



# Office of the Regulator

Individual Investor Programme (ORiip)

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Fourth Annual Report on the  
Individual Investor Programme  
of the Government of Malta  
(1<sup>st</sup> July 2016 – 30<sup>th</sup> June 2017)

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November 2017



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## oreword by the Regulator

This Report - which is my second report since my appointment as Regulator of the Individual Investor Programme in February 2016 and the fourth in its series – is being drawn up in terms of subarticle 8 of Article 25 of the Maltese Citizenship Act, Cap. 188. It covers the period 1 July 2016 to 30 June 2017.

All in all, this has been once again a year where the success of this Programme has evinced no bounds. Indeed the number of persons becoming Maltese citizens in terms of this Programme during this period has witnessed a sharp increase, thereby contributing a much bigger share than last year in the country's economic growth all around and in various spheres of the country's blooming economy. Since it appears that the income the Government is deriving from this Programme will in the coming years definitely play an extremely important role in the country's infrastructural boom and social development, it is highly imperative that this Programme will continue to remain as highly dynamic as possible. With this aim in view, Government should ensure that this Programme is being rigorously monitored and kept under constant review so that it will be well sustained and upgraded without fail as and when required. Considering that other EU countries do have similar schemes/programmes, a close watch on the development of such schemes/programme should always be kept so that Malta's Programme will not only continue to remain in the forefront but will also continue to attract the best applicants from around the world.

It is pertinent to point out that recommendations put forward by my predecessor in his Second Annual Report as well as others put forward by the undersigned in a Memorandum to the then Minister of Justice, Culture and Local Government concerning changes to the Individual Investor Programme Regulations are actively being considered by Government in the light of a public consultation process which the Government intends to launch in the near future with the primary aim of enhancing the Programme and possibly taking it to the next higher level. This exercise is expected to be finalized by mid-2018. As already previously pointed out in the said Report and Memorandum, the changes proposed therein basically involve the updating of provisions in order to reflect practices and procedures adopted by the IMA, which practices and procedures are, in effect, **quite valid, reasonable and called for**. It is further hoped that this year's recommendations will eventually be also taken on board during the coming months.

At one point in time this Office cherished the opinion that the provisions of subsections (1), (3) and (5) of Section 25 of the Malta Citizenship Act (Cap 188) concerning the functions of the Regulator **taken together** duly authorized the Regulator to deal directly in *ad hoc* manner with certain situations and instances which required a unique adaptation of the way in which specific provisions of these Regulations need to be implemented or fulfilled by the IMA in the sense that once such interpretation or implementation was acceptable to the Regulator then in itself that would imply that those specific provisions were correctly implemented. If this view of the provisions of the above-mentioned subsections were to be upheld by the Attorney General, this would definitely have gone a long way in reducing the need of having to amend the relative Regulations every now and then so as to cater for exceptional or unique instances emanating from circumstances prevailing in other countries of different systems and/or cultures. However, the Attorney General does not share the same view since in his opinion the function of the Regulator "is to oversee and monitor the Programme and should not intervene as long as the rules in general are being adhered to in substance by the Identity Malta Agency, due account being taken of some practical considerations which may address situations which arise from time

to time and which might not have been previously foreseen". In practice, the Attorney General's opinion means that in the implementation of this Programme Identity Malta Agency, as the Administrator of this Programme, is expected to take due account of some practical considerations which may address situations which arise from time to time and which might not have been previously foreseen. In a way this does solve an essential part of the problem in that it has been made clear that the Identity Malta Agency is not bound to implement and follow the Regulations *ad litteram* "as long as the rules in general are being adhered to in substance". Section 5.3 of this Report deals with this subject in more detail.

On its part the Identity Malta Agency has also been actively considering fresh ideas, changes and innovations to the Programme with a view to making it more dynamic, more efficient and more effective so as to withstand the challenges that it may face through the coming years from various sources and at the same time project Malta's Individual Investor Programme further up the front line.

In conclusion, I wish to acknowledge the input of my staff in drawing up this report. My special thanks go to Mr. Jesmond Camilleri (Regulatory Officer) whose total dedication and unstinting support have given a unique impetus to this Office's forward thrust and rendered my regulatory functions at law more meaningful and worthwhile in a concerted effort to achieve a better scrutiny of the work performed by the Identity Malta Agency insofar as the Individual Investor Programme is concerned. The addition of Ms Graziella Bartolo Pizzuto to this Office's staff as from the first week of April 2017 has further increased our capabilities to organize ourselves better and more effectively. Finally my heartfelt thanks insofar as this Office is concerned go to Ms Sandra Borg Agius who has been a real inspiration in this Office's proper administration and organization. I would also like to show my gratitude to the Identity Malta Agency's top management, particularly the Chairman, Mr Joe Vella Bonnici, the Chief Executive Officer (IIP), Mr Jonathan Cardona as well as his immediate supporting staff, top amongst whom is Ms Monica Farrugia. Generally speaking, the IMA's open door policy in regard to this Office is truly appreciated and commended and has in turn strengthened our relationship and proper understanding of our respective functions.

**Carmel L. De Gabriele**  
**Regulator**

**6 September 2017**

**Annual Report on the Individual Investor Programme**

as on the 30 June 2017

In fulfillment of the provisions of Article 25(8) of the Maltese Citizenship Act (Cap. 188)

# Glossary

EU	European Union
GDP	Gross Domestic Product
IIP	Individual Investor Programme
IMA	Identity Malta Agency
ORiip	Office of the Regulator (Individual Investor Programme)

## 1.0 Introduction

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This report constitutes the fourth, in a series of annual reports required at law, in order to regulate the Individual Investor Programme in terms of Article 25(8) of the Maltese Citizenship Act (Cap 188). In line with previous reports, the timeline of this year's annual review will consider the period between 1 July 2016 and 30 June 2017.

The third meeting of the Monitoring Committee was held on Monday 31<sup>st</sup> October 2016 whilst the third Annual report was tabled in Parliament on Wednesday 9<sup>th</sup> November 2016.

During the period under review we have witnessed a substantial increase of approved applications. Great care was taken by this Office to keep under proper surveillance the processes involved in the adjudication of the applications that were processed by the IMA during the period covered by this Report.

It has to be pointed out that the IMA and this Office have continued to work closely together, meeting and communicating with each other on a regular basis in order to discuss issues arising as a result of the implementation of the Programme.

The basis of this report is similar to last year's document:

- Detailed analysis of statistics which were made available by the IMA is contained in **Section 2**.
- Themes that were in the public domain (namely either raised in parliament through the submission of parliamentary questions and/or published in the Media) are covered in **Section 3**.
- Feedback provided by the IMA on recommendations made (in previous reports) by this Office is included in **Section 4**.
- **Section 5** contains an exhaustive report on activities and recommendations made by this Office in the fulfilment of obligations emanating from the provisions of the IIP regulations, namely the regular vetting of a sample of the IIP applications (both those which were approved and those which were refused) and ad hoc initiatives undertaken to address any issues which might have cropped up during the period in question.
- In conclusion **Section 6** lists a number of recommendations based on the ORiip's observations of all the afore-mentioned themes.



## 2.0 Statistical Information

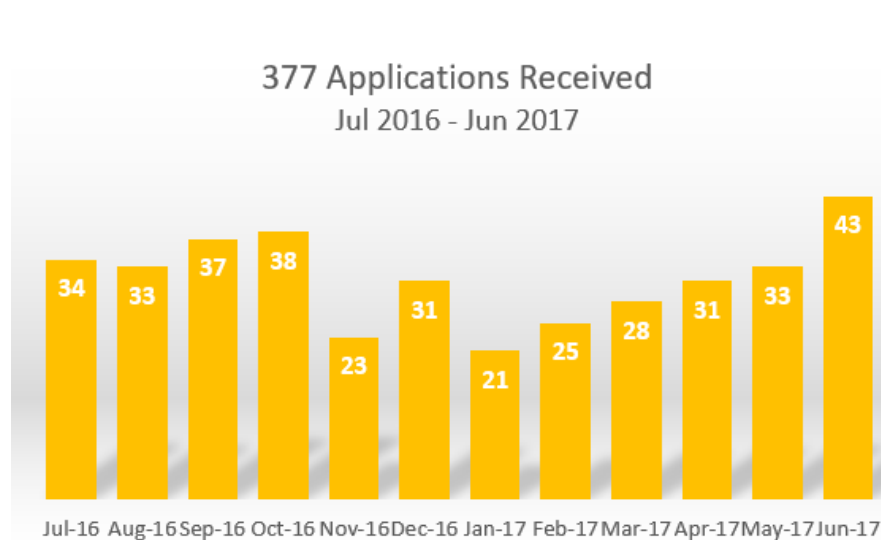
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The statistical information contained within this report is deemed to be correct as at 30 June 2017 and is based on data made available to the ORIip by 6 September 2017. Experience has shown that IIP statistics are dynamic and therefore are continuously susceptible to variations. In particular, changes may be registered in locality details and property prices since applicants might opt to terminate a lease and start a new one without informing IMA accordingly in good time before the final annual statistics are passed on to the ORIip or at least before the final draft of the Report is drawn. This proviso applies both in the case of current data (information listed in this report) and historical data (information pertaining to the period prior to July 2016).

Statistical information drawn up during the period in question shows that although there was a slight decrease (18%) in the number of applications that was received, the number of naturalised persons has increased exponentially (182%). The latter increase has consequently had a positive effect on the incoming contributions and fees payable by the main applicants, spouses and dependants.

### 2.1 Applications submitted to the IMA

The number of applications received during the period in question amounted to 377. When compared with the number of applications received during the previous twelve months – 451 – this constitutes a decrease of 18%. When analysed on a monthly basis, up till October 2016 the figures were roughly in line with the previous year's average.



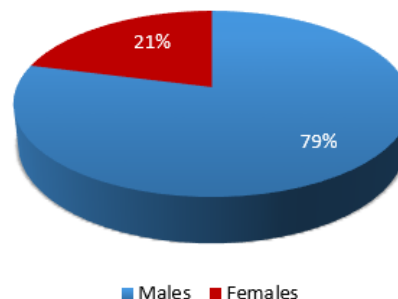
These figures then dipped down quite substantially in November 2016 (23) and further still in January 2017 (21) and then slowly but steadily restarted going up again in February 2017 reaching the highest number of applicants (43) for the whole 12-month period under review in June 2017.

Indeed, the number of applications received in June 2017 was the third monthly highest during the previous two-year period. The total number of applications received as on June 30, 2017 since the inception of the IIP stood at 1101.

## Gender

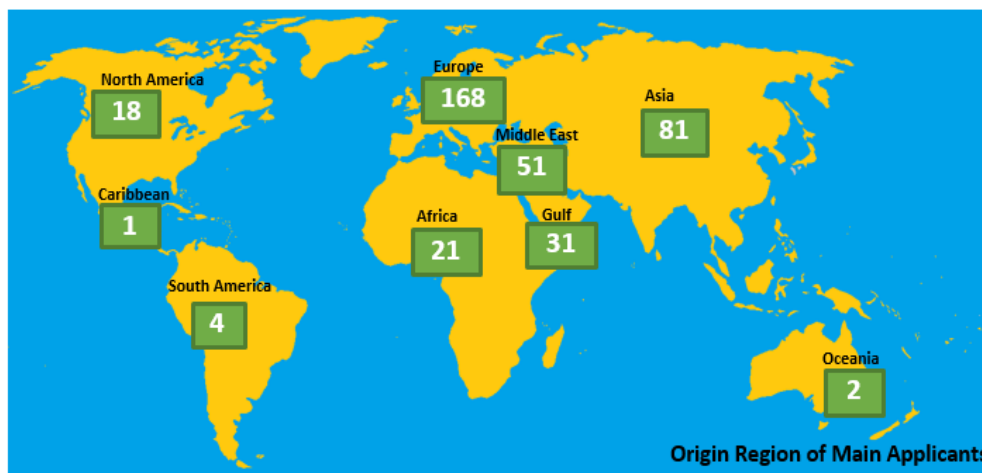
Although the gender of the main applicants persists to be predominantly male, the upward trend in the number of main female applicants which was noted in last year's report continued this time round. Indeed, whereas last year's figures showed an increase of 4 percentage points (from 8% to 12%), during the period in question the percentage of main female applicants has shot up by a further 9 percentage points (totaling 21%).

**Main Applicants sorted by Gender**



## Origin

Similar to last year the applications originated from nine different geographical regions (basing on the main applicants' principal nationality) – Europe, the Gulf Region, Asia, Africa, the Middle East, North America, South America, the Caribbean and Oceania.



As in previous years, the largest number of main applicants originated from Europe, followed by Asia and the Middle East. The percentage of applicants from Europe has practically remained the same as that of last year whereas the percentage of applications originating from Asia and the Middle East has increased significantly.

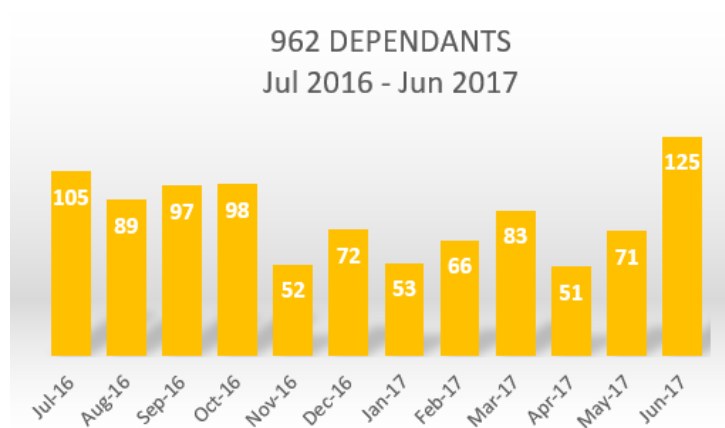
Region	2015 Report	2016 Report	2017 Report
Europe	61.6%	44.5%	44.6%
North America	9.8%	4.2%	4.8%
Asia	8.6%	15.3%	21.5%
Middle East	8.6%	5.1%	13.5%
Gulf Region	5.9%	20.9%	8.2%
Africa	5.1%	8.0%	5.6%
South America	0.4%	0.5%	1.1%
Caribbean	0.0%	1.3%	0.3%
Oceania	0.0%	0.2%	0.5%

## **Number of Different Citizenships**

Statistical information was also recorded on the number of different citizenships of which the main applicants were already in possession (at the time of application). Similar to last year the absolute majority of main applicants (354 out of 377, i.e. 94%) only had one previous citizenship, meaning that if their IIP application were to be successful, the Maltese Citizenship would be their second. On the other hand, 21 main applicants had two previous different citizenships whereas only 2 had three.

## **Dependants**

The number of dependants included in the 377 applications amounted to 962 which is less than the amount registered during the previous year (1188). This is mainly due to the afore-mentioned decrease in the number of applications – indeed, on average, the number of dependants per application amounted to three which is the same average recorded during the previous twelve months.



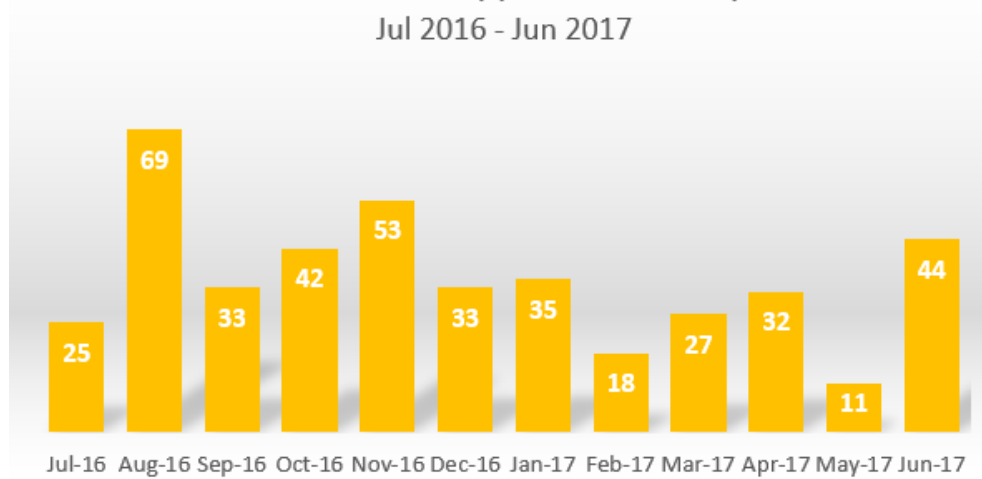
## **2.2 Outcome of Applications**

As also stated in last year's report, the figures quoted in this sub-section do not tally with those recorded in the previous one, the reason being that there is a time-lapse during which an application is processed and therefore a significant number of the 377 applications received between July 2016 and June 2017 would still be in the initial or due diligence stage (and thus their outcome would be recorded in next year's report).

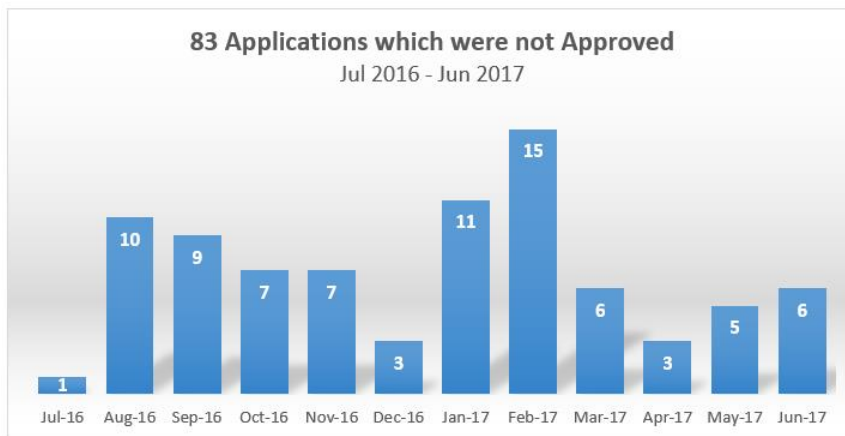
## **Approved Applications**

The amount of applications which were approved (i.e. applications for which the due diligence has been positively concluded and a letter of approval in principle has been issued) was 422. This constitutes a significant increase from the previous year (241) and also from the year before that (75). The highest number of approvals (69) was issued in August 2016 whilst, conversely, the lowest number (11) was registered in May 2017.

### 422 Letters of Approval in Principle Jul 2016 - Jun 2017



### Applications which were not Approved



This category includes applications which were either rejected or withdrawn. The number of applications during the period in question was 83 (an average of 7 applications per month). The highest number registered in one month was 15 (in February 2017).

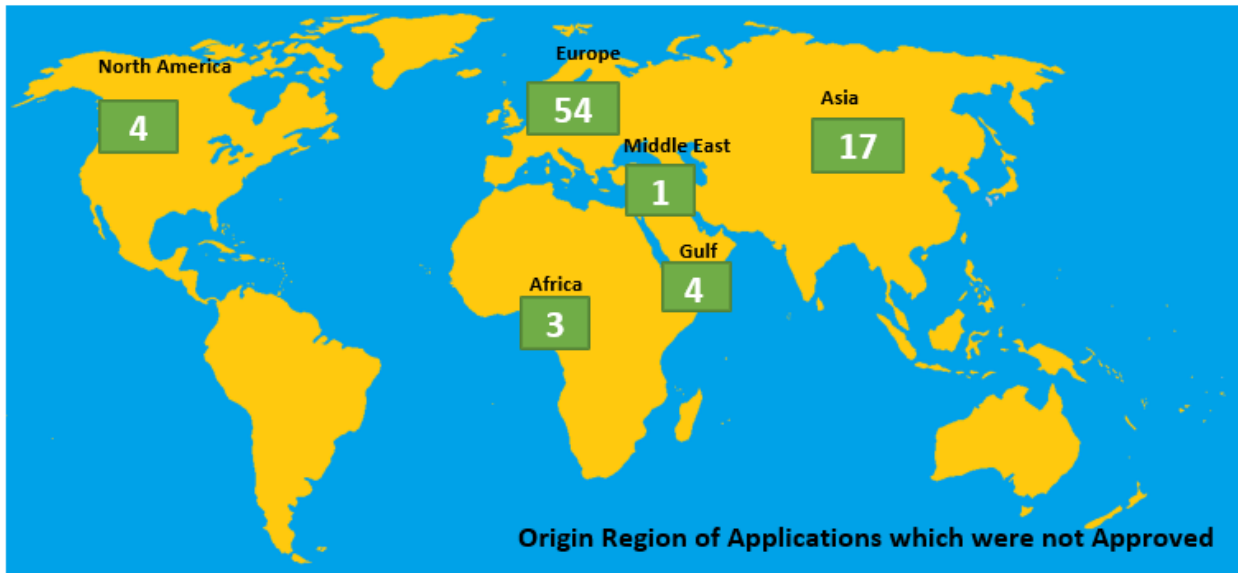
Taking into consideration the decisions (approval or otherwise) taken during the

period in question it transpires that the overall rate of such applications stood at 16% of applications.

This is basically in line with the overall average (i.e. taking into consideration all applications for which a decision has been taken from the launch of the Programme) which stands at 18%.

### Origin

The majority of the 83 applications which were not approved originated from Europe (54) followed by Asia (17). The other applications originated from North America (4), the Gulf Region (4), Africa (3) and the Middle East (1).



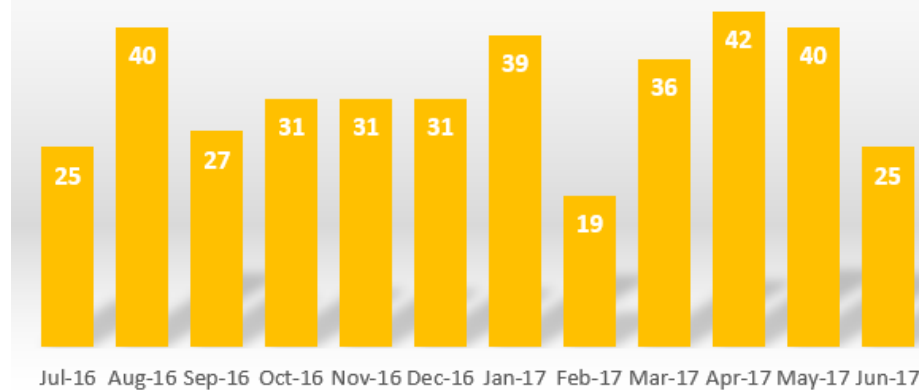
## 2.3 Naturalisations

The same rationale (as per above) that the figures do not tally with those in the previous two sub-sections applies. Indeed, a substantial number of applications which reached the naturalisation stage during the period in question would have actually been initialized and possibly also approved during the previous reporting period.

### Naturalised persons

#### Applications reaching final stage

Jul 2016 - Jun 2017



During the period in question 386 applications had reached the final stage (i.e. when the naturalisation process was completed).

This constitutes a significant increase from the amount recorded during the previous 12 months, which stood at 137. In total (since the launch of the Programme), up till the end of June 2017 there have been

566 successful main applicants. Considering that Regulation 12 of the IIP Regulations stipulates that the number of successful main applicants (excluding dependants) shall not exceed 1,800 for

the whole duration of the Programme, the afore-mentioned figure constitutes 31.4% of the indicated pre-established target.

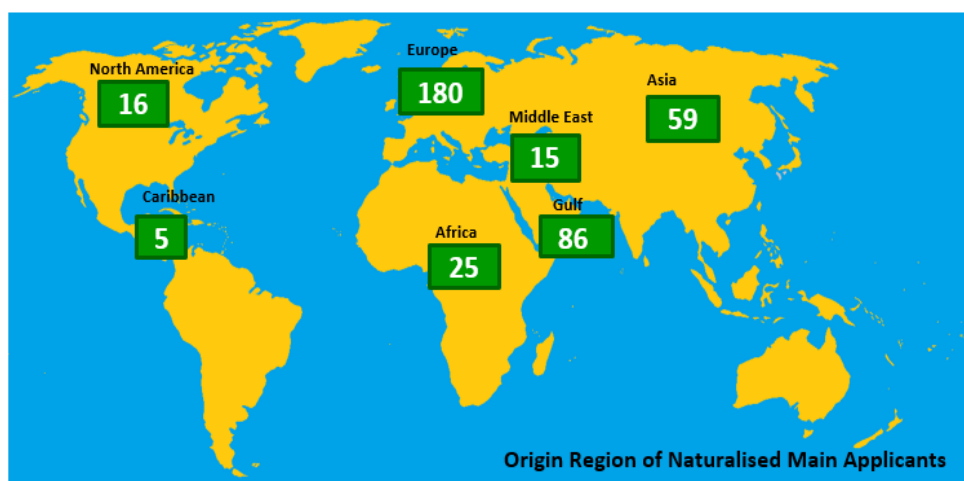
### Dependants

The 386 applications included a total of 1409 persons. Apart from the 386 main applicants there were 294 spouses, 487 minor dependants and 242 adult dependants, meaning that each application contained an average of 3 dependants (similar to the related figure recorded during the previous 12 months).

Month	Main Applicants	Spouses	Minor Dependants	Adult Dependants	Total
July 2016	25	23	36	13	97
August 2016	40	30	39	23	132
September 2016	27	17	36	23	103
October 2016	31	24	51	15	121
November 2016	31	22	32	24	109
December 2016	31	24	34	25	114
January 2017	39	30	44	27	140
February 2017	19	18	34	8	79
March 2017	36	29	52	21	138
April 2017	42	36	66	26	170
May 2017	40	27	39	23	129
June 2017	25	14	24	14	77
TOTAL	386	294	487	242	1409

### Origin

Similar to the previous twelve months, the region from which the naturalized main applicants mostly originated from was Europe, even though there was a sizeable increase of naturalized applicants originating from other regions. Indeed, whereas



previously 68% of naturalized persons originated from Europe, during the period in question the amount went down to 47%. It is also relevant to point out that there were no naturalized applicants originating from the Oceanian region (in the previous twelve months there was one).

## **Number of Different Citizenships**

The majority of naturalised main applicants – 354 – only had one citizenship (i.e. the Maltese Citizenship which they acquired was their second). Of the remaining applicants, 30 held two citizenships and 2 had three.

## **Gender**

The ratio of the gender of naturalised main applicants was 86% males and 14% females. This constituted a slight variation from the ratios recorded during the previous twelve months (88% males and 12% females).

## **Employment Status**

With regards to the employment status of the naturalised main applicants, the absolute majority (57%) declared that they were self-employed. This constituted an increase from the percentage recorded during the previous twelve months (51.8%).

Type	Count	Percentage
Self-Employed	219	56.7%
Employed	146	37.8%
Non-economically Active	21	5.5%

## **Educational Level**

Type	Count
PHD	26
Masters	80
Degree	159
Diploma	24
Higher Secondary	13
Secondary	8
Others	69
Not Specified	7

The educational level of naturalised main applicants remained extremely high with around 69% (an increase of 7 percentage points from the previous year) reaching a degree level, Masters level or PHD level.

## **Age Bracket**

Similar to last year the main age bracket of naturalised main applicants was between 45 and 64 (55%) followed by those falling within the 25-44 age bracket (38%).

Age Bracket	Count
18 – 24	1
25 – 44	146
45 – 64	214
65+	25

## 2.4 Properties

The IIP Regulations oblige the main applicant to invest in a residential immovable property in Malta, either by acquiring and holding one having a minimum value of three hundred and fifty thousand euro (€350,000) or by taking one on lease for a minimum annual rent of sixteen thousand euro (€16,000). In this regard, during the period in question there were 386 properties that were either purchased or leased. Similar to the previous 12-month period, the vast majority of property - 88% - was leased whereas the remaining 12% was purchased. This constituted an increase of 8 percentage points in the number of applicants who preferred to lease rather than to purchase.

Type of Property	July 2016 – June 2017	July 2015 – June 2016	Since Launching of the IIP till 30 June 2015	Grand Total Since Launching of the IIP till 30 June 2017
Purchase	46	27	7	<b>80</b>
Lease	340	107	36	<b>483</b>

During the period in question the most popular locality for purchased properties was St Julians, closely followed by Sliema (which was the favourite one during the previous twelve months). Once again the Sliema area (comprising Sliema, St Julians and Swieqi) proved to be the most popular destination since 78% of properties were purchased there. The only exceptions were 4 properties in Mellieha, 3 properties in Valletta, 2 properties in Marsascala and 1 property in Vittoriosa.

Property leasing was spread over 30 different localities. Similar to the previous 12 months the most popular locality was Sliema where an overwhelming 38% of properties was leased. Also similar to the previous year, the second most popular locality was St Julians. It was also noted that 4% of the properties were leased in Gozo.





Location	Purchased	Leased
Bahar ic-Caghaq	-	1
Balzan	-	1
Birkirkara	-	3
Birzebbugia	-	1
Fontana	-	1
Gzira	-	16
Ibragg	-	5
Madliena	-	1
Marsalforn	-	10
Marsascale	2	2
Mellieha	4	9
Mgarr	-	2
Mosta	-	7
Msida	-	1
Naxxar	-	4
Pembroke	-	2
Pieta	-	1
Qawra	-	1
San Gwann	-	4
San Lawrenz	-	1
Senglea	-	2
Sliema	15	129
St Julians	18	75
St Paul's Bay	-	20
Swieqi	3	29
Ta' Xbiex	-	2
Valletta	3	4
Victoria	-	2
Vittoriosa	1	2
Xlendi	-	1

Between July 2016 and June 2017 the value of the 46 purchased properties amounted to €35,284,168.97, averaging €767,047.15 per property. Such average is significantly above the minimum threshold of €350,000 set in the IIP Regulations. Globally (taking into consideration all the properties purchased since the launch of the IIP) the value of all purchased property (82) totals €71,190,233.31 (averaging €868,173.58 per property).

In the case of leased property the rental value for the duration of the 5-year contract is projected to be €33,659,279.80 averaging €98,997.88 per contract. On an annual basis this translates into an average of €19,799.58 per lease. Similar to the situation regarding purchased property, the average is significantly higher than the minimum threshold of €16,000 per year as set in the IIP regulations. Globally (taking into consideration all the properties leased since the launch of the IIP) all 484 leased property would add up to €51,131,040.45, averaging €105,642.64 per leased property which, in turn, translates into an annual average rental value of €21,128.53.

## 2.5 Investments in Government Stocks

Regulation 7(6) of the IIP Regulations states that an IIP applicant shall make a minimum investment of €150,000 in Malta Government Stocks. In this regard, the amount invested in such Stocks between July 2016 and June 2017 totaled €58,371,279.83. Taking into consideration all investments made since the launch of the Programme the total amount would add up to €85,873,164.71.

Month	Total (€)
Prior to July 2016	27,501,884.88
July 2016	3,884,151.16
August 2016	6,057,698.07
September 2016	4,079,498.83
October 2016	4,711,354.71
November 2016	4,686,655.11
December 2016	4,694,321.20
January 2017	5,903,669.70
February 2017	2,872,633.41
March 2017	5,294,484.97
April 2017	6,366,879.16
May 2017	6,037,475.72
June 2017	3,782,457.79
<b>TOTAL</b>	<b>85,873,164.71</b>

## 2.6 Contributions and Fees Payable by Main Applicants, Spouses and Dependants

### 2.6.1 Contributions

During the period under review by this Report (1<sup>st</sup> July, 2016 – 30<sup>th</sup> June, 2017), the contributions collected by the IMA amounted to €290,225,000. This equates to approximately 2.74% of the GDP **relative to the same period** (estimated at €10,584,600,000). The contributions so collected initially go into a Suspense Account and it is only after the Oath of Allegiance is taken that the distribution of funds is carried out in accordance with the provisions governing the Individual Investor Programme (IIP). Taking all inputs from the IIP related to property purchases and rent, investments and contributions during the period covered by this Report, the sum total (€394,106,676.68) would equate to approximately 3.72% of the GDP **relative to the same period**.

When the amount of contributions collected during the period covered by this Report is added to the contributions previously collected by the IMA since the launching of this Programme this would result in a grand total of €509,375,000 contributions collected by the IMA in respect of this Programme.

During the period 1<sup>st</sup> July, 2016 – 30<sup>th</sup> June, 2017 the funds distributed were as follows:

- €194,381,249 the National Development and Social Fund;
- €83,306,249 the Consolidated Fund;

- €16,440,000 Identity Malta Agency;
- €13,212,000 Henley & Partners.

This means that since the launching of the IIP till the 30<sup>th</sup> June 2017, the total amount of funds distributed were as follows:

- €249,328,799 the National Development and Social Fund;
- €106,855,199 the Consolidated Fund;
- €23,701,500 Identity Malta Agency;
- €19,054,000 Henley & Partners.

The balance in the Suspense Account, which was still awaiting distribution, as on 30 June 2017 stood at €110,435,502.

### 2.6.2 Fees

Paragraph 2 of the Schedule to LN 47 of 2014 establishes the fees that need to be paid by way of (a) due diligence fees, (b) passport fees and (c) bank charges fees by the main applicant in his or her respect and in respect of his or her dependants.

During the period covered by this report (1<sup>st</sup> July, 2016 – 30<sup>th</sup> June, 2017), the amounts collected by way of such fees were as follows:

Due diligence fees	€5,760,000
Passport fees	€674,000
Bank Charges fees	€75,600

## 2.7 Agents

The total number of Accredited Agents as at the end of June 2017 now stands at 141, an increase of 9 when compared with the amount registered a year before. Of these, 17 were upgraded to the status of Approved Agents. The 141 Accredited Agents were subdivided into four main categories, namely:

Type of Firm	Count	Percentage
Legal	46	32.6
Financial Fiduciary and Trust	58	41.1
Management and Consultancy	24	17
Property Consultancy	13	9.2

## 3.0 **T**he IIP in the Public Domain

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### 3.1 **Parliamentary Questions**

During the period in question (between 1 July 2016 and 30 June 2017) there were six parliamentary questions that were laid on the table of the House of Representatives. This constituted a decrease in the number of parliamentary questions when compared to the previous year. Most of the questions focused on the same topic with one of them being a reminder of a preceding question. All questions were tabled by MPs of the Opposition.

Four out of the six questions dealt with contributions that were made through the IIP to philanthropic organisations, NGOs and similar organisations. In November 2016 a question was raised requesting updated information on the number of donations made and their global amount. In response it was stated that the number of contributions was 169 and that these amounted to €1,438,000. Later that month it was enquired which were the organisations that benefited from the contributions made, towards which projects were these funds allocated (whilst providing details of the call issued including the selection criteria) and what were the names of the persons who were on the selection board. In reply it was clarified that the Individual Investor Programme does not distribute funds among voluntary organisations and that therefore there was never the need for a selection board and for a call to be issued. Furthermore, it was stated that it is entirely up to the applicants of the programme to make a contribution to any non-governmental organisation of their choice.

In January 2017 the Minister responsible for the IIP was asked to name all philanthropic organisations, NGOs and similar organisations that were granted funds generated by the Individual Investor Programme. In addition he was asked to provide the total amount which was given to date. In reply it was again explained that the IMA does not give out funds to such organisations and that contributions were only made by the applicants of the programme on a voluntary basis. As for the amounts it was confirmed that there were 215 donations amounting to €1,703,700 by the end of 2016. Later that same month, the Minister was asked to provide a list of all philanthropic organisations and NGOs that had received any contributions and the amount of each contribution. In reply to this, a list of organisations which by then had received a donation directly from the applicants of the IIP was put on the table of the House of Representatives. It was however pointed out that the IMA did not keep record of the distinct amounts given out to organisations but only retained a global figure.

In March 2017 (as a reminder to a question raised a month earlier) the Minister was asked to provide the number of pending applications for citizenship and how many of them were applicants of the Individual Investor Programme. As a reply it was stated that the number of pending applications of the IIP amounted to 346, all of which were at due diligence phase at the time.

## 3.2 Media Articles

During the period under review, the IIP Programme continued to feature on and off in a more or less regular manner in the local media and, in a couple of features (but with much less frequency) even in the international media. The ORIip monitored such news items/articles/features closely in order to investigate them whenever this appeared necessary. Due attention was given to ensure that the Office steered away from intervening in controversial issues which came to the fore. Instead it focused only on areas which fell within the remit of the Regulator.

Similar to previous years, one of the recurring main themes was whether the IIP scheme should be retained or scrapped, with divergent views being regularly published. On a related matter, an article in the Italian newspaper 'La Stampa' (dated 21 August 2016) reported that there were 12 EU Countries (including Malta) which are offering some form of citizenship scheme, most of which are based on the principle of direct financial investment by the applicant in the country to which the request for citizenship is made. Incidentally, last year's Annual Report by this Office included a number of paragraphs in which reference to such schemes/programmes was made and commented upon.

Statistical information, ranging from the funds which were being generated by the Programme to the number of applicants requesting Maltese citizenship under the said Programme was published from time to time. Such data would have originated mainly from Ministerial declarations, answers to parliamentary questions and also from information printed in the IIP Regulator's report (published in October 2016). With regards to media comments made on the latter, the main points which would seem to have generated the most interest were:

- The increase in the number of applications lodged as well as the increase in the number of acceptances or rejections;
- The quality and level of the applicants;
- The amount of generated income as well as how this amount compares to Malta's GDP;
- The localities that were mostly preferred by such applicants for their respective residences whether through lease or purchase; and
- IIP Agents' disgruntlement at having to back up leased property values with architects' evaluations.

Following the publication in August 2016 of the names of all those who had acquired Maltese citizenship during the previous year, certain parts of the media aired disappointment towards the fact that names had neither been published in alphabetical order according to their respective surnames nor distinguishing clearly between those who qualified under the Individual Investor Programme and those who qualified through naturalization.

An article published by Malta Today on 8 March 2017 (titled “Bogus addresses for Malta’s IIP applicants can be reported to the Police”) was mainly a follow-up to one which the same newspaper had previously published on 26<sup>th</sup> June 2016 which made reference to a number of persons who had allegedly obtained Maltese Citizenship through the IIP scheme and wherein it had been inferred that the property which they had purchased/leased in Malta hardly satisfied the requirements listed in the IIP regulations. In this follow-up article the journalist first referred to the Justice Minister’s speech in Parliament (whereby the latter stated that the abusive use of properties and their addresses for IIP applicants can be reported to the police and the IMA, with the applicants in question risking the refusal of their application for the acquisition of a Maltese passport). Then he proceeded to quote from the 2016 ORiip report (wherein it had been mentioned that the first article was duly investigated by this Office in collaboration with the IMA), in particular making reference to its findings on the cases highlighted in the article and the indication that the IMA had set up an internal Compliance Unit in order to investigate and nip in the bud any future potential abuses.

One other matter which was touched upon by the media refers to instances where IIP applicants were accepted even though they did not provide proper birth certificates. On this subject this Office had already been in close contact with the IMA with regard to the relatively few instances in which such cases arose. This subject, is being expounded further in Section 5.7 of this Report.

## 4.0 Feedback by the IMA on Recommendations made in the previous report

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Similar to the procedure adopted previously, the IMA was invited to provide comments (including any action which the Agency would have taken) on the recommendations which the ORiip had listed in the preceding report. An overview of such feedback is provided hereunder:

<b>Recommendation 1</b>	Start issuing clarifications in cases where Media reports contain inaccuracies.
<b>Comments by the IMA</b>	A Media and Communications Chief Officer is in the process of being engaged.

<b>Recommendation 2</b>	Every effort should be made to align the provisions of the Regulations in line with the valid, reasonable and called for procedures and practices adopted by the IMA.
<b>Comments by the IMA</b>	A consultation process is expected to start in September 2017 with the aim of upgrading and updating both the legal notice and the processes.

<b>Recommendation 3</b>	Sanction Agents who provide poor quality applications.
<b>Comments by the IMA</b>	There were several instances where Agents were called to the IMA Offices in order to discuss their submitted application files in order to provide all necessary assistance for them to improve their performance. Consequently it was noted that most of the application files were submitted complete during the period in question.

<b>Recommendation 4</b>	Review IIP and other IMA departments' processes in order to harmonise the application procedure.
<b>Comments by the IMA</b>	This is in place. Processes which follow the Oaths of Allegiance are being taken care of by both the Public Registry and the Passports Office respectively. Documentation is submitted directly to them and Agents have direct communications with both Departments. Consequently complaints have decreased drastically and Agents seem to be content with such new procedure.

<b>Recommendation 5</b>	Increase staff complement in order to: <ul style="list-style-type: none"> <li>- Address slippages in timelines which are established by law;</li> <li>- Carry out compliance tasks;</li> <li>- Train accredited agents performing weakly.</li> </ul>
<b>Comments by the IMA</b>	IMA is now in line with all the timelines. Furthermore there are plans for seminars for all agents to take place in September.

<b>Recommendation 6</b>	Train staff in order to increase the level of internal expertise on due diligence and compliance matters.
<b>Comments by the IMA</b>	This has been carried out. In particular the Due Diligence team is attending courses related to their work.

<b>Recommendation 7</b>	Automate parts of the process.
<b>Comments by the IMA</b>	This is works in progress. Most of the data inputting will be computerised.

<b>Recommendation 8</b>	Create a one-stop shop within select areas of the Mediterranean Conference Centre relocating all related services from the Evans Building in Valletta and Gattard House in Blata I-Bajda.
<b>Comments by the IMA</b>	This is works in progress. The IMA's aim is to have all services up to the passport stage stationed at the Mediterranean Conference Centre.

<b>Recommendation 9</b>	With regards to the Mediterranean Conference Centre, increase privacy in cubicles where meetings are held by covering Perspex with blinds or curtains.
<b>Comments by the IMA</b>	The cubicles have been upgraded and now offer a satisfactory level of privacy.

<b>Recommendation 10</b>	Review Guidelines and start updating them regularly.
<b>Comments by the IMA</b>	New Guidelines will be distributed to all Agents by the end of September also as part of the consultation process.



<b>Recommendation 11</b>	Set up a Compliance Unit.
<b>Comments by the IMA</b>	A procedure has been implemented to conduct random on-the-spot checks in order to verify all lease agreements and purchase contracts submitted at post-approval stage.

<b>Recommendation 12</b>	The Oath of Allegiance document should be drawn up more professionally: it should include more details, typed (not handwritten) and the name of the officer giving the oath should be clearly visible.
<b>Comments by the IMA</b>	The name of the Officer is now being clearly written.

<b>Recommendation 13</b>	Introduce a Declaration Form to be signed by clients to confirm that they are well aware of the real market value of the purchased / leased property.
<b>Comments by the IMA</b>	As of July 2016, a valuation report is requested with all lease agreements submitted, confirming that the rental value is according to the current market value.

<b>Recommendation 14</b>	Bring the complaints procedure into force.
<b>Comments by the IMA</b>	This falls outside the IMA's remit.

<b>Recommendation 15</b>	Develop a modern fully fledged ICT system as early as possible.
<b>Comments by the IMA</b>	This is works in progress.

As regards Recommendation 14 in the above table to which the IMA has remarked that this recommendation falls outside the IMA's remit - with which this Office intrinsically agrees as had already been hinted at in last year's Report - this Office firmly believes that this issue should undoubtedly be dealt with in line with the proposed public consultation process particularly in view of its apparent conflict in principle with the Minister's right at law to have the final say in the granting of citizenship under this Programme (as pointed out later on in this Report - vide sub-section 5.1 on the next page).

## 5.0 Initiatives carried out by the ORiip

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### 5.1 Vetting of Applications

The focus of the ORiip's vetting this year was on checking all the various IIP processes (from start to finish) in order to verify whether there were any issues (recurring or otherwise) which needed to be addressed. For this to be established the Office embarked on a year-long initiative whereby it vetted a significant amount of applications which had - at least - reached the stage where a decision had been taken on the application.

In essence for each application the following checks were carried out:

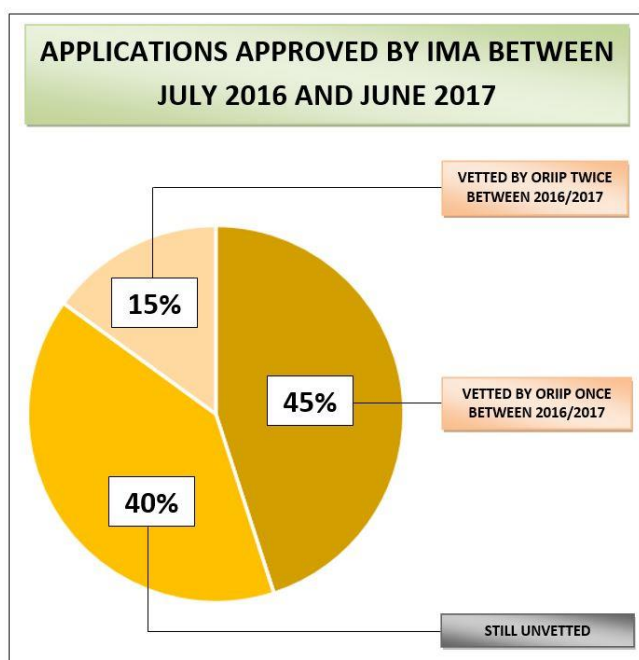
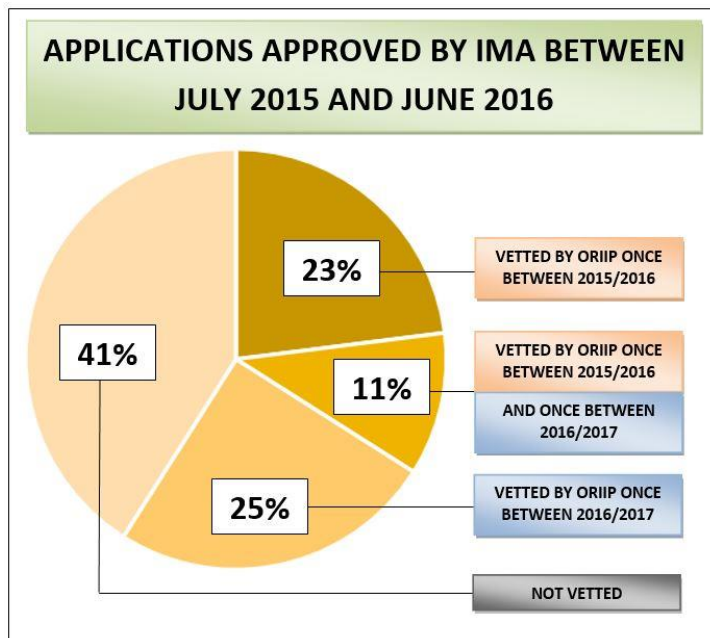
- a) Whether the amounts due were paid;
- b) Whether required documentation was duly provided;
- c) Whether the due diligence process was carried out effectively;
- d) Whether the IIP obligations had been satisfied;
- e) Whether the respective application package contained an exhaustive audit trail; and
- f) Whether the established timelines had been respected.

Accordingly 60% of applications which had been approved during the period in question (July 2016-June 2017) were vetted. Such amount constitutes a significant increase when compared with the amount of applications vetted during the previous 12 month period (34%). Similarly, the percentage of rejected applications vetted by this Office (45%) increased when compared with that vetted during the previous year (38%).

It has to be pointed out that, when vetting applications, the ORiip focused mainly on the period between July 2016 and January 2017 (indeed the percentage of applications vetted during such period goes up to 88%). The reason for this was that the majority of applications approved from February 2016 onwards would still have been in progress and therefore any vetting would have been inconclusive (i.e. the Oath of Allegiance had yet to be taken). This peculiarity was noted by the ORiip during the vetting sessions carried out in conjunction with its 2016 Report and, indeed, 32% of the applications vetted during that time had to be reviewed again at a later stage after June 2016 in order to ensure that these had been successfully concluded. Similarly, 25% of the applications which were approved and vetted during the period covered by this Report (amounting to 60%, as per above) also had to be reviewed for a second time because when first vetted a few months earlier these were still in progress.

Apart from the above-mentioned documents, during the past twelve months the ORiip also checked an additional 25% of those applications which were originally approved during the previous reporting period (July 2015 and June 2016), thus increasing the total amount of vetted applications which had been approved during such period from 34% (as indicated in last year's report) to 59%.

Such additional vetting effectively means that, in the case of applications approved by the IMA between July 2015 and June 2016, the ORiip has vetted 25% once (during the 2015/2016 period), 23% once (during the 2016/2017 period) and 11% twice (once during the 2015/16 period and once during the 2016/2017 period). Only 41% of such applications has now remained unvetted.



On the other hand, with regards to applications approved by the IMA (and vetted by the ORiip) between July 2016 and June 2017, 45% of applications were vetted once whereas 15% were vetted twice. Similar to the previous twelve months, only 40% of the applications were still unvetted by the end of June 2017.

In the case of rejected applications it has to be pointed out that only in a few cases was the Regulator approached by the respective agents on behalf of their clients to protest against such a refusal and requesting his intervention for a review of such a decision. Since the launching of this Programme till the end of June 2017, in all there have only been 11 cases wherein the intervention of the Regulator in this sense has been requested. In all these cases the bone of contention was basically a due diligence issue. However, these requests for the direct intervention by the Regulator could not be entertained since the *ad hoc* regulations governing the Complaints Procedure in this respect have not yet been published and it is still a legally moot

point whether the Regulator can in fact intervene and review such rejections once at law the Minister's decision in this respect is final and cannot be appealed against.

Considering the elevated number of applications which, throughout these past two years, have had to be vetted more than once, the ORIip has now opted to review its internal procedures. Accordingly, as from the next reporting period (starting from July 2017), **with regards to approved applications** it will start vetting them after they have been all successfully concluded (i.e. after the Oath of Allegiance would have been taken). This would:

- a) reduce the impact of the vetting process on the IMA's staff (who would otherwise have to retrieve / file applications more than once and would have to address queries whilst applications are still in progress);
- b) reduce the impact of the vetting process on the ORIip's staff (who would otherwise have to vet the same applications more than once); and
- c) ensure that the ORIip would vet the applications at a more appropriate stage when all processes related to the IIP application would have been concluded and all the documentation would have been collated, thus ensuring that it is presented with a more holistic picture.

**Such revised procedure will have no impact whatsoever on the vetting of rejected applications because these are already being checked by the ORIip after the application is deemed to be concluded.**

### **5.1.1 Payments**

The Schedule forming part of the IIP Regulations outlines the payments which are due by the Main Applicant and by his/her spouse/dependants (if any). Apart from IIP contributions applicants would be expected to also cover due diligence fees, passport fees and bank charges. Different amounts apply in the case of the main applicants, their spouse and the different types of dependants.

All in all the ORIip has no particular issues or alerts regarding this part of the process. Considering that the system is heavily dependent on manual intervention, the person(s) responsible for handling payments should be highly commended.

At this stage particular mention has to be made on the splitting of the initial payment in two tranches of €5,000 each. In both its 2015 and 2016 reports the ORIip had stated that, although it had no issues with such method of payment, *prima facie* this practice seemed to deviate from what is actually laid down in the Regulations. Following additional deliberations, the ORIip considers that since the Regulations do not specifically lay down that the initial payment should be made in one tranche, the decision taken by the IMA in splitting the first payment in two separate tranches is in the circumstances acceptable and the need to amend the Regulations in this respect need not be further aggressively pursued. Furthermore the ORIip notes (with satisfaction) that its recommendation to insert in file a photocopy of the fiscal receipt issued in respect of the first tranche of €5,000 had been taken into consideration and is now being implemented.

### **5.1.2 Documentation**

The aim of collecting documentation is to allow the IMA to carry out effective due diligence checks on the applicant and his/her dependants. In view of this, during the vetting process the ORIip made sure that the prescribed (and other) forms (namely Forms N, O, P, PDFEE, SSWF, PSC and MRQ) were duly filled in and that the required supporting documentation had been provided. In the case of the latter the ORIip acknowledges that there might be instances where the exact document would not be available. In such cases the ORIip checked the validity of reasons why the intended documentation could not be provided and whether alternative documents were (or could have been) provided. In this regard one may wish to note the ORIip's research on Birth Certificates (vide Section 5.7) which was carried out following the publication (on 18 April 2017) of the Times of Malta article titled "Wealthy investors with no Birth Certificate get Maltese ID Cards".

On the whole the ORIip is satisfied that there are no particular issues (apart from one-off instances which were addressed individually). In the 2016 report the ORIip had made reference to the forms filled in on behalf of minor dependants noting that contrary to the provisions of the IIP Regulations (which state that forms are to be signed by both parents) such forms were being endorsed by only one parent. Subsequently the IMA had clarified that it interpreted the provision to apply only vis-a-vis the prescribed forms (the Form P in the case of Minors). Such interpretation is accepted by the ORIip.

### **5.1.3 Due Diligence Process**

This part of the process was also covered in the 2016 report where it was stated that the level of checks being carried out was extremely satisfactory. Although in this regard the ORIip's opinion has remained unchanged, a number of points had to be addressed. These relate to the communication sent to the Minister (providing details of findings and an outline of reasons for the IMA's recommendation to approve or otherwise). Such communication generally consists of a covering letter (containing succinct information on the applicant/dependants) and a more exhaustive dossier.

With regards to the covering letter it was noted that often this consisted mainly of a sweeping statement that the due diligence process had revealed no issues. Whilst this was true with regards to the vast majority of reports, there were a few cases in which the more exhaustive dossier had taken into consideration a number of potential issues. At this point it has to be made quite clear that as per Regulation 6 of the IIP Regulations the IMA has the right to consider an applicant as being still worthy for approval notwithstanding any adverse remarks contained in the due diligence report. Accordingly the ORIip deemed that in the very few instances in which this arose such information (in a very abridged form) had to be included in the covering letter so that anyone reading this document – and in particular the Minister for whom it is originally intended - would have a more meaningful and precise picture embodying the IMA's reasoned opinion as to why such applicant should still be considered for approval. Such recommendation was duly communicated to the IMA and was taken on board accordingly.

### **5.1.4 Applicants' Obligations following Approval in Principle**

One area which was closely monitored by the ORIip was the latter part of the IIP process whereby, following the issuance of the letter of approval in principle, Applicants would be bound to pay the final contribution and to provide proof of purchasing/leasing property, drawing up global health insurance and investing in Government Stocks, Bonds, etc.

In this regard no particular issues worthy of note were identified.

### **5.1.5 Exhaustive Physical Audit Trail**

The ORiip has always contended that once the processes involved in assessing applications are not fully computerized (in true fact by far the greater part of such processes is still carried out manually), it is of the utmost importance that documentation related to each individual application should be stored in a manner which allows one to effectively retrieve it **whenever required**. This is even more so considering the importance given to the availability of physical documents as part of the IIP process (in particular the requirement to have original, apostilled or certified documentation). Whilst it has to be stressed that records of documentation would be available at the IMA's end, more often than not some documents are not easily or readily available physically until the case is finally closed.

During the vetting process it was noted that particular communications would be missing from the file (egs. a request for extension or written approval for a change in bank details). Nonetheless it was noted that such information would be available also as soft copies in the IMA's IT system (and would promptly be provided when requested). The ORiip considers that the staff turn-over at the IMA might eventually lead to a situation where such documentation might not be traced so easily and therefore, for posterity's sake, it has always contended that all related documentation should be available in one exhaustive physical application pack.

### **5.1.6 Timelines**

The IIP Regulations contain a number of timelines to which the IMA and the Agents must adhere to. For each application the ORiip has verified whether such timelines have been respected.

Similar to what was reported in the 2016 report the main timeline which could not be respected was the obligation to issue the letter of approval/refusal/extension within 120 days from the date of submission of application. Such timeline was constantly exceeded even though (as per more recent applications) it has now been noted that (as per provisions of the IIP Regulations) the IMA is now covered by communicating an extension.

Another timeline which is, at times, not respected is the obligation on the Agent to communicate (within 4 months or less from the date of issuance of the letter of approval) details of purchased/leased property, global health insurance and investments in Government Stocks, Bonds, etc.

## **5.2 An evaluation of Residency Requirements**

Instances arose when residence in Malta by applicants to a Maltese citizenship in terms of the IIP Regulations was brought into question. This was further fuelled when it transpired that a number of such applicants were eventually also accepted by the Electoral Commission as voters in the General Elections Register.

At this stage one has to point out that these in fact are totally separate issues and not the least inter-related in any way as some seem to believe. The right to vote in Malta's General Elections is governed by totally different provisions within the General Elections Act as well as certain specific provisions enshrined in the Constitution of Malta, whilst the right to Maltese citizenship in

terms of the Individual Investor Programme are governed by the Maltese Citizenship Act as regulated by the Individual Investment Programme Regulations. As such, residency in Malta under and in terms of the aforesaid Regulations has nothing to do with residency in Malta as contemplated in the Constitution of Malta insofar as the right to vote in Malta's General Elections is concerned.

Regulation 4(d) of the IIP Regulations commits the applicant to “**provide proof of residence in Malta**” in order to qualify as a main applicant for citizenship under the IIP. Furthermore, Regulation 7(12) requires that no certificate of naturalisation be issued “**unless the main applicant provides proof that he has been a resident of Malta for a period of at least twelve months preceding the day of the issuing of the certificate of naturalisation**”.

Neither the IIP Regulations nor their parent Act (the Maltese Citizenship Act) provide any definition of the terms “residence” or “resident” and, as also stated by the former Regulator in his 2015 report, their interpretation was not clear. Consequently the ORiip is informed that the IMA had sought the advice of Professor Dr Dimityr Kochenov in order to achieve such clarity.

Professor Dr. Kochenov holds a Chair of EU Constitutional Law at the Department of European and Economic Law at the University of Groningen. He consults governments and international institutions. In particular he also advised the government of the Netherlands on the application of EU law in the Caribbean parts of the Kingdom and the European Parliament on the Rule of Law mechanisms. He also participated in expert discussions on the future of EU citizenship at the European Commission and ECOSOC's working group on the future of Europe. He also regularly participates as an expert in national and international litigation, including international commercial arbitration. He also assesses grant applications both nationally and internationally and reviews manuscripts for Cambridge, Oxford, Hart, Routledge, Rowman & Littlefield, as well as countless journals.

In his advice to the IMA Dr Kochenov observed that:

- residence is a legal status and that it therefore does not carry the same meaning as presence;
- the conditions for obtaining the legal status of residency do not include the requirement of physical presence; and
- as it is possible to hold a residence permit in more than one country, it is therefore a physical impossibility for an individual to be omni-present in all countries in which a residence permit is held.

In addition to the above, following the IMA's consultation with the Attorney General, the latter advised that a valid Residence Card should, under these circumstances, be considered as proof of residency in Malta.

**In this connection, it is imperative to point out, however, that prior to the acquisition of nationality, IIP enshrines a special status of residency for IIP applicants, which can be characterized as a “reinforced residency status” (RRS). The requirements applicable to this residency status in Maltese law are the most stringent compared with any other residence. The rules governing the Individual Investor Programme provide for the granting of RRS to the applicants who fulfill the first set of conditions, and the status applies in full until the applicant acquires nationality, in case the remaining conditions are fulfilled.**

**The purpose of RRS is to confer on the applicant an effective residence status, linked to the specific requirements of the IIP. Consequently, and as already mentioned, RRS is**

**subject to more stringent requirements than ordinary residence under Maltese immigration rules, with the aim of ensuring that the acquisition of nationality is in line with the goals and requirements of the IIP. Failure to comply with any of these requirements entails automatic loss of RRS, including any benefits enjoyed as a result of the status to date.**

Basing himself on such opinions/advice the Regulator at that time concluded that concerns being raised on physical presence were dispelled, provided that the emphasis to establish some form of **genuine links** with Malta, as part of the IIP process, is retained. Such views, coupled with the RRS system adopted by IMA in this regard, tally with those of the present incumbent.

### **The Vetting Process via-a-vis Residency in Malta**

As part of the vetting process the ORIIP has ever since based its checks on Dr Kochenov's opinions, steering away from effectively checking (and/or judging) a main applicant's constant physical presence in Malta and, instead, confirming whether the main applicant had (a) been initially provided with a valid Residence Card by the IMA, and (b) established some form of genuine links with Malta as may have been identified or accepted by the IMA and/or the Regulator.

The most common proof of links provided by the various main applicants was one's (and/or one's dependants') presence in Malta (albeit for a limited period of time). This was provided through three references:

- a) flight ticket print-outs, stubs, boarding passes, entry and/or VISA stamps on one's passport and also (in some cases) through a declaration made by the Agent in question ascertaining presence in Malta;
- b) local hotel bookings spanning different time periods and covering the main applicant and/or his/her dependants;
- c) transportation services (taxi or car rental).

Additional proof of links (either through invoices, receipts, certificates of attendance, bank statements, etc) was provided through various activities carried out during the main applicant's and/or his/her dependants' presence in Malta. These include (but are not limited to) any one or more of the following:

- a) donating to various institutions (charitable, band clubs, football clubs, etc);
- b) becoming members in various institutions, including sports and social clubs;
- c) opening local bank accounts;
- d) subscribing to local operators (mobiles, television, internet);
- e) attending Maltese / English language courses;
- f) paying for local services (cleaning, architectural, supply services, etc);
- g) applying for a Maltese Driving Licence;
- h) paying income tax to the Maltese Inland Revenue Department; and
- i) purchasing/leasing additional properties in Malta.

Furthermore it has been noted that in line with the Regulator's recommendations in the 2015 report a small number of main applicants went a step further and carried out investments related to their businesses and/or interests. These included the registration / incorporation of their Company in Malta, leasing of office space in order to establish their business locally and (at least in one case) engaging an employee to run the business in Malta.



### 5.3 Reviewing legal provisions

The Individual Investor Programme is regulated by the provisions of Legal Notice 47 of 2014 (Individual Investor Programme of the Republic of Malta Regulations, 2014). It is normal for newly-introduced legislation to require some tweaking after it comes into force and a meticulous review of the IIP Regulations has revealed that these are not an exception.

Since this might potentially lead the IMA to face a situation whereby its processes can be slowed down or, indeed, stalled, the ORIIP has sought to identify existing legal avenues whereby the IMA could be adequately covered in its effective implementation of the Individual Investor Programme in the best interests of the Programme and within the parameters of existing legal provisions.

Following an exchange of views between this Office and that of the Attorney General, the latter has opined that in the implementation of this Programme the IMA, as the Administrator of this Programme, is not bound to implement and follow the Regulations *ad litteram* but, **as long as the rules in general are being adhered to in substance**, the IMA is expected to take due account of some practical considerations which may address situations which arise from time to time and which might not have been previously foreseen. Such an opinion by the Attorney General certainly so goes a long way in solving an essential part of the problem.

In fact this effectively means that situations such as the ones listed in the table below need not form part of any amendments to the current Regulations in order to be formally regularised:

1.	The IIP Regulations stipulate that payment has to be made in two parts whereas the IMA is splitting the first payment at law (€10,000) in two different tranches of €5,000 each. The first tranche (of €5,000) is paid at the stage when the potential applicant applies for a Residence Document. This payment is meant to cover expenses which are incurred at such stage. The second tranche (the remaining €5,000) is paid at the first stage of the IIP process when the applicant pays due diligence fees, passport fees, bank fees and part of his/her contribution.
2.	Regularising the definition of the term “between” in the case of the eligibility of the adult child of the main applicant (“between the age of eighteen and twenty-six years”). The Agency interprets this to mean that as long as the person has not attained his/her 27 <sup>th</sup> birthday he/she is considered to form part of the 18-26 bracket.
3.	The official date of receipt of application is not clearly identified in the Regulations and therefore could be open to interpretation. The date of application as applied by the IMA is the date when the first payment of the contribution is effected.
4.	There are instances in which the Application Forms would not have been properly filled in. Regulation 4(9) states that applications shall only be accepted and processed on condition that all forms are properly completed. Nonetheless, adopting a practical approach, the IMA accepts instances in which forms would not have been properly filled as long as missing information could be verified through other sources.

5.	Regulation 2 of the IIP Regulations states that parents/grandparents would be eligible if (amongst other criteria) they “form part of the household of the main applicant”. The IMA does not interpret this phrase to mean that such category of dependants is living in the same address <b>when living abroad</b> provided they will form part of the same household <b>when living in Malta</b> .
6.	Regulation 4(7)(a) states that the forms of dependants who are below the age of eighteen “shall be signed by both parents on behalf of the dependant”. The IMA applies this only in the case of Form P, contending that it is the only prescribed document and that therefore they are not obliged to apply the rule to the other documents (PDFEE, PSC and MRQ) which are considered as administrative forms.
7.	Instances when the MA requests extensions in the case of timelines established by the IIP Regulations (eg final contribution to be made within 20 days from issuance of the letter of approval in principle). These could be accepted as long as these are due to valid reasons (namely circumstances which are beyond the control of the main applicant).
8.	Regulation 7(5) states that a letter of approval in principle should be issued to the main applicant. The Agency however addresses such communication to the Agent in order to reduce the risk of collusions between its staff and the Main Applicant. In this regard the IMA claims that addressing the Agent (rather than the Main Applicant) is justified since the latter would be legally covered by the former through the power of attorney which would have been drawn up between them.
9.	Instances when replacement (and authentic) documents are provided since those which are normally requested could not be obtained. These are being accepted by the IMA as long as there are justified reasons why the proper documents could not be provided and as long as the information contained therein would include the information required at law.

From its part the ORiip has also flagged a number of areas which should be revised. This was pointed out both in its previous annual reports and as an internal memo addressed to the (then) Minister responsible for Citizenship.

A non-exhaustive list of provisions which in the opinion of the ORiip ought to be revised and brought in line with current practices as applied by the IMA is as follows:

### **The Role of the Concessionaire**

The present Regulations specify that the Concessionaire is to be awarded a public service concession to design, implement, administer, operate and promote the Programme. The Regulations also give it exclusive rights (apart from the Agency itself) to receive and present applications and to cause due diligence checks to be performed in respect of every applicant. The Concessionaire is also to be notified about the outcome of each application.

In practice, since the launch of the scheme, the role of the Concessionaire has been consensually toned down and an agreement to this effect was entered into accordingly by Government, the IMA and the Concessionaire at the outset. Therefore it would make sense that the provisions of the Regulations are revised in order to reflect this important change. This recommendation was also made by the former Regulator in various occasions but mainly in his Annual Reports.

## **Consolidation of Regulation 4**

As also pointed out by the former Regulator in his previous report, such Regulation may be streamlined and consolidated in order to eliminate repetition and facilitate the validation of applications. As an example (also reported in the 2015 report), Regulations 4(2)(e) and (f) are a replication of Regulations 4(1)(d) and (e) and could have been avoided or the provisions of the sub-regulations merged to provide a single, comprehensive list of obligations.

## **Retention of purchased/leased property**

This issue was brought up also during the ORiip's one-to-one meetings with Agents. Regulation 7(5) of the Regulations states that property which has been purchased or taken on lease shall be retained for at least five years from the date of purchase or lease. The IMA considers the start date (for such five years) as that when the letter of approval in principle is issued. Since the present text of the Regulations might lead to ambiguous interpretations (eg: a property might have been leased years ago) ideally the definition should be amended in order to be in line with the IMA's interpretation.

## **5.4 Launching the ORiip website**

### **Website**

In 2016, the ORiip launched its website (adopting the URL [oriip.gov.mt](http://oriip.gov.mt)). The website provides an overview of the Office's role and functions whilst granting access to its audience to all the ORiip's annual reports which have been published to date. The English version of the website went live on 4<sup>th</sup> October 2016 whilst the Maltese version was officially uploaded a few weeks later (in November 2016). The layout of the website is as follows:



WEBPAGE	DESCRIPTION
<b>Home Page</b>	The home page of the ORiip website displays banners and separate links to other web pages of the website. These include:
	<ul style="list-style-type: none"> <li>• <b>Documents &amp; Links</b> – this link redirects the user to a list of documents such as the ORiip annual reports, acts and regulations as well as links to related websites.</li> <li>• <b>News &amp; Events</b> – this web part takes the user to a list of news items published by the ORiip such as announcing of the issuance of annual reports and the convening of Monitoring Committee meetings.</li> <li>• <b>Latest News</b> – a list of news in chronological order accessed directly from the home page</li> <li>• <b>Freedom of Information</b> – this link provides exhaustive details on the ORiip’s Freedom of Information policies and practices which are in place</li> </ul>
<b>Role of the Office</b>	This web page provides an overview of the Office’s appointment and main functions, its autonomy, powers and reporting obligations. Also included are details and a brief résumé of the IIP Regulators who have been appointed to date.
<b>Complaints</b>	This page provides relevant information about complaints which can be made about the Individual Investor Programme.
<b>FAQs</b>	This web page includes a list of Frequently Asked Questions about the Office of the Regulator.
<b>Contact Us</b>	This section provides the contact details of the ORiip

## 5.5 Verifying the publication of names in the Government Gazette

Sub-Regulation 14(2) of the Individual Investor Programme of the Republic of Malta Regulations (Legal Notice 47 of 2014) states that the Minister responsible for Maltese Citizenship shall every year publish in the Government Gazette the names of all persons who during the previous twelve calendar months, were granted Maltese Citizenship by registration or naturalisation including those persons who were granted Maltese Citizenship under the Programme.

In 2016 the list was published in Government Gazette No. 19,616, dated 2<sup>nd</sup> August 2016.

In this regard the ORiip carried out an internal exercise in order to ensure that the details of IIP applicants and dependants (who were granted Maltese Citizenship during the previous twelve months) were duly published in the Government Gazette. This was done by obtaining the list from the IMA and comparing the names with those printed in the Gazette accordingly. The exercise was successfully concluded and no issues were identified.

## 5.6 Monitoring of Court Cases

At present the ORiip is aware of two IIP-related court cases which have been instituted against the IMA. Both refer to refused applicants who felt aggrieved by the communicated decision without being given any explanatory details.

Case No. 144/2016 (Mifsud Cedric L-Avukat Dr Noe Vs L-Agenzija Identity Malta Et) was registered on 23 February 2016. To date (up till 30 June 2017) there have been 10 sittings and the Case is earmarked to continue in October 2017.

Case No. 834/2016 (Schembri Alexander L-Avukat Dottor Noe Vs L-Agenzija Identity Malta Et) was registered on 23 September 2016. To date (up till 30 June 2017) there have been 4 sittings and the Case (similar to the previous one) is earmarked to continue in October 2017.

The ORiip is actively monitoring both cases since it deems that the eventual judgements will definitely have a bearing on the decisions which the Regulator would take once his office receives similar complaints.

## 5.7 Evaluating the requirement to produce a Birth Certificate

In an article titled “Wealthy investors with no birth certificate get Maltese ID cards” published in the 18<sup>th</sup> April 2017 edition of The Times of Malta, it was alleged that two applicants hailing from India and Lebanon respectively had managed to qualify for the IIP without being able to present a birth certificate.

First and foremost it has to be pointed out that although the birth certificate is requested by the IMA as part of the documentation to be provided when a person applies for the IIP, the provision of such document is not, explicitly, a requirement listed in the IIP regulations.

Notwithstanding the above, in line with the Regulator’s role (as delineated in the Maltese Citizenship Act – Cap 188) to ensure the correct implementation and monitoring of the Individual Investor Programme, this Office conducted a research using reliable data available online in order to check whether there could be instances where a birth certificate may not be available and if this was the case, to verify what alternative documents may be presented and accepted instead.

In this regard our research shows that in 16% of international countries a birth certificate may not be available and alternative documents may be provided in its place. Reasons why the birth certificate may not be obtainable vary, with the most common being the following:

- If a birth is not registered and/or certificate is not obtained immediately after birth, it may be very difficult to acquire at a later stage
- Birth certificates may have been destroyed in wars, natural disasters or other calamities
- Birth certificates available may not always be reliable and accurate
- Registration of births was not compulsory prior to a specified date (depending in which country)
- Birth certificates may be available only subsequent to a particular date (depending in which country)
- Births may have been declared and maintained by unofficial sources

In cases such as the above, in lieu of birth certificates, it was noted that other official documentation may be presented as evidence instead. The most common substitutes that are usually accepted are:

- National identity / nationality / citizenship card
- An official declaration stating that the birth certificate was destroyed
- The Baptismal certificate or an extract from Church books
- A sworn Affidavit
- A statement of identity verifying the nonexistence of a birth certificate
- School records attested by the school principal
- Household registration

It was also noted that in most countries documents such as affidavits, declarations, statements and extracts must be notarised.

Considering that the afore-mentioned Newspaper Article made specific reference to Lebanon and India, this Office also carried out a more in-depth research on the actual availability of birth certificates with respect to both countries. This has revealed that, in actual fact, there are circumstances whereby birth certificates may be unavailable as well.

In the case of India, prior to April 1<sup>st</sup> 1970 the registration of births was purely on a voluntary basis. Consequently, in the case of a person born in India whose birth has not been registered (or the available birth certificate contains insufficient information), it is an accepted praxis that the applicant can present either one (or more) of the following documents: a school-leaving certificate; a Matriculation certificate; a certificate of a Recognized Board obtained from the school last attended by the person; a baptismal certificate obtained from the church authorities or a notarised affidavit executed by a parent or close relative (older than the applicant). The latter should clearly state the date and place of birth, both parents' names and any other related facts.

On the other hand, in the case of Lebanon, nationals may have their birth certificate missing due either to non-registration or to the civil war. Consequently, in lieu of birth certificates such nationals may present alternative civil documentation such as an individual or family civil registration sheet issued by the Civil Registry Office and which contains records of all family members, together with a statement of non-existence of the relative birth certificate/s. A Lebanese identity card may also be used as secondary evidence along with the aforementioned statement of non-existence of the relative birth certificate/s.

During our vetting sessions it was noted that there were cases (of persons originating from particular countries) in which the birth certificate was not available. However, the ORIip is satisfied that, in such instances, the applicants in question were always required to present an explanation as to why the document could not be provided and to present the best alternative document in its stead.

## 6.0 **R**ecommendations based on observations made by the ORiip in this Report

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The ORiip is pleased to note that nearly all of the recommendations which it had put forward in its 2016 report were either entirely implemented or are in the process of being taken on board. Consequently, in this year's report the number of recommendations which it has drawn up is significantly less:

### **Statistical Information**

IMA should consider issuing statistical information on a regular and more frequent basis rather than opting to divulge information only when it is requested in Parliament (through requests contained within parliamentary questions, as can be seen in Section 3.1) or when it is published annually in the IIP Regulator's report.

### **ICT System**

This recommendation was put forward in last year's report and since (as per the IMA's feedback in Section 4.0) this is still works in progress, the ORiip feels that it should continue emphasizing the importance of having a proper ICT system which facilitates the carrying out of its functions.

### **Filing**

As highlighted in Section 5.1, until all processes are fully computerized, all related documentation (including exchanges of communication approving requests or otherwise) should be filed in an appropriate manner along with the original applications and other relative documents made available in physical format together with printed versions of online documents of relative importance so that the conventional physical file will contain all the relevant information; thus allowing for a proper **physical** audit trail.

### **Staffing**

This recommendation was also put forward in last year's report. In this regard the ORiip considers that this issue has yet to be adequately addressed especially in view of the constant staff turn-over which takes place at the IMA.

### **Communications with the Minister**

As indicated in Section 5.1, recommendation letters to the Minister should contain exhaustive reasons (where warranted) as to why an application should be approved or refused.