

Malta Partnerships - An Alternative Vehicle To Set Up A Business In Malta

By **Jonathan Vassallo**, 20th April 2021

Types of Partnership in Malta

A Malta Partnership offers an alternative way in which to set up a business in Malta. The Maltese jurisdiction allows two types of partnership: Partnership 'En Nom Collectif' (General Partnership) and Partnership 'En Commandite' (Limited Partnership). Regulation of these two partnerships is detailed in the Malta Companies Act.

Once the partnership is created, it has to be registered with the Malta Business Registry (MBR) and, if it is a Partnership En Commandite, the name of the partnership has to include "Limited Partnership (or LP)".

The difference between a General and a Limited Partnership is the liability of the partners. While general partners have an unlimited liability, limited partner liability depends on how much each partner has contributed to the partnership. Nevertheless, any person who calls him/herself general partner, will have unlimited, joint and several liability with all other general partners, for the obligations established in the LP.

General Partnership (*En Nom Collectif*)

The Maltese law defines a General Partnership as a group of partners who act together, which is one of the most common structures. Individuals involved in this kind of partnership have collective and personal unlimited liability. This means, the Partnership En Nom Collectif can hold and/or own a property and can also be sued or sue in its own name. The main difference, in comparison to a company, is that when a partner is insolvent, retires or dies his interest in the partnership is liquidated.

Partners who receive income from the General Partnership must declare this income in their personal tax returns. The tax rate applicable will therefore depend on the

individual's personal tax rate. A partnership must have at least two partners that sign the Partnership Deed, which must then be sent to the Malta Business Registry, before the Certificate of Partnership is issued.

A General Partnership registered in Malta must have an office in Malta.

The Deed of Partnership must state; the name and address of each of the partners, the partnership name, details of the registered office in Malta, the objects of the partnership, the contribution of each of the partners, specifying the value of the respective contribution of each partner, and the period (if any) fixed for the duration of the partnership.

Limited Partnership (LP, *En Commandite*)

LPs have a legal personality separate to their partners and this responsibility lasts until the LP is dissolved. This means that LP's have rights and obligations, they can hold or own property and they can sue or may be sued in their own name.

Taxation of LPs is the same as for companies, resulting in a potential effective tax rate of 5% on trading income and a potential effective tax rate of 10% on passive income, for non-Maltese resident shareholders.

The partners of an LP may either be general or limited partners. Partners are defined as "any person or body corporate". General partners will manage the LP and be responsible for the debts, without limitation. Limited partners are not responsible for managing the LP, or for the debts of the LP. Decisions are made by the general partners, by simple majority.

In order to create an LP, three documents are needed: A 'Partnership Deed' signed by the initial partners, a 'Partnership Registration Document' delivered to the Malta Business Registry (MBR), and a 'Certificate of Registration', issued by the MBR.

The Partnership Deed must include; the names and addresses of the general partners, the name of the partnership, details of the registered office in Malta, the business objects, whether the capital is divided into shares or not, the period of the duration of the LP, a declaration that the Partnership Deed has been entered into and signed, and a specification of who the general partners are and who the limited partners are.

Limited Partnerships and Different Structures

An LP can be one of a number of different structures:

- Limited Partnership with Variable Share Capital. This kind of partnership must include “with Variable Share Capital (or VC)” in its name, in addition to “Limited Partnership (or LP)”. Unique features of this type of partnership, include; it cannot issue partly paid-up shares, and it may purchase or redeem its own shares directly or indirectly from its assets, as long as this is permitted in the Partnership Deed.
- Multi-Class Limited Partnership. A Share Capital Limited Partnership can be constituted as Multi-Class, when the capital detailed in the Partnership Deed is divided, or can be divided into different types of shares, class or classes of shares, without creating any sub-funds. The different share classes can be denominated in different currencies, similarly, the annual accounts may be in any one of these currencies.
- Multi-Fund Limited Partnership. A Share Capital Limited Partnership can be constituted as a Multi-Fund, when the capital detailed in the Partnership Deed is divided, or can be divided into different types of shares, creating different sub-funds. Different type of shares in different currencies are permitted in each sub-fund.

Taxation of Partnerships

Generally, a partnership is tax transparent and tax is levied at the partner level.

Malta Partnerships need to be registered for income tax purposes and the partners are required to keep partnership accounts and file a partnership tax return. Partnership income is deemed to be the income of each partner. The tax rate levied on each partner is therefore at the rate applicable to them individually, and will depend on their country of residence and other circumstances.

Additional Information

For further information about partnerships in Malta please contact Jonathan Vassallo or Clive Azzopardi, at the Dixcart office in Malta: advice.malta@dixcart.com. Alternatively, please speak to your usual Dixcart contact.