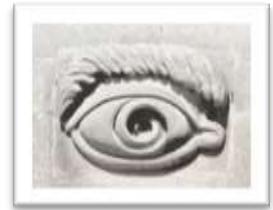


Office of the Regulator

Granting of Citizenship for Exceptional Services



Operational Guidelines

Governance Arrangements for the Office of the Regulator GCES

Version	3
Date	14 December 2020

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 Regulations shall include any amendment and/or substitution thereof, as currently in force at the relevant time;
 - d. Reference to “the Regulator GCES” also applies to those engaged within the Office of the Regulator GCES 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) and any Regulations or Notices made thereunder which may directly or indirectly refer or relate to the duties and functions of the Regulator GCES, in part or in whole.
03. “Regulations” shall mean Granting of Citizenship for Exceptional Services Regulations, 2020 (L.N. 437 of 2020) or the Individual Investor Programme of the Republic of Malta Regulations, 2014 (L.N. 47 of 2014) in respect of those cases where an application for Maltese citizenship had been made in terms of the said Programme. when such Programme was still in force.

2.0 Better Regulation

04. In general, where the Regulator GCES needs to consult stakeholders, the provisions of Directive No. 6 "Consultation Exercises with Stakeholders" issued on 24 February 2011, and Amending Directive No. 6.1 issued on 6th April 2017, shall apply. However, the following principles shall also apply.
05. The Regulator GCES 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 GCES 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. The Regulator GCES should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that he is 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 GCES shall provide advice and guidance to allow the Community Malta Agency (hereinafter referred to as the CMA) to better understand its role and responsibilities.
08. The Regulator GCES shall seek to create an environment in which the CMA can have confidence in the advice it receives and feel able to seek advice without fear of triggering enforcement action.

3.0 The Regulator GCES

09. Article 25 of the Malta Citizenship Act (Cap 188) as amended by Act No. XXXVIII of 2020 provides for the appointment of a Regulator “*for the purposes of the application process for the granting of Maltese citizenship by naturalization for exceptional services and the individual investor programme by collating and analyzing data and information*”. The Granting of Citizenship for Exceptional Services Regulations, 2020 are currently governed by Legal Notice 437 of 2020.
010. The Regulator GCES is appointed by the Prime Minister after consulting the Leader of the Opposition.
011. Any person appointed as Regulator GCES should be a person who has held the office of Judge or Magistrate, or who has held the office of Attorney General, State Advocate or Permanent Secretary, or who has practiced as an advocate or auditor or accountant 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.
012. The Regulator GCES shall act in his individual judgment and shall not be subject to the direction or control of any other person or authority.
013. The Regulator GCES may request any information from the Agency in the administration of (a) applications for the Granting of Maltese Citizenship by Naturalisation through Exceptional Services or (b) applications for Maltese Citizenship in terms of the Individual Investor Programme, and it shall be the duty of the Agency 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.
014. The Regulator GCES may at any time report to the Minister responsible for the Granting of Maltese Citizenship by Naturalisation through Exceptional Services, on any matter relating to the discharge of his functions.
015. The Regulator GCES 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 by naturalization for exceptional services or in terms of the Individual Investor Programme.
016. The Regulator GCES is also empowered to investigate complaints received in the prescribed form as provided for in the Second Schedule to the Citizenship (Amendment) Regulations 2020 – L.N. 443 of 2020 – [vide copy of form attached to these guidelines], by the applicant or his agent on behalf of the said applicant, about the process undertaken during the eligibility assessment in accordance with the Granting of Maltese Citizenship by Naturalisation through Exceptional Services Regulations or requests for reviews in the case of rejections or refusals for Maltese citizenship submitted to the MIIPA/CMA in terms of the Individual Investor Programme Regulations.
017. The Regulator GCES shall, in respect of Article 25B of the Act, provide the Monitoring Committee with any information as and when requested.
018. The title of the Office shall be known as: The Office of the Regulator, Granting of Citizenship for Exceptional Services (OR-GCES).

4.0 The Granting of Citizenship for Exceptional Services (GCES)

019. The GCES is intended as an enabler to allow for the grant of Maltese citizenship by a certificate of naturalization to foreign individuals and their families who render exceptional services to the Republic of Malta either by –
- (a) merit on the basis of humanity or on the basis of exceptional interest primarily through contributions by scientists, researchers, athletes, sports people, artists, cultural performers, investors and entrepreneurs. or
 - (b) direct investment in its economic and social development.
020. The CMA is the government entity responsible for the GCES. Hence the Regulator GCES will regulate the CMA in terms of its functions. Paragraphs 021-026 hereunder summarise the key elements of the GCES.
021. The Regulations detail the specific provisions of how an applicant is to apply under the GCES and the conditions that have to be satisfied.
022. The CMA will be responsible for licensing Agents.
023. The CMA 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 GCES will discharge his duties.
024. The number of successful main applicants, excluding dependants, shall not exceed four hundred (400) in any calendar year and one thousand and five hundred (1,500) for the whole duration of the scheme.
025. CMA shall retain 15% from contributions received through applications received under GCES and allocate 30% of the remaining balance to the Consolidated Fund and 70% to the National Development and Social Funds in accordance with the provisions of the Community Malta Agency (Establishment) Order, 2020 - Legal Notice 436 of 2020.
026. The GCES 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 GCES Provisions

027. The Regulator GCES intends to develop an ongoing collaborative working relationship with the CMA on matters of procedure whilst remaining separate, and be seen to do such, in respect of any operational activities for which the CMA is responsible. This, with a view to establish a clear understanding of the procedures, interpretations and any other recommendations to be adopted in the implementation of the GCES.
028. As a general rule, the OR-GCES will not undertake parallel studies (e.g. due diligence processes and procedures) as undertaken by the CMA in its operations although up to a certain degree the Regulator GCES might verify, if he so deems fit and proper, their correctness in general terms where doubts would have been raised by third parties.
029. Regulatory interventions are envisaged to be of two main types:
- a. Overall compliance – that is ensuring, through a risk management approach, the checking of all (i.e. 100%) applications received by the CMA;
 - b. Specific compliance – in respect to specific cases where a complaint with the Regulator GCES in respect of an application is filed or where he feels that a regulatory investigation is required from his end, particularly after a report that he may receive and/or any contribution/news item/comments that appears in the media.
030. The Regulator GCES will present an annual report to the Minister who, in turn, shall lay same on the Table of the House. The annual report is envisaged to include, but not necessarily limited to:
- a. An overview of the development of the Granting of Citizenship for Exceptional Services, and an overview of the applications that are still being processed under 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. Details of activities carried out by the OR-GCES in the fulfilment of obligations emanating from the provisions of the GCES regulations, namely the regular vetting of the applications (both those which were approved and those which were refused at the eligibility assessment phase) and ad hoc initiatives undertaken to address any issues which might have cropped up during the period in question;
 - d. Feedback from GCES stakeholders on relevant areas;
 - e. Succinct resume' of themes appearing in the public domain (in particular either raised in parliament through the submission of parliamentary questions and/or published in the Media);
 - f. Recommendations for future action.

The report shall not include personal data relating to individuals who have acquired Maltese citizenship under the provisions of the Granting of Citizenship for Exceptional

Services or the Individual Investor Programme nor any reference to the proceedings of the Monitoring Committee.

6.0 Governance Principles

031. The Regulator GCES will act on the following governance principles:

- a. Outcome focused – activities will be:
 - i. focused 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 the MIIPA;
 - 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 including the general public;
 - ii. exchanging operational information with other government agencies;
 - iii. develop appropriate relationships with the regulated sector.

7.0 Routine Regulatory Operations (RROs)

032. 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 Regulations.
033. RROs include the asking for, and being provided with, any information that the Regulator GCES may request from any natural or legal person referred to in the Act or Regulations, public or private, in connection with the GCES.
034. RROs include vetting applications received, processed and approved or refused at eligibility assessment stage, to ensure that they have been processed in conformity with the Regulations.
035. RROs include the compilation of statistics of applications received, approved and refused as well as the origin of the applicant and the nature of the investment made in conformity with the Regulations.
036. RROs shall include the preparation of an annual report for presentation to the Minister for laying in Parliament.
037. RROs shall also include keeping up to date with the development of similar schemes, their terms and conditions, in other EU or International States.
038. RROs shall also include the formulation of advice to Government, the Minister and the Monitoring Committee on any aspect of the GCES and its administration.

8.0 Specific Regulatory Operations (SRO)

039. Specific regulatory operations are those regulatory functions which shall be carried out in response to an official complaint against the CMA's refusal of an application at the eligibility assessment stage, in its capacity as the administrator of the Granting of Citizenship for Exceptional Services in accordance with LN 437 of 2020 or against the rejection by the Minister in cases of an application in accordance with the Individual Investor Programme terms of L.N. 47 of 2014 as in force prior to the advent of L.N. 437 of 2020.
040. Upon receipt of a complaint lodged in the form and manner as prescribed by law, the Regulator GCES shall notify the CMA and request access to the relevant application documentation. If deemed necessary, the Regulator GCES may request the CMA's position in respect of that particular case.
041. The Regulator GCES reserves the right, if so he deems necessary, to call in any party involved in the complaint to gather evidence as to the case in question.
042. The Regulator GCES shall examine the case referred to him by the complainant and determine whether it has been correctly, justly and equitably dealt with by CMA in conformity with the relative Regulations. At the end of this process, -
- (a) if the case would be one of those where the application had been submitted in terms of the Individual Investor Programme and Regulations thereto, if the Regulator GCSE determines that the case had been dealt with correctly, justly and with equity by the MIIPA/CMA in conformity with the Regulations, the Regulator GCSE informs the complainant accordingly, and if this has not been the case the Regulator GCSE informs the Minister accordingly so that the latter establishes what steps to take in the circumstances; and
 - (b) If the case would be one of those where the application had been lodged in terms of the Granting of Citizenship for Exceptional Services Regulations 2020, whatever the Regulator GCSE determines about this case, he shall inform the Minister about everything that he deems fit and proper about this case together with his Recommendations about this same case.
043. A copy of the Report and Recommendations made to the Minister by the Regulator GCES in terms of paragraph 042 above shall also be sent to the CMA.

Form D2
(Regulation 4A)

COMPLAINT REGARDING THE REFUSAL OF ELIGIBILITY TO APPLY
FOR NATURALIZATION AS A CITIZENSHIP OF MALTA UNDER
ARTICLE 10(9) AND THE GRANTING FOR CITIZENSHIP FOR
EXCEPTIONAL SERVICES REGULATIONS.

Name and Surname of Complainant:

.....

Address:

.....

To the Regulator

The complainant/I* has/have* received notice from Community Malta Agency by means of letter dated that my/his/her* application to be considered eligible to apply for naturalization in terms of the Granting of Citizenship for Exceptional Services Regulations has been refused by the Minister.

In terms of the provisions of Article 25A of the Maltese Citizenship Act, the complainant/I* is/am* hereby requesting you to make the necessary investigations into the process which has resulted in the said refusal.

..... OF

(Signature of Complainant)

** Name of Agent and Licence Number

.....

.....

(Signature of Agent)

* Delete as appropriate

** Delete if complaint is not being filed through an Agent on behalf of the complainant.