

Guidelines on the definition of In or From Malta



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Digital Innovation is, by definition, a rapidly evolving sector. These guidelines are expected to be updated to keep abreast with technology, regulatory and operational developments.

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Article 6 of the MDIA Act provides an overview of the purpose, functions and powers of the Authority. Specifically, sub-article (3)(a) states that the Authority shall "*regulate, monitor and supervise the provision of such innovative technology arrangements and innovative technology services in or from Malta*".

In this regard, the Authority is providing further guidance on the definition of "*in or from Malta*" as applicable to all prospective Innovative Technology Arrangements ('ITA') and Innovative Technology Service Providers ('ITSP') that wish to obtain recognition by the Authority.

Applicability of 'In or From Malta' to ITAs

An ITA Applicant must demonstrate to the Authority that the ITA has a reasonable element of substance in connection to Malta. This can be achieved by indicating to the Authority how:

- the development of the ITA has occurred or will be carried out in Malta; or
- the operations of the ITA will be carried out in or from Malta.

In determining whether an Applicant fulfils these criteria, the Authority will be particularly looking at operational factors connecting the ITA to Malta, these include, but are not limited to the following:

- the number and type of employees working in Malta;
- the extent of control and management of whose business is exercised and administered in Malta;
- personnel supporting the administration, accounting and financing or other aspects of the business of the ITA;
- the extent of the ITA development carried out in Malta; and
- development and running of specialised centres focusing, for example, on marketing, processing or customer service of the ITA.

Other factors that the Authority will also take into consideration, but that, on their own, do not provide sufficient to be considered as operating in or from Malta, include the following:

- ITA Applicant being a registered legal organisation in Malta, demonstrating however that the legal organisation is not simply a 'shell';
- local Qualifying Shareholders;
- significant IP or copyrights registered in Malta;
- support of local ITSP i.e. having a local Technical Administrator and/or a local Systems Auditor;

- ongoing support of local public educational initiatives;
- provision of sustained traineeships, secondments or internships; or
- ITA Applicant demonstrates it is supporting a local project with a positive socio-economic benefit relating to technology.

The above factors are not to be considered as exhaustive and the Authority will consider other factors presented by ITA Applicants to demonstrate a reasonable element of substance in connection to Malta.

Applicability of 'In or From Malta' to ITSPs

In determining whether the ITSP Applicant has a reasonable element of substance in connection to Malta, the Authority requires that the following factors, *inter alia*, are satisfied:

- The ITSP has presence in Malta through the establishment of an operational legal organisation, office or branch (similar operational and other factors applicable in the case of ITAs, as described above, will also apply for ITSPs in determining the element of substance in connection to Malta).
- In the case where the ITSP is an individual, the registered ITSP must also be a resident in Malta in addition to the above requirements.

The above factors are not to be considered as exhaustive and the Authority will consider other factors presented by ITSP Applicants to demonstrate a reasonable element of substance in connection to Malta.