



Employment Licences Unit Guidelines for Clients

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Employment Licences Unit

Guidelines for Clients

The following Frequently Asked Questions are intended to act as a guide to applicants and to foreign nationals wishing to work in Malta. They are subject to regular updates and thus, it is important that applications must comply with those guidelines applicable at the date of application (as indicated in the footer of this document).

These FAQs are divided into five main parts: 1.0 *Scope*, 2.0 *Process*, 3.0 *Eligibility*, 4.0 *After a licence is issued*, and 5.0 *Other Considerations*. Should you have a specific query that is not addressed by these FAQ's, kindly send a letter to The Unit Manager, Employment Licences Unit, Jobsplus, Head Office, Hal-Far, Malta, or on email at employment-licences.jobsplus@gov.mt

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1. Scope

1.1 Why are Employment Licences needed?

The need for an Employment Licence (also known as Work Permit) derives from the **Immigration Act** (Cap217) which regulates the entry and permanence in Malta of non-Maltese citizens. Article 11 of the Immigration Act provides as follows:

“11.(1) It shall be an implied condition of any leave granted to any person under article 6(1)(a) or, saving the provisions of Part III, of a residence permit issued to any person under article 7(1) that such person shall not in Malta exercise any profession or occupation or hold any appointment or be employed by any other person or engage in business without a licence from the Minister.

(2) It shall be an implied condition of any leave granted to any person under article 6(1)(b) or extended under paragraph (c), that such person shall not in Malta exercise any profession or occupation or hold any appointment or be employed by any other person without a licence from the Minister.

(3) The Minister may grant a licence for any of the purposes mentioned in sub-article (1) or (2) for such period and under such conditions as he shall think fit and may at any time cancel or vary the conditions of any such licence.”

It is to be remarked that as a result of the publication of legal Notice No 160 of 2014 Immigration Act (Cap. 217) Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third-Country Workers legally residing in Malta Regulations, 2014, the process regarding the authorization of work in Malta by certain categories of Third Country Nationals shall be conducted by means of a single permit application.

The single application procedure will be available to all TCNs other than those who fall within the following categories:

- TCNs who are awaiting or have been granted temporary protection and beneficiaries of either international or national protection.
- TCNs who have long-term resident status.
- TCNs who are self-employed workers.
- TCNs who are students recognised under the Students Regulations (Legal Notice 29 of 2008).
- TCNs working in Malta for up to 6 months only.
- TCNs working in Malta on the basis of a visa.
- Posted TCN workers and intra-corporate transferees.

Information in this respect is given in the relative leaflet entitled ‘*Single Permit (Work/Residence) Application Procedures and Rights Enjoyed by Persons Authorized to Work in Malta*’ issued by the Department for Citizenship and Expatriate Affairs (<http://mhas.gov.mt>). Such persons would still require an employment licence in order to work in Malta, but the issue of such licence will be an internal process between the Department for Citizenship and Expatriate Affairs and Jobsplus. Indeed the Jobsplus will continue to conduct the labour market tests and consequently the requirements set down hereunder will still apply in order to carry out such tests.

1.2 Who needs an employment licence?

At present, with the exception of citizens from the EEA¹/Switzerland and their TCN² “family members”³ or “other family members”⁴ all foreign nationals require authorisation to work in Malta. Employment licences are needed in respect of persons who enjoy long-term residence status (in terms of Legal Notice 278 of 2006). These licences are not subject to labour market considerations.

In the case of citizens from outside the EEA/Switzerland (or ‘third country national’), applications for an employment licence or Single Permit applications are, generally, subject to labour market considerations, as explained further below. Such authorization is not automatic, and is only granted where EEA/Swiss nationals cannot be identified for the position in question.

Employment licences are also needed in respect of Asylum Seekers, and for persons with Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status.

In all the above cases, an application for an employment licence is made by the employer, except in the case of persons with Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status, who are granted a licence in their own name.

1.3 Who does not need an employment licence?

Posted workers, that is, workers who are usually based in another country (EEA/Switzerland) and who have an employment relationship with an employer in that country, but who are being ‘posted’ for a stipulated period to Malta, do not need an employment licence. Although no employment licence is necessary, the firm in Malta to which the employee will be posted must notify the Department of Industrial and Employment Relations of this posting, within twenty-four hours of commencement of work. You may contact the Department in Melita Street, Valletta or on telephone number 00356 21224245.

Employment licences are not issued in respect of workers who will not normally or habitually be carrying out work in Malta. Employers wishing to employ a worker to carry out work primarily in another country need not apply for an employment licence. At present, for the purpose of employment licence considerations, ‘normally and habitually working and residing in Malta’ means, half the requested duration of the licence.

¹ EEA nationals are those from Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the UK.

² TCN – Third Country National – i.e. Citizens from outside the EEA/Switzerland, excluding persons who are Long Term Residents or Asylum Seekers, or enjoy the status of Refugee or Temporary Humanitarian Protection, or Subsidiary Protection.

³ “family members” :

the spouse, provided it does not include a party to a marriage of convenience;
the direct descendants who are under the age of 21 or are dependents, and those of the spouse;
the dependent direct relatives in the ascending line and those of the spouse.

Note: the EEA/Swiss national must be living in Malta for the TCN to not require a licence to work in Malta.

⁴ “other family member”:

a person who, irrespective of his nationality, in the country from which he has come, is a dependant or a member of the household of the Union citizen having the primary right of residence, or
a person who, for serious health reasons, strictly requires personal care by the Union citizen, or
the partner with whom the Union citizen has a durable relationship

Employment licences are not issued in the case of foreign national non-resident and non-executive directors (that is, directors who do not ordinarily reside in Malta, who do not have an employment relationship with the company and who may be in receipt of a director's remuneration but not in receipt of a salary).

1.4 *Is an employment licence transferable?*

An employment licence is issued in respect of a third country national work with a specific employer to perform a specific job.

An employer cannot use an employment licence issued in respect of one employee, for another employee, even if the latter is performing the same work previously done by the former.

The employee cannot use the licence to take up a different job, to change his/her working conditions, or to work for a different employer, even on a part-time basis.

An employment licence between an employer and a foreign national is deemed to constitute a commitment between both parties. In the case of third country nationals, Jobsplus will not issue employment licences in respect of persons who still have a valid employment licence with a different employer (see also [5.1](#)).

In the case of the situations mentioned hereunder, following the notification, through the Department for Citizenship and Expatriate Affairs, if it concerns a single permit application, that is, where:

- a change in name of employer, and where the line of business of the employer will remain the same, having the same owners/shareholders and operating from the same premises, upon formal notification the Employment Licences Unit will issue new employment licences for the persons concerned
- mergers or takeover of business whereby the transfer of employees takes place, upon formal notification of same, the Employment Licences Unit will issue new employment licences for the remaining duration of the active licence.
- a transfer of employee from one enterprise to another within the same group of companies for the same occupation is notified, the Employment Licences Unit will issue of a new licence.

The issue of such licences will be free of charge, without prejudice, however, to the cost of the residence permit that may be required to reflect such change.

1.5 *What is the duration of an employment licence?*

All employment licences are, in general, issued for a maximum duration of one year. In the case of Asylum Seekers, employment licences are generally issued for six months and in the case of Failed Asylum Seekers, employment licences are issued for three months. The duration of these licences depend on the status of the application submitted with the Refugee Commission for asylum.

2. Process

2.1 Applications for a licence for a third country national

Third country nationals who are eligible for the Single Permit Application still require an employment licence, which process, as has been explained, is conducted by means of internal arrangements between Jobsplus and the Department for Citizenship and Expatriate Affairs within Identity Malta, some of the documentation indicated in the contents below still applies in their respect.

This is indicated by means of an asterisk “**”

Documentation required:

In the case of an application for a new employment licence for a third country national, the process is as follows. The employer, unless it is a **single permit application** must fill in an application form and submit it to the Employment Licences Unit by hand or by mail.

The following documentation needs to be provided at application stage:

- (a) Application form
- (b) Curriculum vitae*
- (c) Position description*
- (d) References/testimonials*
- (e) One passport photo
- (f) Copy of travel document
- (g) Copy of valid visa (if third country national is in Malta)
- (h) Copy of qualification certificates and accreditation/recognition*
- (i) Covering letter by employer indicating site of work*
- (j) The fee (see 2.8 below)*
- (k) Evidence of search for EEA/Swiss/Maltese nationals through a detailed vacancy report*

The following documents must also be supplied, depending on the case as indicated:

(l) A valid police certificate (if the foreign national is an asylum seeker or a person enjoying Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status.

(m) Valid certificate issued by the Refugee Commissioner in the case of THP⁵ s/SPs, Refugees and Asylum Seekers

(n) Proof of long-term residence status, or of relation to long-term resident, where applicable

(o) Birth certificates of children, if not born in Malta, if application is for nanny*

(p) Proof of relationship to diplomat, if application is for family member of diplomat

(q) Approval of the regulatory body, in the case of applications for third country nationals to perform a regulated profession*

(r) Health clearance form in the case of third country nationals already in Malta*

⁵ Subsidiary Protection/Temporary Humanitarian Protection Status

(s) Proof of relationship with EEA/Swiss national in the case of TCN dependent on EEA/Swiss national

Documents (a), (b) and (c) above may be found in soft copy on this website. The CV must be filled in and signed by the person who is the subject of the CV. An inadequate position description will result in rejection of the application. The application form and the position description need to be signed by the employer. Contact details must also relate to the employer, not to the third country national.

In respect of (d), if a third country national lacks formal qualifications in the occupation for which s/he will be engaged, s/he requires at least three years of experience, to which these references must testify, stipulating start and end dates, and details of work carried out. References must be signed with clear contact details of the referee. If repeated attempts on the Employment Licences Unit's part to contact the referee prove futile, the application will be rejected. The prospective employer is also requested to fill in and submit a Declaration of Suitability for the applicant.

In respect of (e) and (f), if the third country national is already in Malta, they may be certified as true likeness and as true copy respectively, by the employer signing the application. If the foreign national is still abroad at the time of application, the certification is to be done by a Malta Embassy official or a lawyer, or a doctor, whose details must be legible. In the case of countries whose nationals are subject to the visa requirement when travelling to Malta, all the pages of the travel document (passport) have to be presented. A list of these countries may be found at www.mfa.gov.mt (<http://www.mfa.gov.mt/Default.aspx?MDIS=530>).

In respect of (h), relevant qualification certificates assist with favourable consideration of an application but do not in themselves guarantee a positive outcome. In any case, qualification certificates must be relevant to the post to which the application refers. The employer is not to submit original certificates to the Employment Licences Unit but only certified true copies of originals. In the case of lesser-known academic institutions, the applicant organization must obtain recognition from the Malta Qualifications Recognition and Information Centre (MQRIC) – (<http://www.mqc.gov.mt/home?!=1>). It is the responsibility of the applicant organization to submit to Jobsplus translated and legalized documents from Maltese Embassies/Consulates abroad. Translations are to be in English. Jobsplus may, where the need arises, refer such certificates to MQRIC or to Maltese Embassies abroad for further verification.

In respect of (i), the covering letter by the employer is to state in as much detail as possible why this position is necessary and why it cannot be filled by an EEA/Swiss/Maltese national. Efforts of the search for candidates must be illustrated and proved. Any supporting documentation such as contracts or evidence of relevant commercial activity should be provided to substantiate the application.

In respect of (j), 'Fees', please see 2.8 below for the relevant amounts.

(k) Employer must submit evidence of his/her active efforts to locate EEA/Swiss/Maltese candidates. For every application, the employer is required to:

- Advertise the Job with the Jobsplus and
- Advertise the Job, at least twice, in the appropriate local media specifying
 - ❖ Job title
 - ❖ Main Duties and Responsibilities
 - ❖ Salary package or range
 - ❖ Necessary skills, qualifications and experience

Or

- Advertise the job through a Private Recruitment Agency.
 - ❖ In this case all the above specifications need to be specified.
 - ❖ The Private Recruitment Agency may use any of its normal recruitment methods.

Exemptions to the vacancy requirement as part of the labour market test will apply to the following cases:

- Applications for *EU nationals* who are subject to transitional arrangements and who have been in active employment for more than one year;
- Applications for which the job applied for is on the *Malta Vacancy Exemption List*, accessible from the Jobplus website;
- Applications submitted by Identity Malta under the *Key Employee Initiative*;
- Applications recommended and endorsed by *Malta Enterprise*;
- Applications for *Service Providers* and *Intra-Corporate Transferees*, for which the employer needs to submit related contracts highlighting the transfer / provision of service required;
- Applications for *Managing Directors, Chief Executive Officers and General Managers*;
- Applications for which the *salary offered* is of €80,000 per annum or higher;
- Applications for the following occupations:
 - *Sportspersons and coaches*, for which the Employment Licences Unit will obtain the approval of the Malta Council for Sports.
 - *Entertainers, musicians and crew members on film productions*, for which the employer will need to elaborate in the covering letter on the reasons for the choice of the third country nationals concerned.
- Applications submitted by *Public Entities* , if the entity applying is in conformity with the national regulations as per the Employment and Training Services Act (1990);
- *Student workers* in their second year of studies and recognised as students under *LN 29 of 2008*; and *students at the Institute of Tourism Studies and any other higher institution as recognised by the Jobsplus*, who need to carry out a work placement as part of their studies;
- Applications from *Self-Employed persons or Shareholders of Companies* registered in Malta.

All Maltese employers engaging personnel (regardless of their nationality) require a PE Number to be able to do so. This includes employers of personal carers, nannies and housekeepers. The application for a PE number needs to be submitted to the Inland Revenue Department, Floriana.

Jobsplus and the Department for Citizenship and Expatriate Affairs reserve the right to request any further documentation that it may deem necessary to assist it to consider the authenticity of applications.

2.2 Processing of application:

When the application is received, the Employment Licences Unit verifies that all documentation is present. If incomplete, the application is returned to the applicant. If documentation is complete, the application moves on for processing. Preliminary verifications include checks as to the existence and operations of the company concerned, and its staff lists as registered with Jobsplus.

Requests for changes by the applicant organization in regard to information already submitted (ie changes relating to position, salary and hours of work) will cast serious doubt on the veracity of the application

The application is then considered from a labour market perspective (see Section 2.4 below). If the application is not accepted, the applicant is informed as soon as possible

Key stakeholders are asked for their clearance, including health and immigration authorities, as well as other sector-specific authorities as the case may be. If clearance is withheld from any of these stakeholders, the application will be rejected and applicant informed accordingly. If no stakeholder presents an objection, then the employment licence is issued to the employer, and the third country national may take up employment with that employer on the terms indicated in the application.

Applications will be considered more favourably if employers indicate in their application that the wage to be granted, reflects the average wages in the relevant occupation or sector. These may be found in the latest Labour Force Survey on www.nso.gov.mt.

In the case of single permit applications further information regarding processing is available on the information leaflet 'Single Permit (Work/Residence) Application Procedures and Rights Enjoyed by Persons Authorized to Work in Malta' (<http://mhas.gov.mt>). Reference may also be made to the provisions contained in Legal Notice 160 of 2014.

2.3 What does labour market consideration involve?

There are many aspects to labour market consideration, including the national situation in respect of surpluses or shortages in the given occupation and sector; the employer's history and situation in terms inter alia of recruitment and redundancy patterns; business investments; and contractual commitments. The third country national's skill level, relevant experience and overall suitability for the position in question are also taken into account.

The employer is responsible to provide substantial evidence of efforts made to try and fill in any vacant posts primarily with Maltese / EEA / Swiss nationals and/or Third Country Nationals who have an inherent right to work in Malta (see also 1.3). To fulfil the vacancy requirement as part of the Labour Market test, the employer is required to: advertise the Job with the Employment Licences Unit; and advertise the Job, at least twice, in the appropriate local media or advertise the job through a Private Recruitment Agency. Documents related to the Labour Market Test must be kept for each recruitment method used and presented to the Jobsplus when asked to do so. Applications submitted without the necessary evidence of efforts made will not be entertained (see 2.2(k)).

Applications for third country nationals from firms that have effected redundancies in the post in question, or in similar positions to that being applied to, in the preceding twelve months will not be entertained.

Moreover there are a number of specific occupational/sectoral considerations as follows:

In the case of applications for *highly qualified employment*, applications will generally be considered favourably, in line however with the labour market situation. To be treated as highly qualified employment, applications must illustrate clearly that certain conditions will be met, which include the following. The third country national concerned must hold qualifications at [ISCED](http://www.isced.org/)⁶ levels 5a, 6 or above and which must be validated by Malta Qualifications Council; must hold any documents necessary in the case of regulated professions; must have an offer of a job which may be considered highly qualified employment and which involves the payment of at least 1.5 times the average gross annual salary as defined in the most recent Labour Force Survey issued by the National Statistics

⁶ <http://www.jobsplus.gov.mt>

Office (www.nso.gov.mt) but without prejudice to any applicable collective agreements in the area concerned.

In respect of family members of *diplomats stationed in Malta*, applications are referred to the Ministry of Foreign Affairs in view of the possible existence of reciprocity agreements. Where no such agreements are in place, applications are subject to labour market considerations.

In respect of *home-based carers*, applications are at present not subject to a labour market test. However, a medical certificate declaring that the applicant requires a full-time carer to meet his or her daily needs, must be submitted with the application. In respect of carers for children, a clear case must be made for the need to recruit foreign nationals, and if born outside Malta copies of the birth certificates of children (aged under 16) must be submitted with the application. If the children were born in Malta details re date of birth need to be submitted for the Employment Licences Unit to be able to retrieve a copy of the birth certificate from the Public Registry. A power of attorney signed and attested by a Notary, Advocate or Public official is needed, when a person applies or withdraws an application on behalf of another, in the case of a home-based carer.

In respect of *culture and entertainment*, the employer does not need to provide evidence of a search for EEA/Swiss/Maltese candidates. He or she does however have to elaborate in the covering letter on the reasons for the choice of the third country nationals concerned.

In respect of *steel fixers, form work erectors and concrete shutterers*, evidence of work contracts is necessary. Employers may be required to actively participate in Open Days held by Jobsplus and to interview suitable EEA/Swiss/Maltese candidates on request. Failure to do so may result in non-issue of employment licences and/or revocation of current ones.

In respect of *cleaners and room attendants*, evidence of work contracts is necessary. Employers may be required to actively participate in recruitment drives held by Jobsplus and to interview suitable EEA/Swiss/Maltese candidates on request. Failure to do so may result in non-issue of employment licences and/or revocation of current ones.

In respect of *chefs* in restaurants offering ethnic cuisine, the policy is as follows. The prior approval of the Malta Tourism Authority is required in each case. Outlets with up to thirty covers may apply for up to two third country nationals; outlets with up to one hundred covers may apply for up to three third country nationals; outlets with over one hundred covers may apply for up to four third country nationals. Applications from employers that engage the services of EEA/Swiss/Maltese nationals as part of their staff complement will assist in the favourable consideration of an application.

In respect of *sportspersons*, Jobsplus will obtain the prior approval of the Malta Council for Sports. In the case of footballers a copy of the contract of work submitted to the Malta Football Association, would need to be submitted with the application for issue of Licence

In respect of *foreign minors to work in film productions*, these applications are referred for the views of the Department of Industrial and Employment Relations (DIER) and a Licence is given upon DIER consent.

2.4 Are there any requirements in terms of health?

There are no health requirements in terms of EEA/Swiss nationals their TCN family members or other family members. Third Country Nationals applying under the Single Permit Process need to obtain the respective health forms from Identity Malta. In the case of third country nationals coming from [High](#)

[Risk TB countries](#)⁷ and who are not eligible for the Single Permit Process, health clearance is necessary. On receiving an application, the Employment Licences Unit sends a Health Form to the employer, so that clearance is obtained from the Qormi Health Centre. In the case of third country nationals already in Malta at the time of application, health clearance is to be obtained before the Employment Licence can be issued. In the case of third country nationals still abroad when application is submitted, health clearance is to be presented to Jobsplus within three months of the issue of the Employment Licence, or their entry in Malta. If such clearance is not presented, the Licence will be revoked and the immigration authorities will be alerted accordingly.

It is also necessary for an employer to take out a private health insurance for the TCN concerned, to cover the full duration of employment. The employer is to provide a copy of the receipt for the insurance premium within three months from the date the Licence is issued, failing which, the licence will be revoked. Such health insurance is not required for home-based carers, for persons working with persons with disability and persons needing constant care; or for third country nationals working in the public service.

2.5 What are the timeframes involved?

Jobsplus endeavours to process applications in the shortest time possible.

In respect of third country nationals who do not fall under the criteria for a single permit application, the application is first considered from a labour market perspective. The application may be referred to other stakeholders for views. If no objections are received from the stakeholders concerned, the Employment Licences Unit will proceed to issue the licence. Generally, feedback from stakeholders may take four (4) to six (6) weeks to reach Jobsplus.

In case of TCNs eligible under the single permit directive, kindly refer to the following: <https://identitymalta.com/citizenships-expatriates/> for further information.

2.6 How may I apply for renewal of an employment licence and what other information should I know?

In respect of third country nationals, an application for renewal, accompanied by the relevant fee, must be received prior to the expiry of the prevailing Employment Licence, and a receipt of payment will be issued. If applications are made late, and the prevailing Employment Licence expires, the third country national concerned is not permitted to continue to work beyond the expiry date of his or her licence.

Applications for renewal for third country nationals must be accompanied by evidence of payment of national insurance and income tax, upon the prescribed Jobsplus form (Tax Declaration Form). This evidence is still needed in the case of an application by (a) an employer who is applying for the same third country national but is submitting a 'new' application rather than one for renewal; and/or (b) an employer who is seeking to re-employ the third country national under a different company. Evidence of the ongoing need for this deployment is also necessary. The application for a TCN is re-considered from a labour market perspective (see 2.4). If the applicant is applying for a renewal of an employment licence, there is no need to re-submit the Curriculum Vitae or the Position Description if

⁷ <http://www.jobsplus.gov.mt>

the third country national is to be doing the same work. This should however be clearly declared in the covering letter. Neither is there need to resubmit any qualifications/reference letters in such instances.

When the new licence is picked up more than four weeks before its commencement date, the original copy of the old licence is to be returned at the same time.

2.7 What is the fee for an employment licence?

In respect of new applications, and in line with Legal Notice 254 of 2009, the fees are as follows:

a) Third country national Long-term Residents	Payable on issue	€ 58
b) Asylum seekers; recognized refugees; beneficiaries of subsidiary protection and persons granted analogous forms of protection.	Payable on issue	€ 58
c) All other third country nationals	Payable on application	€ 150
	Payable on issue	€ 80

The application fee is waived in respect of employers of persons exempt from providing private health insurance in respect of their third country national employee. This provision is not applicable for the employment of third country nationals in the public service.

In cases of the short-term employment (for less than twenty working days) of a group of foreign nationals in the film and entertainment industry, a bulk licence fee is payable as follows,

TCNs	€150 for the first person
	€15 for any additional person up to a maximum of €500.
	Payable on application
	If the bulk licence is issued, an additional €80 is payable.

In the case that the short term employment is of more than 20 days, the normal application procedure i.e. one application form for each individual, applies. Especially in the case of third country nationals, the application must be submitted at least 8 weeks before the TCN's intended arrival in Malta, to allow for security clearance.

In respect of applications to extend an employment licence, the renewal fees are as follows:

a) Third country national Long-term Residents	Payable on issue	€ 58
b) Asylum seekers; recognized refugees; beneficiaries of subsidiary protection and persons granted analogous forms of protection.	Payable on issue	€ 34
c) All other third country nationals	Payable on application	€ 150
	Payable on issue	€ 80

2.8 If my application is rejected, may I request reconsideration?

The appeal procedure regarding the single permit applications is provided in Legal Notice 160 of 2014 and as explained in the relative information leaflet.

As regards other applications not falling under the above-mentioned procedure the following process applies:

Following feedback from Jobsplus, applicants may, within one calendar month from the date of rejection letter, submit a request for reconsideration. In the request for reconsideration applicants have to substantiate the request for the issue of Licence by submitting new information and/or by giving reasons why the request should be favourably considered

Only one request for reconsideration may be made in respect of any rejection.

An employer may not submit a second application for the same person for the same occupation for which a rejection would have been issued and confirmed at reconsideration stage, for the following 6 months, from the date of the second letter of refusal.

3. Eligibility

3.1 *May I apply to be self-employed in Malta?*

First of all it has to be remarked that the single permit application process does not apply in the case of self-employment.

EEA/Swiss nationals and their TCN “family members” or “other family members”, may take up self-employment in Malta without the need for an employment licence, although they must still send an Engagement Form to Jobsplus (in line with Legal Notice 110 of 1993).

In respect of third country nationals, an employment licence is required and is only granted in exceptional cases. In order to qualify for self-employed status, a third country national must meet one or more of the following criteria:

- a. Invest in Malta capital expenditure of at least Eur 500,000, within 6 months from the date on which the Jobsplus licence is issued. Capital expenditure shall solely consist of fixed assets (such as immovable property, plant and machinery) used for the business purposes as reflected in the business plan submitted with the application. Rental contracts do not qualify. Such expenditure needs to be supported by receipts in the TCN’s name. The application also needs to be accompanied by a letter of reference in respect of the TCN, from a reputable Maltese bank that certifies that the TCN has the facility to raise such capital;
- b. Highly skilled innovators with a sound business plan to be submitted with the application who commit to recruiting at least three EEA/Swiss/Maltese nationals within eighteen months of establishment;
- c. A person leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to Jobsplus.

Applications containing a firm commitment re the engagement of EEA/Swiss/Maltese nationals as part of the staff complement will assist in the favourable consideration of an application.

Long-term residents, Asylum Seekers, persons enjoying Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status require an employment licence to work as self-employed in Malta. However, they are exempt from meeting the above criteria.

3.2 *May a Maltese resident company of which I am a shareholder or ultimate beneficial owner, apply for a licence to employ me?*

The company of which the foreigner is a shareholder or ultimate beneficial owner must meet one or more of the following criteria:

a Every TCN shareholder must have a fully paid up share capital of at least Eur 500,000 which may not be redeemed, reduced or transferred to a third party during the first two years following the issuing of the Employment Licence. This share capital must be through a cash/stock injection in Malta;

b Have made a capital expenditure of at least Eur 500,000 that is to be used by the company. Capital expenditure shall solely consist of fixed assets (such as immovable property, plant and machinery) used for the business purposes as reflected in the business plan submitted with the application. Rental contracts do not qualify. Such expenditure needs to be supported by receipts in the company's name;

c The company is leading a project that has been formally approved by Malta Enterprise and formally notified by the latter to Jobsplus.

Moreover at application stage, a business plan in conformity with the Memorandum and Articles of Association of the company must be submitted for all the aforementioned scenarios, together with the Company Registration Certificate indicating that the said company has already been registered with the Malta Financial Services Authority.

Applications containing a firm commitment re the engagement of EEA/Swiss/Maltese nationals as part of the staff complement of the company will assist in the favourable consideration of an application.

Long-term residents, Asylum Seekers, persons enjoying Subsidiary Protection/Temporary Humanitarian Protection Status and Refugee Status require an employment licence. However, they are exempt from meeting the above criteria.

Executive Directors – in cases where a director is not a shareholder, the application does not need to meet the above criteria, and it will be processed from a labour market consideration (see 2.4 on what the labour market consideration involves).

3.3 *May I work part-time?*

There are no restrictions on the type of work undertaken by Long Term Residents or by recognized Refugees and persons with Temporary Humanitarian Protection or Subsidiary Protection. Asylum seekers may work on a full or part-time basis.

Third country nationals may only work on a part-time basis if they are in possession of a valid Single Residence / Work Permit or an Employment Licence. Holders of primary employment may submit an application for an Employment Licence for secondary employment as per conditions indicated in section 2.2. of these guidelines. Part-time work as the sole primary employment is possible only if such job enjoys a remuneration which is at least twice the minimum wage and entails a minimum of 20 hours work per week throughout the validity of the employment licence. Details of such conditions should be clearly explained in the Position Description (see 2.2(c)).

3.4 *I am a student in Malta. May I work?*

Only TCN students holding a residence permit issued under Legal Notice 29 of 2008 are entitled to take up employment, for a maximum period of ten hours each week as long as they are in possession of an Employment Licence. Students are not granted licences to take up self-employment. Upon submission of an application, proof of study in Malta must be submitted (see 2.2).

(u) Proof of study in Malta, in the case of students

TCN students in Malta to study English do not fall under the above legal notice and therefore the Employment Licences Unit will not accept applications for issue of an Employment Licence.

Applications for employment licences for students are received from the employer seeking to recruit the student.

Applications are not accepted in respect of students who are still in their first year of residence in Malta or who do not have a copy of a student's residence permit issued by the Department of Citizenship and Expatriate Affairs.

The expiry date of the Employment Licence will correspond to the date of commencement of the following academic year. For the purpose of these guidelines "completion of studies" will be taken to mean the date when Faculties/Institutes/Centres work out final classifications following issue of resit results. Applications from employers in respect of students who have not left Malta for at least three consecutive months following completion of their studies will not be accepted, except where required by public policy and in the case of graduates (ISCED 5 and higher).

3.5 *I am a Maltese citizen who has adopted a child from a country outside the EEA/Switzerland. May my child work?*

A third country national adopted in accordance with Maltese Law by a Maltese national before his or her eighteenth birthday will be granted an automatic Employment Licence after age 21. Before this age, no licence is necessary as the person in question would be considered an "exempt person" in terms of the Immigration Act

3.6 *I am related to a long-term resident in Malta. May I work?*

Family members of long-term residents (LTRs) who acquire a residence permit under the Family Reunification Regulations (LN150 of 2007) are entitled to apply for an employment licence to work in Malta. From the thirteenth month after reunification, family members of LTRs are entitled (in the same way as the LTR him or herself) access to employment and to self-employment, without the need for labour market considerations.

In this instance, family members refers to (a) the LTR's spouse who is aged twenty one or over; (b) the unmarried minor children of the LTR and of his spouse, including children adopted in a manner recognized by Maltese law; and (c) the unmarried minor children, including adopted children, or the LTR or of the spouse, as the case may be, where the sponsor or the spouse has custody and the children are dependent upon him/her.

Proof of relation to LTR is to be presented upon request and/or a copy of passport showing residence in Malta on the basis of family reunification.

Applications for employment licences for family members who are not granted rights out of Legal Notice 150 of 2007 but who wish to work in Malta will be treated as third country national applications.

4. After an Employment Licence is issued

4.1 *What happens when the licence is issued?*

In the case that it is not a single permit application when the employment licence is issued, the applicant is immediately informed.

At Jobsplus, an automatic Engagement Form is generated, which signals the start of employment on the date when the licence was issued. The employer is still to advise the Jobsplus of such engagement by sending an Engagement Form containing the actual date of commencement of employment. This form may be obtained from www.jobsplus.gov.mt

Compliance with social security, income tax and employment conditions regulations must be ensured.

The employee in respect of whom an employment licence is issued, must go to the Department for Citizenship and Expatriate Affairs in order to obtain a residence permit. This must be done within three months from the date of the employment licence or three months from date of entry into Malta, if the third country national is abroad on the date of issue of Licence.

4.2 *What do I do in case of a change of address?*

Jobsplus is to be notified immediately of any change of address in respect of the residence of a foreign national or the site of work at which he/she is deployed. A new Employment Licence will be issued free of charge against submission of the old Licence.

4.3 *How may a licence be cancelled or revoked?*

An employment licence may be stopped in one of two ways. First, it may be revoked by Jobsplus. This may occur if the employer fails to collect the licence within one month from date of issue, or if the licence conditions are breached. Examples of the latter include (but not exhaustively) instances such as: (a) third country nationals (TCNs) undertaking different work to that specified in the relative employment licence; (b) TCNs working for a different employer than the one specified on the

employment licence; (c) issue of licence on the basis of false information or false documentation; and (d) failure to present receipt of payment for health insurance within specified timeframe. The Employment Licences Unit may also revoke an employment licence if the person in respect of whom the licence is issued is found guilty of committing a criminal offence.

Second, it may be cancelled by the employer, for a number of reasons, for instance if the third country national concerned (a) did not come to Malta, (b) did not report to work, (c) left the employer's service during the validity of the licence, and (d) did report to work but the employment relationship was subsequently terminated through dismissal or redundancy.

In the case of cancellation, the employer is to advise the Jobsplus in writing, stating the reason for cancellation, the with effect date and is to return the licence to Jobsplus.

4.4 *What happens if a third country national is found working without a licence?*

Such instances are reported to the Immigration Police as they constitute a violation of the provisions of the Immigration Act (Cap 217) and the employer would be subject to prosecution and penalties while the foreign national concerned may be removed from Malta.

Employers found guilty by the Courts of Law of illegally employing third country nationals will be barred from applying for any new or renewed licence for twelve months.

Reports of illegal employment may be made to Jobsplus's freephone 80076501 or by completing the form accessible from our website.

5. Other Considerations

5.1 *May I apply for a third country national currently working with someone else?*

An application for a third country national currently employed with someone else, can only be issued/recommended when the first licence has expired or has been cancelled by the employer.

5.2 *What rights does a foreign national working in Malta have?*

Conditions of Employment

The Employment and Industrial Relations Act applies to all foreign nationals engaging in employment in Malta. Employers should not engage foreign nationals on conditions of work, (ie wages/salaries, hours of work etc) which are less favourable than those established for work of the same character or nature by national laws and regulations. Any employee who believes that his or her rights may be

breached in any way may seek recourse at the Department for Industrial and Employment Relations at Melita Street, Valletta.

Equal Treatment

The Jobsplus encourages Equal Treatment of workers and implements this through the services offered. All Jobsplus services are available to those individuals who have an inherent right to work in Malta.

Occupational Health & Safety

Employers are obliged to ensure that foreign nationals are sufficiently conversant in English and/or Maltese to understand all health and safety requirements.

5.3 *What happens if I submit false or, deliberately wrong or incorrect information?*

As indicated in the application form itself, in such a case (for example, applying for a position, and then, engaging the TCN on different working activity or job other than that applied for), not only the application will be refused or rescinded, but the applicant organization will also be liable to prosecution.

5.4 *May we show our appreciation for the issue of an employment licence?*

Jobsplus aims to provide the best possible service. If you feel that you have been served well, we would be very pleased to hear this on employment-licences.jobsplus@gov.mt. However, we do have a strictly observed policy that employees are not allowed to receive any form of gifts for their services and we thank you for your understanding.