

# Office of the Regulator

Individual Investor Programme (ORIIP)

8 ta' Novembru, 2019

Onor Dr Joseph Muscat,  
Prim Ministru,  
Berga ta' Kastilja,  
Il-Belt Valletta.

Għażiż Prim Ministru,

Mehmuż ma' din l-ittra qiegħed bir-rispett kollu nissottomettilek uffiċjalment ir-Rapport li lestejt dwar il-każ tal-kumpanija ta' Chetcuti Cauchi Advocates b'konnessjoni mal-programm Enquête Exclusive li deher ftit tal-ġimgħat ilu fuq stazzjon televiżiv Franciż vis-a-vis l-IIP. Tajjeb jingħad illi f'dan ir-rapport ta' sehemu sew is-Sur Jesmond Camilleri, uffiċjal għoli fl-Uffiċċju tiegħi, bil-kollaborazzjoni sħiħa tas-Sur Jonathan Cardona, il-Kap Eżekuttiv tal-MIIPA, billi tani aċċess sħiħ u totali għad-dokumenti kollha meħtieġa. Dan ir-rapport jien għamiltu a termini tal-funzjonijiet tiegħi skont kif hemm provdut fl-Artiklu 25 tal-Att Dwar iċ-Ċittadinanza Maltija (Kap. 188), partikolarment is-subartikli (1) u (3) tiegħu, liema rapport, skont kif hemm provdut fis-subartiklu (7) tal-imsemmi Artiklu 25, jien għandi l-obbligu li nipprezentah lilek bħala l-Ministru responsabbli miċ-ċittadinanza Maltija.

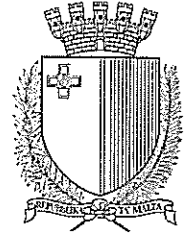
Jekk inti tkun trid tiddiskuti miegħi xi partijiet minnu jew ikollok bżonn xi kjarifiki, jiena ninsab għad-dispożizzjoni tiegħek skont il-ħtieġa.

Tislijiet.

  
**CARMEL L. DE GABRIELE**  
Regolatur  
Programm Investitur Individwali

Kopja lill:

Onor Julia Farrugia Portelli,  
Segretarju Parlamentari,  
Uffiċċju tal-Prim Ministru.



# Office of the Regulator

Individual Investor Programme (ORiip)

## Analysis of IIP Applications presented by Chetcuti Cauchi Advocates

8 November 2019



## Executive Summary

The ORIip has carried out a review of all IIP applications submitted by the Firm Chetcuti Cauchi Advocates following a number of related allegations which were made on a French TV programme. The exercise was primarily aimed at identifying potentially unusual patterns which could either prove the veracity of, or at least give a degree of credibility to any of these allegations. By way of comparison, it also took into consideration inherent issues concerning applications submitted by other agents.

During the vetting sessions a number of observations were recorded covering both general themes and matters concerning specific applications.

An analysis of these observations has not uncovered any red flags which support, in all or in part, the purported allegations. No records were found of applicants having a criminal record or of applications being presented for the Minister's consideration more than once. There was no indication of collusion between the Agent and the responsible Minister (or with the Agency) or that the former, at any point since the start of the Programme, had ever received preferential treatment. The allegation that the Agent enjoyed a hundred percent successful rate was incorrect since it was calculated that 16 percent of his applications were not approved. There was also no evidence that the Agent had attempted to find a way to get around the selection criteria. Nonetheless, if this were to be the case, the stringent checks and balances which are in place would have ensured that such attempts would have been futile.

In conclusion, although no issues were identified during the vetting exercise, the ORIip has put forward a number of recommendations which should be actively considered in order to improve the processes and, at the same time, pre-empt the possibility that doubts are cast on the credibility of related stakeholders and of all the IIP processes in general.



**Carmel L. De Gabriele**  
**Regulator**  
**Individual Investor Programme**

## 1.0 Introduction

During the transmission (on 22 September 2019) of the Programme Enquête Exclusive on French TV channel M6, a number of allegations were made regarding the Individual Investor Programme (IIP) and specifically concerning the Firm Chetcuti Cauchi Advocates (hereinafter referred to as CCA) which, up till such time was duly represented by Agents IIP001 and IIP124.

Consequently, the Office of the Regulator, Individual Investor Programme (hereinafter referred to as the ORIIP) has carried out, both on its own initiative and also following a request by the Malta Individual Investor Programme Agency (hereinafter referred to as the MIIPA), a review of all IIP files submitted by CCA from inception of the said Programme till the present date. Such initiative is in line with the provisions of the Maltese Citizenship Act (Cap 188) which state that "*the Regulator shall keep under review all aspects of the Individual Investor Programme*" (Article 25(3)) and "*the Regulator may at any time report to the Minister on any matter relating to the discharge of his functions*" (Article 25(7)).

## 2.0 Allegations made during the recorded meeting

The main IIP-related allegation made in such Programme was that CCA could influence the Minister to close an eye, successfully convincing him/her to approve a previously refused application (even if the applicant had criminal precedents) by re-presenting the dossier containing new information that would benefit the client. It was also allegedly said that this was possible because no reasons needed to be given for refusal of dossiers, indicating that the secret of this success was an intimate knowledge of the selection criteria and the best ways to get around them. Furthermore, it was alleged, that CCA claimed to be one of the only Passport Agencies with a 100 percent success rate.

**It has to be stressed that the review by the ORIIP does not address the authenticity or otherwise of these allegations, as reported by the French TV channel and, subsequently published by the Media since this goes beyond the scope and functions of the Regulator IIP as provided for in Article 25 of the Maltese Citizenship Act (Cap. 188).**

## 3.0 Action taken by the ORIIP

As indicated in Section 1.0, the ORIIP carried out a review of all IIP applications submitted by CCA since the inception of the Programme. The exercise consisted of a thorough analysis of documentation (duly made available by the MIIPA) in the form of packs (one for each application presented by CCA) containing forms, supporting documents and exchanges of correspondence. It has to be stressed that application-vetting has been the principal method adopted by the ORIIP in order to ensure the correct implementation of (and to effectively monitor) the IIP. This has been carried out regularly from the date when the first applications were received by the Agency. Initially the ORIIP adopted the sampling method whereby it vetted up to 20% of approved applications, however the rate was progressively increased

and, since July 2017, 100% of all types of applications (approved, refused and withdrawn) have been scrutinised.

The ORIip's review also took into consideration inherent issues concerning all applications submitted by the other Agents and which were already vetted (separately and previously) by the Office. Particular attention was given to the quality of applications and the ensuing due diligence process. This was done in order to verify whether issues which were identified during this exercise had any similarity to those noted in the case of other Agents or whether these were unique to CCA's applications.

In essence, when going through each document, the ORIip searched for potentially unusual patterns such as (but not limited to):

- Identified red flags which were not sufficiently addressed;
- Refusal recommendations/decisions which were overturned;
- Any application which was presented more than once by the Agent;
- Any correspondence suggesting that the Agent was given preferential treatment; and
- Any action taken by the Agent suggesting that he was attempting to circumvent any of the provisions of the selection criteria.

## 4.0 Statistical Information

At the time when CCA had been suspended and the ORIip started the ball rolling in its investigations the Agent had submitted 164 applications. Of these the ORIip had already, in the past, vetted 67 (i.e. 41%). The remaining unvetted applications consisted of those that either did not form part of the samples originally selected by the ORIip for vetting or (in the case of more recent applications) had either yet to be vetted or were not yet completed.

The outcome of these 164 applications was as follows:

Approved	123
Refused	14
Withdrawn after approval	5
Withdrawn before approval	5 <sup>1</sup>
Still in progress	17

In addition to the above, the ORIip is informed that there were 16 other cases in which the process, **leading exclusively** to an IIP application, had started but was discontinued at pre-IIP application stage. 13 of these were officially withdrawn by the Agent during this pre-IIP application stage since initial verbal enquiries with the MIIPA revealed that the Main Applicant might be facing serious problems at due diligence stage if he/she were to proceed with his/her IIP application, whilst the remaining 3 failed the security checks carried out by the Malta Police at Residency Card application stage and were consequently *ipso facto* rejected before a formal IIP application was filled in and officially presented to the MIIPA. Things being as such, there was no scope in vetting or examining these cases because, in effect, no IIP-related documentation had been compiled and presented to the MIIPA and hence no further action was taken by the latter.

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<sup>1</sup> One of these applications was returned to the Agent at the initial stage and was never resubmitted. Consequently it could not be vetted by the ORIip since no documentation existed at the MIIPA's end.

Apart from compiling statistical data on the Agent in question, the ORiip also carried out a comparative exercise by determining the approval rate applicable in the case of other main Agents, also since the start of the Programme (those having relatively few applications were not taken into consideration). The results are as follows:

Agent <sup>2</sup>	% Approved	% Not Approved
Agent A	93	7
Agent B	91	9
Agent C	86	14
<b>CCA</b>	<b>84</b>	<b>16</b>
Agent D	83	17
Agent E	80	20
Agent F	76	24
Agent G	72	28
Agent H	70	30
Agent I	63	37
Agent J	13	87

Discounting the applications withdrawn before approval and those still in progress, the remaining 142 applications were actioned (over a period of years) by the following three Ministers and one Parliamentary Secretary – the latter acting in lieu of the Prime Minister - all of whom were responsible, during their tenure of office, for Citizenship affairs:

Minister Emmanuel Mallia	1
Minister Carmelo Abela	18
Minister Owen Bonnici	52
Parliamentary Secretary Julia Farrugia Portelli	71

## 5.0 Key Observations

### Observation 01

It was alleged that CCA claimed to be one of the only Passport Agencies with a 100 percent success rate. In view of the statistical information in Section 4.0 it is clear that such claim is false. Taking into consideration only the applications on which a decision was taken the refusal rate in the case of CCA is **10%** whilst, if one were to include those withdrawn, the percentage of non-approvals goes up to **16%**. On the other hand, if one were to include also the cases which were rejected/withdrawn at pre-application stage the percentage of non-approvals would go further up to 20%.

### Observation 02

CCA's claim – as alleged – that it was one of the only Passport Agencies with a 100 percent success rate implies that there were other Agencies that held such record. The data in Section 4.0 shows that this is not the case.

<sup>2</sup> The reference numbers used in this report to distinguish between the various Agents are random and have no link whatsoever with any of them.



Furthermore, a comparison of the various refusal rates pertaining to each Agent shows that applications are considered on their own merit and none are receiving favourable treatment.

### **Observation 03**

Up till 2016 a number of applications submitted by CCA were refused because they were deemed to be incomplete. This was not a phenomenon exclusively linked to CCA. In fact applications of other agents were similarly refused for the same reason. The alleged reference (in the recorded meeting) to refused applications is not referring to these types of applications since refused poor quality applications were never, in the first instance, referred for the Minister's consideration.

### **Observation 04**

During the vetting sessions the ORIip noted one application containing two reference numbers. The matter was investigated further since, in theory, two reference numbers could mean that an applicant could have been referred twice (on different occasions). The investigation revealed however that this was one of the instances in which an application had been referred back to CCA before the effective processing itself by the MIIPA had even started due to being of poor quality. The ORIip is informed that, when the application was received the first time it was given a reference number and that, when a subsequent good quality version was submitted, the receiving officer quite erroneously and inadvertently assigned another reference number to it.

### **Observation 05**

There was one instance in which the external due diligence reports were completed by January 2018, however the letter to the Minister (with a recommendation to approve) was submitted one year later (in January 2019). Since the Due Diligence report is usually completed by the Agency within 1-2 months from the date when such external reports are finalized, the ORIip investigated the reason for such delay. Accordingly, it transpired that this particular application contained a considerable amount (58 pages) of documentation which had to be translated and therefore the report was updated after such exercise was completed (hence the length of time).

In any case it has to be remarked that no significant issues were identified during the due diligence process.

### **Observation 06**

In the recorded meeting it was alleged that CCA could resubmit a refused application and manage to have it approved. This is incorrect. Indeed, a thorough analysis of applications has revealed that none of the applications presented by CCA was ever submitted more than once.

### **Observation 07**

When going through the due diligence evaluation process of CCA's approved applications the ORIip has noted that:

- 45% of applications contained absolutely no adverse information;
- 42% of applications contained a number of red flags prompting the MIIPA to carry out further investigations (including seeking additional explanations/supporting

documentation from the applicant in question) prior to determining that these did not constitute any threats to the Programme;

- 13% of applications contained a number of red flags which were the subject of a discussion between the ORiip and the MIIPA in order to determine exactly the reasoning behind the evaluators' assessment and consequent decision to recommend approval.

The above figures are similar to those drawn up by the ORiip on all applications vetted from 2017 onwards – 54% contained no issues, 40% contained minor issues that were adequately resolved by the Agency and 6% for which additional clarification was requested from the MIIPA.

#### **Observation 08**

It was alleged that CCA would be able to present an application which included an applicant who had a criminal record. A thorough analysis of all applicants revealed that this was not the case and that none of the applicants (forming part of applications presented by CCA) ever had any criminal records. When considering all vetted applications (i.e. including those submitted by the other Agents) the ORiip is aware only of one incident when the Main Applicant had a criminal record. The Agent in question was not CCA and the application was refused outrightly.

#### **Observation 09**

There are no noteworthy issues concerning exchanges of communication. Most of the communications sent by CCA to the Agency relate to requests for extensions (in order to pay the final contribution and/or satisfy post-approval requirements). There were also exchanges regarding specific points of contention, however there is no indication that the Agent was ever given any preferential treatment, as shown by the following observed instances:

- The MIIPA did not accept CCA's request for documents to be certified by a legal procurator, insisting that these should be signed by a lawyer / notary;
- The Agent was asked to resend the covering letter since it contained no confirmation that Tier 1 Due Diligence checks had been carried out.
- Whereas, if deemed justifiable, the MIIPA approved requests for extension, instances when the Agent attempted to continue extending a particular deadline repeatedly were never accepted.
- When documentation was missing, the MIIPA always insisted that it was provided.
- In one instance the Agent asked the MIIPA whether an application could be fast-tracked however the latter request was denied.

#### **Observation 10**

In one instance it was noted that the Agent had asked the Agency to put an application (which was in progress) on hold. This request was received by the Agency four months after the application had been originally submitted. This was followed by an explanation in relation to some developments in a business in which the Main Applicant was involved. Notwithstanding this explanation, in view of the red flags which were found during the due diligence process the application was nonetheless refused.



### Observation 11

In general, persons appointed as Main Applicants are usually those who are economically the wealthiest of the group. Nonetheless the ORIip has noted a number of instances in which the less wealthy spouse was appointed as the Main Applicant and, in some of these instances, the due diligence process revealed damning information about the wealthier dependant leading the application to be either refused or withdrawn as soon as questions start being asked.

### Observation 12

It was noted that four applications were withdrawn at due diligence stage, at a point when the Agency was waiting for feedback / supporting documentation regarding red flags identified during the process.

### Observation 13

In all cases where a decision was taken, the Minister always took on board the recommendation put forward by the Agency. There were no instances in which the recommendation was overturned.

### Observation 14

There was one instance in which the application was originally submitted by another Agent but was eventually replaced by CCA. In such case the ORIip noted that there were no issues since, according to the documentation available in the application pack, the due diligence process had not yet been carried out at the time of the switch.

## 6.0 Detailed Analysis

From experience, and also following an analysis of applications submitted by CCA, the ORIip can point out that the very notion of an Agent meeting up with the Minister and convincing him/her to reassess a refused application is implausible.

First of all, the Agent would not be aware of the exact time and date when the application will be sent by the MIIPA to the Minister (for his/her consideration) and therefore a physical encounter to discuss the outcome of an application is highly improbable.

Secondly, at the stage when an application is being considered for approval / refusal, exchanges of communication only take place between the MIIPA and the Minister responsible for citizenship. The Agent is only roped in at the end of the process, when the Minister would have taken a decision, and this would have been communicated to the MIIPA. Furthermore, at such latter stage, communication (in order to transmit the final decision) with the Agent is made exclusively by the MIIPA, with no ministerial intervention.

If – for the sake of the argument – the Agent does manage to communicate with the Minister and does manage to convince him/her to reassess a refused application, it is not clear how the Agent would be able to produce new information that would “benefit the client”,

considering that, by the Agent's alleged own admission, no reasons are given for refusal of dossiers.

Also for the sake of the argument, if the Agent manages somehow to present new information which would convince the Minister to change his/her mind, the Minister could theoretically opt for:

- a) Either overturning the MIIPA's recommendation (as indicated in **Observation 13**, no such instance was noted during the vetting process);
- b) Or having the application processed again by the MIIPA (as indicated in **Observation 06** there have never been any instances in which CCA submitted an application more than once).

One should note that the IIP process involves quite a number of stakeholders and therefore it would be very difficult for any unorthodox and hypothetical tweaks (by the Minister or the Agency) in the process to go unnoticed. In particular, application forms/supporting documentation are endorsed by professionals, police conduct certificates (originals) are provided by police authorities and external due diligence reports are drawn up by independent companies who'd have no interest in falsifying their findings. Furthermore, all related information/documentation is eventually checked by the Office of the Regulator.

The vetting process per se has confirmed that, in the initial period following the launch of the Programme, the quality of documentation submitted by the vast majority of agents was very poor. This often led to applications being refused, not because the applicants in question were not deemed suitable for being granted Maltese Citizenship but because the applications could not be processed in the manner how they were presented. Indeed, it was customary for forms to be riddled with missing / wrong information and for key supporting documents to be unavailable. In such cases the application packs would be resubmitted (after all issues would have been rectified by the Agents) after a few weeks/months. With regards to the Agency, whose staff – at the launch of the Programme – had faced a steep learning curve, a number of shortcomings (obviously due to inexperience) was noted as well, particularly in the manner how physical documentation (including exchanges of correspondence denoting ad hoc decisions taken on requests concerning parts of the process) was not always properly filed. On the other hand, with regards to due diligence, as indicated in Observation 07, no particular issues were noted since the decisions taken by the Agency (to recommend approval or rejection) were in line with its internal evaluation of all related findings.

Article 6 of LN 47/2014 technically provides a loophole for persons with a criminal record to be approved since it states that an applicant who is ineligible "shall not be approved for citizenship under the programme, unless Identity Malta is satisfied that the applicant is still worthy of being considered for approval due to special circumstances to be demonstrated by the applicant. In such case, Identity Malta shall issue a reasoned opinion as to why such applicant should still be considered for approval and shall refer such application to the Minister who will have the sole authority to grant such approval." **In reality, however, such Article has never been invoked** and, in all fairness, as observed during the vetting sessions (**Observation 08**), CCA has never presented an application which included anyone having a criminal record.

This does not necessarily mean that the Agent might have not attempted to find ways (not deemed to be illegal) how to circumvent (or, as allegedly stated, find the best way to get around) the selection criteria, as noted hereunder:

- In one instance (**Observation 10**), the Agent's attempt to put the application on hold and try to justify a number of issues at the point when it was inevitably veering towards refusal was deemed by the Agency to be a ruse to buy time in order to try

and mitigate the damage, noting that, if this were to be a genuine request, there would have been ample time to submit such communication before it became clear that this application was bound to be refused.

- In the case of instances (**Observation 11**) whereby the less economically wealthy partner was appointed as the Main Applicant, whilst there might be legitimate reasons why one should do so, one could also surmise that this might have been an attempt to obscure the latter person's presence, possibly in the hope that potential red flags are not noted. If this were to be the case such action would have been futile since the Agency has always carried out stringent due diligence checks irrespective of whether the person is the Main Applicant, the Spouse or any of the other dependant.
- In the case of applications withdrawn at due diligence stage (**Observation 12**), whilst there could have been legitimate reasons for applications to be withdrawn one could also think that this was a move intended to pull out an application before it was refused (following which it would be more difficult to apply for citizenship in any other country offering citizenship by investment programmes).

## 7.0 Conclusion

Basing itself on the documentation which it has vetted the ORIip can conclude that there are no indications that CCA has ever engaged in any of the activities allegedly mentioned in the recorded interview. In particular no applicant with a criminal background has ever been included in an application presented by the Agent. There have also never been instances in which the Agent put forward an application more than once or that any pressure was put on the Minister and/or the Agency for a favourable decision to be taken in cases which should have been refused. Furthermore, the observations listed in this report, although focusing on CCA, generally apply across the board.

The ORIip is not the competent authority to determine the authenticity, proper interpretation or otherwise of the allegations made during the recorded meeting. Therefore, **if the allegations made by the presenter/narrator of the French TV Programme in relation to the statements/declarations made by CCA are ultimately proven to be true**, then the ORIip can only conclude that the Agent (CCA) could be charged with disseminating totally misleading information for reasons best known to him, probably by way of an insensible sales promotion, as a result of which (a) the Individual Investor Programme was unduly put in very bad light both locally and abroad and (b) the persons referred to by CCA in the reported interview – i.e. the Prime Minister, Minister Owen Bonnici and Parliamentary Secretary Julia Farrugia Portelli – were grossly slandered.

## 8.0 Recommendations

Notwithstanding the fact that no issues were identified following an analysis of each application submitted by CCA there is a number of recommendations (as indicated hereunder) which should be actively considered in order to improve the processes and, at the same time, pre-empt the possibility that doubts are cast on the credibility of related stakeholders and of all the IIP processes in general.

## 8.1 ICT System

The ORIIP's recommendation that the MIIPA invests in a comprehensive ICT system has been amply recorded in its previous annual reports. One of the fundamental advantages of an ICT system is that it would improve security and accountability since any insertion / amendment by any user would be recorded without the possibility of being deleted. This would ensure that one can keep track of any application and its varying statuses, including if a decision is reversed or if an application is presented more than once. At present such checks are being carried out manually and/or through basic IT programmes, which is time-consuming and prone to errors.

## 8.2 IIP Regulations

This is another recommendation which has regularly featured in the ORIIP's past annual reports and, in which, it was made clear that a revision of the Regulations is long overdue. As indicated in Section 6.0 of this report, Article 6 of LN 47/2014 (Individual Investor Programme of the Republic of Malta Regulations) technically provides a loophole for persons with criminal records to become Maltese citizens through the IIP. Whilst, whoever came up with this provision as contained in the afore-mentioned Article 6 might have had the best intentions for doing so, it is clear that, today (**given also the fact that this provision has never been invoked**) it serves only for detractors of the Programme to continue pushing forward the idea that criminals are "buying" Maltese passports. Consequently, it is being recommended that – at least – this particular provision in Article 6 of the Legal Notice under reference is removed.

## 8.3 Interactive Network

As noted in **Observation 11**, it is possible that an application is withdrawn from the Programme of one country and submitted to that of another (so that, potentially, the latter would not identify any red flags and, therefore, the application would have a better chance of being approved). It is therefore recommended that an international network is set up between Authorities of States that operate citizenship by investment schemes and that information regarding refused and/or withdrawn applications would be shared amongst them. Obviously, this recommendation is also dependent on the collaboration of all related stakeholders.

## 8.4 Main Applicants

As noted in **Observation 11**, some of the Agents might be resorting to the tactic of placing the less wealthy partner as Main Applicant. It is therefore recommended that the MIIPA accepts only the more economically wealthy partner (if this is clear) as the Main Applicant. Although, in theory, it is irrelevant as to who should be the Main Applicant (since rigorous due diligence checks are carried out on the applicants nonetheless), the fact that sometimes a partner of limited economic means should enter into a number of commitments (such as providing an affidavit of support for each dependant who is over eighteen years old) makes a mockery of the whole process.

## 8.5 Sanctioning Agents

As per current provisions of the IIP Regulations, Agents are managed directly by the Agency – they are licensed by the Agency (as per Article 3(3)) and their licence can be withdrawn by the Agency (as per Article 3 (5)). In order to dispel any notion of potential collusion between the Agency and the Agents (who would have, inevitably gained a degree of familiarity, in view of the day-to-day interaction) it is being suggested that the roles of issuing and revoking a licence is assigned to a third party who would independently monitor and evaluate each licensed agent in order to determine whether a licence should be revoked or renewed.



**Carmel L. De Gabriele**  
**Regulator**  
**Individual Investor Programme**