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CHAMBERS GLOBAL PRACTICE GUIDES

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# Venture Capital 2025

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**Malta: Law and Practice  
& Trends and Developments**  
Dr Josef Cachia Fenech Gonzi  
and Cherise Abela Grech  
GTG Legal





## Law and Practice

### Contributed by:

Dr Josef Cachia Fenech Gonzi and Cherise Abela Grech  
**GTG Legal**

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**GTG Legal** is a corporate and commercial law firm, particularly known for its expertise in technology-related laws, providing clients with comprehensive legal advice in areas such as emerging technologies, AI, cybersecurity, cyber-resilience, IoT, cryptocurrencies, blockchain, data protection, adtech, healthtech, gaming, telecommunications, media, entertainment, intellectual property and ecommerce. Since its founding in 1997, GTG has been at the

forefront of Malta's legal profession, bringing together established private practices to form a centre of expertise and excellence. Based in Malta's capital city of Valletta, GTG's ever-growing team of industry specialists is internationally ranked and recognised as a leader across multiple fields, offering a multi-disciplinary approach to service the requirements of local and international clients.

## Authors



**Dr Josef Cachia Fenech Gonzi** is a partner at GTG Legal who specialises in corporate, commercial, M&A and regulatory, amongst other areas. Throughout his experience,

Josef has advised on various corporate deals, including both local and foreign M&As, private exits, private shareholder agreements, and also assisted clients to list on a local exchange. Josef is also an expert in investment services and capital markets and regularly advises clients in regulatory issues with the relevant competent authorities, such as the Malta Financial Services Authority, the Malta Business Registry and the Malta Stock Exchange.



**Cherise Abela Grech** is a partner at GTG Legal. Her main areas of focus are financial services, employment law, competition law and residence and citizenship. She regularly

advises prospective and current licensees, including investment funds, investment services providers and financial institutions, and also assists clients on DLT matters, including in respect of security token offerings and investment funds investing in virtual currencies. Cherise also lectures on DLT and cryptocurrencies at the University of Malta.

## GTG Legal

66 Old Bakery Street  
Valletta  
VLT 1454  
Malta

Tel: +356 2124 2713  
Email: [info@gtg.com.mt](mailto:info@gtg.com.mt)  
Web: [www.gtg.com.mt](http://www.gtg.com.mt)



## 1. Trends

### 1.1 VC Market

From the publicly disclosed transactions, the largest VC-related transaction pertains to Xen-sam, which is a technology provider of AI-driven cloud-based software asset management. It raised USD40m in growth funding from Expedition Growth Capital. Additionally, AirX Charter which is a Malta-based luxury charter airline closed a Series A funding round and has successfully raised approximately USD35 million to acquire four additional aircrafts. The company is also preparing for a larger Series B funding round.

As for exists, High Roller Technologies which is a US-based company with a strong Maltese presence, filed with the Securities Exchange Commission in the United States to raise USD14 million in an initial public offering.

### 1.2 Key Trends

Malta has always been a pivotal jurisdiction for start-ups and SMEs and has seen substantial growth in the past decade from a number of key industries. With Malta's focus on specific high-value sectors, Malta has managed to attract significant foreign investment. It is thus no surprise that in the first half of 2024, Malta

attracted over EUR13 billion worth of foreign direct investment (FDI) from January-June 2024, resulting in Malta's total stock of FDI totalling approximately EUR466 billion at the time. Local and foreign start-ups continue to invest in Malta due to several key government-promoted incentives or favourable legal frameworks. This makes Malta an ideal jurisdiction for VC growth, which has seen significant increases in recent years.

Malta has not been particularly affected by the globally subdued VC market due to the small size of its economy, and while VC in Malta is still considered to be at its infancy, the jurisdiction has immense potential for VC investors to invest in Malta-based companies. Malta already provides significant assistance to start-ups, with the Malta Enterprise managing numerous programmes and incentive schemes to encourage local investment. Such incentives have taken a significant drive forward in 2024, with the Maltese government issuing the Seed Investment Scheme, which allows eligible companies access to up to EUR250,000 in tax credits, and Start-Up Finance Schemes, which provide assistance to a maximum of EUR1.5 million. These schemes are coupled with wider financing opportunities as the government has also announced the creation of a EUR10 million VC fund to assist innovative start-ups. There are

also various residence schemes for high net worth or highly skilled individuals to relocate to Malta. These incentives, in addition to Malta's very attractive tax system, which allows foreign-owned corporates effective corporate tax rates as low as 5%, make Malta an ideal jurisdiction for start-ups to grow and thrive, and for VC investors to invest in. These incentives also allow foreign SMEs to establish a strong base of operations in Malta and to benefit from these incentives, making them more attractive to VC investors. Such trends are quite common and, subsequently, many innovative start-ups are acquired by larger entities or attract significant foreign investment. Such investments can occur either through VC funds acquiring an interest, or through setting up separate corporate entities by the investor to invest in the project and benefit from some of the incentives available.

### 1.3 Key Industries

Malta has seen substantial growth in various high value industries in recent years. These include gaming, aviation, financial services, crypto-assets, software development and technology. In a survey carried out by the Europe Startup Nations Alliance (ESNA), Malta was ranked as the fourth best destination for innovative start-ups and over the past few months over 300 start-ups have launched, which have added over EUR1.2 billion into the economy. Malta's location is also a key element allowing certain industries to flourish as it is seen as a gateway to both Europe and Africa.

The gaming industry in Malta has become critical and contributes more than 12% towards the country's GDP. In this regard, various start-ups have been launched from Malta to provide B2B or B2C gaming services. Such enterprises are a prime target for VC investors seeking to invest in the industry due to the potential growth. This

can be seen with companies such as Just Slots, a B2B gaming services provider, which managed to acquire over EUR1.1 million in seed capital in 2024.

Talent coming out of the University of Malta is also significantly contributing to start-up growth at the local level. Start-ups founded by alumni have significantly contributed to enterprise value, which today exceeds EUR1.5 billion from 2019. Such projects have also raised EUR260 million in VC in recent years.

Lastly, entities licensed by the Malta Financial Services Authority (MFSA) have seen significant growth in recent years with several financial start-ups choosing Malta for regulatory licence acquisition to provide financial services into the EU. Malta, which was also dubbed "*the Blockchain Island*" few years ago, had significant growth in the crypto-asset sphere and, with the Markets in Crypto-Assets Regulation (MiCAR) coming into force, Malta is one of the only jurisdictions to be MiCAR-ready from day one. It is anticipated that such industries will also attract VC investors in the coming years.

## 2. Venture Capital Funds

### 2.1 Fund Structure

In Malta, VC funds are typically structured using various legal vehicles, with the following two being the most prevalent.

- Investment company with variable share capital (SICAV): this is the most common structure of VC funds due to the significant flexibility offered by SICAV structures. A critical element of the SICAV is its open-ended structure, meaning that its share capital can be modified. The SICAV structure permits a

wide variety of investment strategies, making it a popular choice for Maltese funds.

- Investment company with fixed share capital (INVCO): INVCOs are far less popular than SICAVs due to its fixed share capital, often referred to as “close-ended” structure. INVCOs also have various restrictions on their activities, allowing the SICAV to be by far the most popular investment structure.

SICAVs also allow for a great level of flexibility that alternative legal forms do not provide. Primarily, SICAVs can be structured in an umbrella fund structure, which allow for multi-funded investment vehicles and sub-funds under the primary fund. A SICAV can also be established as a Recognised Incorporated Cell Company (RICC), which allows each sub-fund under the primary fund structure to be set-up as separate incorporated cells, which have their own separate legal patrimony.

The law also allows for funds to be structured into Partnerships, Unit Trusts, and Common Contractual Funds, however, they are rarely used as structure for a fund.

As for the regulatory structure, professional funds are either regulated under the European-wide Alternative Investment Fund Managers Directive (AIFMD), with funds being legally recognised as Alternative Investment Funds (AIFs), or under the local fund regime for professional investors, where such funds are known as Professional Investor Funds (PIFs). Retail fund structures are excluded from these frameworks.

PIFs serve as a flexible and efficient vehicle for VC investments as they are primarily designed for professional or qualifying investors, benefiting from a regulatory framework that allows fund managers to adopt innovative and tailored

investment strategies. They offer a cost-effective and tax-efficient structure, making them an attractive option for VC firms looking to invest in start-ups and high-growth companies. PIFs have less regulatory requirements than AIFs but are not subject to the single market passport and hence cannot be marketed outside of Malta without obtaining the necessary regulatory licence.

As for the corporate documentation, each fund will have a statute, the form of which will depend on the fund’s legal structure. A SICAV or INVCO will have its own Memorandum and Articles of Association (MAA), which are often supplemented by a separate shareholders agreement. The fund will then issue an offering memorandum, which will list the key details of the fund, its investment objectives, investment strategy and other key terms. Lastly, investors will enter into a subscription agreement with the fund. The agreement sets out the terms of the investment.

## 2.2 Fund Economics

In Malta’s VC landscape, Fund Principals – comprising initiators, managers and principals – engage economically with the funds they oversee through a combination of management fees, performance incentives, and personal capital commitments.

- Management fees: Fund Principals typically receive an annual management fee, which is a percentage of the fund’s committed capital. This fee compensates for operational expenses, including salaries, due diligence and administrative costs. The exact percentage can vary based on the fund’s size and the management team’s expertise.
- Performance incentives (carried interest): In addition to management fees, Fund Principals often receive carried interest, a share of the



fund's profits after investors have recouped their initial investments. This performance-based incentive aligns the interests of Fund Principals with those of the investors, promoting diligent fund management.

- **Personal capital commitments:** to further align interests, Fund Principals may invest their own capital into the fund. This practice demonstrates confidence in the fund's potential and ensures that Fund Principals share in both the risks and rewards alongside other investors.

The MFSA emphasises robust corporate governance within the financial sector, including VC funds. The primary legislative framework is the Companies Act, which delineates the responsibilities of directors, shareholder rights and transparency obligations. Complementing this, the MFSA has introduced several codes and manuals to guide governance practices.

- **Corporate Governance Code:** applicable to all unlisted entities authorised by the MFSA, this code provides principles and provisions to be applied on “*best effort*” basis, promoting responsible and efficient management for long-term success.
- **MFSA Corporate Governance Manual for Directors of Collective Investment Schemes:** targeted at directors of collective investment schemes, including VC funds, this manual offers guidance on implementing good governance practices. It covers aspects such as the role of directors, board composition, meetings and crisis management.

These frameworks underscore the importance of the following.

- **Board composition:** ensuring that boards include directors with the requisite skills and

experience, with an emphasis on appointing independent directors to enhance objectivity and oversight.

- **Regular board meetings:** conducting meetings at least quarterly to review the fund's performance, operations, and compliance with investment strategies and regulatory requirements.
- **Risk management and compliance:** implementing robust systems to identify, assess and manage risks, including financial crime prevention and adherence to anti-money laundering regulations. By adhering to these governance standards, VC funds in Malta aim to balance the economic interests of Fund Principals with investor protection, fostering a transparent and accountable investment environment.

## 2.3 Fund Regulation

In Malta, VC funds are subject to regulation under the Investment Services Act (ISA), which provides the legal framework for investment services and Collective Investment Schemes (CIS). The MFSA is the primary regulatory body overseeing these activities. The ISA encompasses various subsidiary legislations that address different aspects of investment services, including the establishment and operation of collective investment schemes.

As a member of the EU, Malta has also implemented the AIFMD, which regulates managers of AIFs, including VC funds. The AIFMD sets out requirements for authorisation, operation and transparency for AIF managers operating within the EU.

Additionally, Malta has adopted the European Venture Capital Funds (EuVECA) Regulation, which provides a framework for qualifying VC funds to market their funds across the EU under

a unified label. This Regulation aims to facilitate cross-border fundraising and investment in SMEs.

As an alternative to the heavily regulated AIFs, Malta offers the local PIFs, which are specialised collective investment schemes governed by the ISA, designed for professional and high net worth investors. They offer a less regulated alternative to retail investment funds, which make them attractive for non-traditional investments. To qualify, investors must commit a minimum of EUR100,000 and meet specific financial criteria, including possessing net assets exceeding EUR750,000 or being a senior employee or director of a service provider to the PIF.

Malta also offers two streamlined fund structures for non-retail investors; these are the Notified Professional Investor Fund (NPIF) and the Notified Alternative Investment Fund (NAIF). NPIFs were introduced by the MFSA and were designed to complement Malta's existing fund structures, particularly benefiting sub-threshold asset managers. On the other hand, the NAIF framework provides an expedited route for AIFs to enter the market.

## 2.4 Particularities

Malta's VC landscape has experienced significant growth, marked by strategic initiatives and evolving fund structures aimed at fostering innovation and accommodating extended investment horizons. These include the following.

- **Government-backed VC funds:** in September 2023, the Maltese government introduced a EUR10 million Venture Capital Fund to provide equity investments in innovative technology start-ups. Managed by Malta Government Investments through Malta Government Ventures, this fund targets sectors such as

video game development, fintech, e-sports, life sciences and green energy. Eligible start-ups can receive up to EUR500,000 in equity investment, with plans to support approximately 20 companies over two years.

- **Special Limited Partnership Funds (SLPFs):** in February 2025, the MFSA introduced the Special Limited Partnership Fund framework. This structure allows for Collective Investment Schemes structured as Limited Partnerships without separate legal personality, offering flexibility and tax efficiency. SLPFs are particularly suited for private equity and VC funds, providing a versatile vehicle that aligns with international best practices.
- **Malta Private Equity and Venture Capital Association (PEVCA Malta):** launched in March 2024, PEVCA Malta aims to promote and support the development of the private equity and VC industry in the country. By bringing together investors, fund managers and service providers, the association seeks to enhance Malta's profile as a destination for private equity and VC activity.
- **Fund strategies for extended holding periods:** to address extended average holding periods for investments, Maltese VC funds are adopting several strategies. Utilising frameworks like SLPFs allows for customisable governance arrangements and profit-sharing mechanisms, accommodating longer investment horizons.
- **Continuation funds:** while specific data on continuation funds in Malta is limited, the evolving regulatory environment and the introduction of flexible structures like SLPFs may facilitate the establishment of such funds to manage assets requiring extended holding periods. These developments reflect Malta's commitment to nurturing a dynamic VC ecosystem, supporting innovation, and



adapting to the evolving needs of investors and entrepreneurs.

## 3. Investments in Venture Capital Portfolio Companies

### 3.1 Due Diligence

The due diligence process carried out is very similar to due diligence carried out under standard M&A situations, albeit with a different focus and objectives. Various technical experts are engaged to carry out due diligence on specific parts of the business subject to the potential acquisition. Accountancy and audit firms are engaged for financial due diligence on the books of the enterprise. Law firms are engaged for the legal due diligence and technical experts are engaged to carry out due diligence on other assets such as technology or intellectual property. A tax compliance assessment is also typically carried out to ensure that the enterprise is compliant with its tax obligations.

It is standard practice that prior to engaging the legal and technical experts, the business model of the enterprise is primarily assessed, to ensure that the target has sustainable potential growth prospects. Scrutiny of key individuals in the industry is also common. In local SMEs targeted by VC investors, most of the critical work is carried out by the founders and their initial team and hence a certain level of scrutiny is carried out on these individuals. Time commitments are also often required by the founders to ensure that such key members of the enterprise do not abandon the project in the medium term.

Following an agreement on the financials, legal firms are often engaged, along with other technical experts, depending on the enterprise. Any legal due diligence carried out is typically “red

flag” exercise, with specific focuses on the legal structure of the company, regulatory compliance, tax compliance, employment law, data protection, legal agreements, intellectual property, debt agreement, active securities and warranties, as well as litigation. Such exercise will be subject to materiality and relevance thresholds and often involves multiple jurisdictions because Maltese companies are typically used in multi-jurisdictional structures and have numerous companies in various jurisdictions, even in SMEs.

Additional scrutiny is also carried out on specific company assets, specifically when the company’s main asset is intellectual property. Technical experts are often also engaged to assess the technical architecture and, depending on the industry, any required security aspects of the technology. For instance, in the crypto-asset, gaming or payment industry, technical security is a critical element of the technical asset.

### 3.2 Process

The timeline typically varies from weeks to months, and the duration thereof is dependent on a number of factors as follows.

- The time needed for the investors to come to a financial agreement on factors such as the acquisition price, share of profits, equity share and shareholder rights.
- The drafting of any required preliminary agreements/terms sheets, memorandums of understanding which may or may not be required as part of the process, and any negotiating time required to agree on a final text.
- The time needed to conduct any required due diligence. This timeline could be extended if the information provided lacks sufficient detail as well as in situations where the due diligence uncovers certain issues which would

need to be resolved prior to the finalisation of the deal.

- The drafting and negotiation of key legal documents such as the share purchase agreements, shareholders agreements, amendments to the MAA of the company, and others.
- If the target is licensed by a regulatory authority such as the MFSA or the MGA (Malta Gaming Authority), such agreement needs to be notified and approved by the relevant authorities before it can proceed. This authorisation may take some time depending on the extent of the change. The investors are also subject to significant due diligence requirements by the regulatory authorities. This submission may also require additional specific documents, such as an updated business plan, if the target will substantially change its business model following the investment.
- The preparation, execution, filing and registration of the final transfer documents which need to be registered with several authorities, such as the Malta Business Registry and the tax authorities. This is a formality, but the process may be time consuming.

Similarly to a traditional M&A transaction, the interests of all the parties need to be balanced and safeguarded to ensure that the transaction is finalised. While the investor will seek to enhance their potential investment, the original owners will seek legal protections and assurances. Such agreements would then be governed through shareholders' agreements between the parties. Share class and class rights are also very common in such transactions, and these serve to distinguish between the different classes of owners. Class rights carry different voting rights, dividend rights and so forth. The negotiating phase is hence critical as both sides of the transaction need to agree on the terms of

the deal, which can also impact the timeline of the transaction. While the due diligence process would require more hours to complete, negotiations with investors typically take longer due to various interests which need to be aligned, as well as due to the multiple advisors required on each front.

### 3.3 Investment Structure

There are various options for investors in early-stage financing to invest in a company, other than ordinary shares. In all cases, this is done through different classes of shareholding, which include the following.

- Preference shares: these shares offer holders a preferential dividend at a fixed rate. Holders of preference shares are not considered equity holders and are paid dividends before any are paid to ordinary equity holders. Investors are allotted preference shares when they want to invest monies into an enterprise but want a fixed rate of return, which is paid before any dividends to ordinary equity shareholders.
- Convertible preference shares: these shares have the same elements of ordinary preference shares but are convertible to ordinary shares or a specific class of ordinary shares on the occurrence of a specified event. This would allow preference shareholders to become equity shareholders on the materialisation of certain events.
- Participating preference shares: these shares have the same elements of ordinary preference shares but also provide the right to receive an additional dividend which ranks equally with ordinary shareholders.
- Redeemable preference shares: these shares have the same elements of ordinary preference shares but can be redeemed upon a decision being taken or upon the materialisation of a specified event.

- **Pre-emption rights:** these rights are provided to all or to specific classes of shareholders to the effect that should another shareholder wish to sell their shares, these shares must first and foremost be offered to the other shareholders at the same price and conditions as those offered to third parties.
- **Dilution protections:** similarly to pre-emption rights, anti-dilution provisions are typically inserted to ensure that in the event that the company would like to increase its share capital and allot new shares, such shares are first offered to the current shareholders so as not to dilute their stake in the company.
- **Drag-along and tag-along rights:** these rights are typically granted to shareholders to ensure that investors are allowed a fair exit opportunity in the event that a majority shareholder would like to exit their investment. Such rights allow the remaining shareholders to sell their shares or for the majority shareholder to force the minority shareholders to sell their investment at the same price and terms as the majority shareholder.
- **Transfer restrictions:** such restrictions, akin to the pre-emption rights, are inserted to restrict potential sales to third parties, typically in early-stage financing to ensure that the founders do not exit the company before the enterprise has fully developed.
- **Voting limitations:** various kinds of voting limitations can be included under different share classes. These would include shareholders with no voting rights, shareholders with veto rights, rights to appoint directors by specific shareholders, and other similar rights.
- **The initial MOU/terms sheet/preliminary agreement:** an initial non-binding agreement is typically used in the initial phase of the negotiations of an investment transaction. This is common in VC transactions as well as in traditional M&As. The document is usually not binding, however specific binding provisions such as those related to confidentiality may be inserted.
- **The share purchase agreement:** the share purchase agreement is a formal agreement between the sellers and the buyers which formally sets out the rights and obligations of the parties in a share transfer transaction. The document would typically contain various provisions on intellectual property, warranties and restrictive covenants, amongst others. This document is a private document, and a separate short form share transfer instrument is utilised when registering a transfer with the authorities.
- **The shareholders' agreement:** the shareholders' agreement is a private document, signed by the shareholders, which deals with various aspects of the company such as specific share rights, income rights, decision making, governance and management. The shareholders' agreement is frequently used to ensure that certain arrangements remain private and is common in any form of investment transaction.
- **The MAA:** the memorandum is the statute of the company, the general format of which is standard. While the articles of association allow for a great deal of customisation, the memorandum of association has a predefined format which must be followed, as specific clauses must be inserted as a matter of validity. The MAA can have specific provisions related to share rights, governance and management, but these are often listed in private shareholders' agreements. If the company

### 3.4 Documentation

The typical documents in a such a transaction are as follows.

decides to have various share classes as a result of the transaction, these must be listed in the memorandum of association of the company. The document is public and can be accessed by anyone at will.

- The standard registration documents: this is a set of documents mandated by law which are required to formally register a transfer of shares in a company in Malta. These include statutory standard registration forms from the Malta Business Registry, standard duty and capital gains taxation forms and a short form share transfer instrument. These are not required if the transaction has occurred in a holding company outside of Malta, although if such transfer resulted in a change of beneficial ownership, a specific notification form must be filed in Malta.

### 3.5 Investor Safeguards

There are various key protections that investors can attempt to secure when investing in an enterprise. Essentially, all such measures are treated through share classes, and, to that effect, specific classes of shares are created which hold different rights, including those listed below.

- Pre-emption rights: these rights ensure that in the event of a transfer of shares, such shares are not offered to third parties outside the company, without first being offered to other shareholders. Various mechanisms and rankings can be implemented on who gets offered shares first, and there are different pricing mechanisms that can also be used.
- Dilution protection: these rights are similar to the pre-emption rights, but apply when new shares are issued. When a company issues new shares, such shares shall be offered first to current shareholders based on specific ranking and pricing mechanisms.

- Drag-along/tag-along rights: these rights ensure that, in the event of a potential transfer by the majority shareholder, certain exit guarantees are put in place. Such provisions ensure that the company can be sold as a whole to a potential acquirer, hence ensuring that minority shareholders can exit when a total change in ownership takes place, and also allowing the buyer to eliminate minority shareholders.
- Reserved matters: in certain situations, shareholders agree that a number of matters should be reserved for the shareholders to decide on, rather than the directors, such as the sale of major assets or intellectual property. While such a decision would normally be taken by the board, the shareholders may determine that such a decision is too important and should be decided by the shareholders themselves.
- Board influence: it is also quite common that shareholders opt to have representation at board level, and special rights are granted to specific classes of shareholders to appoint their own director at that level too.
- Voting rights: different voting rights are also common. Share classes can be created to differentiate between the voting power of shareholders. However, this requires proper structuring, as not all decisions are equal and providing various voting rights at different levels may require modification to the nominal value of the shares.
- Veto rights: in certain instances, veto rights are created to ensure that certain decisions cannot be passed unless agreed to by specific share class majorities.

Under law, there is also a legal remedy called “*the unfair prejudice remedy*”, which is an umbrella protection for shareholders in the event that certain decisions are taken by the company

which unfairly prejudice their right. This is a very flexible and dynamic remedy with varying consequences.

### 3.6 Corporate Governance

The extent of influence on decision making power by the investors would depend on the agreement reached between the parties, on the number of different investors, as well as the amount invested by the investors. This influence is typically exercised through the rights outlined below.

- The parties may agree on the investors having direct board representation, which may be either an executive director or a non-executive director, depending on the extent of the influence agreed to between the parties.
- Quorum requirements are also very common to ensure that valid meetings cannot be held if certain categories of shareholders are not sufficiently present. This ensures that even if the investors have voting rights, decisions are not taken without their knowledge or involvement.
- It is also possible to appoint an observer, which allows an individual to attend certain meetings without being exposed to the fiduciary duties of a director. It is important to note that although, in practical terms, there is a difference between executive and non-executive director, legally, they are subject to the same level of exposure or liability.
- As mentioned at **3.5 Investor Safeguards**, different voting rights, reserved matters and veto rights are also often used by investors to enforce their influence.

The parties may agree to various other measures to ensure transparency. These would be agreed to in the shareholders' agreement, addendums or supplements thereto.

### 3.7 Contractual Protection

On the conclusion of the financing deal, several contractual protections are typically agreed to between the parties, which may be split as follows.

- **Representations and warranties:** a standard set of provisions in such agreements would consist of numerous generic and specific warranties from both parties when entering into such transaction. These warranties would cover potentially anything, from past liabilities and damages, as well as representation regarding certain facts or disclosures. A breach of those warranties would entitle the other party to potential damages. Due to the specific nature of such warranties, it is also possible to bind the founding shareholders as jointly and severally liable alongside the company, so that the investor would have redress against individuals rather than the entity alone. This serves to prevent a situation where the company pays damages to the investor from the investor's own funds. It also allows the investor to take action against the shareholders directly in the event of corporate insolvency. In insolvency proceedings, the law of rankings may result in a situation that after preferential creditor claims are satisfied, the investor has no assets to resort to, hence joint and several liability protects the investor from such a possibility and gives the investor further forms of redress.
- **Restrictive covenants:** non-compete and non-solicitation provisions are also very common in investor agreements to ensure that the investor does not start a competing business using the knowhow obtained from the start-up. Non-solicitation of employees and key staff are also fairly common to protect the company's human resources. Likewise, strong intellectual property clauses are typi-

cally in place to prevent intellectual property misappropriation. The same scenario is applicable to the founding shareholders, so that they do not start competing enterprises to the detriment of the investors.

- **Damages and liability:** the shareholders' agreement often contains specific breach and indemnity provisions to protect the investors. In certain instances, the parties may agree on pre-liquidated damages provisions, although this is not very common due to the effect of such damages on the relationship.
- **Non-circumvention provisions:** non-circumvention provisions are also common in such agreements to avoid potential issues when related parties, such as family members or other entities, are utilised to circumvent obligations, especially those related to restricted covenants.

## 4. Government Inducements

### 4.1 Subsidy Programmes

Malta offers several government and quasi-government programmes designed to incentivise equity financing in growth-oriented companies. These initiatives aim to support start-ups and SMEs through various forms of financial assistance and tax incentives. These programmes include the following.

- **Start-Up Finance Scheme:** administered by Malta Enterprise, this scheme provides financial support to small start-up undertakings with specific innovative activities. Eligible start-ups can receive a re-payable advance of up to EUR500,000, which may increase to EUR1 million for innovative enterprises. For those operating in designated assisted areas, the support can reach EUR750,000, doubling to EUR1.5 million for innovative start-ups.

The funds can be utilised for payroll expenses, procurement of tangible and intangible assets, specialised services, and establishing operations in Malta.

- **Seed Investment Scheme:** this scheme was re-introduced in 2024 and offers tax incentives to individual investors who provide equity financing to qualifying start-ups. Investors can benefit from a tax credit amounting to 35% of their investment, up to a maximum of EUR250,000 per annum. A qualifying company can raise up to EUR750,000 through this scheme. To be eligible, companies must be incorporated in Malta, unlisted on any recognised stock exchange, have fewer than ten employees, possess gross assets under EUR250,000, and have been in operation for less than three years.
- **SME Guarantee Scheme:** managed by the Malta Development Bank, this scheme facilitates access to bank financing for SMEs by offering an 80% loan guarantee through authorised financial intermediaries. Family businesses and other SMEs can obtain loans ranging from EUR10,000 to EUR750,000, with repayment terms of up to ten years and an optional 12-month moratorium. This support is particularly beneficial for businesses lacking sufficient collateral or credit history.
- **Micro Invest Scheme:** offered by Malta Enterprise, the Micro Invest Scheme encourages SMEs to invest in innovation and expansion. The scheme provides tax credits on eligible expenditures such as infrastructure improvements and wage costs. Businesses can receive tax credits of up to EUR70,000 over a three-year period, which can be used to offset their tax liabilities.
- **Business Development Scheme:** the scheme targets new business ventures, expansions and transformation activities that foster new opportunities, create skilled employment,



- enhance competitiveness and broaden market reach. Eligible projects encompass various categories, including the establishment, expansion and modernisation of activities such as manufacturing, software development, waste recycling, research and development and audiovisual productions. Additionally, the scheme supports environmental initiatives, innovative start-ups, employment of workers with disabilities, collaborative projects, upgrading of industrial sites and hotels, artisanal facility enhancements, business re-engineering, digital transformation, and market access and certification efforts. Applicants can receive assistance in the form of tax credits, cash grants or a combination of both, covering up to 75% of eligible expenses, with a maximum of EUR300,000 per single undertaking over a rolling three-year period. Eligible costs include wages, rental fees, advisory services, as well as the acquisition of tangible and intangible assets.
- **Research and Development Scheme:** also offered by Malta Enterprise, this scheme aims to support businesses in conducting industrial research and experimental development projects. This initiative aims to address scientific or technological uncertainties, fostering the creation of innovative products and solutions. Eligible enterprises, including limited liability companies, partnerships and co-operatives, can receive aid in the form of cash grants or tax credits. The assistance covers a percentage of eligible costs, such as personnel wages, equipment, contractual research and other operating expenses, with aid intensities varying based on the project's nature and the size of the enterprise.
  - **Innovate (Innovation Aid for SMEs) Scheme:** the scheme aims to bolster innovation among SMEs in Malta. This initiative provides financial support for projects that lead to prod-

uct, process or organisational innovation. Eligible SMEs can receive funding covering up to 50% of qualifying costs, capped at EUR250,000 per application. For specific innovation advisory and support services, funding can reach 100%, with a cap of EUR220,000 over a three-year period. The scheme supports expenses related to the secondment of highly qualified personnel, innovation advisory services and innovation support services. Applications must be submitted before the project commences, with projects required to start within 12 months of approval and complete within a maximum of 36 months.

- **Exploring Research Grant:** offered by Malta Enterprise, this grant is designed to assist businesses in conducting feasibility studies for prospective R&D projects. These studies aim to evaluate the technical, operational and commercial viability of proposed R&D initiatives, helping enterprises identify potential risks and necessary resources. Eligible applicants include limited liability companies, partnerships and co-operatives that are not defaulting on income tax, VAT and social security payments, and are not classified as undertakings in difficulty. The grant provides up to EUR100,000, covering a varying percentage of eligible costs, being 50% for large enterprises, 60% for medium-sized enterprises, and 70% for small enterprises. Qualifying expenses encompass wage costs for researchers and technical staff, costs for contractual research and technical knowledge, and other operating expenses directly related to the feasibility study.

## 4.2 Tax Treatment

In Malta, investments in growth, start-up or VC fund portfolio companies are subject to specific tax treatments designed to encourage such

investments. These treatments often differ from the standard tax regime applicable to all companies.

## Tax Classification of Funds

From a tax perspective, funds are classified as prescribed or non-prescribed. A prescribed fund is considered as such if it holds at least 85% of the value of its total declared assets in Malta, and has been classified as such by the Commissioner of Inland Revenue. The most notable difference is that a prescribed fund is taxed at the standard corporate rate of 35% whereas the income which is derived by a non-prescribed fund is exempt from Malta tax. If a fund does not meet these conditions, it will be defined as a non-prescribed fund.

## Taxation of Funds

Prescribed funds are taxed based on the source of their income:

- 10% final withholding tax is levied on investment income paid by companies and other legal entities, as well as on bonds issued by listed companies and on interest, discounts or premiums earned on Malta government stocks or bonds;
- 15% final withholding tax is levied on bank interest income;
- 35% tax is levied on income derived from immovable property situated in Malta;
- no tax is paid on income which is not sourced in Malta;
- no tax is levied on dividends from Maltese companies or from other funds; and
- no capital gains are levied on disposal of securities.

On the other hand, non-prescribed funds fall out of scope and are not taxed at fund level, except

on gains from immovable property situated in Malta.

The tax treatment of funds is completely different from the standard corporate taxation system.

## 4.3 Government Endorsement

The Maltese government has implemented several significant initiatives to enhance equity financing activities, particularly focusing on supporting SMEs and start-ups.

### Malta Development Bank (MDB)

The MDB aims to bridge financing gaps by complementing private sector financial services. It offers various financial instruments, including loans, guarantees and equity participations, in an effort to support SMEs, infrastructure projects and environmentally sustainable initiatives. The MDB collaborates with commercial banks to facilitate access to finance for businesses that may face challenges in securing traditional funding.

### Collaborations with the European Investment Fund (EIF)

Malta has partnered with the EIF to bolster SME competitiveness through the InvestEU Member State Compartment. In October 2024, the EIF signed a EUR30 million agreement with the Bank of Valletta, aiming to unlock EUR60 million in investments for over 140 businesses. This initiative provides SMEs with improved financing conditions, such as lower interest rates and reduced collateral requirements.

### Malta Enterprise

As the government's economic development agency, Malta Enterprise offers various schemes to support businesses as outlined at **4.1 Subsidy Programmes**.

## EUR10 Million Fund to Support Innovative Start-ups

A VC scheme has been introduced by the Maltese government to assist new companies which find it difficult to receive bank loans due to risk factors. Eligible companies may include those involved in video game development, fintech, e-sports, life sciences, pharma, green energy, the filming industry, agritech, AI, communications, electronics, financial services, medical devices, software, blue-water industries and digital technology.

## 5. Employment Incentives

### 5.1 General

In Malta, founders' and key employees' long-term commitment to a venture is typically secured through a combination of equity-based incentives, contractual provisions and retention-focused remuneration schemes. One common method is the issuance of shares, often accompanied by specific provisions in the company's MAA or a private shareholders' agreement, the provisions of which would typically supersede those of the MAA. Notably, the latter is only binding if all shareholders are parties to the agreement.

Vesting provisions are frequently incorporated to ensure retention, with shares being allocated over a predetermined period or upon meeting performance milestones. These provisions often include clawback mechanisms, allowing the company to reclaim shares if the founder or key employee leaves before the vesting period ends. Employee Share Option Plans (ESOPs) and free bonus share schemes are also popular, often structured with multi-year vesting to promote long-term alignment with the company's growth.

Tax considerations play a crucial role in structuring these schemes. Malta's fringe benefit tax rules apply to share option and free share schemes, impacting the overall benefit received by employees. Additionally, cash-based or phantom share plans offer alternatives to direct equity participation, enabling employees to benefit from the company's success without acquiring actual shares. These arrangements may come with distinct tax implications that need to be carefully assessed.

In the case of listed entities, the requirement to obtain prior written authorisation from the Malta Financial Services Authority before offering such schemes has been recently removed, simplifying the process and encouraging broader adoption of equity-based incentives.

Beyond equity incentives, companies may offer cash-based retention bonuses, more favourable employment terms or a percentage of profits without issuing shares. Employment agreements often include anti-competition clauses to protect the company's interests post-employment. However, the enforceability of such clauses is subject to Maltese court rulings, which underscore the need for carefully balanced terms. Additionally, "*garden leave*" clauses may be used to restrict departing employees from engaging with competitors during their notice period while still receiving compensation.

Overall, a combination of these strategies helps align the interests of founders and key employees with the long-term success of the venture, ensuring stability and commitment while balancing legal, tax and commercial considerations.

### 5.2 Securities

Companies in Malta commonly use shares, including share option schemes and free share

plans, to incentivise founders and employees. These instruments are typically structured with a vesting period to encourage long-term commitment and align individual performance with the company's growth.

Vesting terms often require continued employment over a set period or the achievement of specific milestones. Reverse vesting mechanisms may be applied, particularly with founders, whereby shares are issued upfront but subject to potential forfeiture if conditions are not met. Clawback provisions further protect the company by allowing the retrieval of shares if the employee or founder departs before the vesting period ends or fails to satisfy ongoing conditions.

In some set-ups, shares are held in a trust during the vesting period as this also facilitates the implementation of any applicable clawback provisions. Depending on the structure, founders or employees may have limited rights over these shares until the vesting process is complete. This arrangement ensures that equity benefits align with long-term performance and retention goals.

Overall, these instruments provide companies with flexible tools to incentivise key individuals, ensuring their interests remain closely tied to the venture's success.

## 5.3 Taxation of Instruments

When structuring incentive pools in Malta, several tax considerations play a pivotal role in determining their design, particularly concerning tax rates and the timing of taxable events.

### Issuance of Shares

The timing of share issuance significantly impacts tax implications. Issuing shares at an early stage

when the market value closely aligns with the nominal value may result in minimal immediate tax consequences. However, issuing shares at a later stage, when the company's market value has appreciated, typically involves a share premium. In Malta, this premium is allocated to the share premium account, governed by specific provisions in the Maltese Companies Act. According to the Act, funds in the share premium account can be used for purposes such as:

- issuing fully paid bonus shares to existing shareholders;
- writing off preliminary expenses of the company; and
- providing for premiums payable on redemption of redeemable preference shares or debentures.

These provisions ensure that the share premium is utilised in a manner that maintains the company's capital integrity.

### Fringe Benefit Rules

Malta's Fringe Benefit Rules classify benefits like share options and free share plans as taxable benefits. The taxable value is determined by the excess of the market value of the shares at the time the benefit is provided over any amount paid by the beneficiary. This benefit is subject to a flat tax rate of 15%, which employers are required to account for through the Final Settlement System (FSS).

### Duty on Documents and Transfers

The transfer of shares in Malta is subject to duty under the Duty on Documents and Transfers Act payable by the acquirer/transferee. The standard duty rate is 2% of the higher of the market value or the consideration paid for the shares. For property companies, this rate increases to 5%. The market value is typically assessed based

on the company's net asset value, adjusted for factors such as the market value of any other shares held by the company. There are instances where a company, and thus the acquisition of shares therein, is exempt from payment of duty. However, this is primarily applicable to companies which have more than 90% of their business interests outside of Malta and which are not ultimately owned or controlled by individuals who are tax resident and domiciled in Malta.

## Capital Gains Tax

Upon the sale of shares, capital gains tax considerations arise. In Malta, capital gains derived from the transfer of securities are generally taxed as part of the individual's income, with rates varying between 15% and 35%, depending on the total income. However, certain exemptions exist, such as gains from the transfer of shares listed on the Malta Stock Exchange, which are exempt from both income tax and duty.

## Timing of Taxable Events

The timing of taxation varies based on the type of benefit.

- Share options: taxation occurs at the exercise date, calculated on the difference between the market value at exercise and the exercise price.
- Share awards: taxable at the time the shares are issued or transferred to the employee at the end of the vesting period, based on the market value at that date.
- Share transfers: duty is payable upon the execution of the transfer agreement, with the applicable rate depending on the nature of the company (eg, property versus non-property company).

Understanding these tax considerations is crucial for effectively structuring incentive pools in

Malta, ensuring compliance and optimising the benefits for both the company and its employees.

## 5.4 Implementation

There are various considerations to take into account before preparing and implementing employee incentive programmes in Malta. Primarily, the company needs to consider whether such an incentive programme would affect any rights currently held by the shareholders of the company. These are found in the MAA of the company and in the shareholders' agreement, if any. The creation of such schemes usually creates specific share classes to be assigned to the employees participating in such schemes. Any changes to the MAA, or the creation of any share classes, would require approval by the shareholders. The company would also need to assess any fiscal and tax considerations that such schemes would have on the current shareholders and the new employees, as the allotment of new shares may have tax considerations on both the current shareholders and the employee participants of the scheme.

As for dilution of interest, there are options in place to prevent the dilution of certain rights. Employees participating in such schemes would usually have no voting rights and hence the issuing of new shares would not affect voting power. It is also possible for certain employee schemes to be structured through phantom shares, meaning that employees do not become equity holders in the company. However, all these measures would result in the dilution of dividends/income received and therefore any such schemes must be agreed to by the relevant shareholders.

## 6. Exits

### 6.1 Investor Exit Rights

There are various mechanisms that shareholders and companies utilise to regulate exit rights between themselves. Such mechanisms are generally also considered to be transfer restrictions, and this impacts how investors are able to divest of any interest in the enterprise. These generally include:

- pre-emption rights;
- transfer restrictions; and
- drag-along and tag-along rights.

These are discussed in detail in **3.3 Investment Structure** and **3.5 Investor Safeguards**.

### 6.2 IPO Exits

Maltese start-ups or foreign-owned Malta-based start-ups rarely issue an IPO in Malta as the market is very small. In the event that a company is planning for an IPO exit, the company would undergo major restructuring to issue an IPO in a foreign jurisdiction with a bigger market for IPOs. However, Computime, a local IT hardware provider, launched an IPO in 2024 to sell 22,987,600 shares at an offer price of EUR0.45 per share whereby the then current shareholders sold approximately 33% of their shareholding.

### 6.3 Pre-IPO Liquidity

Investors looking to obtain liquidity would typically engage directly with other investors, rather than through an IPO. The primary market in Malta, being the Malta Stock Exchange, is not active in relation to IPOs for local start-ups.

However, a few years ago, the Malta Stock Exchange set up a secondary market targeted towards local start-ups, namely Prospects MTF. Prospects is specifically designed to assist start-

ups to gain access to external finance with less stringent rules and lower costs than the main market. Prospects allows start-ups to seek alternative funding routes, through a less regulated market. However, Prospects allows issues for amounts below EUR8 million, to avoid requiring a prospectus.

## 7. Regulation

### 7.1 Securities Offerings

A securities offering, which is deemed to fall under the definition of an “*offer of securities to the public*” will require the issuer to prepare a prospectus as required under the Companies Act. In addition, the issuer also needs to adhere to the capital markets rules issued by the MFSA.

In drafting the prospectus, there are certain key points to be considered.

- The corporate structure: the corporate structure of the issuer and other affiliated entities is essential and, before an issue of any kind, the issuer would undergo major restructuring and consolidation, typically with equity issues, by setting up a holding entity and consolidating all operating companies under it.
- The management body: The composition of the management body is essential for any issue as potential investors would need assurances as to the competence of the board. In main market IPOs, the competence of the management body is also scrutinised and the issuers are legally obliged to ensure that the management body is “*fit and proper*”. Issuers are also obliged to ensure that during an IPO, independent non-executive directors are also appointed as part of the board to ensure a fair balance with non-independent directors.



- **Corporate governance:** the internal corporate governance and management of the issuer is of critical importance when dealing with an IPO, as they provide a view of the internal workings of the company and certain levels of disclosure would be required as part of the prospectus. These would include internal committees, remuneration policy principles and operational strategy. The disclosure of related party transactions is particularly important, especially with shareholders and directors.
- **Tax and fiscal considerations:** an IPO, as part of the restructuring mentioned above, would also need to consider any fiscal and tax implications on the operations of the company. With Malta's taxation system, which is greatly geared to benefit foreign investors, issuers of securities in an IPO would need to structure the issue to maximise any tax benefits and reduce tax leakage.
- **The financials:** the prospectus must contain specific financial information of the company, including past and future projections. Key financial information is critical for the success of an IPO as investors, with an emphasis on institutional investors, would look at these numbers closely. Apart from the general projections, the prospectus would also contain a market analysis and key trends likely to impact the issuer.
- **Pre-issue housekeeping:** prior to any IPO, the issuer would usually engage lawyers and financial consultants to "*clean up*" its internal legal and financial operations. Such exercise would consist of a due diligence exercise to consolidate the issuer's legal and financial obligations as these would reflect negatively on the issuer.

It is important to note that there are a number of requirements in the capital market rules specifi-

cally related to collective investment schemes and, hence, should a VC fund wish to be listed locally, these requirements must also be considered and adhered to.

## 7.2 Restrictions

Foreign VC investors considering investments in Maltese growth companies should be aware of several regulatory frameworks that may impact their investments.

Malta implemented the National Foreign Direct Investment Screening Office Act 2020 (the "Act"), aligning with Regulation (EU) 2019/452, to monitor FDI that could affect national security or public order. This legislation mandates that non-EU investors aiming to establish or maintain lasting and direct links to carry out economic activities in Malta must notify the National Foreign Direct Investment Screening Office (NFDISO) before proceeding with their investments. The scope includes investments enabling effective participation in the management or control of a company engaged in economic activities.

Investors are required to notify the NFDISO if:

- the Maltese entity intends to engage in activities listed in the First Schedule of the Act, which encompasses sectors such as energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities;
- the entity will have a non-EU investor who is a beneficial owner or holds a direct or indirect controlling interest; or
- there is a change in the ownership structure resulting in a foreign investor holding at least 10% of the shares.

The notification must include information on:

- the ultimate beneficial owners;
- the source of funding;
- the activities to be undertaken; and
- details on the products, services and business operations of both the foreign investor and the Maltese entity.

Additionally, since Malta's accession to the EU on 1 May 2004, there are no exchange control regulations in place. This means there are no restrictions on capital movements, and no distinction is made between undertakings owned or controlled by EU citizens and those owned or controlled by non-EU citizens concerning exchange controls. However, the Minister for Finance retains the power to impose restrictions on capital transactions in exceptional circumstances to preserve the stability of Malta's financial system.

Lastly, while there are no specific banking-related restrictions that prohibit foreign VC investments, it is essential for investors to ensure that any financial transactions comply with Malta's AML and CTF regulations.

## Trends and Developments

### Contributed by:

Josef Cachia Fenech Gonzi and Cherise Abela Grech  
**GTG Legal**

**GTG Legal** is a corporate and commercial law firm, particularly known for its expertise in technology-related laws, providing clients with comprehensive legal advice in areas such as emerging technologies, AI, cybersecurity, cyber-resilience, IoT, cryptocurrencies, blockchain, data protection, adtech, healthtech, gaming, telecommunications, media, entertainment, intellectual property and ecommerce. Since its founding in 1997, GTG has been at the

forefront of Malta's legal profession, bringing together established private practices to form a centre of expertise and excellence. Based in Malta's capital city of Valletta, GTG's ever-growing team of industry specialists is internationally ranked and recognised as a leader across multiple fields, offering a multi-disciplinary approach to service the requirements of local and international clients.

## Authors



**Josef Cachia Fenech Gonzi** is a partner at GTG Legal who specialises in corporate, commercial, M&A and regulatory, amongst other areas.

Throughout his experience,

Josef has advised on various corporate deals, including both local and foreign M&As, private exits, private shareholder agreements, and also assisted clients to list on a local exchange. Josef is also an expert in investment services and capital markets and regularly advises clients in regulatory issues with the relevant competent authorities, such as the Malta Financial Services Authority, the Malta Business Registry and the Malta Stock Exchange.



**Cherise Abela Grech** is a partner at GTG Legal. Her main areas of focus are financial services, employment law, competition law and residence and citizenship. She regularly

advises prospective and current licensees, including investment funds, investment services providers and financial institutions, and also assists clients on DLT matters, including in respect of security token offerings and investment funds investing in virtual currencies. Cherise also lectures on DLT and cryptocurrencies at the University of Malta.

## GTG Legal

66 Old Bakery Street  
Valletta  
VLT 1454  
Malta

Tel: +356 2124 2713  
Email: [info@gtg.com.mt](mailto:info@gtg.com.mt)  
Web: [www.gtg.com.mt](http://www.gtg.com.mt)



### Market Overview and Investment Trends

The venture capital (VC) market has recently gained significant traction, and is currently experiencing major interest and growth. The local market is being driven by government incentives, a growing interest from foreign investors, and an expanding start-up market. The past few years have seen a rise in the number of deals by VC investors and this is especially relevant in the context of industries such as gaming, fintech, AI, esports and digital infrastructure as a whole.

Investments remain attractive, in the Maltese context, due to Malta's efficient and business-friendly regulatory framework, a favourable tax refund scheme and various government incentives, including various schemes managed by the Malta Enterprise. The first half of 2024 saw Malta exceed EUR13 billion in foreign direct investment, showcasing the increased confidence foreign investors have in the jurisdiction.

Even though Malta's geographical and market dimensions are small, its location and general business-friendly mentality ensure its attractiveness in the European start-up market, attracting significant and constant foreign investment. In 2024, a new EUR10 million VC-co investment fund was introduced in an effort to bring private

investment to the country through a mechanism which de-risks early funding.

### Key Players Determining VC in Malta

In Malta, VC is backed and driven by a mixture of local and foreign investors, bodies and interest groups, such as:

- VC funds, including GoVenture, AcrossPlus, the Seed Investment Initiative;
- angel investors and other networks, including the Malta Angel Investors Network, Angel-Match.io;
- incubators, such as Malta Enterprise, Malta Digital Innovation Hub and Tech.mt;
- VC initiatives backed by the government, including Malta VC Fund and Accelerate 2024;
- foreign investment funds, such as various UK-based and other EU-based funds seeking to establish a healthy business interest in Malta;
- institutional investors and general private equity firms; and
- government-backed set-ups or local private associations, such as FinanceMalta, Malta Development Bank and the Private Equity Venture Capital Association (PEVCA).

## Notable Recent Developments

Notable recent developments which have had an impact on the Maltese VC landscape include the following.

- The launch of the EUR10 million VC co-investment fund: this is an initiative led by the government backing start-ups at the early stages of their business operations by affording them private VC investments.
- The Malta Start-up Residence Programme: This programme, which was introduced in 2023, aims to attract various non-EU investors and skilled personnel. This is significantly aided by a streamlined visa process.
- Various schemes introduced or renewed by the Malta Enterprise, with the aim of promoting start-ups and foreign direct investment in Malta.
- Developments in the regulatory context: the Malta Financial Services Authority (MFSA) and the Malta Digital Innovation Authority (MDIA) continue their efforts to refine processes in order to ensure that start-ups are effectively and efficiently supported, attracting investments in innovative industries such as fintech and AI.

## The Maltese VC Legal Framework

### *An overview of the regulations governing VC*

The Maltese regulatory landscape affords a business-friendly environment for the flourishing of VC investments. The legal framework encapsulates the following.

- The 1995 Companies Act: this governs the incorporation, general management principles and the winding-up of companies and other commercial partnerships, together with the workings of corporate structures backed by VC.

- The 1994 Investment Services Act: this Act regulates fund managers, collective investment schemes and investment advisors. It is the primary legislative framework regulating funds and fund managers.
- Various sector-specific legislation, which regulates different sectors. This includes the local gaming laws and regulations, other financial services-related laws as well as the newly implemented Markets in Crypto-Assets Regulation (MiCAR) which regulates block-chain and general investments relating to crypto-assets. Through these laws, Malta has maintained its position as a market leader in this field.

Malta's VC landscape is regulated by a robust framework which aims to align with that adopted across the EU, while offering diverse incentives. The Maltese landscape is such that VC funds in Malta are built as investment vehicles and regulated by the MFSA. It is commonplace for VC funds to be legally structured as investment companies with variable capital (SICAVs). In this regard, these funds would normally operate as Alternative Investment Funds (AIFs), which target investors based on the offering documentation and investment strategy of the fund. To this end, fund managers are to comply with the provisions of the EU's Alternative Investment Funds Managers Directive (AIFMD). Malta provides allows venture capital fund managers that operate on a smaller scale to benefit from de minimis registration under the AIFM regime, provided that they fall below the AIFMD asset thresholds. They may also register under the EU VC Funds Regulation (EuVECA) to obtain a marketing passport which would be valid across the whole EU. In practice, a Malta-based VC fund manager is afforded the possibility of setting up in an efficient manner, by obtaining authorisation from the MFSA, and subsequently open the market for EU investors.

Funds may also be licensed as Professional Investment Schemes (PIFs), a local licensing regime for funds providing significant flexibility and lower regulatory requirements for funds targeting professional investors. This comes at the cost of the fund not being able to be passported throughout the EU.

The setting up of a VC fund requires that a specific application is submitted to the MFSA, which must include an offering document, investor disclosures and a detailed account of internal policies. Funds would also need to identify key individuals or service providers involved in the operation of the funds, in addition to their board of directors and shareholders, and submit specific documentation on each of those individuals. Where the applicant is applying for an AIF, EU passporting has greatly aided this process, as Malta-licensed fund managers are able to market their services to professional investors across the EU as a whole. This is a significant advantage afforded to investors.

From the regulatory compliance perspective, VC investors and start-ups are obliged to comply with certain requirements. It is imperative, to this end, that efficient AML procedures are put in place and that reporting obligations are adhered to.

Moreover, Malta has been at the forefront of the introduction of new legislative instruments, such as the Notified AIF framework. This facilitates the process of launching AIFs which specifically target professional investors, even where they do not hold an MFSA licence. Under this framework, the MFSA is notified of such fund by means of an existing AIFM.

The MFSA's perspective and approach, while strict, is known to be prudent, in an effort to

encourage fund structures with innovative ideas and help them flourish, but also ensure that compliance is attained and that investors are adequately protected. Another development of note is the update to the Investment Services Rulebook, with rules on marketing and management of VC funds. One of the more important changes implemented by the said amendments is the aligning of local legislation with the EU's Cross-Border Distribution of Funds Directive on procedures relating to pre-marketing.

There are several advantages offered by the legal and fiscal regimes in Malta. As mentioned previously, the corporate law framework in Malta aims to be business-friendly and efficient, allowing the fast incorporation of corporate structures and offering a variety of corporate forms suitable for start-ups (with the most popular being private limited liability companies). Tying in with this, regulatory and AML compliance regulations follow the EU model, and start-ups may benefit from various sandbox regimes offered by the MFSA and the MDIA, especially in the realms of fintech and similar. This affords businesses the opportunity to put their projects to the test, while under oversight from the MFSA. From a purely fiscal point of view, Malta does not levy capital gains tax on sales of shares when carried out by non-residents, provided, however, that certain conditions are satisfied. This is advantageous for foreign investors.

Moreover, fund vehicles are typically structured in a tax-neutral manner. For instance, it is customary for a limited partnership to be treated in a transparent manner for the purposes of taxation. More so, SiCAV (*Société d'Investissement à Capital Variable*) funds are often granted tax-exempt status on both their income and gains, with distributions being taxed at the level of



investors. This is applicable if the fund has less than 85% of its total declared assets in Malta.

Another notable scheme is the Seed Investment Scheme (SiS), which is mainly targeted at angel investors in the process of investing in start-ups. Under the SiS, an individual investor who purchases equity in a Maltese start-up can receive a 35% tax credit on their investment, provided that they are a resident in Malta. The total tax credit can be up to EUR250,000 a year. Each start-up can raise up to EUR750,000 solely through SiS investments. This scheme, which is fairly recent, helps to reduce income tax levied on investors by a substantial portion of their start-up investment, which effectively encourages high-net worth individuals to support start-ups in the early stages of their operations. It also give the entrepreneur the opportunity to tap into risk-tolerant capital, since angel investment would become more attractive and feasible.

While SiS is one of the main incentives in this regard, the Malta Enterprise also offers a myriad of tax credits and grants to aid start-ups. These include:

- R&D tax credits;
- innovation vouchers; and
- tax rebates on wages and salaries of highly-skilled employees.

Moreover, start-ups partaking in research and innovation are able to access these incentives in an effort to either limit or offset certain costs which may arise. In addition, Malta's favourable tax regime effectively means that, due to its full imputation system and refund system, start-up entrepreneurs and investors are aided upon their exit. In this regard, foreign investors are levied a low tax rate on their dividends and/or capital gains.

Furthermore, the National Strategy on AI entails that, while AI-start-ups are not heavily regulated, the jurisdiction has shown itself to be in line with the EU AI Act, aiming to hone an environment which helps AI to develop rapidly.

## The Corporate Tax Regime

Malta's corporate tax regime is ideal for foreign investors seeking to invest in Malta. The corporate tax rate in Malta is charged at a flat rate of 35%, but through a tax refund mechanism, non-resident shareholders can apply for a significant tax refund, which often amounts to 30%, hence leading to an effective tax rate of only 5%.

The quantum of the refund depends on the accounting treatment of the income of the company, and, based on which, a tax refund is provided. Under Maltese law, there are 5 different tax accounts under which income can be allocated:

- the Final Tax Account;
- the Immovable Property Account;
- the Foreign Income Account;
- the Malta Taxed Account; and
- the Untaxed Account.

Based on where the profits of the company are allocated in the respective tax account, the shareholders of the company can claim significant refunds on their payable taxes. The refund mechanism is split into three different kinds, as set out below.

- 5/7 refund: this tax refund is available on taxes paid on profits deriving from passive interest or royalties. Passive income is considered passive when it is not directly or indirectly derived from active trading activity.
- 2/3 refund: this tax refund is available on taxes paid on profits on which double tax-

tion relief has been claimed. There are various kinds of double taxation relief that can be obtained, and if any one of them is applied, this refund shall be applicable on such profits.

- 6/7 refund: this tax refund is available on taxes on profits arising from profits allocated to the Malta Taxed Account and the Foreign Income Account. This would include the vast majority of profits.

In most cases, a foreign-owned entity would be able to claim the maximum tax refund of 6/7ths, effectively reducing the tax payable by the company on its distributable profits to 5%. It is critical to note that the tax refund is granted to the direct shareholder of the company for whom the refund is applied; hence, it is not the company claiming the refund that would receive the refund payment, but its direct shareholder. In addition, Malta applies the full imputation system whereby the law prevents double taxation of the same income in the hands of the company and again in the hands of the shareholders. Hence, after the applicable tax has been levied on the trading company, no further tax is payable on the dividends received by the shareholders.

Recently, the legislator also introduced laws that allowed group entities qualifying under the rules to register as a single fiscal unit, which allows for tax consolidation between group entities. The practical effect of this law allows groups that register under the law to simply pay the final effective tax rate applicable, rather than apply for the tax refund. This provides a very significant cash flow boost for groups that qualify under the scheme, as the tax refund specified previously may take several months to be paid to the shareholders.

In addition to the tax refund system, Malta allows for the Participation Exemption, which originates

from the Parent Subsidiary Directive. This Directive applies a tax exemption between participating holdings and their participating subsidiaries in EU member states. When the applicable criteria are satisfied for the exemption to apply, a full tax exemption applies on all taxes between the participating holding and its subsidiary.

The corporate tax system in Malta is critical to the VC sector in Malta. Most VC investors do not invest through a fund but invest directly in the company, either personally or through their own corporate group, to benefit directly from the corporate tax system.

## Possibilities for the Future

In light of the above, Malta's flexible regulatory and fiscal regimes combine EU oversight with attractive fiscal incentives. The framework allows investors to benefit from these regimes, with start-ups benefitting from sound governance and investor trust.

Trust in solid policies and legal protections (in the context of shareholder rights and contract enforcement) is crucial, especially for VC. Investor rights have so far been protected by Malta's legal system, which is based on EU law. However, any political unrest or changes in policy could be dangerous. Furthermore, Malta's tax advantage could be undermined by impending international tax changes (such as the OECD global minimum tax), which could make it less appealing to holding firms or funds.

Malta must carefully manage these adjustments to maintain its competitive advantage without sacrificing compliance.

The lack of later-stage funding is a problem from the standpoint of entrepreneurs. Angel investors and government matching programmes

have made it simpler to secure seed money, but Maltese start-ups frequently need to approach international venture capitalists in order to grow. By being closer to investors and customers, this may result in promising businesses moving their headquarters to bigger markets or even moving important activities overseas. Malta runs the danger of losing out on the talent and economic advantages when that occurs. The ecosystem is also hampered by low visibility: a lot of investment agreements in Malta go unreported (founders frequently do not disclose funding rounds), which means that success stories do not always receive the recognition they require to motivate others. The story of Malta as a developing hub may be hampered by the absence of publicly available investment data, which could make it more difficult to attract new entrepreneurs or investors.

Lastly, there are drawbacks to relying too much on public sector assistance. The VC industry has been stimulated by government initiatives, although having the state as a key investment source carries some risk. Compared to private venture capitalists, public funds might make decisions more slowly and with different motivations.

Malta's state venture fund must attract private investment rather than drive it away. The ability of such plans to show returns and professionalism will determine their success in persuading private investors to co-invest instead of assuming the government will handle all initial funding. If this is not done correctly, there is a chance that start-ups will become reliant on government assistance and find it difficult to switch to completely commercial funding sources.

In conclusion, Malta's modest market, talent and capital scale, as well as the growing pains

of a young ecosystem, are the main risks and obstacles facing VC in the island. Talent shortages, cultural risk aversion, a lack of local capital throughout growth stages, and external variables like tax changes and regulatory compliance are some of the main problems.

In future years, there will probably be a greater emphasis on developing industries. Malta-based fintechs now have the chance to compete throughout Europe thanks to EU-wide efforts like the Digital Finance Package and open banking legislation. If they are successful, they will attract more VC funding. Malta may be considered a compliance-friendly jurisdiction for the development of AI products because of its dedication to AI and its implementation of the EU AI Act once it becomes operative, which could attract AI start-ups from less regulated areas. Now that the wild west of cryptocurrency exchanges has subsided, the blockchain industry is likely to change its focus, possibly concentrating on institutional and enterprise DLT solutions. If trends like asset tokenisation and decentralised infrastructure persist, with businesses like PEAQ setting the standard, Malta's early investment in blockchain technology may render successful. A successful game studio exit or a well-attended e-sports league in Malta might lead to a small cluster of gaming start-ups backed by specialised investors, making e-sports and gaming another potentially recognisable vertical for the country.

With the advent of new innovation programmes and incubators (sometimes in collaboration with universities), the future of education seems bright. The facilities required for start-ups to flourish will be provided by infrastructure initiatives such as the extension of co-working spaces and innovation hubs (for instance, the proposed addition of new tech labs to the Malta Life Sciences Park). In the event that Malta continues to

**Contributed by:** Josef Cachia Fenech Gonzi and Cherise Abela Grech, **GTG Legal**

nurture and give innovation the required platform to grow, the VC market in Malta is set for continued growth. A thriving VC market would reap the benefits of attracting more investors and entrepreneurs, validating Malta as a destination for significant results, and encouraging local capital to get more involved.

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