L.N. 121 of 2005

EXTERNAL TRANSACTIONS ACT
(CAP. 233)

Investment Registration Scheme Regulations, 2005

IN exercise of the powers conferred by article 11(2) of the External Transactions Act (hereinafter referred to as "the Act"), the Prime Minister and Minister of Finance has made the following regulations:-

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Registration Scheme Regulations, 2005.

(2) The scope of these regulations is to provide for the establishment of a registration scheme to be known as the Investment Registration Scheme, hereinafter referred to as the Scheme, whereby residents of Malta who hold assets outside Malta without the necessary exchange control permits and/or, without declaring the relevant income (including capital gains) for the purposes of the Income Tax Act, may regularise their position under the Act, the Income Tax Act and other relevant laws.

Cap. 123.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires –

"applicable date" means:

(a) in respect of assets referred to in regulation 6 (a), any date between 1 January, 2000 and 30 March, 2005, and

(b) in respect of assets referred to in regulation 6 (b) and 6 (c), any date between 31 March 2005 and 16 June, 2005;

Cap. 371.

"eligible assets" means deposits as defined in the Banking Act, securities including shares and stock in the capital of a company, debentures, certificates of deposit, bonds, notes and any other similar instrument acknowledging indebtedness; units in a collective investment scheme, life and annuity long term insurance policies, whether index-linked or not; precious metal bullion; warrants, options, futures and other derivatives as well as any other financial instruments entered into for investment purposes; loans to a non-resident company; and immovable property situated outside Malta;

"loans to a non-resident company" mean, for the purposes of these regulations, funds advanced by a Maltese resident to a non-resident company which he owns in part or in whole and which has as its sole object the investment of funds for portfolio purposes.

Cap. 123.

(2) The words and expressions which are also used in the Act or the Income Tax Act shall have the same meaning as in these Acts.

(3) For the purposes of these regulations, the following shall be treated as if they were eligible assets held outside Malta:

Cap. 371.

(a) foreign currency deposits held with credit institutions licensed under the Banking Act;

L.N. 55 of 2001.

(b) investments in a non-prescribed fund of a Malta-based Scheme as defined in regulation 5(2) of the Collective Investment Schemes (Investment Income) Regulations, 2001; and

Cap. 403.

(c) investments in any long-term policy of assurance, whether index-linked or not, as specified in Classes I to VI listed in the Second Schedule to the Insurance Business Act, expressed in foreign currency and issued by an insurer lawfully carrying on in Malta long-term business of insurance.

(4) For the purposes of these regulations, any income arising from eligible assets which is received after 31 March 2005 and reinvested outside Malta before the date of registration, shall be deemed to constitute eligible assets existing on 31 March 2005 and shall be eligible for registration under these regulations.

Residents may regularise their position.

Cap. 123.

3. (1) Residents of Malta who own eligible assets outside Malta may regularise their position under the Act and, or, the Income Tax Act and, or, other relevant laws, by registering such assets under the Scheme on the prescribed form as set out in the First Schedule to these regulations.

(2) Eligible assets shall be registered under the Scheme by the person who owns such assets outside Malta on the applicable date, or by the heir or legatee of such person when such heir or legatee becomes the owner of eligible assets after their repatriation.

Scheme to run until 16 June 2005.

4. The Scheme shall run until 16 June, 2005.

Registration through Appointed Agents.

5. Registration of eligible assets shall be executed through the Appointed Registration Agents which shall be credit institutions licensed in Malta under the Banking Act, stockbrokers licensed under the Investment Services Act, and persons holding a category 2 or category 3 Investment Services Licence granted under the Investment Services Act, and in each case appointed as Registration Agents by the Central Bank of Malta.

Cap. 371.
Cap. 370.

Assets which may be registered.

6. Registration of eligible assets under this Scheme shall be open to:

(a) eligible assets which were held outside Malta on or after 1 January, 2000 and which were repatriated to Malta prior to 31 March, 2005;

(b) eligible assets which were held outside Malta on 31 March 2005 and which are repatriated to Malta prior to 16 June, 2005;

(c) eligible assets which were held outside Malta on 31 March 2005 and which are retained overseas.

Documentary evidence.

7. (1) In the case of eligible assets which are repatriated to Malta, the Appointed Registration Agent shall only register such assets against the submission by the applicant of original documentary evidence:

(a) confirming that such assets were held outside Malta between 1 January, 2000 and 30 March 2005 in the case of assets referred to in regulation 6(a), or on 31 March 2005 in all other cases; and

(b) confirming repatriation during the Scheme's operation period.

(2) In the case of eligible assets which are to be retained abroad, the Appointed Registration Agent shall only register such assets against the submission by the applicant of original documentary evidence confirming that such assets were held outside Malta on 31 March 2005.

(3) The documentary evidence referred to in subregulations (1) and (2) hereof shall be:

(a) in the case of precious metal bullion, a confirmation from the licensed institution with which the precious metal bullion is held;

(b) in the case of immovable property situated outside Malta, a duly authenticated copy of the original contract by virtue of which the property was purchased and a confirmation from a duly qualified person;

(c) in the case of loans to a non-resident company which has as its sole object the investment of funds for portfolio purposes, a duly authenticated copy of the agreement by virtue of which funds were advanced by a Maltese resident to such non-resident company;

(d) in the case of all other eligible assets which are not referred to in paragraphs (a), (b) and (c) above , a confirmation from a licensed financial intermediary outside Malta;

(e) such other documentary evidence which may be declared sufficient by the Central Bank of Malta in writing on a case by case basis;

(f) where eligible assets are held by a third party in a fiduciary capacity, the applicant shall also submit to the Appointed Registration Agent:

(i) where the fiduciary is regulated and licensed in Malta or in a foreign jurisdiction, evidence that such fiduciary is in fact so regulated or licensed; or

(ii) where the fiduciary is not licensed or regulated, a confirmation, bearing the fiduciary's original signature and witnessed by a Notary Public or a Commissioner of Oaths, evidencing that such fiduciary held eligible assets on behalf of the applicant; and

(g) where eligible assets are repatriated to Malta, the confirmation required by subregulation (1)(b) hereof shall be provided by a local licensed financial intermediary.

(4) Where eligible assets which may be registered under the Scheme have been switched by the applicant into other foreign assets during the period between 31 March 2005 and the registration date, the applicant is to provide documentary evidence of such switches as may be required by the Registration Agent.

(5) Copies of the original documentary evidence specified in subregulations (1), (2), (3) and (4) hereof are to be retained by the Appointed Registration Agent, in printed or electronic form, for record purposes for a period of ten years.

8. (1) A person who registers eligible assets under the Scheme shall sign a Declaration which is to be provided by the Appointed Registration Agent, stating that: Declaration to be signed.

(a) such person is the beneficial owner of the assets being registered;

(b) such person accepts full responsibility for the accuracy and authenticity of the information and documentary evidence provided to the Appointed Registration Agent;

(c) such person undertakes to make available to the Appointed Registration Agent any further information that may be required by the Agent for the proper exercise of its functions in this regard;

(d) the documentary evidence being submitted to the Appointed Registration Agent in terms of subregulations 7 (1), (2) (3) and (4) hereof is the true original documentation;

(e) the registered eligible assets do not represent proceeds from:

(i) a crime of money laundering under the Prevention of Money Laundering Act, or Cap. 373.

(ii) any of the crimes listed in the Second Schedule to the Prevention of Money Laundering Act other than a crime against the Act or the Income Tax Act, or Cap. 373. Cap. 123.

(iii) any offence against any other law;

(f) the registered assets were held outside Malta between 1 January, 2000 and 30 March 2005 in the case of assets referred to in regulation 6(a), or on 31 March 2005 in all other cases;

(g) the registered assets have only been registered once under the Scheme;

(h) the declaration is being given in good faith.

(2) The Declaration shall also include:

(a) a detailed description of the eligible assets being registered and details thereof;

(b) details of the beneficial owners including full name, identity card number, address and signature; and details of the fiduciary where eligible assets are held by a third party;

(c) details of the Appointed Registration Agent.

Certification.

9. (1) The Appointed Registration Agent, after having duly completed the declaration modalities, shall issue a Registration Certificate. The Certificate shall be sequentially and uniquely numbered and in controlled stationery.

(2) The Registration Certificate shall be issued to the applicant against the payment of a registration fee as specified in regulation 10 hereof.

(3) The Registration Certificate shall be issued by the Appointed Registration Agent in triplicate: one copy shall be provided to the applicant, one copy is to be retained by the Appointed Registration Agent, and one copy is to be provided to the Appointed Central Registration Certificate Depository. The Central Bank of Malta is, by means of these regulations, being appointed the Central Registration Certificate Depository.

(4) Every person, including past and present officers or agents of an Appointed Registration Agent or of the Appointed Central Registration Certificate Depository, shall be bound by the duty of professional secrecy in the exercise of his functions under these regulations and shall not disclose any information contained in the Registration Certificate which may come in his possession in the exercise of his functions under these regulations.

(5) Upon registration, the beneficial owner of the eligible assets registered under this Scheme shall be entitled to the exemptions referred to in article 11 of the Act and article 9B of the Income Tax Act.

Cap. 123.

(6) The submission by the applicant of false statements and documents shall nullify the Certificate and render the applicant ineligible to the benefits granted under the Scheme.

(7) The Registration Certificate is strictly non-transferable.

(8) In the event of the loss or destruction of the Registration Certificate, the applicant may make a request in writing to the Central Registration Certificate Depository for the issue of a copy of the lost or destroyed certificate.

Registration fee.

10. (1) The issue of a Registration Certificate is subject to the payment by the applicant of a registration fee payable to the Government. Such fee is equivalent to five per centum of the market value of the registered eligible assets, calculated on the basis of a valuation by a duly qualified person made within the preceding three months and presented to the Appointed Registration Agent.

(2) The registration fees paid by registered applicants are to be remitted by the Appointed Registration Agent to the Government at a designated account at the Central Bank of Malta by not later than seven days after the end of the month during which the fees are collected.

(3) The Appointed Registration Agent shall issue a receipt, which is an integral part of the Registration form, to the applicant in respect of the registration fee paid.

(4) The triplicate copies of all the Registration Certificates issued by the Appointed Registration Agent during the month are to be sent to the Central Depository at the Central Bank of Malta within seven days after the end of that month.

Fee for services rendered.

11. The Appointed Registration Agent is entitled to recover a fee for services rendered to effect registration. Such fee shall be deducted from the Registration fee paid in respect of the issue of the Registration Certificate. Such fee shall be equivalent to five per centum of the Registration fee, provided that it shall not be less than Lm10 or more than Lm125 per application registered. No service fee is to be charged by an Appointed Registration Agent which is a credit institution where funds are repatriated and placed with that credit institution in a deposit account fixed for one year or over.

Holders to retain documentary evidence.

12. Holders of a Registration Certificate who convert their registered eligible assets into other assets shall, after registration, retain the documentary evidence regarding such conversions.

FIRST SCHEDULE

(Regulation 3)

STRICTLY NOT TRANSFERABLE

Registration Certificate

Issued for the purposes of the Investment Registration Scheme

B 1712

Section 1 (please use additional prescribed forms if space is not sufficient) **(Block Letters)**

This Certificate is issued in respect of the registration of the eligible assets which were (a) held outside Malta on or after 1 January 2000 and repatriated to Malta prior to 16 June 2005 and/or (b) held outside Malta as at 31 March 2005 and still retained overseas, as detailed hereunder. It entitles the registered beneficial owner of the said assets to the exemptions referred to in article 11 of the External Transactions Act and article 9B of the Income Tax Act.

	Type of Asset	Currency	Registered Assets			Amount retained abroad (at market value in Lm)	Amount repatriated on or before registration (at market value in Lm)
			Amount in nominal terms	At market value (foreign currency)	At market value (in Lm)		
	A	B	C	D	E	F	G
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12	**Total Value of the Assets listed above**						
13	**Please indicate the Certificate Number (s) of the additional form(s) used if any**						
14	**Total Value of Assets listed in additional forms if any**						
15	**Total Value of All Assets being hereby registered (Sum of Rows 12 and 14)**						

Section 2: To be completed by Applicant as Beneficial Owner (Block Letters)

I have read and understood the declaration in Section 4 overleaf. I confirm that on the applicable date I was the owner of these assets/heir or legatee of the owner of these assets (please tick as applicable)		
Title (Mr/Mrs/Ms) * Full name and surname * ID Card No* 1.	Address	Owner ☐ Heir/legatee ☐ Signature Date
Title (Mr/Mrs/Ms) * Full name and surname * ID Card No* 2.	Address	Owner ☐ Heir/legatee ☐ Signature Date
Name of Fiduciary (where applicable) * ID card No * 3.	Address	 Signature Date

***If beneficial owner/fiduciary is a body corporate, please insert company name and company registration number**

Section 3: To be completed by Appointed Registration Agent (See Declaration in Section 5 overleaf)

Name of Appointed Registration Agent *	Market Value of Registered Assets (Lm)	Registration Fee at 5% (Lm)	Commission (Lm)
Official Stamp			Official Stamp
Authorised Signature:	**I confirm having received the Registration Fee detailed above** Authorised Signature:		Date

* **Complete details when not included on official stamp**

B 1713

Section 4: Applicant's Declaration

In completing Section 2, I/ we declare:

1. to be the owner/joint beneficial owner(s) of the registered assets or the heir or legatee of the owner;

2. that the registered assets were (a) held outside Malta and owned by me/us on or after 1 January 2000 and repatriated to Malta prior to 16 June 2005 and/or (b) held abroad and owned by me/us on 31 March 2005;

3. that these assets are being registered only once under this Investment Registration Scheme and that these assets have not already been registered in any form under the Investment Registration Schemes established by virtue of Legal Notice 315 of 2001 and Legal Notice 59 of 2002, Legal Notice 209 of 2003, and Legal Notice 226 of 2003;

4. that the registered assets do not represent proceeds from a crime of money laundering in terms of the Prevention of Money Laundering Act, or from a crime that would result due to an infringement of any law other than the Exchange Control Act or the Income Tax Act;

5. that the documentary evidence being hereby submitted to the Appointed Registration Agent in support of the registered assets is true and original;

6. that I/we accept full responsibility for the accuracy and authenticity of the information and of the documentary evidence submitted to the Appointed Registration Agent under the Scheme;

7. that I/we will make available to the Appointed Registration Agent any further information, statements or documents that it may require for the proper exercise of its functions in terms of the Investment Registration Scheme;

8. that the declaration is being made in good faith;

9. that in return for my/our making this declaration and obtaining the relevant exemptions arising from law upon registration, I/we hereby pay the registration fee in Maltese liri on the market value of the eligible assets as per Column E Row 15 in Section 1;

10. I/we understand that the submission of false statements and documents will nullify this Certificate and render me/us liable to legal prosecution;

11. I/we also understand that in the event that I/we am/are receiving any benefit, exemption or other advantage under the Social Security Act or under any other scheme made by the Government or any public entity or under any other law, as a result of not having declared the eligible assets being hereby registered (or income therefrom), I/we shall not be required to refund that benefit, exemption or other advantage acquired before this declaration. However, if after this registration, I/we continue to take that benefit, exemption or advantage without being entitled thereto, I/we shall be considered as never having enjoyed exemptions referred to in article 11 of the External Transactions Act and article 9B of the Income Tax Act, and shall forfeit the right not to refund any benefit, exemption or advantage acquired before the Registration.

Section 5: Appointed Registration Agent's Declaration

In completing Section 3, we declare:

1. that we have obtained the necessary information, statements and documents required for the proper exercise of our function under the Scheme;

2. that we have retained copies of supporting documentary evidence as necessary and undertake to continue retaining such documentation for 10 years;

3. that we are bound by law by the duty of professional secrecy and will not disclose any information contained in the Registration Certificate.