

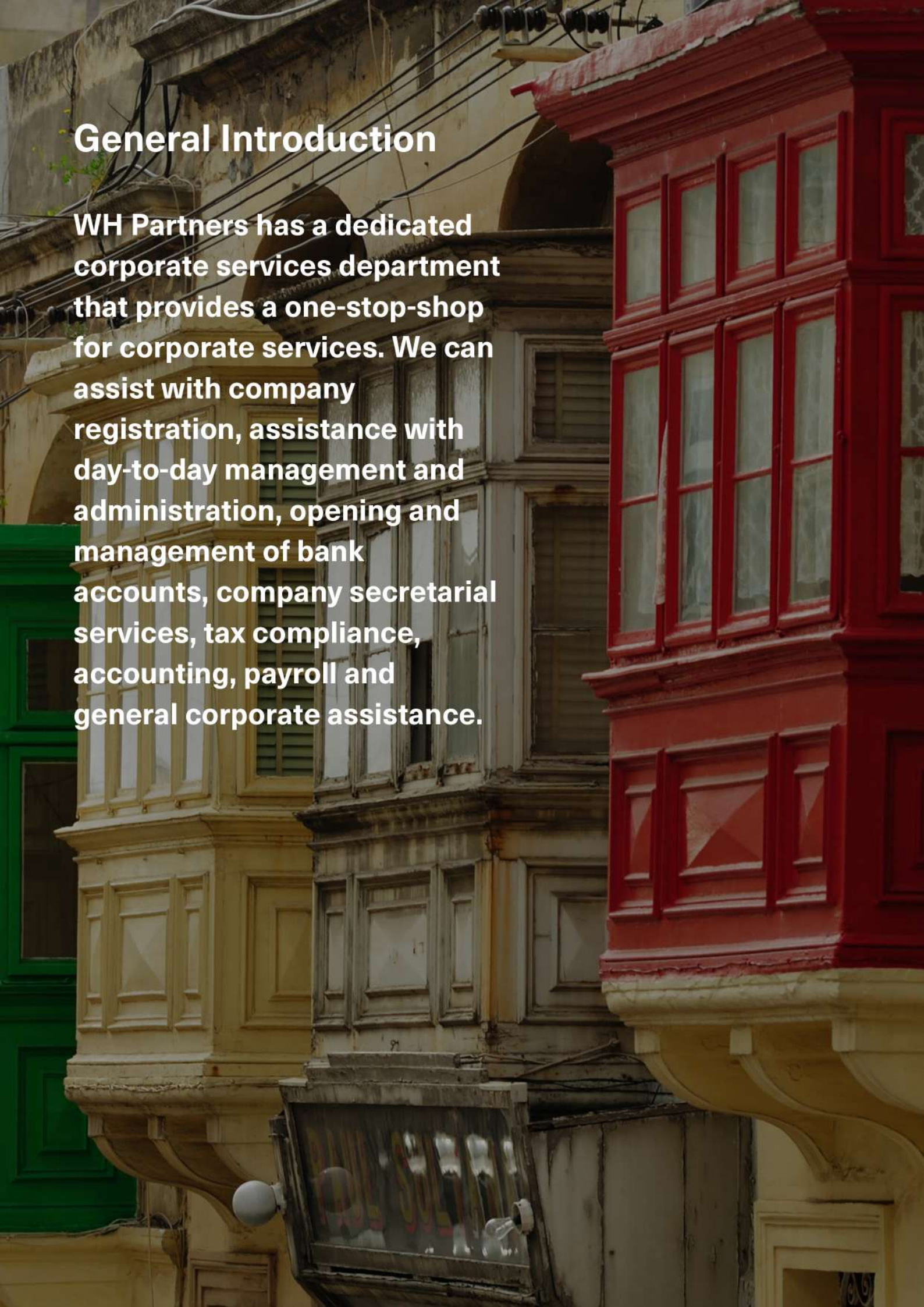
WHPARTNERS

Aspects of Company Formation & Maintenance under Maltese Law



General Introduction

WH Partners has a dedicated corporate services department that provides a one-stop-shop for corporate services. We can assist with company registration, assistance with day-to-day management and administration, opening and management of bank accounts, company secretarial services, tax compliance, accounting, payroll and general corporate assistance.



PRIVATE VS. PUBLIC

Maltese law distinguishes between private and public limited liability companies.

The main differences between a private company and a public limited liability company include the limitation to 50 shareholders, the prohibition of offering shares to the public and a restriction on the transfer of shares, with possible applicable pre-emption rights.

A private company may also opt for private exempt status in which case it may have a single shareholder. Certain additional restrictions apply.

NAME

A company name must not be identical or similar to the name of another company which is registered with the Malta Business Registry. Company names may be reserved with the Malta Business Registry for a period of 3 months at a nominal charge of €10.00.

SHARE CAPITAL

The Memorandum of Association must include details on the authorised share capital i.e. the amount of share capital with which the company proposes to be registered, the division thereof into shares of a fixed amount and on the issued share capital i.e. the number of shares taken up by each of initial shareholders and the amount paid up in respect of each share. The authorized and issued share capital cannot be less than €1,165 for a private company which must be, at least 20% paid up and €46,587.47 for a public company, which must be, at least 25% paid up. Proof of payment must be provided.

CLASSES OF SHARES

A company may issue its shares with different classes, with different rights attached to the shares of each class such as rights to dividends, attendance at meetings, voting rights, rights to appoint directors, as well as capital rights.

DIRECTORS

Every public company must have at least two directors while every private company must have at least one director, who need not necessarily be a Maltese resident.

The manner in which the legal and judicial representation of the company is to be exercised and the name of the person/s vested with such representation must be also indicated in the Memorandum of Association.

COMPANY SECRETARY

All companies must appoint a company secretary. A company secretary may also be a duly registered company service provider.

REGISTERED OFFICE

Every company must have a registered office in Malta. This address may be at the office of the corporate services provider.

INCORPORATION

Under Maltese law, the incorporation of a company takes place by virtue of the registration of the Memorandum and Articles of Association with the Malta Business Registry. The Memorandum and Articles of Association must be signed by the proposed initial shareholders. Additional documents cover the requirement for directors to confirm their acceptance to act and a declaration outlining the ultimate beneficial owners, as may be applicable.

Once the Malta Business Registry has all necessary documentation in order, the process for registration normally takes from one to a few days to be finalised.

The registration fee payable to the Malta Business Registry for a company with minimum authorised share capital is €245. For a higher authorised share capital, the fee will vary with the maximum fee of €2,250 for companies with authorised share capital more than €2,500,000.

MANAGEMENT AND ADMINISTRATION

The calling, conduct, and frequency of board meetings are generally matters left to be regulated by the Articles of Association. Likewise, the Articles of the company may regulate the place where board meetings are held.

The law provides for the possibility of resolutions in writing signed by all the directors which shall be valid and have effect as though they had been passed at a board meeting duly convened and held.

The Companies Act provides that the shareholders in general meetings must meet, at least once a year. The first annual general meeting of the company must be held within 18 months of the company's incorporation. Every general meeting other than the annual general meeting is called an extraordinary general meeting. A resolution in writing signed by all the members entitled to vote at a general meeting shall be valid and have effect as if the same had been passed at a general meeting duly convened and held. The requirement to hold annual general meetings may also be satisfied in this manner.

ACCOUNTS

All companies must maintain proper books of accounts which give a true and fair view of the state of their affairs. In addition, the law provides that a Certified Public Accountant and Auditor must annually audit these financial statements. Annual filing of corporate tax returns is also required. The audited financial statements are generally due by the 10th month following the accounting reference date of the company, which by default is 31st December.

ANNUAL RETURNS

A statutory annual return against an annual fee is to be filed with the Malta Business Registry within 42 days following the anniversary date of registration of the company.

The annual fee payable to the Malta Business Registry for a company with minimum authorised share capital is €100. For a higher authorised share capital, the fee will vary with the maximum fee of €1,200 for companies with authorised share capital more than €2,500,000.