

Extended Country Report

**Financial Participation of Employees
in Malta**

David Borg Carbott
and
Saviour Rizzo

2006

Contents

1.	Background	4
	a) History	4
	b) Social Partners.....	5
	c) Policy-Makers	6
2.	Types of Schemes and their Legal Foundations.....	8
	a) Privatizations	9
	b) Employee Share Ownership Schemes and Share Option Schemes	9
	(1) Employee Share Ownership Schemes.....	10
	(2) Employee Share Option Schemes	12
	c) Employee Share Ownership Plans (ESOPs).....	12
	(1) Trusts	13
	(2) Collective Investment Schemes.....	13
	d) Co-operative Societies	15
	c) Profit-Sharing Arrangements	17
	c) Taxation Issues.....	17
3.	Incidence Now and Over Time.....	18
	a) Employees Shares, Long Term Incentive Plans and Employee Shareholder.....	19
	b) Employee Privatization on Preferential Terms.....	19
	c) Employee Share Ownership Plans (ESOPs).....	20
	d) Co-operatives	21
	e) Profit-Sharing.....	22

c) Stock Options.....	23
4. Empirical Evidence of Economic and Social Effects.....	23
5. Conclusions.....	24
Bibliography	25
Annex	27

1. Background

a) History

Government policies in the economic-political scenario in Malta during the last three decades, can be delineated as being the origin or prime movers of the financial participation schemes in Malta. Indeed the schemes in existence in the banking sector are the result of the unintended consequences of two diametrically opposite government policies.

One of these policies was the Nationalisation programme adopted by the Malta Labour Party (MLP) between 1971 and 1987. The newly elected government in 1971, conforming to its espoused socialist principles and at same time trying to assert the economic independence of Malta, embarked upon a programme of nationalisation as part of the de-colonialization process, seven years after the attainment of political independence¹ (see Kester, 1980, p. 72). The banking sector, at the time dominated by two major banks, namely the National Bank of Malta owned by Maltese shareholders and Barclays Bank (Barclays), an international banking firm, was one of the targets of this nationalisation plan. The former bank was transferred to Government and renamed Bank of Valletta plc (BOV) in 1974.² In the latter case the Government became the major shareholder by owning 60% of the shares and the bank was renamed Mid Med Bank plc (Mid Med) on 1st October 1975. Later on Barclays renounced to its 40% shareholding so that Mid Med became an entity fully owned by the state. The winding up of a 'widow and orphans' fund in operation in these banks prior to nationalisation was to result, later on, in the creation of a number of shares to employees of one of these banks.

The privatization drive in evidence since 1990 as part of the policy of liberalisation of the market adopted by the Nationalist Party in government since 1987 also had the unintended consequences of introducing financial participation schemes for employees in the banking sector. This market liberalisation was reversing the process of nationalisation of the previous administration in the sense that it entailed a policy wherein government was divesting itself of the ownership of several entities in which it had the majority shareholding.³ One of first of these entities to be affected by this policy was the Bank of Valletta (BOV). In 1994 government sold a major part of its shares to the public. The side effect of this privatization process in this bank was the creation of a trust fund for the benefit of the employees in one of the banks. Four years later, in an-

¹ The seven year plan designed by the newly elected government sets as its objectives the establishment of Malta as a sovereign state with the right to achieve self determination and the ability to reach a high level of self reliance. To achieve these objectives it had to loosen all ties with the colonial past. Development Plan for Malta 1973-1980, Valletta, Malta, Office of the Prime Minister.

² Following a run on the bank by depositors, shareholders were forced by Government to surrender their shares.

³ This restructuring became more urgent in view of Malta's Government formal application, submitted in July 1990, to become full members of the European Union (Rizzo, 2003, p. 31).

other privatization exercise in a telecommunication state-owned enterprise a similar fund was set up for the employees of this enterprise.

b) Social Partners

Developments in national-level bargaining in Malta has been characterised by two distinct categories. The first is a pattern of close consultation and mutual support between government and the largest union in the island – the General Workers Union (GWU).⁴ The GWU staunchly supported the measures taken by government in its aim to achieve economic independence.⁵ This close collaboration between government and trade union from 1971 to 1987, which at various times was involved in controversial policies, was denounced by the party in opposition and the other trade unions. The confrontation that ensued gave rise to a high mobilisation of workers to join the ranks of the other trade unions which were in opposition to the GWU. This eventually resulted in the setting up of another trade union – the Union of United Workers (UHM) which was to act as a countervailing force to the GWU.⁶ This new union, emerging as a general union, is affiliated to the Confederation of Malta Trade Unions (CMTU) which is an umbrella organisation embracing within its fold a number of unions representing professional, executive, clerical and related grades.

In 1988, following a change in government, national level bargaining was institutionalised by the setting up of a national tripartite body – Malta Council for Economic Development (MCED) – in which the major trade union organisations, CMTU, GWU and UHM, together with the major employers associations were represented. In 2001 through an act in parliament this tripartite institution was given a legal status and given a new name - Malta Council for Economic and Social Development (MCESD).⁷ Financial participation never featured as an issue in the debates of this social dialogue institution.

In spite of this apparent a lack of enthusiasm amongst the social partners, trade unions have supported all the schemes that were proposed and put into practice. Indeed they have participated actively in their administration. The point that needs emphasising is that in most of the enterprises which have a financial participation scheme in operation, the workers are unionised. The trade unions supported the schemes wherever they were introduced and in some cases they negotiated the terms under which they

⁴ G.W.U. represents 54% of the Maltese unionised workers. Report by the Registrar of Trade Unions. December 2004.

⁵ In 1978 the Malta Labour Party, then in office, and G.W.U. were statutorily fused. By means of this fusion the trade union claimed that it was representing the workers' aspirations at higher level since two of its representatives were appointed to be part of the Cabinet of Ministers. See Kester (1980), p. 237.

⁶ UHM became the second largest union representing 30% of the Maltese unionised workers. Report by the Registrar of Trade Unions, December 2004.

⁷ MCESD (2001) Act provides for the establishment of a Civil Society Committee appointed by the Tripartite Council itself.

were to operate. The lack of collective bargaining at sectoral level makes it easier for the Maltese trade unions to be supportive of such schemes. The trade unions which are suspicious of financial participation schemes tend to be centralised unions involved in collective bargaining at national or sectoral level. These unions fear that financial participation schemes can be part of a human resource policy adopted to challenge the principle of employee solidarity by encouraging selfishness in companies which are financially better. They can indeed be used as a strategy against an increase in unionisation (Vaughan-Whitehead, 1996, p. 166). Since collective bargaining in Malta is by and large conducted at enterprise level, Maltese trade unions do not seem to harbour any such fears. They feel strong at enterprise level and can therefore control any manipulative attempts to undermine them. Nevertheless, in spite of this seemingly favourable disposition towards these schemes, financial participation of employees as a concept has never formed part of the espoused ideology or the mindset of the trade unions.

The trade union which has been most vociferous in its demands for financial participation of employees had been the Malta Union of Bank Employees (MUBE). This is due to the fact that the two major banks, where the union is heavily represented, were the target of both nationalisation programmes in the 1970s and the privatization drive of the 1990s. The general trade unions, GWU and UHM, were also involved in prolonged discussions with the government about the introduction and implementation of a scheme in the public sector by means of which employees were given the opportunity to set up co-operatives and submit tenders for contract of work.

c) Policy-Makers

Policy-makers do not seem to have attached much importance to this practice of employee participation. Indeed legislation on financial participation is underdeveloped when compared with that of other countries, especially with that of the UK which has historically been the source of much of Malta's laws on Companies and Employment. Financial participation of employees has not featured prominently in the agenda of the two major political parties – The Malta Labour Party (MLP) and the Nationalist Party (NP) – which have dominated the Maltese political scenario since independence in 1964. The MLP in office between 1971 and 1987 made an attempt to introduce workers' participation schemes that may have eventually resulted in financial participation if the firms where these schemes were in operation, had proved to be economically viable. Unfortunately this did not prove to be the case so none of those firms was in a position to act as a model.

Various attempts were made to introduce workers' participation during the Labour administration of 1971 -1987. This policy of participation started at Malta Drydocks Corporation (now Malta Shipyard Ltd) by introducing a codetermination system which ultimately culminated in workers' self management in 1975. Other participation schemes were introduced in industry where government had a major shareholding (Kester, 1980). However these firms did not prove to be economically viable. Malta Drydocks managed to register a profit during a brief period (1975-1981) during which

workers were given a bonus as part of the profit made. However financial participation schemes never featured as part of the government policy or programme.

In 1988, following a change in government, an attempt was made by the minister of finance to introduce financial participation in two state-owned banks through a profit-sharing scheme. The Minister of Finance and the MUBE signed an agreement whereby 5% of the banks' profits were to be distributed to employees. This agreement was never implemented as it was not endorsed by the Cabinet of Ministers. By virtue of this nationalisation these two banks had become para-statal entities (independent statutory bodies within the realm of the public sector). The government was afraid that this profit-sharing scheme was going to have an adverse effect on the other para-statal enterprises which were not commercially oriented as the banks. Much to the chagrin of the employees and their union, the scheme was shelved as it was perceived by government that it might jeopardise the principles of equity. This agreement between the Minister and the trade union was also contested on legal terms as it was contended that the principles and practices of corporate governance dictate that such a decision has to be taken at shareholding level. In other words majority share ownership of shares by the state did not confer on the minister the prerogative to decide about the allocation of profits.

It is against this background that one has to evaluate the decision of the NP government in 1990s to provide the co-operative framework in the public sector which enabled workers to tender for work projects and share in the profits accruing from them. The new government's belief was that initiative in workers' participation emanating from government sources would take the form of workers co-operatives. In 1992 government appointed a committee to make proposals on the developments of worker participation in the workplace. Among other things this Committee recommended the setting up of a 'support unit' to promote worker participation in those sectors of government departments and the statutory independent bodies within the public sector (para-statal enterprises) which are mostly congenial to the operation of a worker participation scheme. It was envisaged that these sectors will ultimately adopt a co-operative structure which would enable the workers to participate in the profits accruing from increase in productivity (Zammit, 1996, p. 124). The number of workers who have taken this option during its nine years in existence (since 1996) is not impressive. However they have managed to set up a model of work in a sector which is rarely praised for its level of productivity and efficiency. This scheme in the public sector stands out among the others as it was designed with a clear objective in mind by government and was implemented after prolonged discussions between government and officials of trade unions representing workers in the public sector.

2. Types of Schemes and their Legal Foundations

In so far as legislation on financial participation of employees is concerned, it is unfortunate to note that Maltese law is somewhat underdeveloped. Indeed no formal framework for employee participation has ever been attempted in Malta. Instead, Maltese law tends to indirectly refer to employee participation schemes and tacitly recognises that Maltese undertakings are able to put such schemes in place (by means of private or collective agreements) rather than establishing a formal framework for the establishment of such schemes or any fiscal or other incentives of note.

Maltese law is founded on Roman law and the legal system is predominately Civil, with codes of law principally based on the Code Napoleon. However, the Maltese Parliament has, of late, increasingly enacted legislation in line with British statutes and, since Malta's accession to the European Union,⁸ European law in line with the general European trend towards harmonisation of legislation. This has resulted in a rather 'mixed' legal system. Maltese company law, maritime law, employment law and commercial law are also very much influenced by English law. For example, the Maltese Companies Act, 1995⁹ is similar to the UK Companies Act (1985) and UK Insolvency Act (1986). On the other hand the package of Maltese financial services legislation¹⁰ introduced in 1994 and later, is consonant with the relative European Union directives.

Maltese employment law is essentially based on the contractual relationship between the employer and employee, with certain controls being imposed by statutory intervention. The Employment and Industrial Relations Act, 2002,¹¹ which regulates some conditions of employment and contracts of service, currently governs Maltese labour law. Also worthy of note is Malta's recent Trust legislation,¹² which, inspired by Jersey legislation, successfully achieved a seamless integration of the UK common law concept of Trusts into Maltese law.

The provision of investment services is regulated by the Investment Services Act, 1994¹³ which provides that no person shall provide, or hold himself out as providing, an investment service in and from Malta unless he is in possession of a valid investment services licence issued by the regulator of investment business in Malta, namely the Malta Financial Services Authority. 'Investment Service' refers to a number of services in relation to a number of 'instruments' including the services of dealing as prin-

⁸ On 1st May 2004.

⁹ Chapter 386 of the Laws of Malta.

¹⁰ A package of fourteen Acts including; the Investment Services Act (Chapter 370); the Banking Act (Chapter 371); the Prevention of Money Laundering Act (Chapter 373); and the Insurance Business Act (Chapter 401).

¹¹ Chapter 452 of the Laws of Malta; this Act has in fact amended the legislation existing up until 2002 and introduced the necessary legal framework for Malta to come in line with European legislation.

¹² The Trusts and Trustees Act, 1988 (Chapter 331 of the Laws of Malta).

¹³ Chapter 370 of the Laws of Malta.

2. Types of Schemes and their Legal Foundations

cipal or agent, arranging deals, acting as manager, administrator or registrar, acting as trustee, custodian or nominee holder or giving investment advice. The term 'instruments' refers generally to securities, warrants, options and certificates relating to securities and other instruments.

Taxation on income in Malta is governed by the Income Tax Act, 1948,¹⁴ and the Income Tax Management Act, 1994.¹⁵ To these one might add the Duty on Documents and Transfers Act, 1993¹⁶ that establishes a stamp duty payable upon the execution of certain types of contracts¹⁷ in Malta and upon the transfer of certain assets.¹⁸

a) Privatizations

The aforementioned privatization drive which the Nationalist Party embarked upon since the early 1990s resulted in the setting up of a financial participation scheme being put into place for the employees of two formerly para-statal entities which were partially privatized.¹⁹ However, these schemes did not have any formal statutory basis. Indeed, as is the case with most (the sole exception being co-operative societies, discussed below) financial participation schemes in Malta, these schemes were put into place and regulated by means of private agreements (both individual contracts and collective agreements) between the newly privatized companies and their employees.

As an aside, it is interesting to note that the statutes of both the Enemalta Corporation²⁰ and the Water Services Corporation,²¹ (two as yet un-privatized utility providers) explicitly permit the '*establishment, by the Corporation [...] of schemes of incentives related to productivity or performance.*' However, it would appear that this power has, to date, never been exercised.²²

b) Employee Share Ownership Schemes and Share Option Schemes

There is no statutory framework for Share ownership and Share Option schemes in Malta although certain large companies do in fact operate such schemes as an additional incentive for their employees.²³ Provided that a company is empowered by its

¹⁴ Chapter 123 of the Laws of Malta.

¹⁵ Chapter 372 of the Laws of Malta.

¹⁶ Chapter 364 of the Laws of Malta.

¹⁷ Such as insurance policies.

¹⁸ Immovable property, marketable securities, etc.

¹⁹ This was a trust fund, set up on behalf of employees, in BOV, a formerly state owned bank, and in Maltacom, a telecommunication state owned enterprise.

²⁰ Enemalta Corporation Act, 1977 (Chapter 272 of the Laws of Malta).

²¹ Water Services Corporation, 1991 (Chapter 355 of the Laws of Malta).

²² As has already been stated, Maltese policy-makers, though publicly subscribing to the principles underlying the financial participation of employee, do not seem to be overly enthusiastic about its implementation.

²³ Mainly for those holding Executive or Managerial positions; see below 3.

Memorandum and Articles of Association to implement employee financial participation schemes,²⁴ employers wishing to operate any of the two types of schemes will do so by entering into private or collective agreements with their employees setting out the scope, terms and conditions of the scheme.

Where the company establishing the scheme is itself the issuer of the shares to be offered to its employees it is not considered to be providing an investment service in terms of the Investment Services Act, 1994 (IS Act) and consequently will not require a licence under the IS Act. In the case that the company will be offering shares in its parent or other group company to its employees, the company would fall squarely within the definition of providing an investment service (and consequently would require a licence under the IS Act) were it not for the express exemption provided in regulation 3 para. 1 lit. g) of the Investment Services Act (Exemption) Regulations²⁵ This exemption applies to all companies provided that the company obtains the prior consent of the Malta Financial Services Authority (MFSA). This exemption is particularly useful since it also exempts any investment advertisements (such as promotional material, leaflets, etc.) which the company might provide to its employees in connection with the above mentioned schemes from the requirements of the IS Act on advertising.²⁶ In view of this, companies planning on offering their own shares to employees and who intend circulating a fair amount of brochures, leaflets, etc. regarding the issue to its employees should apply for the MFSA's approval under the above-quoted regulation 3 para. 1 lit. g) in order to benefit from the exemption as regards investment advertisements.

(1) Employee Share Ownership Schemes

Provided that a company is so authorised by its Memorandum and Articles of Association,²⁷ it may also allot shares to its employees. Such an allotment must be made in accordance with the general rules on the offering and allotment of shares as contained in the Companies Act, 1995²⁸ (CA).

²⁴ There is no formal requirement for the inclusion of such empowerment; it is instead up to the shareholders of the company to decide on its inclusion. A typical clause granting this power would read: *'The Company has the power [...] to remunerate employees of the Company out of or in proportion to the profits of the Company or otherwise as the Company may deem fit and to promote and give effect to any scheme or arrangement (whether involving the issue of shares or not) for sharing profits with employees of the Company or of any other company forming part of the same group of companies of the Company.'*

²⁵ Legal Notice 6 of 1995 as subsequently amended; *'operating a scheme [...] where the service consists of dealing or arranging to deal in instruments [...] for its own employees, former employees, their dependents, or for employees' former employees or their dependents of companies in the same group, in instruments issued by the company or other companies in the group and any other instruments...'*

²⁶ In terms of Art. 11 para. 2 of the IS Act, no person may issue or cause to be issued any investment advertisement in or from or within Malta unless the contents of such advert have been approved by a holder of an investment services license in terms of the IS Act.

²⁷ Mainly for those holding Executive or Managerial positions; see below 3.

²⁸ Chapter 386 of the Laws of Malta.

2. Types of Schemes and their Legal Foundations

As a general rule, the CA prohibits companies from acquiring its own (Art. 105 para. 1 CA) shares or the shares of its parent company (Art. 110 para. 1 lit. a) CA) or providing financial assistance for the purchase of its own shares or the shares of its parent company (Art. 110 para. 1 lit. b) CA). However, Art. 106 para. 4 CA and Art. 110 para. 2 CA²⁹ derogate from the aforesaid general rule by providing that a company may both acquire its own shares or those of its parent and provide financial assistance where this is intended to facilitate the acquisition of shares by or for its employees or the employees of a group company.³⁰ The only limit to this derogation is that the financial assistance being provided must not have the effect of reducing the net assets of the company below the amount required by law. Furthermore, Art. 106 para. 4 CA³¹ stipulates that companies are exempt from requiring the sanction of the shareholders in extraordinary general meeting when acquiring their own shares for distribution to its own employees or to employees of a group company. In this regard, this sub-article provides that such shares are to be distributed within one year of their acquisition by the company.

Another provision of note is Art. 89 lit. e) CA³² which exempts public limited companies from having to issue a prospectus when issuing shares to directors or employees. More specifically, Art. 89 para. 3 exempts offers where shares are allotted to existing or former directors or employees by their employer that has shares already admitted to trading on a recognised investment exchange or by an affiliated undertaking.

It should also be noted that the CA generally allows companies to offer their shares at a discount or pay a commission to any person in consideration for his subscribing or agreeing to subscribe for any shares in the company.³³ This may also apply where shares are to be offered to employees at a discounted rate as part of a corporate share ownership scheme. The CA does not differentiate between discounted shares being offered to employees and where they are offered to third parties. Consequently, the following conditions apply across the board: (i) Authority for the making of discounts must be given by the company's Memorandum and Articles of Association, (ii) the discount must not exceed 10% of the issue price or as prescribed by the Memorandum and Articles, whichever is the less (iii) the amount or rate of discounting must be made public, and (iv) in no event may the value of the shares be reduced to below their nominal value as a result of such discount.

Thus the CA contains three incentives for the offers and allotments of shares by Maltese companies to their employees concerning financial assistance, the distribution of fully paid up shares and capital issues by public limited companies while Maltese tax law on the other hand does not offer any tax incentives of note for these schemes.

²⁹ Based upon Art. 23 para. 2 of EC Directive 1977/91/EC.

³⁰ This sub-article thus permits companies to contribute to employee share schemes.

³¹ Based upon Art. 19 para. 3 of EC Directive 1977/91/EC.

³² Based upon Art. 4 para. 2 lit. f) of EC Directive 2003/71/EC.

³³ Art. 113 para. 1 of the Companies Act, 1995

(2) *Employee Share Option Schemes*

Maltese law does not regulate the exact conditions under which share option schemes may take place (instead leaving it up to the individual companies to create their own schemes utilising general company and civil law notions as the legal basis³⁴). However, in contrast with the other schemes, Maltese tax law offers certain minor incentives in this regard. Under the Fringe Benefit Rules issued under the Income Tax Act,³⁵ share options are only taxable upon exercise of the option.³⁶ Thus, when an employee decides to exercise the share option then the employing company must withhold tax at source from the income of the employee according to the rates applicable to each individual employee. Such withholding of tax is carried out by the employing company and reported in the tax forms of the employee which the employing company is bound to submit, on a monthly basis, to the Maltese tax authorities according to the Final Settlement System.

The taxable amount is computed as the difference, if any, between the option price and the market price of the shares at the time the option is exercised.³⁷ Thus, this income derived from the exercise of the option is in fact considered to be part of the normal income derived by the employee during the course of his employment. Furthermore, when a share option is assigned or renounced in favour of any person, any gain thereby realised (the difference between the option price and the market price of the share) shall constitute a capital gain that is subject to Maltese tax.³⁸ In this regard, the share acquisition price of the shares is again deemed to be the market price of the share at the time the option was exercised. The employee (and not the employing company) must declare such income as part of his normal assessable income for the year in which the income arose.

The granting of share options does not attract any duty on documents or transfers (stamp duty).³⁹

c) Employee Share Ownership Plans (ESOPs)

Once again Maltese law does not contain any specific legislation concerning Employee Share Ownership Plans (ESOPs). However, it does provide for the legal instrument that is most commonly used as a basis for such plans, namely the Trust vehicle. Al-

³⁴ Indeed Maltese law does not contain any explicit provisions on share options. In this regard, there currently is a legal debate as to whether the civil law notion of ‘promise to sell’ or ‘promise to buy’ coupled with the institute of *Kappara* or Earnest (a form of deposit that is forfeited by the buyer should he withdraw from the contract or to be paid by the seller if he withdraws) is a sufficient base. Although it is commonly believed that the ‘share option’ could be ‘shoehorned’ into this legal institute, there are some early judgements where it was held otherwise.

³⁵ Legal Notice 125 of 2001.

³⁶ Rule 36 of the Fringe Benefit Rules (LN. 125 of 2001).

³⁷ Ibid, Rule 37.

³⁸ Ibid, Rule 38.

³⁹ Chapter 364 of the Laws of Malta.

2. Types of Schemes and their Legal Foundations

though traditionally used for hedge funds or retail investment funds, the Collective Investment Scheme set up may also be used as the basis for an ESOP.

(1) Trusts

A Trust can take many forms. Its essential characteristic being that a person (the Settlor) transfers property to another person (the Trustee) or declares that he holds property (unilateral declaration of Trust) for the benefit of someone else (the Beneficiary) and such property will form a ring fenced patrimony separate from that of the trustee. Although the concept originated in the UK, Trusts are not exclusive to countries that follow the common law tradition. Trusts are generally recognised as one of the most flexible and versatile vehicles for holding, managing and administering assets. It is therefore not surprising to note that many countries, particularly those with a civil law tradition, have, by specific legislation, introduced the concept of a Trust. One of these civil law countries⁴⁰ is Malta who through the Trusts and Trustees Act, 1988 as amended in 2004 (Trusts Act), allows Maltese individuals and companies to set up and be a beneficiary in Trusts regulated by Maltese law.⁴¹

The Trusts Act does in fact contain an explicit reference to ‘*employee benefit or retirement schemes or arrangements*’ as forming the basis of a Trust. This explicit reference is contained in the Trusts Act’s definition of ‘commercial transactions’, for which the said Act permits certain significant derogations. One such derogation is that contained in Art. 6 and Art. 21 para. 7 of the Trusts Act: Although as a general rule Maltese Trusts are subjected to the rules of the Trusts Act concerning *inter alia* the effects of the Trust and the duties and liabilities of the Trustees, Trusts set up in connection with *commercial transactions* (Commercial Trusts) operate exclusively according to the express terms of the deed establishing the Commercial Trust. Similarly Art. 21 para. 6 of the Trusts Act allows, as a derogation to the general prohibition, the Trustees of Commercial Trusts to benefit under the Trust. Such derogations obviously grant a higher level of flexibility when planning the manner in which an ESOP (in Trust form) is to operate.

(2) Collective Investment Schemes

The term ‘Collective Investment Scheme’ is defined in Art. 2 of the Investment Services Act, 1994 as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange. Furthermore it must operate according to the principle of risk spreading; and either:

⁴⁰ Such as France, Italy and Liechtenstein.

⁴¹ It is to be noted that prior to the 2004 amendments, Malta resident individuals and companies could not be the Settlor or Beneficiary of a Maltese Trust and immovable property situated in Malta could not be included in the property held on Trust. In 2004 these restrictions were lifted.

- i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- ii) at the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or
- iii) units are, or have been, or will be issued continuously or in blocks at short intervals.

A collective investment scheme may take a number of legal forms namely the SICAV (Société d' Investissement à Capital Variable), the INVCO (Investment Company with Fixed Share Capital), the Unit Trust, the Mutual Fund or the limited partnership. Further to this, Art. 4 of the Investment Services Act, 1994 imposes certain strict regulatory requirements on all Collective Investment Schemes (CISs) operating from or in Malta. Although these stiff requirements are necessary for purposes of investor protection especially since, as stated above, CISs are usually synonymous with consumer funds or hedge funds, the definition is wide enough to encompass certain types of funds that do not require such a costly level of regulation.

Certain types of ESOPs operated by a company may in fact fall to be caught by the definition of a CIS. In this regard, the legislator, recognising that such schemes do not require the same level of protection as other funds and as an incentive towards their setting up, provided an explicit exemption for such schemes.⁴² Thus ESOPs may be subjected to fewer formalities than funds intended to be marketed to the general public. ESOPs which fall within the above exemption are not automatically exempt from any form of regulation, the prior approval of the MFSA is required in order to benefit from the exemption.⁴³ In this manner, only those schemes which, in the eyes of the MFSA, offer an acceptable level of professionalism and protection will be able to benefit from the exemption.

Furthermore CIS ESOPs established under a Unit Trust⁴⁴ form will, in terms of Art. 43 para. 7 lit. e) of the Trusts and Trustees Act, 1988 also benefit from an exemption

⁴² Regulation 4 para. 1 lit. c) of the Investment Services Act (Exemption) Regulations, 1994 – Legal Notice 6 of 1995 as subsequently amended exempts schemes: ‘...operated by a company for its own employees, former employees and their dependents, or for employees, former employees, or their dependents, of companies in the same group, in instruments issued by a company or companies within that group and any other instruments as may be approved by the [Malta Financial Services Authority]’.

⁴³ Ibid Regulation 4 para 2.

⁴⁴ Unlike an ordinary trust, unit trusts are divided into portions or units where the unit holders have no proprietary or equitable interest in the underlying assets until termination of the trust. During the duration of the trust the unit holders instead have a personal interest in the value of the unit which is calculated according to the terms of the trust deed (normally with reference to the NAV of the trust fund). The Trusts and Trustees Act defines a unit trust as meaning ‘any trust established for the purpose of, or having the effect, or providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever, being a collective investment scheme as defined in the Investment Services Act.’

2. Types of Schemes and their Legal Foundations

from requiring a licence under the said Trusts Act. Since in the case of ESOPs a Unit Trust structure is far more straightforward and cost effective, this double exemption is an invaluable incentive.

As regards the taxation of ESOPs which fall within the definition of CISs, unfortunately the Income Tax Act, 1948 does not distinguish between exempted and non-exempted CISs so the income arising from CIS ESOPs will be taxable at the normal rate. For taxation purposes, a CIS may be treated either as a prescribed fund or as a non-prescribed fund, depending on the geographical location of 85% of its assets (whether in Malta or not). Since this report concerns ESOPs in Malta, we can assume that the assets of the fund will in fact be situated in Malta and hence it will fall to be treated as a prescribed fund.⁴⁵ Investment income as defined in the Income Tax Act, 1948 received by a prescribed fund is subject to a withholding tax of 15% on bank interest and 10% on investment income other than bank interest. Other income and capital gains remain exempt in the hands of prescribed funds. If the CIS ESOP holds foreign securities (such as those of its foreign parent company), capital gains, dividends, interest and any other income from the foreign securities may be subject to tax imposed by the country of origin concerned. Thus, when the Maltese resident participants of the CIS (the employees) redeem, liquidate, or cancel their units in the CIS they will not be subject to a second withholding tax.

d) Co-operative Societies

The sole exception to this dearth of specific legislation on financial participation by employees is in regard to co-operative societies. Maltese law has a rather detailed legislative instrument entitled the Co-operative Societies Act, 2001 (the Co-op Act) which regulates the formation, registration, organisation, operation and duties of such societies as well as the rights and duties of its members.

In terms of Art. 21 para. 1 of the Co-operative Societies Act, a co-operative is ‘*an autonomous association of persons united voluntarily to meet their economic, social and cultural needs and aspirations, including employment, through a jointly-owned and democratically-controlled enterprise, in accordance with co-operative principles.*’ Put simply, these co-operative principles are (1) Voluntary and open membership; (2) Democratic member control; (3) member economic participation; (4) Autonomy and independence; (5) Education, training and information; (6) co-operation amongst co-operatives and (7) concern for the community. Co-operatives may be set up by a minimum of five members by applying to the co-operatives board set up under the Act for registration. Once registered, according to Art. 31 of the Co-operative Societies Act (Co-op Act), co-operative societies are body corporates having limited liability and a separate and distinct legal personality from that of its members. Co-operatives are to be known by the name under which they are reg-

⁴⁵ By way of contrast, non-prescribed funds are not subject to withholding tax in Malta, however, the unit holders will be required to pay a withholding tax of 15% on all dividends, on capital gains from redemption, liquidation or cancellation of units.

istered.⁴⁶ In line with the democratic member control principle, every member of a co-operative may participate in the management. In this regard, unless the co-operative's statute provides otherwise, all members are to have one vote

The Co-op Act contains provisions about the way the profit (surplus) is to be distributed amongst the members. It stipulates that at least twenty per cent of the surplus be transferred to a reserve fund at the end of each accounting period (Art. 90). This fund is to be used exclusively to cover losses incurred by the society. Every co-operative is also bound to contribute five per cent of the surplus resulting from its activities, operations, investment and other sources at the end of each accounting period to a Central Co-operative Fund which is used for the furtherance of co-operative education, training, research and for the general development of the co-operative movement in Malta (Art. 91 Co-op Act). The net surplus of a society after these two afore mentioned transfers have been made may be divided among its members by way of dividend (Art. 92 Co-op Act).

In its drive to increase efficiency and productivity in the public sector the government, after prolonged discussions with the trade unions, introduced a scheme by means of which public sector employees, were given the opportunity to form co-operatives. These co-operatives were set up following a circular issued by the Office of the Prime Minister⁴⁷, Chapter 442 Co-op Act refers to them in Section 29 (3) with the subtitle 'Registration of Society'.⁴⁸ The scheme, envisaged as an alternative to privatization, enables public sector workers to set up a co-operative within their department. The head of the department can allocate work to a co-operative within his/her department. The director of a government department can also compete for tender/s on behalf of the co-operative. If following the call for tenders, the contract of work is awarded to the co-operative and/or the Department, an agreement has to be reached between the department and the co-operative about the allocation of income from the contract of work. The workers will continue to receive their salary which is assured in the contract. However as members of a co-operative they get a share of the profits which may accrue from a contract of work in which they actively take part in accordance to the provisions laid down in the Co-operative Societies Act.

As regards taxation of co-operative societies, Art. 12 lit. q) of the Income tax Act, 1948 exempts the income of co-operative societies from the payment of income tax. Nevertheless, distributions to members of the co-operative,⁴⁹ bonus shares or certificates,⁵⁰

⁴⁶ This name must include the word 'co-operative' or its abbreviation 'co-op'.

⁴⁷ MPO Circular No. 35/1996.

⁴⁸ Societies set up in accordance with co-operative schemes developed by Government for public employees shall be registered in a separate register, clearly identified for this purpose. In such cases the duration for any provisional registration shall be established by the Minister in consultation with the Board.

⁴⁹ By way of dividend.

⁵⁰ Fully or partly paid shares allotted to the members.

and patronage refunds⁵¹ are all subject to the members' full personal rate of income tax.

e) Profit-Sharing Arrangements

Maltese employment law classifies profit-sharing arrangements between employers and employees as forming part of the wage of the employee. Further to this, Maltese labour legislation also appears to contemplate contracts of service that solely contemplate remuneration by way of commission or a share of the employer's profits,⁵² although these are rarely used in practice.⁵³ This treatment as a 'wage' implies that the share of the profit will be computed together with his salary for the purposes of imposition of income tax.

f) Taxation Issues

Malta's tax legislation is also heavily modelled on U.K. legislation and Maltese courts frequently refer to English case law as an aid to interpretation. Maltese tax legislation is based on three main pieces of legislation: the Income Tax Act, 1948,⁵⁴ the Income Tax Management Act, 1994⁵⁵ and the Duty on Documents and Transfers Act, 1993.⁵⁶ Maltese taxation laws have been subject to various amendments throughout the years, particularly in 1994 when an overhaul of the aforesaid tax laws was effected in order to provide an attractive fiscal regime for non-Maltese companies and individuals considering the use of Malta for their activities. In Malta, there is a tax on income and on certain capital gains (such as gains arising from the transfer of the ownership of immovable property, or any rights thereon, or from the transfer of the ownership or usufruct of or from the assignment of rights over any securities, business, goodwill, copyright, patents, trademarks and trade-names or gains or profits arising from the transfer of the beneficial interest in a trust).

Maltese resident individuals are subject to income tax chargeable at progressive rates ranging from 0% to 35% depending on the individual's income bracket, whereas Maltese companies are taxed at a flat rate of 35%. Distributions by Companies registered in Malta (dividends) to shareholders are taxable at source at the corporate rate of 35%,

⁵¹ In terms of Art. 93 of the Co-op Act, Co-operatives may grant patronage refunds. These are where the society distributes all or any part of the net surplus of the society, paid among its members in proportion to the volume of business or other transactions done by them with the society.

⁵² Art. 22 para. 3 and Art. 36 para. 13 of the Employment and Industrial Relations Act, 2002.

⁵³ As the employer is still bound by the provisions on minimum wage, i.e. If the company posts a loss, that employee must still be paid his minimum wage. Therefore one could say that the remuneration is not entirely based on a share of the employer's profit but rather on the minimum wage plus a bonus to be calculated based on the employers performance.

⁵⁴ Chapter 123 of the laws of Malta.

⁵⁵ Chapter 372 of the laws of Malta.

⁵⁶ Chapter 364 of the laws of Malta.

however, individual shareholders may elect to claim the tax deducted at source as a tax credit, in which case their dividends will be subject to their personal rate of income tax. Local investment income is subject to a final tax liability of 15%. Interest received from investments situated outside Malta is taxed at the normal rates; however, non-residents are exempt from tax on local interest. The transfer of shares and other securities gives rise to a liability for payment of stamp duty in terms of the Duty on Documents and Transfers Act, 1993.⁵⁷

3. Incidence Now and Over Time

In spite of the lack of a statutory basis in the Maltese legislation related to financial participation of employees, highlighted in the legal aspect of this report, schemes of financial participation are to be found in Malta. These are not mandated by law, but are the result of agreements reached between employers and employees' representatives. Financial participation schemes are very often offered to few key persons of the enterprise, following an agreement on an individual or small group basis. They do not form part of the collective agreement signed between management and trade union. Thus the few beneficiaries of these schemes tend to be reluctant to divulge any information. On the other hand the workers are very often not aware of these schemes. In view of this empirical information about other existent schemes of financial participation is very scant.

The practice of financial participation of employees in Malta is mainly to be found in enterprises where the state is a major shareholder or in formerly state-owned enterprises. These include two enterprises operating in Malta where the state is the major share holder: Bank of Valletta plc (BOV), one of the major banks, and Maltacom plc (formerly Telemalta), a telecommunication enterprise and the main provider of fixed telephone system in Malta. Share ownership schemes are also found in HSBC Bank Malta plc, which in 2002 bought all the assets of the former state-owned bank Mid Med.

The financial participation schemes existent in these enterprises did not form part of an official policy by government to introduce forms of workers' participation. However, in other areas of public sector, financial participation happened more by design as it formed part of a government strategy to improve the efficiency and productivity of the employees in this sector.

⁵⁷ Ibid.

a) Employees Shares, Long Term Incentive Plans and Employee Shareholding

At BOV shares were offered as repayment to employees who had contributed to a fund which was wound up in 1974 following the nationalisation of the bank. In fact the employees of the banks, National Bank of Malta (nationalised in 1974 and renamed Bank of Valletta) and Barclays Bank (nationalised in 1975 and renamed Mid Med Bank plc) had been contributing to a widows and orphans fund which was appropriated by government during the nationalisation process. The trade union representing these employees maintained that since this fund was made up of contributions by employees, this appropriation was *ultra vires*. In 1988, following a change in government, it was decided to repay the contributions made by the employees towards this fund. The employees of one of these banks (Mid Med) received their repayment in cash whereas the employees of the other (BOV) were given shares as a form of repayment. Many of these employees are still on the pay roll of the bank.

b) Employee Privatization on Preferential Terms

All the employees who are on a contract of indefinite duration at BOV and Maltacom are the beneficiaries of the trust fund in operation in these two enterprises. When in 1994 government offered part of the shares of BOV to the public, a number of shares were issued purposely for the setting up of a trust fund for BOV employees. This trust fund was part of the agreement reached between government, Malta Union of Bank Employees (MUBE) and the General Workers Union (GWU) during the negotiations leading up to this privatization process.

The initial funding of this trust, launched in 1995, consisted of 1.385 million shares which were later to be increased by another 1.5 million through a loan given by government. This loan had a moratorium of ten years during which no interest rates were charged. Repayment was to start after ten years and every annual repayment had to be not less than half the dividends declared.

This fund is administered by a committee of five members elected directly by the employees. In order to ensure continuity the election is held by rotation; every year three or two members have to resign and seek re-election. One of these five committee members is appointed to be member on the board of directors to represent the interest of the beneficiaries of this trust.

Benefits are given in the form of lump sums in the year when an employee reaches retirement age as legally stipulated by the law; the amount of the sum given being based on the number of units accumulated by the employee. At the launching of the fund in 1995 each employee was allocated twenty units to which an extra unit was added for every ten years of service with the bank. These units are not pledgeable. An employee who quits the job will have the value of the units frozen as per date of termination of employment. However an employee who quits before the lapse of ten years will not be entitled to any benefits. In case of death before retirement the sum is given to the heirs.

A similar trust fund is also in operation in another Maltese enterprise. In 1998 government sold 60% of shares of the state-owned Telemalta Corporation to the public. As a result of this privatization exercise the corporation was converted into a public limited company assuming the new name of Maltacom plc. An agreement between government and the trade union representing the workers was reached to allocate 3% of the shares in form of a loan to a foundation set up to administer a trust fund on behalf of the employees. More or less, the fund operates on the same principles and lines as that of BOV with a committee elected by the workers administering the fund.

This financial participation practice seemed to have had its effect in the privatization process of the state-owned bank, Mid Med, which was sold to HSBC Holdings plc (UK) in 2002. Since assuming ownership the new bank has introduced three types of financial participation schemes. The first is a Save-As-You-Earn (SAYE) scheme. This is a savings plan that allows the bank employees to save for HSBC UK shares.⁵⁸ Employees are invited to subscribe to the scheme choosing a term of 3 or 5 years. The number of shares they will obtain upon maturity depends on the monthly savings and the offer price which is normally at a discount. Upon maturity they can choose one of these two options: (i) receive back the sum saved plus an interest thereon – i.e. not exercise the option or (ii) take up the option and buy the stated number of shares at the offer price.

The second type of scheme is a discretionary share option allotment linked to an employee's performance. These, known as Group Share Options or Executive Share Options, are usually for a term of three years and become exercisable subject to the fulfilment of certain conditions linked to corporate performance. When the options are exercisable employees will need to fund the cost themselves, but HSBC provides a service whereby a loan is created to assist them in funding the option costs. The loan is then repaid from the sale of shares. The third option is similar to Group Share Options/executive Share Options, but are held on behalf of the employee and released at the end of the three-year period.

c) Employee Share Ownership Plans (ESOPs)

ESOPs are noticeable by their absence. The trust funds operating in both BOV and Maltacom have legal traits that appear to indicate the existence of a unit trust arrangement. Apparently these trust funds formed part of an agreement signed between two unions representing the workers and government officials with the procedures to be followed laid down in the agreement. As a collective agreement – conferring to the minimum provisions laid down in the law – it became legally binding to both sides.⁵⁹

⁵⁸ SAYE schemes have no formal legislative structure or statutory basis in Malta; since HSBC is a UK bank we assume that this is a UK based SAYE scheme.

⁵⁹ Malta has had some form of trust legislation since 1988 however the legislation (namely the 1994 Trusts Act) excluded Maltese resident individuals or property from acting as Settlor or Beneficiary or forming part of the trust fund respectively. Perhaps the BOV Trust Fund was originally set up

Anecdotal evidence also indicates that other companies have taken advantage of the recently revamped trust laws in order to set up employee trusts; however, this practice is not wide spread. In each case the trust forms the basis of employee benefit or retirement schemes or arrangements.

d) Co-operatives

The first legal framework (Co-operative Societies Ordinance 1946) was mainly addressed to the farming community. Indeed, the affinity of the co-operative movement with the agricultural sector lasted for almost 50 years. Up to 1992 the Ministry responsible for co-operatives was the Ministry of Agriculture and Fisheries. In 1992 this responsibility was transferred to a parliamentary secretary within the Ministry of Education and Resources. The change was not simply cosmetic as following this move a number of co-operatives were registered which lie outside the agricultural sector. The last Co-operative Directory issued in 2000 lists 45 co-operatives. According to the secretary of the Co-operative Board (Interview 21/3/06), at present the number of registered co-operatives is 58 with approximately 4,569 members within their fold. One of these is a secondary co-operative which gathers within its fold seven primary agricultural co-operatives. This co-operative which employs about 30 persons handles about 26% of the agricultural sales in the main agricultural market. Although overall the co-operative movement has managed to branch out in areas which lie outside the agricultural sector, co-operatives are still confined to the marginal sector of the economy. Most of them act as an umbrella organisation for the vested interest of their members. Their contribution to the economy has never been quantified or singled out in the official statistics issued by the National Statistics Office (NSO).

Four co-operatives have been registered under the public sector co-operative scheme within the public sector and two others in independent statutory bodies with a total number of 100 members. The first co-operative to be set up was the Co-operative of Traffic Signs and Notices within the department of works. The largest co-operative of this type is the Linen Service Co-operative Society in the Department of Health. Two other co-operatives were also registered in government agencies acting as independent statutory bodies: Crossroads Co-operative in the Water Services Corporation and Malta Maritime Pilots in the Malta Maritime Authority (see appendix). The co-operatives have adopted accrual accounting, compared to cash accounting system adopted in Government departments, thus enhancing transparency in their business practices.

as an ad hoc or sui generis arrangement which exhibited similarities to a trust. We assume that a Fund initially set up that way, later with Trust legislation being amended, adapted its statutes.

e) Profit-Sharing

Following the merger of the two state-owned entities, Malta Drydocks Corporation⁶⁰ and Malta Shipbuilding Company into Malta Shipyards Limited, government agreed to offer a profit-sharing scheme in the form of a bonus to the employees, who numbered 1,761 (October 2004), of this newly formed company. The two companies prior to the merger had been running at a loss and were heavily subsidised by government. According to the performance-related pay (PRP) scheme agreed by government and the General Workers Union (GWU) in the last collective agreement (signed in November 2003), workers of the Malta Shipyard Ltd. are to receive a quarter of the additional profits achieved through a cut in labour costs. The PRP is given if financial results are better than the forecast. In other words if turnover climbs beyond budget targets in a quarter of the year, employees are given one fourth of this difference, using a weighting system that divides the work force into management, supervision, administration and industrial grades. In August of 2005 the shipyard workers received their first performance bonus after the company's financial performance superseded budget targets, during the first three months of the year.

In the private sector cash based incentives linked to productivity or performance are limited to senior management. Financial participation schemes, consisting of cash-based incentives, operate in two foreign-owned companies and one Maltese hotel group holding company. These schemes, forming part of the performance management system, consist of bonus and/or financial rewards linked either to production levels or the financial performance of the firm.

Vodafone has a bonus structure for senior management which is based on the profit of the company. Baxter (Malta) Ltd, a foreign-owned firm and a subsidiary of a multinational U.S. manufacturing firm, employing about 380 employees in Malta, adopts a system through which a pay increase on an individual level is determined on merit. In turn it depends on the achievement on one's performance management objectives that are pre established with specific employee. Performance is also assessed with respect to Baxter Success Factors. These are predetermined at corporate level and include as one of their criteria the creation of value-added results.

At the International Hotels Island Group, a totally Maltese-owned chain of hotels employing about 750 employees, there is a performance related pay system which is available to all line managers. The amount is based on the Group's financial performance on the whole during one year. This bonus is not tied directly to the individual's performance but to the Group's performance as a whole.

⁶⁰ Malta Drydocks, formerly a naval dockyard, is a commercial shipyard. It was nationalized in 1968 after the company, which in 1959 was given a ninety-nine year lease of the Dockyard by the colonial government, discontinued its operations. Except for a brief period (1975-1981), the Drydocks never registered a profit and had to rely on Government subsidy.

f) Stock Options

At Vodafone in 2001 and 2002 shares options were granted to all employees. However the general policy tends to limit share options to key people in the company. Several other large companies such as First International Bank plc also operate share option schemes for their employees, however, as in the case of Vodafone, these schemes are only offered to key personnel.

4. Empirical Evidence of Economic and Social Effects

No empirical study has been conducted in Malta to assess the effects of schemes related to financial participation of employees. In the field and literature of industrial relations financial participation has not been a topical issue. This may be due to the fact that such schemes are offered to workers who enjoy relatively good conditions of work and good pay. Moreover schemes that tend to benefit employees in the short term, such as share options, are restricted to a few number of employees who occupy high grade positions in the enterprise. Nevertheless excerpts from newspapers and extracts from literature pertaining to management studies and workers' participation provide some anecdotal evidence of the effects of financial participation of employees.

Most of the schemes, with the exception of the Trust Fund at BOV and Maltacom which cover all employees, are not broad based in the sense that they are targeted at personnel at management level or restricted to a number of key employees. The aim of these schemes may be the retention of the employees so as not to let them fall prey to poaching. In this sense the schemes seem to have been effective for labour turnover in these firms tends to be rather low. The two companies, Baxter and International Hotels Island Group, which operate a system of performance related pay, register a very low labour turn over (if any) in middle and senior management levels. The feeling of loyalty is enhanced and nurtured in both companies (Naudi, 2003, p. 185). The Chief Executive Officer of Malta Shipyard Ltd. stated in an interview that the improvement in the results of the firm has been achieved against the background of the PRP scheme in operation as established in the collective agreement between management and trade union (The Times (Malta) Business, 15.9.2005, p. 7). In this regard, the current Minister for Investments was quoted as saying that PRP was proof that rewarding workers for increased productivity, as against traditional wage increases, worked whereas the general secretary of the union that signed the collective agreement stated that the performance bonuses show that the shipyards are facing a brighter future thanks to the reform in which the union was a major player (The Times (Malta) 29.8.05, p. 5).

The setting up of co-operatives in the public sector also seems to have had positive effects. Zammit (2004) reports 'that compared to the period before co-operatives were set up, the rate of sick leave has declined. There are also examples of employees working voluntarily beyond normal hours, without being compensated or being placed un-

der a flexible schedule. Additionally, co-operative employees are demonstrating initiative in diversifying their services in order to increase their income. Co-operative funds can be used for capital investment for the benefit of their enterprise. Hence this experience has resulted in a culture change among public employees, increasing their performance, efficiency and productivity, instilling pride in their work and improving their work ethic.' (Zammit, 2004, p. 27)

In contrast, the schemes of financial participation in operation at the Bank of Valletta plc (BOV) and at the telecommunication company, Maltacom plc, happened more by default rather than design. The ramifications of the nationalisation programme in the 1970s and the privatization drive of the 1990s, diametrically opposed to each other, had the unintended consequences of introducing financial participation practices for employees in these enterprises. The financial participation schemes in operation at HSBC Bank Malta plc may have an element of an 'imported' model from a leading global institution. The two major banks in Malta may have set the ball rolling, but the overall picture is that financial participation of employees in Malta is neither well diffused nor broad based.

5. Conclusions

In Malta the current level of development of financial participation for employees is rather low. The overall picture is that it is neither well diffused nor broad based. One reason for this may be a lack of culture about this form of participation.

Financial participation of employees as a concept has never formed part of the espoused ideology or mindset of trade unions, even though they showed favourable disposition towards such schemes wherever they were set up. Even policy-makers do not seem to attach much importance to this practice of employee participation. Financial participation of employees has not featured prominently in the agenda of The Malta Labour Party (MLP) and the Nationalist Party (NP) – the two major political parties that have dominated the Maltese political scenario since the middle of the previous century. The MLP, in office from 1971 to 1987, made an attempt to introduce workers participation schemes that may have eventually resulted in financial participation if the firms, where these schemes were in operation, had proved to be economically viable. Unfortunately this did not prove to be the case so that none of these firms could act as model of workers' participation. This bitter experience of workers' participation did not leave much room for further development of workers' participation.

The main thrust for the financial participation of employees was the privatization drive of the 1990s. In two government-owned enterprises which were partially privatized, a trust fund was set up on behalf of all employees in the respective enterprises. It should be noted that these two partially privatized companies are listed on the stock market. HSBC following their take over of the state-owned bank, Mid Med, introduced a fi-

nancial participation scheme which may have an element of an imported model from a leading global institution.

However privatization cannot be said to have been auspicious to workers' participation. In a span of three years (2003-2005) following a privatization or a restructuring exercise, five worker directors were abolished. According to the findings of a survey conducted by the Centre for Labour Studies at the University of Malta, business information passed to employees is limited to clinching of a major client or market and achievement of a quality standard practice. Financial information of any kind is rarely divulged (Baldacchino, 2005, p. 10).

Legislation concerning financial participation is underdeveloped when compared with that of other countries, especially with that of UK which has historically been the source of much of Malta's Laws on Companies and Employment. Tax incentives for financial participation schemes are also few and far between.

To date EU accession does not seem to have had any impact on the development of financial participation. The Maltese social partners are digesting the new regulations that have come into force following the transposition of EU directives into law. The employers seem to believe that what they term as excessive regulation of labour market, far from being a sensible response to slower growth, may be the cause of it. At a time when the economy has slowed down and is still undergoing restructuring, policy-makers are adopting a cautious approach in legislation.

The preferred policy of government as regards financial participation is the provision of a co-operative framework in the public sector which enables workers to tender for projects and share in profits accruing from them. The number of workers who have taken the options provided in this scheme, since its inception in 1996, has not been impressive. However they have managed to set up a model of working in a sector which is rarely praised for its level of productivity and efficiency. This scheme in the public sector stands out among others as it was designed with a clear objective in mind by government and was implemented after prolonged discussion between government and officials of trade unions representing workers in the public sector.

Bibliography

Baldacchino, G. (2005), *Trends in Worker Participation and Employee Involvement in Malta*, Centre for Labour Studies University of Malta.

Bord tal-Kooperattivi, Malta (2000), *Direttorju tal-Moviment Koperattiv Malti*.

Mamo, G. (June 2004), *Employee Share Ownership: A Legal Analysis*, unpublished LL.D. Thesis, University of Malta.

Naudi, L. (2003), 'Comparing Performance Management Systems' in *Managing People in Malta*, G. Baldacchino, A. Caruana and M. Gixti (eds.), Malta: Foundation for Human Resources Development, pp. 167-188.

Office of the Prime Minister (OPM), *Development Plan for Malta 1973-1980*.

Kester, G. (1980), *Transition to Workers' Self Management*, The Hague: Institute of Social Studies.

'Report by the Registrar of Trade Unions 2003-2004' in *Government Gazette*, December 2004, pp. 13, 407-13, 408.

Rizzo, S. (2003), 'Flashpoints in Local Industrial Relations in 1990s' in *Evolving Industrial Relations in Malta*, G. Baldacchino, S. Rizzo and E. L. Zammit, Malta: Agenda/WPDC, pp. 28-64.

The Times (Malta), 29th August 2005, p. 5.

The Times (Malta) Business, 15th September 2005, p. 7.

Vaughan-Whitehead, D. (1996), 'Financial Participation: a new challenge for trade unions' in *Trade Unions and Democratic Participation in Europe*, G. Kester and H. Pinaud (eds.), Aldershot: Avebury, pp. 166-182.

Zammit, E. L. (1996), 'From Self Management to Co-operatives in the Contours of Workers' Participation' in *Trade Unions and Democratic Participation in Europe*, G. Kester and H. Pinaud (eds.), Aldershot: Avebury, pp. 119-125.

Zammit, E. L. (2004), *Handbook on Employee Involvement in Malta*, Offprint from Handbook on Employee Involvement in Europe, Supplement 1, June 2004.

Interviews

Cassar-Torregiani, J., Head Executive, Bank of Valletta, 4 November 2005.

Portelli, W., President of Malta Union of Bank Employees (MUBE), 31 October 2005.

Sevasta, J., Worker Director, Maltacom, 4 November 2005.

Zahra, E., Secretary of Board of Co-operatives Malta, 31 October 2005.

Correspondence by e-mail

Pulis, G., Manager Administration, HSBC Bank Malta, 4 November 2005.

Martin, G., Human Resources Manager, Vodafone Malta, 12 November 2005.

Annex

Table. Co-operatives set up within the public sector under scheme 'B'

Co-operative	Section within the public sector within which it is operating	Activity	Membership
Linen Service Co-operative Society	Department of Health	Laundry service. Washing of linen, sheets, pillow cases and other work related to cleaning and provision of clothes	60
Co-operative for Traffic Signs and Notices	Department of work	Maintenance and fixing. Notices of highway code, painting of road signs and fixing bus shelters	15
Aluminium Co-operative	Department of work	Aluminium work	5
Co-operative of Carpenters	Department of work	Carpentry work	6
Crossroad Co-operative	Water Services Corporation*	Laying of pipelines and other work related to road work	5
Malta Maritime Pilots Authority	Malta Maritime Authority (MMA)*	Pilotage Service in the Harbour	10

* Independent Statutory Bodies. Established by law as Government agencies but given the status of a distinct corporate body.