

Government sets up National Office for FDI Screening

All interested practitioners are hereby being informed that the National Foreign Direct Investment Screening Office (hereinafter ‘the Office’) has been set up in order to implement the provisions of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union.

The **scope and remit** of the Office shall be to screen new FDI projects, joint ventures with a foreign component and the transfer of any shares and/or controlling interests in existing companies where the owner, titleholder or ultimate beneficial owner originates from third countries (that is, any country which is not a member of the European Union).

The **purpose** of the screening process is to protect European Union intelligence, knowledge and technology as well as the security interests of the Union.

The **sectors** which shall be subject to screening (hereinafter referred to as ‘the Relative Activities’) include the following:

- (a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- (b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009 (15), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (c) supply of critical inputs, including energy or raw materials, as well as food security;
- (d) access to sensitive information, including personal data, or the ability to control such information; and
- (e) the freedom and pluralism of the media.

Consequently, it is of crucial importance that business practitioners in Malta (including audit and accounting firms, legal firms, business consultants and all practitioners who are in any way involved in the promotion of foreign direct investment) are to observe the procedures which are being outlined hereunder.

Prior to submitting the documents required by the Malta Business Registry (hereinafter ‘MBR’) for the purpose of company registration, **all applications for business relative to the above-mentioned sectors, will need to obtain the necessary clearance from the Screening Office.** Hence, they are to submit an application for such purpose with the Office which shall contain the following information:

- (a) the ownership structure of the foreign investor and of the undertaking in which the foreign direct investment is planned to be made or has been made, including information on the ultimate investor and/or beneficial owner and participation in the capital;
- (b) the approximate value of the foreign direct investment;

- (c) the products, services and business operations of the foreign investor and of the undertaking in which the foreign direct investment is planned or has been completed;
- (d) the jurisdictions, including Member States, in which the foreign investor and the undertaking in which the foreign direct investment is planned or has been completed to conduct relevant business operations;
- (e) the funding of the investment and its source;
- (f) the date when the foreign direct investment is planned to be completed or has been completed; and
- (g) any other information as the Office may reasonably require for the proper execution of its functions in accordance with this Act.

In order to allow an adequate transitional period for the introduction and implementation of the screening process, MBR shall, with effect from the 1st April, 2020, forward to the Office all relevant applications for company registration and share transfers relative to third country nationals / interests.

It is important to underline that, notwithstanding the practice to define the Objects of the company to be registered in wide-ranging terms, the core activities which the company shall be undertaking are to be clearly indicated in the Memorandum, whereas activities of a superfluous nature are to be excluded. In case of doubt, the service provider may seek an initial opinion from the Office which will give the necessary guidance as may be required in the case in question.

The Office would like to reassure practitioners that it is not its intention to create any unnecessary bureaucracy, so much so that in those cases where it is clear that the activities do not require screening, the Office shall endeavour to give the green-light to MBR within 24 hours.

With regards to the Relative Activities, it is to be noted that a full screening process will be undertaken with full due diligence on the activity and on the ultimate beneficial owner. This process will take some time to conclude, although the Office will exert its best endeavours to conclude the process in the shortest time possible whilst not compromising, in any way, the extent and quality of the screening to be conducted, and could also involve some expenses to the promoter, depending on the case.

Kindly be informed that the Office shall be governed by a Board which shall be chaired by Mr. Mario Galea (ex-CEO, Malta Enterprise).