



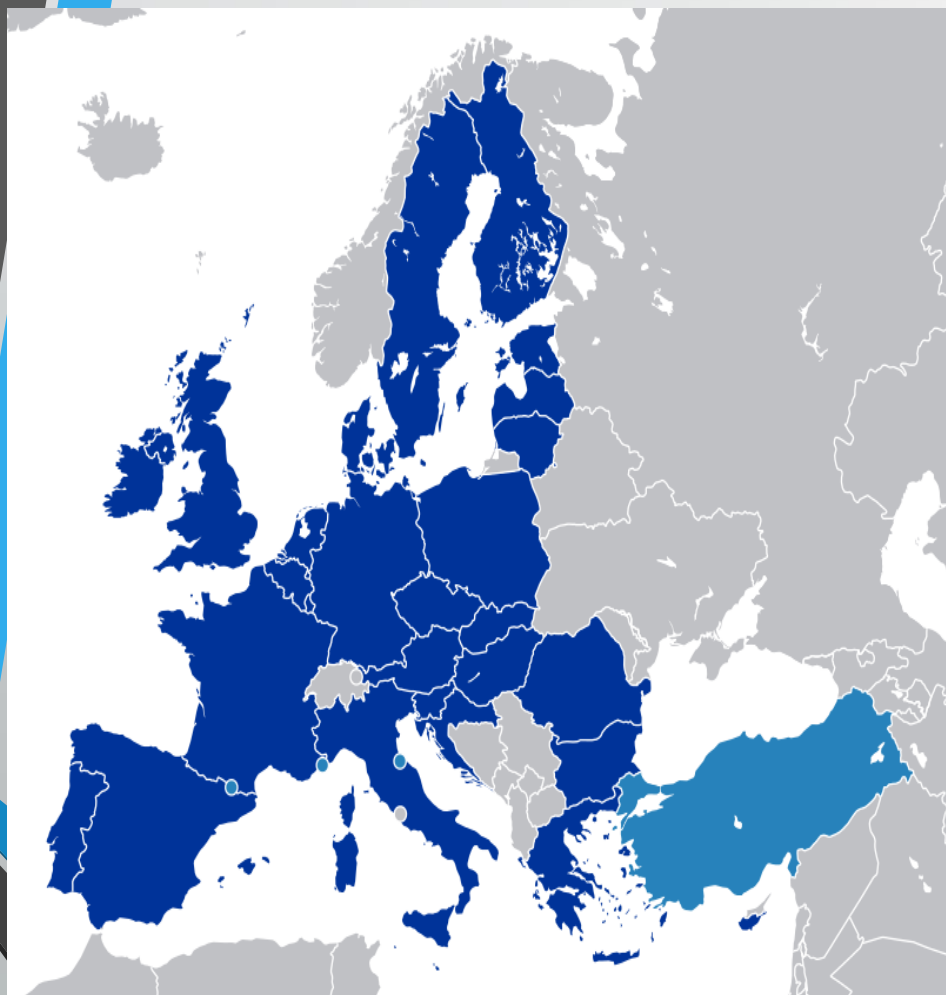
Yacht Leasing – The Maltese Perspective

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Geographical Perspective



- Malta is located in the central Med, South of Italy and North of the African littoral.
- Since 2004 Malta is a full member of the European Union.
- Malta forms part of the European customs territory.
- Malta is a member to the EU's common system of V.A.T.
- Standard VAT rate in Malta is 18%.
- The VAT Leasing Schemes administered by the VAT Department in Malta offer considerable tax planning opportunities to yacht operators and owners.

Yacht Sale & Purchase – Supply of Goods

➤ Basic rules;

- Every yacht used in EU waters by an EU resident must have VAT-paid status and must carry onboard evidence of payment of VAT.
- For EU built yachts there must be evidence that VAT was paid on their acquisition.
- For yachts built outside the EU, there must be evidence that VAT was paid on her market value on importation into the EU.
- For EU VAT purposes, the country where a supply is made or is deemed to be made is called the **place of supply** and is **the place where VAT must be charged** upon the occurrence of a chargeable event.
- There are two broad categories of place of supply rules. those rules governing the supply of goods and a set of rules governing the place of supply of services.

➤ **The sale of a yacht is treated as a supply of goods and depending on the place of supply, or deemed place of supply of the yacht, different VAT rules would apply.**

- A yacht built in a member State for delivery in that member state, the supply is considered to take place there and the VAT rates in that member will apply to the sale.
- For example: Seller established in Malta, buyer resident in Malta – Maltese standard rate of VAT at 18% would apply to the sale

Yacht Sale & Purchase – Supply of Goods

- Place of intra community acquisition of a new means of transport for private use.
 - In the case of a yacht, a “**new means of transport**” means a *yacht exceeding 7.5 meters in length which was supplied not more than three months after the date of first entry into service or has not sailed for more than 100 hours*.
 - Where a new yacht is built in a member State for delivery to a buyer located in another member State, the purchaser accounts for VAT in the **member State of destination** at the rate applicable to the supply of identical goods in that member State.
 - For example: Builder established in Italy, purchaser resident in Malta – yacht to be delivered in Malta, the purchaser will account for Maltese VAT on the acquisition of the new yacht.

Yacht Sale & Purchase – Supply of Goods

- Place of intra community acquisition of a new means of transport for commercial use.
 - The place of an intra community acquisition of a yacht for commercial use shall be deemed to be within the territory of **the member State which issued the VAT identification number** under which the person acquiring the yacht makes the acquisition.
 - VAT will be entered as input tax in the same VAT return in which the tax point occurs under the *Reverse Charge Rule*.
 - When the new means of transport is resold as second hand by a taxable person, VAT becomes due on the purchase price.

Importation of Goods into the EU

- *The place of importation of goods shall be the member State within whose territory the goods are located when they enter the community.*
 - A yacht built outside the EU for delivery to a person resident or established in the Community must first undergo formal importation procedure for that yacht to be in free circulation in EU waters.
 - This procedure would involve the physical presents of the yacht in the member State of importation where the yacht is inspected and valued by Customs, taxes due, whether VAT or excise tax, are paid and a receipt of payment issued by the Customs Authority as proof of importation of the yacht.

Yacht Leasing

- VAT rules treat the lease of a yacht differently from the sale of a yacht.
- Yacht leasing is the provision of a service whereby the lessor (owner) contracts the use of the yacht to the lessee (the person who leases the yacht) in return for a consideration.
- A leasing agreement may also grant to the lessee the option to purchase the yacht at a percentage of the original price at the end of the lease period.

General Rules Governing the Place of Supply of Yacht Leasing

➤ Place of Supply Rules – Long Term Hiring of Yachts (1)

- Distinction between long-term hire and short-term hire of a yacht.
- Where the charter period is more than 90 days the supply is treated as a long term hire of a means of transport.
- Where a yacht is chartered on a long term basis to a **taxable person** acting as such the place of supply is the place where that person, **the customer**, has established its business (“B2B” supplies).
- Where the yacht is chartered on a long term basis to a **non taxable person**, that is, to a person who does not use it for business purposes, for a continuous period of more than 90 days, the place of supply shall be the place where **the customer** (a) is established, or (b) has his permanent address or (c) resides (“B2C” supplies).

General Rules Governing the Place of Supply of Yacht Leasing

➤ Place of Supply Rules – Long Term Hiring of Yachts (2)

- IMP exception to (“B2C”) place of supply rule in the case of a pleasure yacht.
 - The place of supply is where the pleasure yacht is actually “**put at the disposal of**” the customer, namely where the customer takes physical possession, **AND** as long as the service is actually provided by **the supplier from his place of business or a fixed establishment**.
 - Hence, in a Malta yacht leasing scenario it is important for the lessor to establish a “place of business” or “fixed establishment” in Malta.

General Rules Governing the Supply of Yacht Leasing

➤ Place of Supply Rules – Short-Term Hiring of a Yacht

- The place of short-term hiring of a means of transport shall be the place where the means of transport is **actually put at the disposal of the customer**.
- “*short-term*” means the *continuous possession or use of the means of transport through out a period of... in the case of vessels, not more than 90 days*.
- There is no distinction between customers who are taxable persons and those who are not.
- “*put at the disposal of the customer*” means the place where the customer or a third party acting on his behalf takes physical possession of it (*article 40 VAT IR*).
- The contract serves as a rebuttable presumption to establish the actual duration of the continuous possession or use.

The Criterion of “*effective use and enjoyment*”

- Whether or not a lease of a yacht is a “B2B” or “B2C” transaction, and whether or not the charter period exceeds 90 days, the place of supply of services rules are subject to the so called “**effective use and enjoyment rule**”.
- In the context of hiring of a yacht, if the yacht is effectively used and enjoyed outside the territorial waters of the European Union the VAT legislation of the member State in which the supply would otherwise be treated as taking place may permit all or part of the supply to be treated as supplied outside the European Union.
- The use and enjoyment rule is not mandatory. Each member State has a discretion as to whether or not to implement such a rule.

Fiscal Incentives - VAT Treatment of Yacht Leasing in Malta

- Based on the criterion of *effective use and enjoyment* and the place of supply of rules, in 2005, the Director General (VAT) in Malta published the **Guidelines for the VAT Treatment of Yacht Leasing**.
- Malta deems the “*effective use and enjoyment*” of a pleasure yacht inside EU waters depending on the length and method of propulsion of the yacht.
- The standard rate of VAT (18%) is then applied on the established percentages of the lease deemed to be related to the use of the yacht in EU territorial waters.
- Whether the yacht is acquired by the **lessor** from Malta, another EU Member State or imported from a third country, VAT due will be deferred and/or refunded on the basis that the yacht is an asset being used in furtherance of economic activity of the **lessor**.

Fiscal Incentives -VAT Treatment of Yacht Leasing in Malta

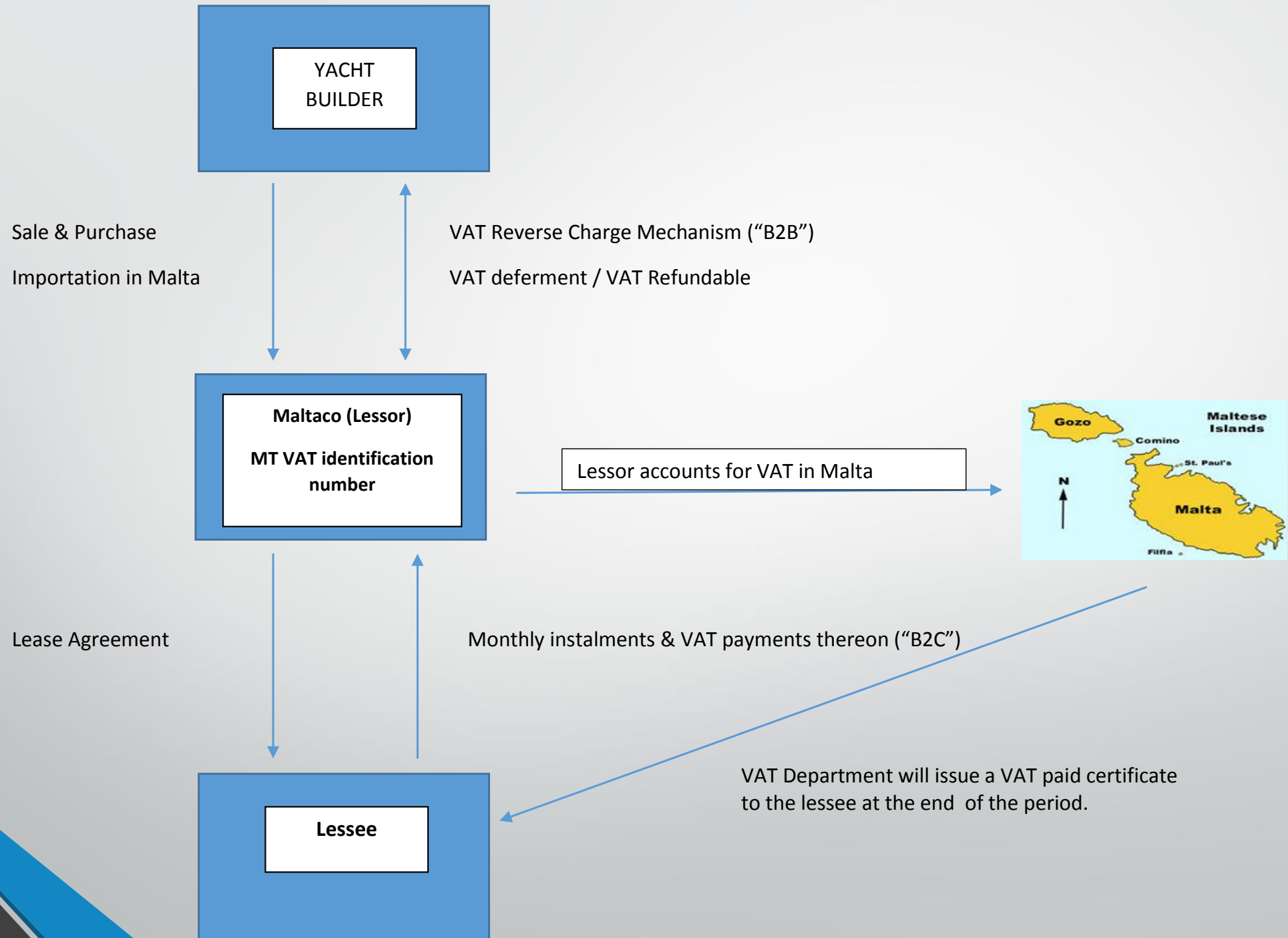
➤ The table below indicates the established percentage portions.

Type of boat	% of lease taking place in the EU	Computation of VAT
Sailing boats or motor boats over 24 metres in length	30%	30% of consideration x 18%
Sailing boats between 20.01 to 24 metres in length	40%	40% of consideration x 18%
Motor boats between 16.01 to 24 metres in length	40%	40% of consideration x 18%
Sailing boats between 10.01 to 20 metres in length	50%	50% of consideration x 18%
Motor boats between 12.01 to 16 metres in length	50%	50% of consideration x 18%
Sailing boats up to 10 metres in length	60%	60% of consideration x 18%
Motor boats between 7.51 to 12 metres in length (if registered in the commercial register)	60%	60% of consideration x 18%
Motor boats up to 7.5 metres in length (if registered in the commercial register)	90%	90% of consideration x 18%
Boat permitted to sail in protected waters only	100%	100% of consideration x 18%

Fiscal Incentives -VAT Treatment of Yacht Leasing in Malta.

➤ Main features of the VAT leasing scheme;

- The yacht must come to Malta at the beginning of the lease where it is **put at the disposal** of the lessee.
- The lease agreement shall be between a MaltaCo (lessor) duly registered with the VAT department and any other Maltese and foreign person or company (lessee).
- An initial contribution shall be paid by the lessee to the lessor amount to 50% of the value of the yacht.
- Prior approval shall be sought in writing from the Director General (VAT) who shall confirm the applicable VAT rate, as well the acceptability of the declared value of the yacht.
- The lease instalments shall be payable every month and lease agreement shall not exceed 36 months.
- The lessor is expected to make a profit from the leasing agreement over and above the value of the yacht.
- Any purchase value at the end of the leasing agreement shall not be less than 1% of the original value of the yacht, and this will be subject to the standard rate of VAT at 18%
- If the lessee opts to purchase the yacht at the end of the lease, a VAT paid certificate will be issued to the lessee provided that all VAT due has been paid.



Fiscal Incentives -VAT Treatment of Yacht Leasing in Malta

Yacht Name	MY Malta
Yacht Size & Type Duration of leasing period	Over 24 meters motor Sailing 12 calendar months
Applicable VAT Rate	5.4%
Yacht Market Value	6,000,000.00 euro
Amount of VAT to be paid at 5.4%	324,000.00 euro
18% on 1% of Value	10,800.00 euro
35% on 1% of Value	21,000.00 euro
Total Payable	355,800 euro
VAT Payments	
Initial lease payment (50% of the VAT due on the value of the yacht at 5.4% +1 quarter/ Period of VAT)	202,500.00 euro
2 nd Lease payment (1 quarter/ period of VAT)	40,500.00 euro
3 rd Lease payment (1 quarter/ period of VAT)	40,500.00 euro
4 th Lease payment (1 quarter/ period of VAT +18% on 1% of value)	51,300.00 euro
35% income tax on 1% of value	21,000 euro
Total Tax due (VAT + Income Tax)	355, 800.00 euro
For comparison purposes 18% on full value	1,080,000.00 euro
Total VAT savings	724,200.00 euro

MY Whispering Angel [2015]

➤ Relevant Facts:

- The MY Whispering Angel was a yacht owned by a Maltese registered company.
- Maltese company entered into a 1 year leasing agreement with a BVI company.
- Leasing agreement regulated by Maltese law and registered with the VAT department pursuant to the Maltese VAT leasing scheme.
- At the end of the lease period the lessee did not immediately exercise the option to purchase the yacht and, instead, it entered into a MOA to sell the yacht to a third party purchaser.
- On the MOA the seller (lessee) bound itself to exercise its purchase option in respect of the yacht and to account for VAT in Malta on such purchase such that the yacht would be transferred to the buyer duly VAT paid and in receipt of a VAT paid certificate issued by the Maltese VAT department.
- The sale contemplated in the MOA fell through and the would be purchaser suffered losses.
- Purchaser found out that the yacht was on her way to Malta where the lessee was expected to exercise the purchase option under the leasing agreement.
- The yacht was arrested immediately upon arrival in Maltese territorial waters and before the lessees could exercise the purchase option.
- The owner challenged the validity of the arrest before the Courts in Malta.

MY Whispering Angel

➤ Lessors' case:

- The lessor had no juridical relationship with the buyer under the MOA, and seller under the MOA was not the owner of the yacht.
- The arrest warrant was sued out against the property of a third party and not that of the lessee (seller under the MOA).
- Hence, the owner (lessor) requested the Court to revoke the arrest on the basis of *article 836(1)(f) of the Code of Organisation and Civil Procedure*.

➤ Buyer's case:

- The buyer recognised the fact that he had no claims against the owner (lessor) of the yacht but contended that the arrest of the yacht was *in rem* because he had a maritime claim against the yacht pursuant to article 742B (d) of the COCP. This article grants jurisdiction *in rem to the Maltese courts* over any claim arising out of the contract for the sale of the vessel.
- Additionally the requirements of *article 742D(a)* were satisfied because the lessees were the bareboat charterers of the yacht when the cause of action arose **AND** the lessees were still the bareboat charterers thereof when the action was brought by the buyer because the purchase option had not been exercised by the lessees.

MY Whispering Angel

- Article 742D(a) provides that“... *an action in rem may be brought before the civil courts of Malta against - (a) that ship or vessel, where the person who would be liable on the claim for an action in personam ("the relevant person") was, when the cause of action arose, an owner or charterer of, or in possession or in control of, the ship or vessel, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that ship or the bareboat charterer of it*”.
- The Court ruled that, the arrest of the yacht by the buyer was valid even though the yacht was owned by a third party (lessor) since the lessees were the bareboat charterers of the yacht at the relevant times.

Legislative Developments (1)

- To date a lease agreement regulated by Maltese law is subject to the provisions of the Civil Code regulating the institute of lease.
- In particular *article 1569(2) of the Civil Code* imposes upon the coveenantee the obligation to give notice by means of a judicial act to the covenantor of his intentions to dissolve the lease. This notification procedure may present the lessor with considerable difficulties in the event that the lessee is not resident or established in Malta.
- In terms of the proposed amendments to the Civil Code, which are expected to come into force shortly, *“the letting of ships... shall be regulated by the provisions of any agreement between the lessor and lessee in accordance with its terms as well as by the international usages of trade applicable in the context.”*
- Notwithstanding any of the provisions of the Civil Code which regulate leases in Malta, *“any agreement relating to the letting of ships or air crafts shall be governed by:*
 - i. The terms and conditions agreed between the parties, and in case of conflict with the provisions [of the Civil Code] such terms and conditions shall prevail: and*
 - ii. The special laws relating to merchant shipping and civil aviation as the case may be”*

Legislative Developments (2)

- Notification requirements upon the occurrence of an event of a default:
 - The requirement to notify the defaulting party by means of a judicial act will be done away with and instead *“a notice of termination by the parties may be given by notice in writing in any manner, **including by electronic means**”.*
- Enhancement of the lessor's powers in the event of a default:
 - The lessor shall be entitled to immediately dissolve or terminate the lease upon an occurrence of an event of default and upon giving the lessee a notice in writing, notwithstanding the opposition by the lessee, and this **without the need of any authorisation or confirmation by any court that an event of default has taken place.**
 - *In such circumstances the lessor may, after giving notice to the lessee, take possession of the ship in accordance with the agreement between the parties and may ask the Court for an order authorising or directing these acts, and the Court **shall** render full support to the lessor or the mortgagee as expeditiously as possible.*
- *In the event that the lessor terminates the lessee agreement for reasons not contemplated in the agreement or valid reasons at law the lessee may seek damages for breach of the agreement.*

Conclusion

- Malta offers advantageous tax planning opportunities to yacht owners or would be owners within a sound and modern legislative framework whilst at the same time granting considerable protection to the rights and interests of both lessors and lessees when they are parties to a leasing agreement regulated by Maltese law.



Thank You All!