

THE CONTROVERSIAL MALTESE INDIVIDUAL INVESTOR PROGRAMME EXPLAINED

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Having come into force after some controversy in 2014 under the recently-elected Labour government of the time, the Malta Individual Investor Programme is one of many 'golden visa' and economic citizenship schemes by which the governments of small international financial centres hope to encourage wealthy persons to invest from abroad. (It is important that this programme should not be confused with an older – and still extant – Maltese residence regime that bestows special tax status, such as a flat rate of 15% on foreign-sourced income, on the participant if he remits it to Malta. Participants have to pay a minimum annual tax charge of €15,000.)

Countries that offer citizenship-by-investment are now afraid to accept people whom the great powers dislike

The programme is designed to grant, or make it easier for the Maltese government to grant, citizenship to foreign high net worth individuals and their families. Malta is a full member of the European Union and is therefore offering investors an easy route to settlement in the Western half of Europe as well. The citizenship is granted on condition of applicants investing significantly in the National Development and Social Fund, a government-established asset pool. The fund focuses on capital and social projects that the Government believes to benefit the country.

Because Malta is a member of the EU and the Schengen Area, a participant from outside the EU who becomes a citizen has full access to the EU; he can travel without hindrance throughout the bloc and also in the four states of the European Free Trade Association (Iceland, Norway, Switzerland, and Liechtenstein). A holder of such citizenship can also travel to more than 160 countries all over the world, including the USA, without need of visas.

At present, to achieve citizenship by means of the programme, the so-called 'main applicant' has to pass the following tests: he must be 18 years old or above; he must provide proof of residency in Malta for a period of 12 months before the day that a certificate of naturalisation is awarded, and he must meet the requirements for application set out in the regulations. At present, the programme is limited to 1,800 main applicants, excluding their dependants. (It is, as with all such

government-run schemes, possible that this number might change.)

Among other tests, main applicants have to show that they and their dependants have a global health insurance policy (so as to avoid becoming a burden to local Maltese taxpayers) of at least €500,000 per person a year, and to be able to obtain coverage indefinitely.

Applicants and dependants will go through a checking process to ensure that they are fit and proper persons to hold a Maltese citizenship. Identity Malta, the organisation that manages the programme, might ask anyone who applies for an interview, although it cannot demand one.

The names of successful applicants are published each year in the Malta Government Gazette. This applies to those who have achieved this status either by registration or naturalisation during any previous 12-month period.

At the core of the programme are investment requirements and each applicant has to meet a number of conditions. Firstly, he must contribute to the aforementioned National Development and Social Fund. The principal applicant must contribute at least €650,000, purchasing property worth at least €350,000, or leasing property for a minimum annual rent of €16,000 and investing €150,000 in government-approved financial instruments. The spouse must contribute at least €25,000; dependent children aged up to 17 years must contribute at least €25,000, while each dependent child from 18 and above must put in at least €50,000. The principal applicant also must pay 'due diligence fees,' when the application is submitted, of €7,500. Other due diligence fees include €5,000 for the spouse and adult dependants and €3,000 for children aged 13-17. Identity Malta charges other fees for passports (€500) and bank charges (€200).

In the more discerning of jurisdictions such as Antigua, Malta and St Kitts/Nevis, the 'due diligence' process no longer concentrates solely on the cleanliness of the applicants' funds or wealth. Any CEO of a company that has polluted the environment is now extremely unlikely to be granted a passport in those jurisdictions. In more flexible countries such as Vanuatu and Dominica, the regimes might let such people in. The less fastidious jurisdictions are also more likely to sell passports to Syrians or other people whose nationality might disqualify them elsewhere, but they still insist on these people passing all the necessary tests for reputational probity.

St Kitts/Nevis still runs the biggest citizenship-by-investment programme around. The people in charge of these programmes rarely publish any numbers, although Cyprus and Malta publish the names of the economic citizens (alongside those of other citizens) in their government gazettes. Malta

is one of the most fastidious jurisdictions, having wisely insisted on good 'due diligence' right from the start of its programme, and its ceiling of 1,800 applications is another guarantee of tight control.

The application procedure is perhaps the most important part of a citizenship-by-investment regime. The issuing country must ensure that its scheme is not open to bribery – this problem surfaced a year ago in Portugal, which had to suspend its residence-by-investment programme. The Government sacked the head of the relevant unit for taking money in exchange for 'fast tracking' a Chinese client.

To get around this problem, Antigua & Barbuda have established a Citizenship by Investment Unit, a stand-alone body that receives 'government fees,' charged for each family member, of US\$50,000 or more to cover its expenses (fees for dependent children are less than that, but children always have to be accompanied by adults, making \$50,000 the smallest amount payable). With these, it can pay its functionaries salaries that are high enough to deter them from accepting bribes. Its relative independence from the rest of the Government is important as well; when a CIU is housed in the ministry of finance, as it is in St Kitts/Nevis, it is likely that the ministry's revenue-generating instincts will inhibit it from processing applicants as fastidiously as it might.

'Due diligence,' then, is something that every jurisdiction's programme must take seriously in an attempt to avoid reputational risk. Jurisdictions are now wary of taking on foreign applicants who come from countries with 'bad' reputations or who themselves (according to submitted documents, open-source news searches and, these days, reports from private investigators who work for the governments) are not of good repute. Since the summer of 2014, the authorities of St Kitts now ask for far more documents than they did before, even turning clients down for minor infractions such as drink-driving and speeding.

In the last couple of years, the programmes have started to compete with one another. Powerful Western onshore countries are also pressurising smaller jurisdictions to check the backgrounds of applicants very stringently, and this pressure even extends to forcing them to add to the information that their passports must contain. The price of non-compliance can be high, with onshore powers cancelling their visa-waiver agreements with countries that offer CIP programmes of which they somehow disapprove, thereby reducing the usefulness of those programmes to high-net-worth participants who originally signed up in the hope that they would then be allowed to travel to those onshore locations without visas.

In November 2014 the nightmare came true when the Canadian Government cancelled its visa

waiver agreement with St Kitts and Nevis – this was a warning shot across the bows of all offshore centres. Even though St Kitts, in the summer of 2014, had already started to issue a new format of passport for all citizens which contained their dates and (again) places of birth, this was not fast enough for Canada. The Canadians forced St Kitts to renounce all the relevant passports, setting the end of January 2015 as a deadline. They announced their policy in late November 2014. This upset the schedules of many people who were planning to come back from their Christmas holidays in the middle or even the end of January (the Eastern Orthodox Christmas being later than others), especially since a passport application in St Kitts can take six weeks and often longer.

Other intervention on the part of the great powers is evident. In December 2014, Antigua stated that it would ban anyone from Afganistan, Iraq, North Korea, Somalia and Yemen from its programme unless they were resident in the UK, the US or Canada. Countries that offer citizenship-by-investment are now afraid to accept people whom the great powers dislike, and in some cases are changing the

rules of their citizenship programmes to favour those onshore powers' economies.

A programme participant from outside the EU who becomes a citizen has full access to the EU

Why should the suspension of visa waivers matter to them? One might expect many applicants for passports to care solely about moving their assets to a new jurisdiction where their home governments cannot steal them. This is sometimes the

case – Citizen Lane occasionally deals with people who want to set up trusts in Nevis, for example – but most clients are not from Western countries. Russian and Chinese clients are very interested in travelling the world without the need for visas and have to buy these passports to do so, as Western countries will insist on visas otherwise. Many of these people want to travel for leisure or to meetings in the US, the UK, the Schengen area and elsewhere for commercial reasons.

The threat of a withdrawal of visa rights therefore gives the great powers a measure of real control over the issuers of citizenship-by-investment passports. As in other fields of offshore endeavour, the need to offer innovative products is balanced by the need to avoid the displeasure of the onshore world. Offshore governments already check the backgrounds of applicants for economic citizenship in far more detail than in the case of people who want to be naturalised through the usual channels (e.g. by marrying citizens of countries they want to live in or by residing in countries for long periods before applying for passports) and such scrutiny can only increase as time goes on.