

Report of the Chamber of Advocates on the Individual Investor Programme

View of the Chamber of Advocates regarding the Individual Investor Programme being proposed by the Government:

We have several concerns relating to the Government's recent decision to introduce an Economic Citizenship scheme – the "Individual Investor Programme" ('IIP') - and related matters. These include the following:

1. Absence of consultation with the financial services sector and other interested parties

We note, with regret, that the Government chose to launch a scheme linked to something as sensitive as Maltese citizenship with no prior consultation whatsoever with the industry, including professionals active in the financial services sector.

Whilst we understand that the Concessionaire is working under tight deadlines, we believe that proper consultation with the stakeholders was required in order to ensure that all angles are properly covered before launching the programme. Practitioners, including ourselves and other professionals active in the financial services sector are certainly willing to contribute their time to a constructive discussion on how the programme could work best to complement Malta's other offerings and solutions.

The speed at which the programme is being introduced has tended to create additional anxiety given the unavoidable political sensitivity and the economic considerations at stake.

We do not feel that economic citizenship should be introduced without careful consideration of the implications of same on all levels and, accordingly, would recommend that the Government should postpone the launch of any such scheme until a proper review involving all stakeholders has been carried out.

2. Citizenship for cash

We note that, in terms of the IIP, a Maltese passport will be awarded to applicants from any country, immediately upon application, subject to two conditions: (a) a due diligence test,

(b) the payment of a cash price of €650,000, plus additional cash amounts for spouses and dependants.

Notwithstanding the fact that the program has been named the Individual Investor Programme, it would appear that the only “investment” the potential beneficiary needs to ensure is that of €650,000 into a fund which has been purposely set up. In our view the principal concern is that the one-time payment does not represent the kind of investment and commitment that could create long term and meaningful links with the persons taking up the Citizenship programme.

Subject to this, and with reference to the scheme as currently proposed, it is our view that this is not consonant with the image that Malta wants to portray. We would have far preferred a scheme in terms of which a Maltese passport would have been tied to direct and measureable investment in the country, be it investment in assets locally or in businesses locally and/or linked to minimum job creation.

A passport for cash scheme will not leave any long-term benefit to the country in general and practitioners in particular, as opposed to a scheme that is tied to investment where the spin-offs and benefits to the local economy from the point of view of economic growth, professional work, jobs, real estate, etc could be significant.

3. The Reputational Considerations

In the view of the Chamber the perception considerations should not be underestimated.

The offering of citizenship to investors is a delicate issue which should be carefully weighed out before it is introduced. By introducing this programme, Malta is not only granting citizenship to Malta, but also free access to the European Union/Schengen an also easier access to the United States based on the ESTA procedure which was introduced only a few years ago. All of these relationships could risk being strained by the introduction of the programme.

The Chamber cannot help noticing that since the general public has been informed of the Individual Investor Programme certain foreign press have sought to throw a bad light on

Malta, putting Malta at a par with countries like Cyprus, Ireland, Latvia, Portugal and Spain, all of which have been badly damaged by the euro crisis. Clearly these articles are based on perception rather than facts but careful management of the programme should actively seek to place Malta alongside Austria rather than countries that have suffered in the recent

financial crisis, not to mention comparisons with other “tax haven” jurisdictions that offer similar programmes.

It is the view of the Chamber that Malta’s association with tax havens will undoubtedly cause serious and irreparable damage to Malta’s reputation as a reputable financial services jurisdiction, which damage will definitely not be restricted to this scheme and the immigration area generally, but will undoubtedly pervade the financial services sector generally.

4. Impact on the financial services industry

Over the years with the hard work of the public and private sectors Malta has managed to establish itself as a credible financial services jurisdiction, including the development of a serious and well-respected shipping register.

Whilst the Citizenship programme is not a financial services matter but an internal/home affairs matter, the programme could have serious repercussions on Malta’s general perception as a credible financial centre.

5. Criminal sanction for promotion of the scheme

We note that the draft Bill amending the Citizenship Act purports to sanction any form of promotion, distribution of information (including presumably via websites) for gain, of this scheme, proposing an administrative fine of a maximum of €20,000.

This puts the financial services sector, and primarily professionals operating in this sector, who are likely to be approached with requests for information concerning this scheme in an untenable position, since they cannot respond to any standard enquiry on this scheme, that they might receive.

6. Appointment of the Concessionaire

While the Chamber of Advocates does not have an objection in principle with the appointment of a reputable and experienced company (irrespective whether the company is local or otherwise) in order to carry out the due diligence and KYC procedures, it must show its concern at the fact that the company that was granted the concession was not precluded from assisting clients in obtaining citizenship. A general concern is that the concessionaire managing the large part of the application process, whilst also being permitted to submit applications creates various levels of potential conflicts which would best be avoided.

In conclusion

The Chamber of Advocates does not oppose a policy to extend current citizenship by naturalisation in the case of bona fide individuals who could contribute to the development of our economy by investing in our country, however, it cannot but express its concern at the programme as proposed.

Dr Stefan Camilleri LL.D.
Secretary General

29th October, 2013