

1. What is the Second Schedule to the Civil Code?

Prior to Act XIII of 2007, the Civil Code (Cap. 16 of the Laws of Malta) only regulated natural persons and not legal persons. Although legal persons have long been recognised in Malta, there has never been a specific law which dealt with them in a holistic and comprehensive manner.

By virtue of said Act XIII, the Civil Code now contains the Second Schedule which regulates the registration of legal organisations both Maltese or foreign and international (which latter organisations may or may not be vested with legal personality and are subject to the law applicable to their establishment) and it also grants legal personality to those Maltese organisations which are capable of acquiring said personality according to the requisites laid down in said Act.

Act XIII of 2007 also amended and gave clarity to the definition of the term 'person' in the Interpretation Act (Cap. 249) which had given rise to problems in interpretation and had led to conflicting judgements in this regard.

Act XIII is an umbrella law which applies to all legal persons, some of which may be regulated by special laws other than the Second Schedule to the Civil Code. In the hierarchy of laws, special laws take precedence over the Second Schedule. If a matter is regulated by the Second Schedule but is not regulated by the special laws or by other provisions of the Civil Code, then it is the Second Schedule which applies. If there is a conflict between the Second Schedule and the special law, it is the special law which prevails over the Second Schedule. The title on Civil Partnerships in the Civil Code is considered to be a special law in its own right and thus prevails over the Second Schedule.

Organisations which are not regulated by special laws are regulated by the Second Schedule to the Civil Code. Hence the Second Schedule regulates associations and foundations since there is no special law which governs them. Associations are not obliged to register in terms of the Second Schedule whereas foundations are.¹ There is no need to register pious foundations and marriage legacies. Until the enactment of Act XIII of 2007, foundations lacked a clearly defined legal framework within which to operate and it was only with the coming into force of the Act that the foundation was legislatively defined.

In virtue of an administrative measure adopted recently, legal organisations which are registered in the Public Registry with the Registrar for Legal Persons in terms of this Schedule or are registered elsewhere in another Registry in terms of a special law wherein they acquire legal personality are eligible to apply for the issuance of an Electronic Identity (e-ID) for their Organisation. Further information in relation to the e-ID can be access through the myGov Portal:- www.myGov.mt or by contacting the e-ID Registration Office via e-mail: idmo.mitc@gov.mt or tel.: 356 2122 6627/8.

2 . Where should legal organisations be registered ?

If the organisation is not governed by a special law which contains provisions for its registration and the granting of legal personality, then such organisation may be registered in the Public Registry by

¹ * Special laws are Acts of Parliament or part of the Civil Code which regulate a particular legal form or forms of legal organisations.

the Registrar for Legal Persons and in accordance with the provisions of the Second Schedule to the Civil Code and Regulations issued thereunder.

Where an organisation can acquire legal personality through registration under any other law which is applicable to the form of the organisation, it shall not be lawful to register this organisation according to the provisions of the Second Schedule of the Civil Code and it is the special law which takes precedence over the said Schedule.

If the special law grants legal personality to an organisation without providing for registration and a Register, then the Second Schedule steps in as the default law.

3. Which legal organisations are registered under the Second Schedule to the Civil Code ?

The following organisations are registered in terms of the said Schedule:

1. Public organisations - when they are formed as foundations - but not public agencies or corporations governed by special laws. Public organisations are organisations where the government has a right to nominate and remove a majority of administrators and must not be confused with public purpose organisations which pursue a social purpose.²
2. International organisations;
3. Foreign organisations;
4. Private foundations;
5. Purpose foundations;
6. Associations which do not take a legal form which can be registered under another law eg companies or commercial partnerships. Companies and commercial partnerships are governed by the Companies Act and cannot be registered in the Register of Legal Persons.

4. Is the Commissioner for Voluntary Organisations part of the set-up of the Public Registry?

No. The Commissioner for Voluntary Organisations is governed by the Voluntary Organisations Act (Cap. 492).

The Office of the Commissioner for Voluntary Organisations is situated at:

Block C, Beltissebh

Floriana FRN 1700

Tel: (+356) 25687261

email: vo@gov.mt

² The vast majority of organisations are also voluntary organisations

The Registrar for Legal Persons is governed by the Second Schedule to the Civil Code (Cap. 16).

The Office of the Registrar for Legal Persons is situated at:

“Casa Bolino”,
116 West Street,
Valletta. VLT 1535

Tel No: (+356) 21239777

The office is open from Monday to Friday during the following hours:

Winter (1st October to 15th June): 8.00 to 13.00

Summer (16th June to 30th September): 8.00 to 11.30

5. Can Voluntary Organisations also be registered with the Registrar for Legal Persons in the Public Registry ?

Yes if their legal form allows such registration to occur. Trusts, for example, which can be voluntary organisations cannot register as legal persons.

The Voluntary Organisations Act regulates *the purpose* of an organisation whereas the Second Schedule of the Civil Code regulates *the legal form* of an organisation.

Voluntary organisations do not need legal personality to achieve their purpose and can therefore still be recognised at law and enrol with the Commissioner for Voluntary Organisations.

However, in order to acquire legal personality, they must be registered with the Registrar for Legal Persons in terms of the Second Schedule to the Civil Code.

Voluntary organisations which have the legal form of a *foundation* are obliged to register with the Registrar for Legal Persons because they take a legal form which is subject to mandatory registration.

6. What is legal personality ?

Legal personality is the status granted by law to an organisation which is established for a lawful purpose stated in writing in a constitutive instrument. The organisation has a patrimony of assets and liabilities, separate and distinct from that of any other person. It has the legal powers to achieve such purpose through the administration of its own governing body.

Amongst the principal features of a legal person is the requirement to have a legal and judicial representative since contracts, court orders and judgements will benefit, burden, limit or be binding on the organisation itself and not on individuals. The legal person must also be registered in Malta and have an address in Malta.

To be recognised as a legal person, the organisation must comply with the formalities which are applicable to the legal form selected for its establishment and registration either according to the Second Schedule to the Civil Code or according to any other special law which grants legal personality.

7. What are the advantages of registering an organisation with the Registrar for Legal Persons and of acquiring legal personality ?

Registration has impacts on liability in some cases and on disclosures which may have to be made public. You might wish to contact your lawyer for advice. In the case of a foundation you would need to obtain the services of a Notary Public to publish the relative deed. The Registrar is concerned only with the registration process of an application.

8. What must one do to register a purpose foundation ?

This requires a public deed to be drawn up by a Notary. You would need to submit the following documents with the Registrar:

1. The application form (Form A as per Legal Notice 97/ 2008);
2. An authenticated copy of the constitutive deed;
3. The consent form of the administrators bearing their original signature;
4. A resolution by the Board of Administrators resolving to register the organisation with the Registrar for Legal Persons;
5. A certified photocopy of the receipt/Certificate of enrolment with the CVO if applicable;
6. A certified photocopy of the identity card of all the current administrators **and of the person who delivers/ signs the application form / other forms, and / or** a certified photocopy of the identity card of the advocate/notary if they present and sign the application;
7. Any other form which may be applicable as per Legal Notice 97 / 2008;
8. The registration fee as per Legal Notice 96/2008 (which fee will be reduced by 90% on presentation of the CVO Certificate of enrolment to the Registrar for Legal Persons).

You might wish to refer to Article 29 of the Second Schedule to the Civil Code which lays down the requisites which the relative Statute of the Foundation must contain on pain of nullity. Other relevant articles are Article 32A, Article 32 [4] and Article 35 (2).

9. What must one do to register a private foundation ?

In addition to the above documents if and where applicable, you would need to file:

1. a Note of registration regarding the private foundation;³
2. the authorisation issued by the MFSA permitting an administrator to act as an administrator of a private foundation;
3. a certified photocopy of the identity card of the administrator/s/directors.

10. What must one do to register an association?

³ The Note is not to be confused with the Note which is enrolled with the Director of the Public Registry in accordance with article 50 (1)(m) of the Notarial Profession and Notarial Archives Act (Cap.55) unless the exemption in sub-article (9) of said article 50 applies.

This does not require a public deed to be drawn up by a Notary. You would need to submit the following documents with the Registrar :

1. The application form - Form A as per Legal Notice 97/ 2008;
2. An authenticated copy of the association agreement/statute;
3. The consent form of the administrators bearing their original signature;
4. A resolution by the Board of Administrators resolving to register the organisation with the Registrar for Legal Persons;
5. A certified photocopy of the receipt/Certificate of enrolment with the CVO if applicable;
6. A certified photocopy of the identity card of all the current administrators and of the person who delivers/signs the application form/other forms, and/or a certified photocopy of the identity card of the advocate/notary if they present and sign the application;
7. Any other form which may be applicable as per Legal Notice 97/2008;
8. The registration fee as per Legal Notice 96/ 2008 (which fee will be reduced by 90% on presentation of the CVO Certificate of enrolment to the Registrar for Legal Persons);
9. A declaration by an administrator regarding the constitutive assets.

You might wish to refer to Article 49 of the Second Schedule to the Civil Code which lays down the requisites which the relative Statute of the association must contain on pain of nullity. Other relevant articles amongst others in particular are article 53(2) and article 56(3).

11 .What must one do to register a foreign organisation?

You would need to submit the following documents with the Registrar :

1. The application form - Form B as per Legal Notice 97/ 2008;
2. An authenticated translation in Maltese or English of the constitutive deed/ Statute⁴;
3. The consent form of the administrators bearing their original signature;
4. A resolution by the Board of Administrators resolving to register the organisation with the Registrar for Legal Persons in Malta;
5. A certified photocopy of the identity card of all the current administrators and of the person/local representative who delivers/signs the application form/other forms and/or a certified photocopy of the identity card of the advocate / notary / local representative if they present and sign the application;
6. Form H and any other form which may be applicable as per Legal Notice 97 / 2008;
7. The registration fee as per Legal Notice 96/2008;
8. A declaration by an administrator regarding the constitutive assets.

You might wish to refer to Article 2; Article 12(5); Article 29(4) (h); Article 49(2)(i) of the Second Schedule to the Civil Code.

12. Can a foundation employ the founder/s ?

⁴ The constitutive deed /statute must be drawn up and authenticated in accordance with the foreign law applicable

The founder of a both a private and purpose foundation can be employed with the foundation. The foundation is a separate legal person and thus can enter into such contracts with anyone including the founder/s. The restrictions which exist concern the Commissioner of Voluntary Organisations and do not constitute a bar to registration of the foundation as a legal person.

13. Can a company establish a foundation ?

Yes.

14. Can an owners association constituted in terms of the Condominium Act apply for registration with the Registrar for Legal Persons to acquire legal personality ?

Yes. Registration under the Second Schedule to the Civil Code does not have the same effect as registration under the Condominium Act. It should be noted that registering with the Registrar for Legal Persons does not satisfy the provisions of Article 15 of the Condominium Act where the administrator is obliged to inform the Land Registrar of his appointment.

15. Can a school apply for registration with the Registrar for Legal Persons ?

Yes if it has a licence to operate which grants it legal personality and there is no other registry where it can be registered.

16. Can an organisation benefit under a will or a donation ?

Yes. However it must be registered as a legal person. Testamentary dispositions made in favour of an unregistered organisation are not effective unless an application for the registration of the organisation is made within one year from the day of the opening of succession.

Donations made to an organisation are deemed to have been made on the assumption that the organisation is registered or will be registered. They do not come into effect unless an application for the registration is made within one year from the day of the donation.

17. What are the fees charged and to whom are cheques made payable ?

The relative tariffs are established as per the Civil Code (Second Schedule)(Fees) Regulations, 2008 (Legal Notice 96/98) and are payable to The Director of the Public Registry.

18. Which forms are applicable in relation to the Second Schedule to the Civil Code ?

In the Civil Code (Second Schedule)(Notifications and Forms) Regulations, 2008 (Legal Notice 97/08) you will find the prescribed forms applicable in terms of the Second Schedule to the Civil Code:

[Form A: Application for registration of an organisation under the laws of Malta](#)

[Form B: Notice of registration of a Foreign or International organisation and appointment of local representative](#)

[FORM F: Notification of changes of Administrator of an organisation](#)

[FORM H: Notification of appointment of a judicial representative for organisations which do not have any administrator ordinarily resident in Malta](#)

[Form DD: Notice of assets added to an organisation by additional endowments](#)

[THE CONSENT FORM regarding AN ASSOCIATION](#)

[THE CONSENT FORM regarding A FOUNDATION](#)

[THE DECLARATION BY AN ADMINISTRATOR regarding THE CONSTITUTIVE ASSETS](#)

[NOTE OF REGISTRATION OF A LEGAL PERSON](#)

Disclaimer: As a matter of course, the Registrar for Legal Persons does not give advice on the interpretation of the law. The FAQs above are thus not authoritative guidelines and are being given to facilitate and enable applicants to come to grips with this relatively new law. Once an application is submitted, the Registrar may have further comments to make and any assumptions, interpretations or omissions being made herein would not be binding on the Registrar. It is also possible that further documentation is requested once an application is lodged. The same applies following the issuance of new Regulations.