

FENECH + FENECH

ADVOCATES



# YACHTING IN MALTA

REPRESENTING YOU SINCE 1891

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Malta is an ideal location for cruising around the diverse Mediterranean whilst highly experienced in the creation of solid legal structures demanded by financiers, owners and charterers alike. These elements make Malta truly a one stop shop for the discerning owner who wishes to choose a stable jurisdiction with a tradition in maritime affairs, which has proven itself in the international arena and which in return for a track record of reliability and unparalleled quality and 24-hour availability of its service providers has been rewarded with the full confidence of the world's leading maritime financiers.

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Today the Maltese maritime flag is the largest flag in Europe and the 6th largest in the world. The reason is simple - it has passed the test of the most demanding ship owners and financiers whilst ensuring full respect and compliance with International Conventions and European Directives and Regulations.

Undoubtedly, it is this solid track record which has attracted and continues to attract some of the world's most beautiful yachts and influential yacht owners who have made Malta their choice.

# YACHTING DEPARTMENT

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## FENECH & FENECH ADVOCATES

Fenech & Fenech Advocates is the oldest law firm in Malta. It was founded in 1891 and has over the years moved from strength to strength offering the services needed at the relative moments in time to both local private individuals and businesses and to foreign clients, institutions and organisations. Particularly renowned for its maritime related services, it was at the forefront of the development of the Maltese flag. It is the only law firm on the island having four separate and distinct departments dealing with maritime related services being marine litigation, ship registration, ship finance and yachting. At the core of each is a work force ready to work 24 hours a day to accommodate the needs of owners and financiers coming from America and the Far East and having an excellent working relationship with the maritime and fiscal administrations, surveyors and other authorities.

Its solid maritime experience has stood it in very good stead in developing over the past 16 years an independent and thriving department focusing on the yachting industry which provides the same level of comprehensive legal assistance to both private yacht and commercial yacht owners in assisting with their registration, financing, chartering, yacht leasing and fiscal requirements and solutions.

## OUR SERVICES

With its vast overall maritime experience the team of professionals at Fenech & Fenech Advocates are able to advise yachting clients on their immediate yacht requirements by looking at the larger picture for the benefit of the client.

Our services include:

- Advice on the best solutions for the owner, charterer, financier and manager
- Assistance with yacht Sale and Purchase
- Private and commercial yacht registration
- Yacht VAT models
- Tax advice
- Advice on and co-ordination of Importation Procedures
- Registration of mortgages and ship finance
- Setting up of shipping organisations
- Employment law and social security advice
- Tailor made guidance based on the clients' particular requirements



## UPDATED RULES RELATING TO VAT PAYMENTS ON OPERATING LEASES

Malta has always been at the forefront of offering solid, reliable solutions to yacht owners depending on their individual requirements and the intended use of their yacht.

Over the past years, Malta has built a formidable reputation in catering to the owners' needs while constantly taking into account industry practice and developments.

On the 12th March 2020, the Commissioner for Inland Revenue published revised Guidelines regarding the place of supply of the hiring of pleasure yachts. The Guidelines establish the manner in which the use and enjoyment of such pleasure yachts is to be treated for VAT purposes.

While the general principle is that full taxation in Malta is applicable where the place of supply of the service is determined to be Malta, the Guidelines provide for a method of adjustment based on the actual effective use and enjoyment of a pleasure yacht within and outside EU waters. The revised Guidelines establish that this is to be calculated by reference to the period of time when the pleasure yacht is used

and enjoyed outside EU territorial waters.

For the purpose of applying the Guidelines, the Lessee is to provide the Lessor with documentary and/or technological data to determine the actual effective use and enjoyment by the Lessee of the pleasure yacht within and outside EU territorial waters during the lease period.

These Guidelines would find their application within the context of Operating Leases set up under Maltese law, which would be formulated in accordance with best practices to ensure compliance with EU interpretations and ECJ Judgements. The resultant models offer flexibility to owners in deferring VAT on the

acquisition of the yacht while enabling the application of clear principles to the manner in which VAT is chargeable to the Lessee during the lease period based on the actual use of the yacht.

## EFFICIENT IMPORTATION PROCEDURES

Malta has for many years offered efficient and attractive procedures for the importation of commercial yachts that are intended to be brought into free circulation within the EU so as to enable them to carry out their chartering season in the Med. The following measures introduced in 2020 have further strengthened the existing procedures, resulting

in the importation of yachts into the EU via Malta increasingly featuring as the favoured option of international advisors and owners alike:

1. Where a commercial yacht is imported by a Maltese owning entity, removal of the requirement of the importing entity to set up a bank guarantee to enable the deferment of VAT on importation.

2. Where a commercial yacht is imported by a non-EU owning

entity, reduction in the amount of the bank guarantee required to allow deferment of VAT on importation to the equivalent of 0.75% of the value of the yacht which would be subject to a cap of one million Euro (€1,000,000).

Our services include the setting up of Maltese shipping organisations, the provision of VAT/tax advice, handling of VAT/tax compliance on importation and the provision of advice and handling of VAT compliance relating to yacht charters.



# YACHT REGISTRATION

The attractiveness of the Malta flag is one of the cornerstones of the services that we offer. The advantages of registration under the Malta flag include:

- Reliability and reputation of Europe's largest flag with circa 85 million gross tonnage.
- Straightforward and quick company and yacht registration procedures.
- Security offered by Maltese law to financiers ("Mortgagees") of Maltese registered vessels.
- Low company formation and yacht registration costs.
- No restrictions on the nationality of the shareholders and directors of Maltese companies.
- No restrictions on the nationality of the Master, officers and crew carried on board Maltese yachts.
- No restrictions on the sale or transfer of shares of a Company owning a Maltese yacht.
- The Maltese Shipping Registry offers a 24-hour service, seven days a week in respect of urgent matters.
- Eligibility of Non-Maltese Shipping Companies to own Malta flagged yachts.

Having years of experience in the sector, our team is available to assist you in taking full advantage of the benefits of the Malta flag.



# COMMERCIAL YACHTS

Malta's position as a leading yachting flag has been strengthened by the introduction of a New Passenger Yacht Code in 2020 catering for passenger yachts carrying more than 12 passengers and up to 36 passengers together with the launch of a revised Commercial Yacht Code in the same year. These Codes have addressed industry demands spurred by the continued growth in size of commercial yachts.

Furthermore, a key advantage offered by the Malta flag is that a Maltese or EU company owning a Malta flagged commercial yacht may qualify to benefit from the Maltese tonnage tax regime. Yacht owners wishing to avail themselves of the Malta tonnage tax regime are required to file with the Registrar of Ships a prescribed declaration to this effect.

If the yacht is declared to be eligible, then tonnage tax will need to be paid to the Malta Registrar of Ships on an annual basis and no further tax on income derived from shipping activities relating to the yacht would be payable.



# YACHT FINANCE

Making a flag attractive to the owner is not enough. A maritime flag is only successful if the financier is confident that the law of the flag will protect his financial interest. When a yacht is registered in Malta, the Mortgagee would register a mortgage in Malta against the vessel's entry in the register. The following is a brief outline of the security provided by a Maltese registered mortgage:

- In the event of a breach of any of the conditions stipulated in the Loan Agreement, Maltese law allows the Mortgagee to take full possession of the vessel and to sell the vessel privately.
- The Mortgagee has an Executive Title such that in the event of a breach of any of the conditions stipulated in the Loan Agreement, the Mortgagee may proceed to sell the vessel without first having to obtain a Court judgement.
- The Mortgagee is entitled to enforce the mortgage either by way of a judicial sale by auction or through a court approved private sale. In both instances the vessel would be sold to the buyer as free and unencumbered.
- A vessel registered under the Malta flag may not be deleted by the owner without the prior written consent of the Mortgagee.
- The Mortgagee also has the power to prohibit the creation of any further mortgages and may likewise preclude the transfer of ownership of the vessel without his prior written consent. This may be effected by the inclusion of an express clause to this effect in the Mortgage Deed.



# EMPLOYMENT LAW AND CREW ADVICE

The handling of all legalities surrounding the employment of crew is a key consideration of yacht ownership and operation. We are well placed in assisting with the drafting and review of employment contracts, handling of crew claims, provision of employment law and tax/social security advice and advising on and assisting with all ancillary matters arising from the engagement of crew.



# FOR MORE INFO KINDLY CONTACT

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