# Corporate governance and directors' duties in Malta: overview

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## CORPORATE GOVERNANCE TRENDS

### 1. What are the main recent corporate governance trends and reform proposals in your jurisdiction?

The Companies Act 1995 is the primary source of Maltese law for all corporate governance matters. Like its predecessor the Commercial Partnerships Ordinance, the Companies Act has its roots in English, French, Italian and European Law. The vast majority of the provisions in the Companies Act have been taken from English common law, particularly the Companies Act 1985 (as amended by the Companies Act 1989) and the Insolvency Act 1986. In addition, the Companies Act has adopted the rules of unfair prejudice from the New Zealand Companies Act 1995 along with a number of implementing measures in line with various European directives on company law.

## CORPORATE ENTITIES

### 2. What are the main forms of corporate entity used in your jurisdiction?

Public or private companies can be incorporated. A private company can be exempt or non-exempt and an exempt private company can also have a single member. Corporate governance does not substantially differ from one corporate entity to another and there is no major distinction in terms of corporate governance between public or private companies.

However, for companies listed on the Malta Stock Exchange, a specific set of rules apply. Appendix 5.1 of the Listing Rules lays down the Code of Principles of Good Corporate Governance for Listed Entities. This Code adopts a "comply or explain" approach (*see Question 4*), except in relation to the mandatory principle requiring every listed entity to have an audit committee.

## LEGAL FRAMEWORK

### 3. Outline the main corporate governance legislation and authorities that enforce it. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? List any such groups with significant influence in this area.

There is no major distinction in terms of corporate governance between public and private companies. Listed companies must abide by the Code of Principles of Good Corporate Governance for Listed Entities (*see Question 2*).

The Listing Rules (issued by the Listing Authority) set out the admissibility of a company to list on a regulated market, as well as ongoing obligations for listed companies. The Listing Authority is responsible for regulating the operation of the markets.

The most important source of corporate governance for a company is its articles of association, which define at length the company's powers, limits, obligations and procedures. The constituting documents of the company are the primary source of its own governance and ultimately bestow legitimacy on actions taken by the company, its directors or its shareholders. The law serves as back drop to the company's governance framework, allowing leeway for the promoters/shareholders to define the way in which the company's management will conduct itself, provided the minimum requirements laid down in the Companies Act are observed.

The Companies Act specifically provides specimen articles of association that apply by default unless an express exclusion (in whole or in part) is inserted in the constituting documents of the company being incorporated.

### 4. Has your jurisdiction adopted a corporate governance code?

The Code of Principles of Good Corporate Governance for Listed Entities (Code) was introduced as an integral part of the Listing Rules. It proposes a fundamental set of guidelines to establish the framework of corporate governance for all listed companies. The Code was designed to enhance the legal, institutional and regulatory framework for good governance and complement the Companies Act by providing comprehensive guidelines based on the recommendations of the Organisation for Economic Cooperation and Development. Although implementation of the guidelines is on a "comply or explain basis", a company that chooses not to comply with one or more of the Code's provisions must explain the rationale behind its omission to the shareholders in a careful and clear explanation which shareholders must evaluate on its merits.

The Code contains provisions targeting companies whose equity securities are listed on a regulated market, but they do not apply to collective investment schemes. The areas covered by the Code mainly include the following:

- The board of directors and committees.
- Shareholders.
- Conflicts of interest.
- Corporate social responsibility.

In September 2014, the Malta Financial Services Authority also published a Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes with the aim of providing guidance to directors of these companies. The guidelines are not mandatory but directors are encouraged to use them to develop a corporate governance manual for investment

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companies and/or collective investment schemes in which they act as directors.

## CORPORATE SOCIAL RESPONSIBILITY AND REPORTING

**5. Is it common for companies to report on social, environmental and ethical issues? Highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.**

The Companies Act provides that certain large undertakings (over 500 employees) must include in the directors' report a non-financial statement containing information necessary to understand the undertaking's development, performance, position and the impact of its activity relating to:

- Environmental, social and employee matters.
- Respect for human rights.
- Anti-corruption and bribery.

The Code of Principles of Good Corporate Governance for Listed Entities provides corporate social responsibility principles that directors are encouraged to adhere to in their day-to-day management practices. These include:

- Behaving ethically and contributing to economic development while improving the quality of life of the work force and their families as well as of the local community and society at large.
- Taking up initiatives aimed at augmenting investment in human capital, health and safety issues and managing change, while adopting environmentally responsible practices relating mainly to the management of natural resources used in the production process.
- Acting as corporate citizens.
- Reviewing material relating to the theme of corporate social responsibility and keeping abreast with initiatives being taken both locally and internationally.

## BOARD COMPOSITION AND RESTRICTIONS

**6. What is the management/board structure of a company?**

### Structure

**All companies are managed by a one-tier board of directors.**

### Management

The directors are empowered by law to manage the business of the company and to exercise all powers that do not specifically require a shareholders' resolution at a general meeting in accordance with the articles of association or the Companies Act. The directors oversee all aspects of running of the company and appoint managers to administer it.

### Board members

The Companies Act does not refer to the different types of directors that can be appointed. However, the Code of Principles of Good Corporate Governance for Listed Entities (Code) specifically recommends that the board be composed of executive and non-executive directors, including independent non-executive directors.

### Employees' representation

The law does not mention any quota for employee representation on a company's board. The Code provides that listed companies must have appropriate policies and procedures in place to ensure that the company and its employees maintain the highest standards of corporate conduct. The board must recognise that the company's success depends on its relationship with all of its stakeholders, including employees, and must maintain an effective dialogue with these groups in the best interests of the company.

### Number of directors or members

Every public company must have at least two directors. Every private company must have a minimum of one director to manage its affairs. The memorandum and articles of association of a company typically lay down the minimum and maximum number of directors that the company can appoint.

**7. Are there any general restrictions or requirements on the identity of directors?**

### General restrictions

There are no general restrictions or requirements on the identity of directors.

### Age

Any person who is 18 years of age or older can be appointed as a director and there is no upper age limit. Directors can even retain their office beyond pensionable age. Minors who are 16 years of age and have been emancipated to trade can also be appointed as directors.

### Nationality

There are no restrictions on the nationality and residence of the shareholders, directors or officers of a Maltese company.

### Gender

Currently, Maltese legislation does not provide for gender quotas. The Constitution of Malta holds that the state must promote equal economic, social, cultural, civil and political rights for men and women and take "all appropriate measures" to eliminate gender discrimination "by any person, organisation or enterprise".

**8. Are non-executive, supervisory or independent directors recognised or required?**

The Companies Act does not refer to the different types of directors that can be appointed. However, the Code of Principles of Good Corporate Governance for Listed Entities (Code) specifically recommends that the board be composed of executive and non-executive directors, including independent non-executive directors. The board should appoint one of the independent non-executive directors to be the senior independent director. The Code also provides that in the annual report each non-executive director that is deemed to be independent must be identified. The board must have a minimum number of non-executive directors on it.

Under the Code, directors are deemed to be independent when they are free from any business, family or other relationship with:

- The company.
- Its controlling shareholder.
- The management.

This independence will avoid conflicts of interest and prevent any restrictions on the ability to exercise free judgment. A non-executive director must be free from any business or other relationship that may materially interfere with the exercise of their independent and impartial judgment.

### 9. Are the roles of individual board members restricted?

The Code of Principles of Good Corporate Governance for Listed Entities states that the roles of chairman and chief executive officer must be kept separate and occupied by different people. This ensures a distinction between running the board and executive responsibility for running the company's business.

The Code provides that the board must not be so large as to be unwieldly. It must be of sufficient size that the balance of skills and experience is appropriate for the requirements of the business.

### 10. How are directors appointed and removed? Is shareholder approval required?

**Appointment of directors**

Directors are appointed during a general meeting for a period of time as determined by the shareholders in accordance with the articles of the company. Individuals who are appointed as directors of a public company must accept the appointment in writing.

**Removal of directors**

A company can remove a director before their period of time in office has expired by passing an ordinary resolution at a general meeting of the company and passed by an aggregate of more than 50% of those members with the right to attend and vote. The director concerned has the right to be invited and speak at the meeting where the resolution to remove them will be discussed.

### 11. Are there any restrictions on a director's term of appointment?

A person can be disqualified from being appointed or holding office as a director of a company if they:

- Are prohibited, incapacitated, or are an undischarged bankrupt.
- Have been convicted of any crimes affecting public trust, or theft, fraud or of knowingly receiving property obtained by theft or fraud.
- Are a minor who has not been emancipated.
- Are subject to a disqualification order.

The specimen articles of association in the Companies Act provide that at the first annual general meeting all directors must retire from office. After that, one-third of the directors in office (starting with the longest serving directors) must retire at every general meeting. Retiring directors are eligible for re-election.

## DIRECTORS' REMUNERATION

### 12. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

**Directors employed by the company**

Directors can be either executive or non-executive.

Non-executive directors are expected to bring outside experience and expertise to the board of directors while exerting a measure of control over the executive directors to ensure that they act in the company's best interests.

**Shareholders' inspection**

Shareholders have the right to inspect the company's statutory books held at the registered office of the company. If the directors deem that their service contracts should form part of the statutory documents held by the company, they will also be subject to inspection during business hours.

### 13. Are directors allowed or required to own shares in the company?

It is possible for directors to hold shares in the company, although they are not required to do so.

### 14. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

**Directors' remuneration**

The specimen articles of association in the Companies Act provide that directors' remuneration must be determined by the company in the general meeting and accrue day to day. The directors can also be paid travel, hotel and other expenses properly incurred by them when attending and returning from the following:

- Board meetings.
- Any committee of the directors.
- General meetings of the company.
- Any meeting in connection with the business of the company.

For listed companies, the Code of Principles of Good Corporate Governance for Listed Entities provides that the board must establish a remuneration policy for directors and senior executives as well as set up formal and transparent procedures for developing the policy and determining the remuneration packages for each individual director.

**Disclosure**

Directors' remuneration must be disclosed during the general meeting. The Companies Act requires companies to draw up annual accounts consisting of:

- The balance sheet on the last day of the relevant accounting period.
- Profit and loss account for that period.
- Notes to the accounts.
- Directors' reports.
- Any other financial statement required.

**Shareholder approval**

The directors' remuneration is determined by the company in the general meeting by ordinary resolution passed by the shareholders.

## MANAGEMENT RULES AND AUTHORITY

### 15. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

The procedure for calling meetings of the board of directors is set out in the articles of association. There is no statutory requirement about the number of meetings that must be held annually by the board. However, the Code of Principles of Good Corporate Governance for Listed Entities recommends that the board meets regularly and that an opportunity is given to each of its members to discuss issues set by the board agenda. Notices for board meetings must be conveyed to all the board members along with the agenda of the meeting and any relevant resolutions or documents to be tabled at it. A chairman is often appointed to preside over the meeting and retains a casting vote where there is a tie in any resolution taken by the board.

### 16. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

#### Directors' powers

Typically, directors derive their powers from the company's articles of association. The board can exercise all the powers of the company unless they are reserved for the shareholders by the law or the memorandum and articles of the company.

#### Restrictions

Where powers are reserved to the shareholders, they are typically disclosed in the memorandum and articles of association of the company. This is a publicly available document and third parties can easily ascertain whether a person seeking to bind the company has the authority to do so.

### 17. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

The directors can, from time to time, appoint a managing director from among themselves or a committee consisting of one or more persons selected from among the directors and delegate to them any of the powers exercisable by them on any terms and conditions and with any restrictions they think fit.

## DIRECTOR'S DUTIES AND LIABILITIES

### 18. What is the scope of a director's general duties and liability to the company, shareholders and third parties?

Directors are bound to their companies by fiduciary duties. The general duty imposed on directors is that they act honestly and in good faith in the best interests of the company. Directors must promote the wellbeing of the company and are responsible for the general governance and proper administration, management and general supervision of the company and its affairs. Among the general duties of the directors, the Companies Act also provides that directors must:

- Not make secret or personal profits from their position without consent from the company, nor make personal gain from confidential company information.
- Ensure that their personal interests do not conflict with the interests of the company.
- Not use any company property, information or opportunity for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with consent from the company in a general meeting or as permitted by the company's memorandum or articles of association.
- Exercise the powers they have for the purposes for which they were conferred and not misuse them.

The liability of directors to the company is joint and several. Directors are liable for any improper performance or breach of any fiduciary or other duty in relation to the company. Directors are also liable for any act which by law must be performed by a company.

### 19. Briefly outline the regulatory framework for theft, fraud, and bribery that can apply to directors.

#### Fraud

The Companies Act contains provisions in relation to fraudulent trading. If in the course of winding up a company, it appears that any business has been carried out with intent to defraud the company's (or any other) creditors, the court can declare that any person who was knowingly a party to carrying out the business to be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company as decided by the court.

#### Theft

The general provisions imposing criminal liability in cases of theft also apply to directors. In addition, the Criminal Code provides for aggravated theft. Theft is aggravated when it is committed in any place by a person employed on a salary or other remuneration in the service of another to the prejudice of that other person or of a third party, if their position facilitated the commission of the theft.

#### Bribery

The law states that any person who, in connection with their office or employment, requests, receives or accepts (for themselves or any other person) any reward or promise or offer of any reward for money or other valuable consideration, or of any other advantage to which they are not entitled, will be liable to imprisonment for between six months to eight years.

### 20. Briefly outline the potential liability for directors under securities laws.

The Securitisation Act does not provide for any additional liability on directors other than the liability arising under the Companies Act and the Listing Rules.

### 21. What is the scope of a director's duties and liability under insolvency laws?

Once a company is placed into liquidation whether it is solvent or insolvent, the directors will no longer enjoy any rights and powers. Directors remain liable for their actions up to when the company was placed into liquidation and directors can be found personally liable in the case of wrongful and/or fraudulent trading.

### 22. Briefly outline the potential liability for directors under environment and health and safety laws.

Over and above the liability arising under the Companies Act, directors can be held criminally liable for any breaches committed by companies in respect of wide-ranging obligations under environmental and health and safety laws, unless it is proved that the offence was committed without their knowledge and that they exercised all due diligence to prevent the commission of the offence.

### 23. Briefly outline the potential liability for directors under anti-trust laws.

The Trusts and Trustees Act does not impose any additional liability on directors.

### 24. Briefly outline any other liability that directors can incur under other specific laws.

The directors of a company can face potential liability under the following:

- **Income Tax Acts.** The manager or other principal officer (including directors) must comply with all the requirements under the Income Tax Acts in respect of assessment and payment of tax. The general principle is that tax is paid out of the company's assets, but every principal officer (including directors) is also personally liable to pay the tax, jointly and severally with the company.
- **VAT Act.** The director of a Maltese company will be liable for the company's VAT liabilities if a VAT registered company does not file its returns on time, or files them incorrectly, or does not pay the VAT due on time.
- **Contractual liability.** Directors can also be liable for breach of any obligations contained in agreements entered into between the directors and the company.

### 25. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Directors cannot be exempted from or indemnified against liability arising from their negligence, default or breach of duty.

However, a company can indemnify an officer or auditor against liability incurred when defending proceedings decided in their favour or from which they are acquitted. A company can take out indemnity insurance for any liability arising from law in respect of negligence, default or breach of duty.

### 26. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

The Companies Act does not prohibit insurance against a director's personal liability. A company can purchase and maintain insurance for the benefit of its directors and can also pay the premium out of the company's funds. A director can also personally purchase and maintain a policy against personal liability.

### 27. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

The Companies Act does not lay down a precise definition of the term "director" but states that the term includes "any person occupying the position of director of a company by whatever name he may be called carrying out substantially the same functions in relation to the direction of the company as those carried out by a director".

The Companies Act therefore recognises the concept of a shadow director who is not formally appointed but who assumes the role of director in practice.

Personal liability of the directors in damages for any breach of duty is joint and several among them all, including shadow directors, except where a particular duty has been entrusted to one or more of the directors, in which case only that person (or persons) will be liable. Joint and several liability also rests on the rebuttable presumption that the director was aware of the breach of duty and failed to take all reasonable steps to prevent it.

## TRANSACTIONS WITH DIRECTORS AND CONFLICTS

### 28. Are there general rules relating to conflicts of interest between a director and the company?

Directors cannot carry on a competing business either for themselves or for someone else without approval granted in the general meeting. Nor can a director be a partner with unlimited liability in another partnership or director of a competing company.

The Companies Act contains provisions in the specimen articles of association stating that it is the duty of a company director who is in any way (whether directly or indirectly) interested in a contract or proposed contract with the company to declare the nature of that interest to the other directors. This must be done either in the first board meeting in which the contract is discussed or, if the director was not in that meeting, at the next one.

The company's articles of association may also include provisions laying down how a conflicted director must behave at meetings where the contract creating a conflict is discussed. Typically once a director declares a conflict, they will be precluded from taking part in the discussion and voting on the decision relating to that contract.

### 29. Are there restrictions on particular transactions between a company and its directors?

The Companies Act states that it is not lawful for a company to make loans to any director or enter into any guarantee or provide any security in connection with a loan made to a director. It is also not lawful for the company to make any payment to a director by way of compensation for loss of office or in connection with retirement from office unless the amount is disclosed to the members of the company and approved by it in the general meeting.

### 30. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

A director can buy or sell shares and other securities in the company in which they are a director. However, this is permissible only where the director trades without any inside information. This ensures transparency in the director's dealings.

The Prevention of Financial Markets Abuse Act 2005 requires any person discharging managerial responsibilities within an issuer of financial instruments and (where applicable) any persons closely associated with them, to notify the Maltese Financial Services Authority (MFSA) of any transactions that they have conducted on their own account relating to shares of the issuer or to derivatives or other financial instruments linked to them. Notification to the MFSA Securities and Markets Supervision Unit must be made within five working days of the relevant transaction (if not exempt) and anyone in breach of these requirements can be subject to fines imposed by the MFSA.

## DISCLOSURE OF INFORMATION

### 31. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

The board is collectively responsible for the company. The board must provide regular, timely, full and accurate information to shareholders and the market. The annual general meeting is a tool for the board to communicate with shareholders.

The Code of Principles of Good Corporate Governance for Listed Entities (Code) provides that the board must serve the legitimate interests of the company while communicating with shareholders and the market. It provides that companies are expected to draft a corporate governance statement for shareholders that must be divided into two parts:

- One part dealing generally with the company's adherence to the main principles.
- One part dealing specifically with non-compliance with any of the Code provisions.

The Code recommends that in the annual report, a company provides information about its internal organisation and on the board evaluation (if any) and whether the evaluation led to material changes in the company's corporate governance framework.

The remuneration committee, if appointed, should also prepare as part of the annual report a statement regarding its membership, the number of meetings held, the attendance levels over the year and its main activities.

The Listing Rules also impose an obligation on listed companies to issue certain company announcements in compliance with the ongoing listing obligations. The purpose of the announcements is to provide the market with useful and relevant facts in relation to the company.

## SHAREHOLDER RIGHTS

*Company meetings*

### 32. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

The Companies Act provides that every company registered in Malta must hold an annual general meeting. The memorandum and articles of the company provide for the ordinary business to be considered at an annual general meeting. They also provide the way in which any business that is not deemed to be ordinary should be conducted.

At the annual general meeting, shareholders vote on the:

- Distribution of dividends.
- Approval of the accounts and balance sheet.
- Report of the directors and auditors.
- Appointment of directors.
- Appointment and remuneration of the auditors.

### 33. What are the notice, quorum and voting requirements for holding meetings and passing resolutions?

A general meeting of the company must be called with at least 14 days' notice in writing. The notice must exclude the day on which it is served and specify the place, day and hour of the meeting. A meeting can be called with shorter notice if agreed by all the members entitled to vote at it and attend.

Notice of any general meeting must be given to every member of the company, and any member entitled to vote can appoint a proxy to attend, speak, vote and demand a poll on behalf of the appointing member. Unless otherwise stated in the articles of association of a company, two members personally present at the meeting are deemed to constitute a quorum.

### 34. Are specific voting majorities required by statute for certain corporate actions?

#### Increasing share capital

Provided that not all the authorised share capital has been issued, a company can increase its issued share capital by ordinary resolution adopted by the shareholders. An ordinary resolution is passed if it enjoys the consent of an aggregate of more than 50% of those members with the right to attend and vote at the meeting.

If a company wishes to decrease its share capital or increase its authorised share capital, this requires an extraordinary resolution.

#### Changing the company's constitution

A company can alter its memorandum or articles of association by extraordinary resolution. The votes required for an extraordinary resolution to pass vary for public and private companies.

#### Appointing and removing directors

A director of a company other than the first directors must be appointed by ordinary resolution of the company in the general meeting. A company can remove a director before their time has expired by ordinary resolution.

#### Winding up

The decision to dissolve and consequently wind up a company rests with the shareholders who must adopt an extraordinary resolution for the process to commence.

### 35. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

Members of a company making up a minimum of 10% of the company's paid up share capital carrying voting rights can make a requisition to the board of directors to convene an extraordinary general meeting of the company. The directors must convene the meeting within 21 days from the requisition, otherwise the person requesting it can convene a meeting at the expense of the company. When shareholders requisition a meeting, they must do so in writing, stating the reason why it is being requisitioned and signing the request.

*Minority shareholder action*

### 36. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

Under Maltese company law, shareholders are protected from the affairs of a company that have been, are being, or are likely to be conducted in a way that is likely to be oppressive, unfairly discriminatory and unfairly prejudicial. A member alleging that they are being subjected to oppressive, unfairly discriminatory and unfairly prejudicial treatment can make an application to the court. On consideration of the application, if the court is of the opinion that the complaint is well-founded and that it is just and equitable to do so, it can make any suitable order provided by law.

In addition, the Registrar of Companies is also given the authority to investigate the affairs of a company at the request of 200 members, or any number of members holding at least one-tenth of the issued capital of the company.

## INTERNAL CONTROLS, ACCOUNTS AND AUDIT

### 37. Are there any formal requirements or guidelines relating to the internal control of business risks?

There are no requirements or guidelines relating to the internal control of business risks.

### 38. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The directors of every company must prepare individual accounts for each accounting period. These must include:

- The balance sheet on the last day of the accounting period.
- The profit and loss account for that period.
- Notes to the accounts.
- Any other financial statements and other information required by generally accepted accounting principles and practice.

The directors must ensure that the company's accounts are drawn up clearly in accordance with generally accepted accounting principles and practice. The accounts must give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

The directors must also prepare a report for each accounting period. The Companies Act sets out requirements that must be observed by the directors when drawing up their report. The directors' report must be approved by the board of directors and once approved, dated and signed, it must be circulated to the shareholders together with a copy of the audited annual accounts for their approval. Once approved, the directors must ensure that a copy of the audited annual accounts is filed at the Registry of Companies.

### 39. Do a company's accounts have to be audited?

Every company not qualifying in law as "very small" must appoint an auditor and prepare audited financial statements for every financial year. A private company is considered to be a small company if it does not exceed the limits of two of the following criteria:

- Balance sheet total: EUR 46,600.
- Turnover: EUR93,000.
- Average number of employees during the accounting period: two.

### 40. How are the company's auditors appointed? Is there a limit on the length of their appointment?

A company must, at each general meeting in which the annual accounts are presented, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are presented. The company can appoint joint auditors.

The first auditors of the company are appointed by the directors any time before the first general meeting of the company at which the annual accounts are presented and they hold office until the conclusion of that meeting. Subsequently, the auditors are appointed by ordinary resolution adopted by the shareholders at the annual general meeting.

If no auditors are appointed or re-appointed as required by the Companies Act, the court can order the companies registrar to appoint someone to fill the vacancy on application from any of the directors or any member of the company.

### 41. Are there restrictions on who can be the company's auditors?

An auditor must at all times adhere to the rules on independence and professional ethics set out in the Code of Ethics for Professional Accountants and other regulations. An auditor must have a certificate to practise auditing and can be an individual or an audit firm.

### 42. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

Auditors practising in Malta are bound to observe the rules on independence contained in the Code of Ethics for Professional Accountants. The restrictions on non-audit work contained in this Code apply to those auditing the accounts on companies incorporated in Malta.

### 43. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Like other service providers, auditors will be liable to the company for damages if, in the course of their work, they act negligently, with imprudence or lack of attention.

Typically an auditor is engaged by letter of engagement laying down the liability of the auditor. This liability can be limited and capped on agreement between the parties.

### 44. What is the role of the company secretary (or equivalent) in corporate governance?

Locally, every company must appoint a company secretary who, according to the directors, is an individual who appears to them to have the requisite knowledge and experience to discharge the functions of company secretary. The company secretary is not vested with decision-making powers but is responsible for keeping:

- The minute book of general meetings of the company.
- The minute book of meetings of the board of directors.
- The register of members.
- The register of debentures.
- Any other registers and records that the company secretary is required to keep by the board of directors.

The company secretary must also ensure that all proper notices are given for all meetings and that all returns and other documents of the company are prepared and delivered in accordance with the requirements set out in the Companies Act.

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## ONLINE RESOURCES

**Laws of Malta**

**W** *www.justiceservices.gov.mt*

**Description.** This website is maintained by the Ministry for Justice, Culture and Local Government of Malta and brings together a collection of all the current laws of Malta. It is regularly updated with amendments and new legislation.

**Malta Financial Services Authority (MFSA)**

**W** *www.mfsa.com.mt*

**Description.** This website provides all the up-to-date rules issued by the MFSA (the local financial services regulator) with links to relevant legislation, regulations and rules, and other relevant information.

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**Professional qualifications.** Lawyer, Malta

**Areas of practice.** Asset management; corporate; corporate finance; derivatives; financial markets regulation; fund custody; investment funds; investment services regulation.

**Non-professional qualifications.** Diploma in Taxation, 2011 (Malta Institute of Taxation); Master of Laws (LL.M) (Banking & Finance), 2009 (London); IFSP Certificate in Trust Law and Administration, 2007; Doctor of Laws (LL.D), 2007 (Malta); Bachelor of Arts (B.A) 2004 (Malta)

**Languages.** English, Maltese, Italian

**Professional associations/memberships.** Admitted to the Maltese Bar, Superior Courts of Malta; Member of the Chamber of Advocates