

L.N. 124 of 2021**PUBLIC ADMINISTRATION ACT
(CAP. 595)****Residency Malta Agency (Establishment) Order, 2021**

IN EXERCISE of the powers conferred by article 26(1) of the Public Administration Act, the Prime Minister has made the following order:-

Citation and commencement.

1. (1) The title of this order is the Residency Malta Agency (Establishment) Order, 2021.

(2) This order shall come into force on such date as the Minister may by notice in the Gazette appoint, and different dates may be specified for the entry into force of different provisions of this order.

Interpretation.

2. In this order, unless the context otherwise requires:

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"Act" means the Public Administration Act;

"Agency" means the Residency Malta Agency established by article 3;

"Agency Agreement" means the agreement as provided in article 6(2);

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"contribution" shall have the same meaning as assigned to it by the Malta Permanent Residency Programme Regulations;

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"main applicant" shall have the same meaning as assigned to it by the Malta Permanent Residency Programme Regulations;

"Minister" means the Minister responsible for immigration;

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"non-refundable administration fee" shall have the same meaning as assigned to it by the Malta Permanent Residency Programme Regulations;

"Permanent Secretary" means the Permanent Secretary in the Ministry responsible for immigration;

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"Programme" means the Malta Permanent Residence Programme set up by virtue of the Malta Permanent Residency Programme Regulations.

Establishment of Residency Malta Agency.

3. There shall be established an Agency, to be known as the Residency Malta Agency, which shall carry out functions and duties of

public administration in the following matters:

(a) administer the process of applications for the grant of residency under the Malta Permanent Residence Programme Regulations issued under the Immigration Act and all other required processes in order to implement the provisions of the Malta Permanent Residence Programme Regulations;

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(b) advise the Minister on all matters concerning the functions of the Agency;

(c) perform due diligence checks on all applicants;

(d) ensure that applicants satisfy all conditions and requirements of the Programme;

(e) implement and maintain internal standard operating procedures;

(f) issue residence-by-investment certificates and other administrative matters relating to applications by third country nationals applying to stay or settle indefinitely in Malta or Gozo, including the general implementation and administration of the Programme for the grant of permanent residency rights on the basis of investment;

(g) work and collaborate with the Identity Malta Agency with regards to the issuance of residence-by-investment permits;

(h) work and collaborate with the competent authority with regards to agents duly licensed under the Commission Agents (Licences) Regulations;

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(i) to order the cessation of the benefits conferred by residence-by-investment certificates; and

(j) all such other matters which are ancillary, incidental or consequential to the matters stipulated in this article, as the Minister may from time to time determine:

Provided that when such matters as are referred to in this order consist of or include the administration of funds, the Minister shall act with the concurrence of the Minister responsible for finance in making a determination in respect thereof.

4. (1) The Minister responsible for immigration shall be responsible for the Agency.

Minister
responsible for
the Agency.

(2) The Permanent Secretary in the Ministry responsible for

immigration shall supervise the Agency in terms of article 29 of the Act:

Provided that the Prime Minister may assign the responsibility of the Agency to another Minister and its supervision to the Permanent Secretary of that Ministry.

The Agency shall be subject to the Act.

5. The Agency shall be subject to the provisions of the Act and shall be regulated accordingly.

Operational set-up of the Agency.

6. (1) The Agency shall, in consultation with the Minister, establish and re-organise units, divisions and sections as appropriate in order to exercise its functions.

(2) The operations of the Agency shall follow an agreement which is to be made in writing between the Permanent Secretary and the Agency. The provisions of article 30 of the Act shall apply.

Administrative fees and contributions. L.N. 121 of 2021.

7. (1) The Agency shall retain the non-refundable administration fee payable by applicants in terms of the Malta Permanent Residence Programme Regulations in respect of applications for residence-by-investment certificates to cater for the operational and due diligence costs of the Agency.

(2) The Agency shall have the power and authority to use any operating profit of the Agency for the purpose of sponsoring or funding any worthy social or philanthropic causes that it may identify from time to time.

(3) The Agency shall allocate the contributions received through applications for residence-by-investment certificates to the Consolidated Fund:

Provided that prior to such allocation, in the case of applications for inclusion on a certificate in respect of persons other than the main applicant, the Agency may deduct due diligence costs from such contributions payable.

Board of Directors.

8. (1) As a special arrangement in terms of article 26(2)(d), read in conjunction with article 39 of the Act, the Agency shall be directed by a Board of Directors appointed by the Minister, and this saving the powers granted to the Minister, the Principal Permanent Secretary and the Permanent Secretary by articles 28 and 29 of the Act.

(2) The Board shall be composed of five (5) Directors appointed by the Minister. One (1) of the Directors shall be appointed by the Minister as the Chairperson of the Board.

(3) The members of the Board shall hold office for a period of three (3) years. Any member may, before the expiration of his term of office, resign by letter addressed to the Minister:

Provided that the members of the Board may be removed from office by the Minister prior to the expiry of their term of office where, in the opinion of the Minister, they have been found guilty of misconduct or where they are, in the opinion of the Minister, unable to perform the duties of their office.

(4) The Minister shall appoint a person to act as a Secretary of the Board.

(5) The meetings of the Board shall be called by the Chairperson as often as may be necessary for the performance of its functions either on his own initiative or at the request of the Chief Executive Officer of the Agency.

(6) The quorum at all meetings of the Board shall in no case be less than three (3) members. The Chief Executive Officer of the Agency may attend meetings of the Board.

(7) Each Board member shall have the right to vote during Board meetings and meetings shall be chaired by the Chairperson of the Board.

(8) In the absence of the Chairperson at any meeting of the Board, the Board members present may select from amongst themselves a person to act as Chairperson at the meeting.

(9) The remuneration paid to members of the Board shall be in accordance with the Act and established guidelines.

- 9.** (1) The Board shall have the functions to:
- (a) determine the mission and strategy of the Agency;
 - (b) set the objectives of the Agency;
 - (c) monitor the Agency's performance against planned goals;
 - (d) support the Chief Executive Officer of the Agency in the execution of his duties;
 - (e) approve the annual budgets that support the Agency's work plans;

Functions of the
Board of
Directors.

(f) support the Agency in its efforts to secure adequate resources to fulfil its mission.

(2) In the execution of its functions, the Board shall consult with the Minister, and it shall have and may exercise all or any one or more of the powers vested in it or entrusted to it by the Act.

Chief Executive
Officer.

10. (1) The Agency shall have a Chief Executive Officer who shall be responsible for the performance, functions and duties of the Agency in accordance with the Act and shall be responsible for the daily management of the Agency.

(2) The Chief Executive Officer shall be appointed by the Minister.

(3) The Chief Executive Officer shall be answerable to the Board and this save the powers granted to the Minister, the Principal Permanent Secretary and the Permanent Secretary by articles 28 and 29 of the Act.

(4) The legal and judicial representation of the Agency shall vest in the Chief Executive Officer or in any officer of the Agency nominated by the Minister for that purpose from time to time.

Approvals
Board.

11. (1) As a special arrangement in terms of article 26(2)(d), read in conjunction with article 39 of the Act, the Agency shall have a separate Board to make recommendations for approving or refusing applications for the issue of residence-by-investment certificates submitted to it by the Chief Executive Officer. The number of Approvals Boards shall be established by the Minister and one of the Boards shall be known as the "Approvals Board – First Division":

Provided that the Chief Executive Officer shall submit all applications before the Approvals Board.

(2) The distribution of applications among the Approvals Boards shall be carried out by the Chief Executive Officer, accordingly, so that each Approvals Board, as far as possible, is assigned an equal number of cases. Each Board shall be composed of a Chairperson and four (4) other members all appointed by the Minister. One (1) of those members shall be chosen to act as secretary where his role is to make the necessary preparations for the Board meeting and to take minutes of those meetings.

(3) The members of the Board shall hold office for a period of three (3) years, but each board member may be reappointed at the end of this term. Any member may, before expiration of his term of office, resign by letter addressed to the Minister:

Provided that the members of the Board may be removed from office by the Minister prior to the expiry of their term of office where, in the opinion of the Minister, a member is unable to perform the duties of his office or there are reasonable grounds for his removal.

(4) The Chief Executive Officer, employees, previous employees and the members of the Board of Directors, are not eligible to be members of the Approvals Board.

(5) The remuneration paid to members of the Board shall be in accordance with the Act and established guidelines.

(6) The meetings of the Approvals Board shall be called by the Chairperson as often as may be necessary for the performance of its functions either on his own initiative or at the request of the Chief Executive Officer, but the Approvals Board shall meet at least once every month.

(7) The quorum at all meetings of the Approvals Board shall in no case be less than three (3) members.

(8) Subject to the provisions of this order, the Approvals Board may regulate its own procedure.

(9) An act or proceeding of the Approvals Board shall be valid notwithstanding any vacancy among its members.

(10) In the absence of the Chairperson at any meeting of the Approvals Board, the Approvals Board members present may select from amongst themselves a person to act as Chairperson at the meeting.

(11) The decisions of the Approvals Board shall be taken by a majority of the votes of the members present and voting. In the case of equal votes, the Chairperson or other person presiding at the meeting shall have a second or casting vote.

(12) In the absence of the Board Secretary at any meeting of the Approvals Board, the Approvals Board may appoint any employee of the Agency to act as Secretary to the Approvals Board meeting.

(13) The Board of Approvals shall review applications submitted to it by officers of the Agency, and it shall have the final say on whether an application is favourably considered for approval or not, ensuring that decisions made are fair and objective, and according to law. When reviewing applications, the Approvals Board shall:

(a) receive and consider due diligence reports on

applicants, and exercise appropriate methods of inquiry and examination with respect to the information presented;

(b) request the Agency to conduct further due diligence or other checks in line with legal and regulatory requirements when it considers that it is appropriate to do so; and

(c) request all necessary information from the Agency.

(14) Approvals Board members shall treat as confidential all information concerning applicants and any information communicated to them by the Chief Executive Officer or any other officer, employee, or advisor of the Agency.

Deployment of public officers and recruitment with the Agency.

12. (1) Public officers deployed with the Agency shall be deemed to be detailed with the Agency in accordance with article 33 of the Act.

(2) Subject to the provisions of the Act and of any other legislation, the Agency shall have authority to engage its own employees.

Power to administer oaths.

13. Lawyers, legal procurators and public officers performing duties as officers of the Agency, shall have power to administer oaths.

Financial arrangements. Cap. 601.

14. The Agency shall be governed by the provisions of the Public Finance Management Act unless otherwise stated in the Agency Agreement between the Permanent Secretary and the Agency, in which case the provisions of the Agency Agreement shall prevail.

Repeal and saving. S.L. 595. 26.

15. (1) The Malta Residency Visa Agency (Establishment) Order is hereby repealed.

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(2) Anything that has been commenced by or under the authority of, or any application which has been made with Identity Malta and/or the Malta Residency Visa Agency prior to the coming into force of this order and such thing or application in relation to the Malta Residency Visa Programme of the Government of Malta as established by and under the Immigration Act, may be carried on and completed by or under the authority of the Agency, which shall also succeed to all powers of the Malta Residency Visa Agency in terms of the Malta Residence and Visa Programme Regulations in relation to applications made or certificates issued thereunder.

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Rights and obligations.

16. (1) Rights and obligations arising from contracts for service entered into by Government or Identity Malta Agency with any agents, advisors or any service providers with respect to the administration of the Malta Residency Visa Programme of the

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Government of Malta as established by and under the Immigration Act, which were effective prior to the coming into force of this order, may by agreement between Government or Identity Malta be assigned to the Agency.

(2) Rights and obligations arising from contracts for service entered into by the Malta Residency Visa Agency with any agents, advisors or any service providers with respect to the administration of the Malta Residency Visa Programme of the Government of Malta as established by and under the Immigration Act, which were effective prior to the coming into force of this order shall after the coming into force of these regulations be deemed to have been entered into by the Agency. Cap. 217.

17. Where immediately before the coming into force of this order, any legal proceeding to which Identity Malta or the Malta Residency Visa Agency is or was entitled to be a party, is pending and such proceeding refers to the administration of the grant of residency certificates under the Immigration Act or to any application made in pursuance thereof, the Agency shall, with effect from such date, be substituted in such proceeding by the Agency. Proceedings.
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18. The Agency shall be exempt from any liability for the payment of any tax on income and duty on documents under any law for the time being in force. Exemption from
tax and duty.

19. The Fourth Schedule to the Act shall be amended as follows: Amends the
Fourth Schedule
to the Act.

(a) immediately after the item "Registry of Companies Agency" thereof there shall be added the following new item:

"Agency	Agency function
Residency Malta Agency	To execute the functions and duties of the public administration in matters relating to issuing of residence-by-investment certificates and other administrative matters related to individuals wishing to stay or settle indefinitely in Malta or Gozo"; and

(b) the item "Malta Residency Visa Agency" shall be deleted.
