capping is reached, the total additional nominal GDP expansion could exceed €1 billion for each of these three years. An economy which in 2012 was capable of sustaining an employment of 174,000 persons can reasonably be expected to create around 25,000 new jobs for each of these three years, i.e. 75,000 jobs from the IIP alone"* (15 February 2014).

Government expects to generate €30 million in one year from the IIP and a total of a €1 billion fund for projects which would improve the people's quality of life.

Henley & Partners, the scheme's concessionaire, are reported (21 June 2014) to have announced that in the first three months some 100 individuals made financial commitments to the tune of more than €100 million. It also reported (10 June 2014) that the IIP's foreign direct investment comprising deposits, bonds, medical insurance, and real estate among other elements, equates to almost €10million per week. At the time of writing the Regulator is informed, through informal discussions with Identity Malta that the actual number of applications has exceeded the figure indicated by the Concessionaire. This does not mean that all the investment has already materialised, as confirmed by the Minister responsible for the IIP, in a parliamentary question (PQ 9874), which stated that Identity Malta has started to process six complete applications in line with the Regulations.

In this context the IIP should serve Malta well, economically, although, as stated, due care should be taken to ensure that its European peers do not have the wrong impression on the

scope of Malta's programme. As the number of approved applicants is currently capped at 1800, Malta has demonstrated its commitment to attract a dose of additional quality to further strengthen its economic performance.

Admittedly, Malta's initiative has given rise to the possibility of other EU Member States to tailor their own version of Malta's IIP, and at a lower cost. Portugal, Spain, Austria, Bulgaria and, very soon, Latvia have all been reported to offer incentives for wealthy third-country nationals to settle in their country. Recently Cyprus was comparing its ability to conclude an application process far quicker than Malta. It is felt that Malta should continue to opt for a meticulous and transparent process rather than opting for short term gains. Hence Malta must ensure that it continues to develop its infrastructure in a manner that befits any modern and growing economy as this competitiveness aspect will play an important part on the applicant's choice of country of citizenship.

Social

Government is committed, as part of the IIP, to set up a national development fund where part of the income derived from this measure will be siphoned off for re-investment in projects. The National Social Development Fund would improve the people's quality of life by investing in projects which were required to improve Malta's social fabric. It is estimated that the IIP will contribute €1 billion over the 1800 applications, an amount which can make projects, which were not possible due to financial constraints, possible. Government is envisaging that these funds would be directed towards investment in children, innovation, health, new social programmes, training and competitiveness.

Such an investment could give rise to a number of benefits not least:

- increased employment opportunities;
- better working conditions (e.g. salary);
- bettering of educational standards through lower school leavers and more graduates;
- enhanced knowledge capacity leading to enhance opportunities for current and future workers;
- an improved benefits infrastructure to support those below the poverty line or at risk of poverty.

It would be interesting if the initiatives could be monitored in order to try, as far as possible, to quantify their direct and indirect benefits as a means for characterising the effectiveness of the IIP on Maltese society.

Technological

No major technological difficulties are foreseen. However, it may be the case that some of the approved applicants may transfer some of their business interests locally and would hence stimulate further the penetration of technology within Maltese society. Current ICT statistics across the EU show that Malta is in a leading position to respond to the technological needs of businesses and this may be yet another 'pull factor' of the IIP.

Environmental

No major environmental issues are foreseen as a result of the IIP.

Legal

The IIP is governed by LN 47/2014 (S.L. 188.03) which falls under the Maltese Citizenship Act (Cap. 188). The Regulations as they stand today went through a number of amendments before being consolidated in their present form. The main issues which may still have some incongruencies are the following:

- | | |
|--------------------|---|
| Regulation 3(2) | <p>Whilst the Regulations state that the operation of the programme shall be carried out by the concessionaire, a reported Government statement indicated that <i>“the programme would be run by Identity Malta, a new government agency, but Henley and Partners would remain agents, as would other financial operators such as PWC and Deloitte. There would be no monopoly”</i>. Meetings held by ORIIP with Identity Malta also gave an indication of the major role being played by Identity Malta.</p> <p>If this is the case in practice, then the Regulations need to be amended to reflect such as otherwise Government would be in a weaker position.</p> |
| Regulation 4(1)(d) | <p>The Regulations put the onus of proof of residency in Malta on the applicant. The issue of residency was one of the most hotly debated components of the IIP. The commitment with the European Commission was to provide “genuine links to Malta through the introduction of an effective residence status in Malta prior to the possibility to acquire Maltese naturalisation” and that “no certificate of naturalisation will be issued unless the applicant provides proof that he/she has resided in Malta for a period of at least 12 months immediately preceding the day of issuing of the certificate of naturalisation”.</p> <p>No metrics or guidelines for this have been provided by Identity Malta. This leaves a potential gap in ascertaining ‘effective residence status’. Recalling the debate in the European Parliament it seems best to opt for a flexible and workable metric as recommended earlier in this report.</p> |
| Regulation 7(2) | <p>The wording of this Regulation is unclear in that whilst the opening portion states that “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” the latter portion obliged Identity Malta to “carry out due diligence tests independently of the concessionaire”. It is as though there is an obligation for two due diligence to be made when, in all probability, the spirit of this Regulation was to allow for Identity Malta to simply conduct a counter due diligence exercise should there remain doubts from the due diligence test that is to be carried out for all applicants.</p> <p>Identity Malta has taken the stance of conducting due diligence assessments of all applications. This is a positive development and hence the Regulations should be updated to reflect this accordingly.</p> |

Having undertaken the aforementioned strategic analysis it is fitting to translate this into a SWOT matrix, as shown in Figure 2 to enable Government and Identity Malta to consolidate upon internal strengths whilst addressing pending weaknesses as well as to capitalise upon external opportunities and mitigate against existing threats.

Figure 2: SWOT Matrix

<p>Strengths S</p> <ul style="list-style-type: none"> • opportunity to attract high end investors who would contribute to the well-being of the Maltese economy. • potential for multiplier effect from high end investors to be manifested in areas such as construction, financial services, industry and services as well as an increase in human capital. • additional and significant source of revenue that permits the undertaking of key projects. • the acquisition or lease of high value property. • a significant investment in local financial instruments. • enhanced consumer spending. • IIP has European Commission endorsement. 	<p>Weaknesses W</p> <ul style="list-style-type: none"> • different figures given at different times and by different entities. • a bone of political contention. • criticism levelled at certain elements of the programme including the publication of the contract as well as the names of approved applicants. • residency metrics unclear. • need to further refine the wording of specific clauses within the Regulation.
<p>Opportunities O</p> <ul style="list-style-type: none"> • contribution to the diversification of the Maltese economy. • improved working conditions opening up possibilities of career progression for Maltese professionals. • potential increase in employment opportunities as well as in business for support services. • use of funds derived from IIP for strengthening the existing social security framework. 	<p>Threats T</p> <ul style="list-style-type: none"> • negative perception from Malta's European peers accusing Malta of selling passports to Europe and not just to Malta. • claims of undermining immigration controls in other Member States. • unclear residency metrics may undermine Commission endorsement.

4.2 IIP Forms

Identity Malta have developed a set of forms and accompanying procedures that govern the IIP. These were provided to the ORiip after a request was made for their review. In general, the Operational Guidelines provided were well defined, concise and to the point. In fact the ORiip proposed only a few minor comments for consideration which included, but were not limited to:

- the introduction of an interpretation clause at the beginning of each form to characterise gender issues;
- the listing upfront of exclusion criteria so that these are clear to potential applicants at the outset;
- clarification on when another high level due diligence on the applicant is to be carried out;
- a more accurate definition of the term 'professional status' in the case of Agent applications;
- renewal procedures in the case of Agents;
- streamlining of timeframes to be expressed in the same currency.

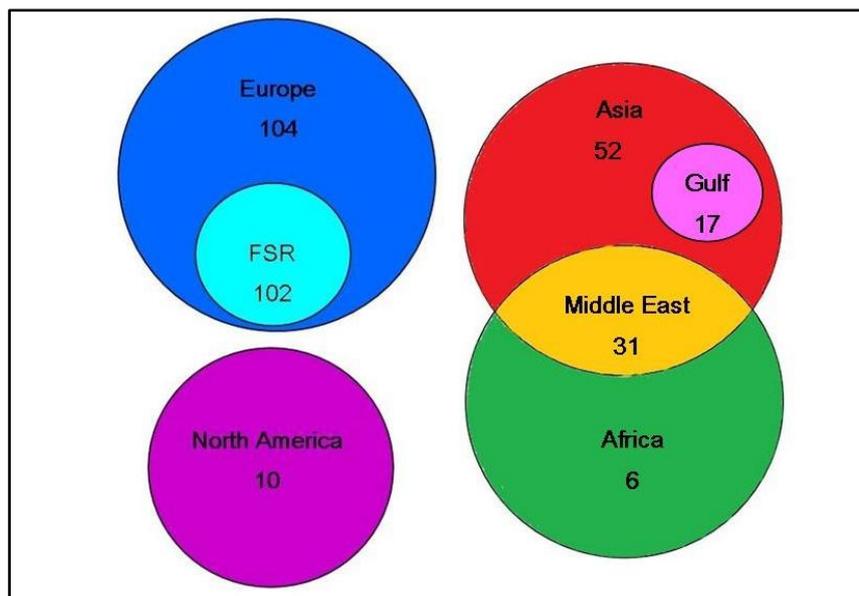
In principle Identity Malta factored ORiip's comments into a revised version of these procedures. This reaffirms the collaborative relationship that has been established between the Regulator and the Operator, a relationship which should be nurtured in the future.

The ORiip had no particular comments on the content of the Forms related to the IIP.

4.3 Applications Received by Continent

As at the end of June 2014, 173 main applications had been submitted. These, in turn, had a total of 96 adult dependents and 101 minor dependents. Figure 3 shows the applications submitted by continent and, where appropriate, by region.

Figure 3: Applications received by continent and region⁸



⁸ Another application was received from the South American continent

59% of all applications were submitted from Former Soviet Republic (FSR) countries with 30% from the Asian continent and 3.5% from the African continent. It is worth noting that, of the latter two continents, 18% of all applications derive from Middle East countries whilst 9.8% are from Gulf countries. Taken from a BRICS⁹ perspective, applications from this grouping account for 61.3% of total applications.

Regulatory Observation

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.

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.

Of the one hundred and seventy three main applications, seven had progressed to the second stage, submitting all the necessary forms and paying the necessary fees for the 4-tier due diligence process to commence. Only one of these applications was from an applicant with an already long-standing relationship with Malta and with a residence permit.

As on date of compilation of this Report, no recommendations have been submitted to the Minister and consequently no naturalisation certificates were issued. This is to be expected given that the programme is still in it's infancy.

4.4 Analysis of Applications for Accredited Person Licensing – Form M7

Around ninety applications for Accredited Persons were approved by IM-IIP. To this effect the Regulator analysed a sample of seventeen applications. IM-IIP decided that it would, initially, accredit persons in their individual capacity and not corporate bodies per se. The motive behind this cautious approach was to ensure greater accountability on the part of the individuals, who would therefore be singularly responsible, and to ensure better communications between IM-IIP and its agents. It is felt that IM is correct in adopting a cautious approach.

A checklist was prepared summarising the requirements set out in Form M7 – Accredited Person Licence Application - and against which all selected applications were screened for compliance. The ORiip completed checklist formed the basis of each assessment.

⁹ BRICS is the acronym for an association of five major emerging national economies: Brazil, Russia, India, China, and South Africa

Regulatory Observation

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.

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.

More assistance to applicants may be required for correctly filling in and submitting the application as there may be grey areas which are not clear enough to Corporate and Individual applicants.

Regulatory Observation

IM-IIP is encouraged to amend the current application form to either:

- Have 2 separate application forms for Corporate and Individual applicants;
- 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.

It has been noted that a number of applications have been completed by hand. Although there is nothing in the application form which prevents this, IM-IIP's attention is drawn to LN 278 of 2010, Regulation 5(a) which prescribes typewritten and A4 format submissions. It is poignant that this regulation falls under the same Ministry and under Identity Malta. Given that despite initial reservations this Legal Notice has stood the test of time, it is recommended that IM-IIP adopts this principle.

Regulatory Observation

Prescribe, within revised IIP Regulations, or else within the Application Form itself the obligatory requirement for typewritten and A4 format submissions.

It has been noted that submissions are usually in the form of the application form, which may be stapled or loose, and a number of supporting documents.

Regulatory Observation

IM-IIP is encouraged to require that each paper forming part of the application is initialled.

For the purpose of the verification of address, applicants and directors/shareholders are requested to submit an authenticated copy of their passport and a utility bill. The utility bill is indicated as being that related to electricity, telephone and water. These parameters may create some limitations. For proof of residence, utility bills tend to be registered to the same person within the household. This means that if there is a case of a husband/wife/sibling partnership as company directors, it would be rather difficult for them to obtain a utility bill. On the other hand one would expect these people to have their own bank account which could be the proof of residence. Persons in rented buildings are likely to have their water and electricity bill calling the owner and which may therefore limit their proof of residence

evidence. One can also opt to allow mobile phone bill statements to suffice for this purpose even though this is not allowed in certain countries. It is suggested that these parameters are widened slightly.

For proof of identity, an official passport/identity card bearing a photo and signature and issued by a State authority as currently requested should suffice. In the case of Maltese and EU nationals, so long as the principles of Cap. 258 (Identity Card and Identity Documents Act) are respected, proof of identity can also be extended to the use of other official documents that can serve to identify an individual.

Regulatory Observation

It is suggested that IM-IIP considers the following parameters for proof of identity and proof of residence:

Proof of residence – one of the following - a water and electricity, bank, telephone, mobile or television statement.

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.

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.

The ORiip is informed that, as a consequence, and in order to limit the amount of administrative burden, for the first year until the time of the first renewal, the information required will be in line with the requirements for individuals. Consequently, IM-IIP has waived the obligation for information related to Directors and Shareholders to be submitted.

Regulatory Observation

In line with the collaborative *forma mentis* with which the Regulator wishes to discharge his duties in respect of IM-IIP the findings of the review of the sample applications for Accredited Persons were discussed with IM-IIP.

The Office of the Regulator notes with satisfaction that IM-IIP responded promptly and in a collaborative spirit throughout the regulatory assessment process. Any issues which were highlighted by the ORiip were dealt with swiftly to the extent that the Regulator is satisfied that the approved applications are in line with the administrative procedures introduced by IM-IIP to amend the requirements set out in Form M7.

5. Conclusion

This first review by the ORIIP is considered to have been a positive experience from a number of aspects. The collaboration that this Office has found from IM-IIP needs to be commended as is their demonstrated attitude to take up this Office's suggestions. The collaborative mentality with which this Office has sought to discharge its duties is considered to have worked effectively. Rather than adopting an autocratic approach the regulatory duties were achieved through regular discussions with IM-IIP and which, in the Regulator's opinion, have led and will continue to add to the development of a more robust governance framework for one of Malta's current flagship projects.

This Office feels that its contribution, in the form of analysis and recommendations, has added value to the process and has amply justified Government's decision to appoint a Regulator for this programme. This Office also feels that the collaborative approach has worked effectively and will continue to function in this manner particularly when, during the course of time up till the next review, it is anticipated that a regulatory assessment of actual applications will commence, as approvals or rejections start to materialise from the operative side.

This Office intends to continue to function in the manner it has done over the past months since the appointment of the Regulator. This Office remains at Government's disposal for the assumption of any additional duties that may be deemed appropriate in connection with the Individual Investor Programme.

Appendix I – ORiip Operational Guidelines

Office of the Regulator

Individual Investor Programme (ORiip)

Operational Guidelines

Governance Arrangements for the Office of the Regulator

1.0 Interpretation

01. Unless specifically intended to mean the contrary:
 - a. Words noting the singular shall include their meaning in the plural and vice versa;
 - b. Reference to any gender shall include every other gender;
 - c. Reference to any Act of Parliament or Regulation shall include any amendment and/or substitution thereof, as currently in force at the relevant time;
 - d. Reference to “the Regulator” also applies to those engaged within the Office of the Regulator or who are acting on his behalf;
 - e. A requirement in these Operational Guidelines (OGs) for liaison and consultation is a requirement for a full and frank discussion and includes a requirement where necessary and appropriate, for full disclosure of relevant information and material.
02. “Act” shall mean the Maltese Citizenship Act (Cap. 188).
03. “Regulation” shall mean the Individual Investor Programme of the Republic of Malta Regulations, 2014 (L.N. 47 of 2014).

2.0 Better Regulation

04. In general, where the Regulator needs to consult stakeholders, the provisions of Directive No. 6 “Consultation Exercises with Stakeholders” issued on 24 February 2011, shall apply. However, the following principles shall also apply.
05. The Regulator shall seek to avoid imposing unnecessary regulatory burdens for example, by considering how one can best minimise negative economic impacts of the regulatory activities and compliance costs and encourage and promote compliance.
06. In responding to non-compliance, the Regulator should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for such. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.
07. The Regulator shall provide advice and guidance to allow Identity Malta to better understand its role and responsibilities.
08. The Regulator shall seek to create an environment in which Identity Malta can have confidence in the advice it receives and feel able to seek advice without fear of triggering enforcement action.

3.0 The Regulator

09. Article 25 of the Malta Citizenship Regulations (Cap 188) provides for the appointment of a Regulator “*for the purposes of the correct implementation and monitoring of the Individual Investor Programme*”. The Individual Investor Programme (IIP) is currently governed by Legal Notice 47 of 2014.
010. Specifically, with reference to Article 25 para 3, which states that “*the Regulator shall keep under review all aspects of the Individual Investor Programme*” and specifically, with reference to Regulation 13(7) which vests the Auditor General with the audit of the Funds, the Regulator shall take the overall context to mean that any regulation of the Fund shall lie strictly within the domain of the Auditor General and the Regulator shall not overlap this jurisdiction in any manner whatsoever.
011. The Regulator is appointed by the Prime Minister after consulting the Leader of the Opposition.
012. Any person appointed as Regulator should be a person who has held the office of Judge or Magistrate, or who has held the office of Attorney General, or Permanent Secretary or who has practiced as an advocate in Malta for a period of at least twelve years. During any period in which the Regulator is not appointed, the Ombudsman shall act ex officio as Regulator.
013. The Regulator shall act in his individual judgment and shall not be subject to the direction or control of any other person or authority.
014. The Regulator may request any information from any person involved in the administration of the individual investor programme and it shall be the duty of that person to disclose or give to the Regulator such documents or information as he may require for the purpose of enabling him to discharge his functions.
015. The Regulator may at any time report to the Minister responsible for the Individual Investor Programme (IIP) on any matter relating to the discharge of his functions.
016. The Regulator shall make an annual report on the discharge of his functions to the Minister. The annual report shall not include personal data relating to individuals who have acquired Maltese citizenship under the IIP.
017. The Regulator is also responsabilised to investigate complaints about the IIP. To this effect the Regulator shall determine in which manner any investigative procedure will be detailed (e.g. regulations, administrative procedure etc).
018. The Regulator shall, in respect of Article 25B of the Act provide the Monitoring Committee with any information as and when requested.
019. The Office of the Regulator shall be known as the ORIIP.

4.0 The Individual Investor Programme

020. The IIP is intended as an enabler to allow for the grant of citizenship by a certificate of naturalization to foreign individuals and their families who contribute to the economic development of Malta.
021. Identity Malta is the government entity responsible, amongst others, for the IIP. Hence the Regulator will regulate Identity Malta only in terms of the IIP function. Paragraphs 22-27 hereunder summarise the key elements of the IIP.
022. The Regulation details the specific provisions of how an applicant is to apply under the IIP and the conditions that have to be satisfied.
023. Identity Malta has appointed a concessionaire in respect of the IIP and will also be responsible for licensing Agents.
024. Identity Malta may, from time to time, issue procedural guidelines to specify the operational aspects and interpretations. These will also form part of the basis on which the Regulator will discharge his duties.
025. The number of successful main applicants, excluding dependants, shall not exceed one thousand and eight hundred for the whole duration of the programme.
026. 70% of contributions received by Identity Malta under the IIP shall be paid to the National Development and Social Fund.
027. The IIP needs to safeguard Malta's international obligations and good reputation as a worthy, transparent and reputable financial centre and a jurisdiction for international business.

5.0 Regulatory Supervision of IIP Provisions

028. The Regulator intends to develop an ongoing collaborative working relationship with Identity Malta on matters of procedure whilst remaining separate, and be seen to do such, in respect of any operational activities for which Identity Malta is responsible. This, with a view to establish a clear understanding of the procedures, interpretations and any other rulings to be adopted in the implementation of the IIP.
029. In general, the Regulator will not regulate the IIP by undertaking parallel studies (e.g. due diligence) forming part of the IIP procedure or by verifying their correctness.
030. Notwithstanding, in the case of a complaint from an applicant, the Regulator may opt to commission any number of studies to establish the legitimacy, or otherwise, of such complaint and which may include the repeating of certain studies (e.g. due diligence) or the verification of part or the whole of the application process. Any charges incurred by the Regulator shall be billed to Identity Malta.
031. The Regulator shall practice a risk-based approach to regulation. This means that samples checked for compliance will reflect their potential inherent risk. It is envisaged that the percentage of applications checked for compliance will, initially, start at a higher rate and eventually taper to a more modest one as compliance is seen to achieve steady rates.
032. Regulatory interventions are envisaged to be of two main types:
- a. Overall compliance – that is ensuring, through a risk management approach, the checking of a fixed percentage of all applications received by Identity Malta which percentage shall decrease as compliance rates are found to be consistently high;
 - b. Specific compliance – in respect to specific cases where a complaint with the Regulator in respect of an application is filed.
033. The Regulator will present an annual report to the Minister which shall be presented to Parliament. The annual report is envisaged to include:
- a. An overview of the development of the Individual Investor Programme;
 - b. Statistics on the number of applications received, processed and decided as well as a breakdown of the characteristics of those granted Maltese citizenship (by gender, age, nationality etc.).
 - c. A section on complaints processed, upheld and/or rejected.
 - d. Development of similar programmes elsewhere in the European Union and worldwide.
 - e. Recommendations for future action.

The report shall not include personal data relating to individuals who have acquired Maltese citizenship under the Individual Investor Programme nor any reference to the proceedings of the Monitoring Committee.

6.0 Governance Principles

034. The Regulator will act on the following governance principles:

- a. Outcome focused – activities will be:
 - i. focussed on the underlying regulatory objectives;
 - ii. represent the most effective and efficient course of action;
 - iii. coherent, working towards common purposes and objectives;
 - iv. flexible, innovative and practical.
- b. Proportionality and efficiency:
 - i. scope and nature of regulatory measures should match the benefits that may be achieved;
 - ii. generate the greatest benefits from the resources employed;
- c. Responsive:
 - i. responsive to the particular circumstances that may prevail;
 - ii. tailoring their approach to account for the circumstances of each individual case;
- d. Transparent and accountable:
 - i. actions should be open and transparent to encourage public confidence and provide certainty and assurance for Identity Malta;
 - ii. legislation should be fairly and consistently administered and enforced;
- e. Independent:
 - i. integrity and objectivity of regulatory actions;
 - ii. eliminate actual or perceived conflicts of interest that may impinge, or be seen to impinge, upon objective decision-making;
- f. Communicative:
 - i. operate in a dynamic context made up of effected stakeholders both public and private;
 - ii. exchanging operational information with other government agencies;
 - iii. develop appropriate relationships with the regulated sector.

7.0 Routine Regulatory Operations (RROs)

035. Routine Regulatory Operations (RROs) are those regulatory functions which shall be carried out on a regular basis and which are meant to demonstrate compliance to the Regulation.
036. RROs include the assessment of the operational capacity and infrastructure of Identity Malta to implement the Regulation. Such an assessment will be conducted in consultation with Identity Malta.
037. RROs include the asking, and being provided with, any information that the ORIip may request from any natural or legal person referred to in the Act or Regulation, public or private, in connection with the IIP.
038. RROs include sampling applications received, processed and concluded to ensure that they have been processed in conformity with the Regulation.
039. RROs include the compilation of statistics of applications received, approved and rejected as well as the origin of the applicant and the nature of the investment made in conformity with the Regulation.
040. RROs shall include the preparation of an annual report for presentation to the Minister for laying in Parliament.
041. RROs shall also include keeping up to date with the development of similar schemes, their terms and conditions, in other EU or International States.
042. RROs shall also include the formulation of advice to Government, the Minister and the Monitoring Committee on any aspect of the IIP and its administration.

8.0 Specific Regulatory Operations (SRO)

043. Specific regulatory operations are those regulatory functions which shall be carried out in response to an official complaint against the administrators of the Individual Investor Programme of the Republic of Malta Regulations (LN 47 of 2014). Such administrators may be Identity Malta or its concessionaire or agent.
044. Upon receipt of such complaint, the ORiip shall notify Identity Malta and request its position in respect of that particular case.
045. Should the complaint not be sufficiently motivated by the complainant, the ORiip shall ask the same complainant to make his case in writing and in more detail.
046. The ORiip reserves the right to call in any party involved in the complaint to gather evidence as to the case in question. The ORiip also reserves the right to conduct confrontation meetings in order to assess the veracity of the evidence provided by all parties.
047. The ORiip shall examine each case and determine whether it can make a *prima facie* ruling or whether additional studies or verifications are required.
048. Rulings made by the ORiip shall be copied to the complainant, Identity Malta, the Minister and any other party deemed relevant to the case under examination.
049. The ORiip may reserve the right to commission an assessment, in full or in part, of the whole process including the reworking of any such documentation such as the due diligence report. Should this be the case, the ORiip shall inform Identity Malta immediately and ask for the cost of such studies to be quantified on the basis of the rates stipulated in the Regulation.
050. Any financing that may be required in respect of SROs shall be billed to Identity Malta who shall pay in full and without any claim thereto. This is in line with the principle of internalising regulatory costs to the regulated sector, treating regulatory assessments as fees for service rather than taxes which costs are passed on to the client. As the fees for the IIP have already been established it is appropriate that the Regulator's budget shall be covered by such fees¹⁰. To this effect the Regulator will submit an annual budgetary statement which will be payable by Identity Malta.
051. The decision of the ORiip shall be final.

¹⁰ Brown, A.C. (undated). The Funding of Independent Regulatory Agencies - A Special Report to the Public Utilities Commission of Anguilla. Harvard University.
Smith, W. & Shin, B. (1995). Regulating Infrastructure - Funding Regulatory Agencies. World Bank