



Dedicated to promote the interests
of the Maltese maritime sector

2023 Budget Proposals

A Document Submitted to the

- Minister of Finance and Employment
- Minister for Transport, Infrastructure and Capital Projects
- Malta Council for Economic and Social Development (MCESD)

In Relation to the National Consultation Process for the 2023 Budget.

August 2022

A. Introduction

The Malta Maritime Forum (MMF) is a non-governmental organisation established in 2015 with a vision to champion all Matters related to the Maritime Industry and the Blue Economy. As a maritime cluster, the MMF embraces the major maritime economic players in activities such as ship-owners, port and terminal operators, vessel towage providers, ship agents, bunkering operators, pilots, tank-cleaning facility operators, ship repairers, mooring-personnel, dockers, cargo haulage operators, maritime lawyers, suppliers of yachting services and other professional services providers amongst many other activities.

The Mission of the Malta Maritime Forum is to serve as a maritime cluster and a common platform for those Malta based entities involved in the maritime transport and logistics sector in Malta. In so doing, it aims to influence national maritime policy by facilitating communication between the various sectors as well as with Government to assist and promote the development of this industry in general.

In light of these aims and its Mission, the Forum is hereby presenting the views and opinions on the maritime industry for the forthcoming national Budget. The aim of this Document is to ensure an environment and conditions in the country which foster investment, sustainability, employment, and prosperity in the maritime industry.

In light of (i) the systemic economic importance highlighted above and (ii) its ranking and importance at a global level, in the forthcoming Budget, the MMF advocates more focus and importance to matters relating to the maritime economy and those who invest in it. To this end, it is putting forward the following concrete proposals for the Finance Minister's consideration.

B. The Economic Contribution of the Maritime Industry

The MMF deems it crucial for government to offer support the development of the maritime industry through its specialised and dedicated cluster dedicated because according to a recent study commissioned by the Forum itself and performed by Dr Gordon Cordina of E-Cubed Consultants, the Maritime Community collectively generated €855m worth of direct economic activity which rises to almost €2.2billion when considering indirect and induced effects. Furthermore, the Industry provided almost 12 thousand direct jobs which figure rose to 20,515 when account is taken of both indirect and induced effects. This was equivalent to approximately 10% of the total gainfully occupied population in 2018. The same study highlighted close economic multiplier effects generated in the financial and insurance sectors. The Maritime Industry also contributed to €25m to the government coffers. It is worth noting that the average Value Added/employee (€72,000) generated in the maritime industry is 53 per cent higher than the national average (€47,000). This economic indicator is rising faster in the maritime industry (12%), compared to the average growth rate in the economy in general (10%).

The full report entitled "Maritime Malta" is downloadable via this link: <https://we.tl/t-se59odzUGk>

1. TM Demerger

In July 2021, the MMF submitted a set of Electoral proposals to the Prime Minister and the Leader of the Opposition which were aimed at consolidating Malta's position in the maritime sector. Chief amongst these proposals was the re-establishment of a national authority solely responsible for the Maritime Sector.

This position reflected the conviction of the MMF members that the country needs to invest the resources and fine-tune government's internal financial organisation with a view to enable the re-establishment of a dedicated national entity which will, in turn, enable the country to defend and consolidate its prime position in the maritime sector at the European and global levels.

The MMF was encouraged by a subsequent Cabinet decision for Transport Malta (TM) to be divided into three entities each responsible for land transportation, aviation, and maritime. Similarly, the Forum welcomed the appointment of a Working Group to plan the implementation of this measure. The MMF actively engaged with this working group to which it submitted a comprehensive position paper which is annexed to this report.

The Forum recognises the great strides which our country has achieved over the past decades to establish Malta as a leading Maritime centre of excellence on a global scale. Nevertheless, going forward, the Forum's position in favour of a single entity dedicated to the maritime industry is based on the need for enhanced:

- Specialisation
- Focus
- Urgency and improved reaction time, and
- Imparting the right message to the international market

With the amalgamation of a number of entities and departments into TM, the priority required by the Industry on both the national and international levels has become diluted in other overall responsibilities covered by the Authority including Aviation and Transport where the latter alone includes, vehicle registrations, drivers licences, VRT stations, the road network, traffic management, road safety, the bus service and all aspects of public transport and animal-drawn vehicles.

Of course, it is crucial for the entity to be well structured and adequately resourced with the necessary technology and people who possess the necessary specialised and technical know-how.

The future Maritime Authority should retain the role of regulator but assume the equally important roles of enabler/facilitator. In this regard, the regulations drawn up to govern the setting up of the Maritime entity must necessarily take into account the functions and responsibilities that such an entity will assume. Chief amongst these are proposed to be :

Controls over territorial waters and ports	Care for the environment
Maintenance of law and order	Prevention of pollution
Provision of port services	Provision and maintenance of infrastructure
Regulate navigation	Active participation in UN agencies such as IMO
Promotion of Maltese ports	Furtherance of maritime education
Registration of ships and vessels under the Malta flag	Certification of labour force
Adherence to international maritime conventions	Promotion of short sea shipping services for the carriage of passengers and cargo

In its extensive position paper reproduced in Annex 1, the MMF makes further detailed proposals in the area of Transfer of Assets; Governance and the importance of an active and independent Users Committee.

2. Establishment of Dedicated Maritime Court

As referred to above, the MMF submitted a “Maritime-Centred Manifesto” to the country’s political leaders in July 2021 where it also advocated strongly the setting up of a dedicated Maritime Court.

This proposal had strong economic objectives in mind stemming from the Forum’s recognition of Malta’s untapped potential to move up the value chain and establish itself as regional centre of excellence with exclusive jurisdiction over all maritime disputes within the territory. In the Forum’s belief, the potential is both real and substantial because Malta is already a maritime centre of significant importance on a global scale.

Every niche of the maritime sector is already strongly represented here forging intrinsic links in the chain of international trade. Cases decided by the Maltese Courts have multiple international interests and every maritime case decided in Malta is invariably studied and analysed by numerous international maritime interests. Therefore, the call for a specialised maritime court is deemed complementary to the country’s role and aspirations to continue to serve the region and beyond as a centre of excellence in the maritime field. In fact, in light of the expanse and breath of maritime cases, the increasing specialisation in maritime law and the expectations of the industry, a dedicated maritime court is indeed a crucial requirement in the commendable international aspirations of the country.

Together with one of its members, the MMLA, the MMF has continued to advise government on the matter providing detail on how the jurisdiction and/or competence of the Civil Court (Commercial Section) needed to be extended to cover a myriad of issues which sooner or later could find themselves before a Maltese Court.

Indeed, cases involving carriage of goods, ownership of or interests in Maltese registered vessels, marine insurance, the enforcement of mortgages through judicial sales by auction or court approved private sales, ship agency, pilotage, ship repair, salvage operations, towage operations, crew employment disputes, collisions, containerisation, bunkering, the cruise line industry to mention but a few, apart from arrests and other security measures, the putting up of security to release from such arrests and other security measures.

Clearly, however, in order for Malta to live up to such potential and international expectations, it needs to build a solid, specialised judicial infrastructure. Indeed, Maritime cases are specialized cases involving specialized lawyers and likewise should be heard by a specialized court. Complex cases concerning areas referred to above are becoming commonplace and increasingly more technical with the ever-intensifying sophistication in international maritime law. Delays cannot be tolerated or contemplated within this particular sphere.

Once it is apparent that the proposal has been well received by all stakeholders concerned, the MMF, as the prime interlocutor for the maritime industry, urges Government to implement it as soon as practically possible to uphold the country's aspirations to be a regional and global centre of excellence for maritime affairs as well as to increase the Maritime Industry's vast economic contribution whilst consolidating its systemic importance to the Maltese Islands.

A position paper on the subject is presented in Annex 2 to this paper.

3. Ensuring the skills and competences required in the maritime industry within the framework of educational programmes of the country

In the context of the fact that value-added generated in the maritime industry is 53 per cent higher than the national average, there is little doubt that the maritime industry has and will continue to offer varied and lucrative job opportunities in various sectors and at various levels of employment. The industry and the authorities, however, need to work in unison in order to reap full benefit of the resources and opportunities at hand.

The maritime industry is not immune to the skill shortages that continue to beset the labour market even after the full-effect of the COVID-19 pandemic. To this end, the MMF is surprised by the fact that the maritime industry does not feature at all in the "I Choose – *Nagħzel il-Karriera Tiegħi*" initiative for 2021 which has been embarked on by the Ministry for Education for students' guidance on career and educational options in their latter years of compulsory education.

To this end, the Malta Maritime Forum is making the following concrete proposals:

- Increase awareness about the Blue Economy in general and about the career opportunities within it especially amongst the younger generation through the national curriculum, school visits and social media
- Enhance the exposure of Blue Economy in Career Guidance structures
- Offer financial assistance to awards a project aimed at aligning skills, competences and qualifications to Industry needs
- Align the various initiatives in the education sector by the local providers concerning Maritime studies into one cohesive unit with a view to build synergies and consolidation whilst discouraging fragmentation and unnecessary duplication;
- Ensure a straight-forward, logical, coherent and attainable path within the framework of our education system.
- Align certification and accreditation for courses in the Maritime sector to the national EQS programme
- Afford financial initiatives to owners of Malta-flagged vessels to encourage take-up of cadets and simplify the match-making system for apprenticeship and cadetship positions
- Take up by students should be encouraged through maritime studies becoming eligible for sponsorship opportunities/grants and inclusion within the *MyJourney* programme
- More emphasis to be given to the training in the Maritime sector for shore-based careers
- Assist the Maritime Industry in enhancing its employer brand

4. A National Maritime Transport Policy for Malta

Whilst it is noted that the country has a National Transport strategy, there is no specific policy document in the country dedicated to the Maritime Industry and that the forthcoming Budget ought to ring-fence resources to this cause. A National Transport strategy is required to provide statements of principle, objectives and directions to the country, at least at a conceptual level. The document would be aimed at spelling out what the Government's vision and goals in the maritime sector are for the immediate, medium and long-term, how they are to be achieved, by whom, by when and the strategy and resources required to realize them. The Policy would give direction to investors as to the channelling of the right resources in the appropriate doses towards achieving the country's aims. Besides, the Policy would contribute to ensure that the Industry is governed in an efficient, consistent, sustainable, safe and environmentally sound manner.

Needless to say, the Policy should follow a holistic approach to provide an Integrated Maritime Policy framework, incorporating all the sectors that make up the industry¹ within the context of all the horizontal levers that influence its development and progress, not least climate change and specifically de-carbonisation and the EU's Emission Trading System (ETS), digitalisation, and availability of skills, training and recognition of qualifications. A well-structured and implemented National Maritime Transport Policy can give a country the tools it needs to become an effective participant in the maritime sector and to harness the full potential of the blue economy. The National Maritime Transport Strategy would need to be handled by a multi-dimensional task force which would need to include all stake holders from the public and private sectors.

The Malta Maritime Forum is prepared to spearhead the task of preparing a National Maritime Transport Policy for Malta, provided it is given the necessary financial and political support by the authorities to complete this task in the most objective, efficient and forward-looking manner. The Forum is committed to discussing this possibility with the country's authorities and political parties in the coming weeks and months with a view to concretize this proposal and move towards the articulation and finalisation of a much-required and long-overdue National Maritime Transport Policy for Malta.

5. Exclusive Economic Zone

The MMF has considered the document published by MFIN entitled "Exclusive Economic Zone – A Sea of Opportunities" and has articulated a position paper with its reaction and opinion. The MMF's position paper is divided into 4 main sections as it sets out to identify:

- a) What economic activity takes place at Hurd Bank and who benefits?
- b) What is the opportunity cost of a regulated allocation of the EEZ?
- c) How will international navigation routes be affected by potential designations within the EEZ? and
- d) What legal framework was going to be put into place for the purposes of enforcement and control of the EEZ?

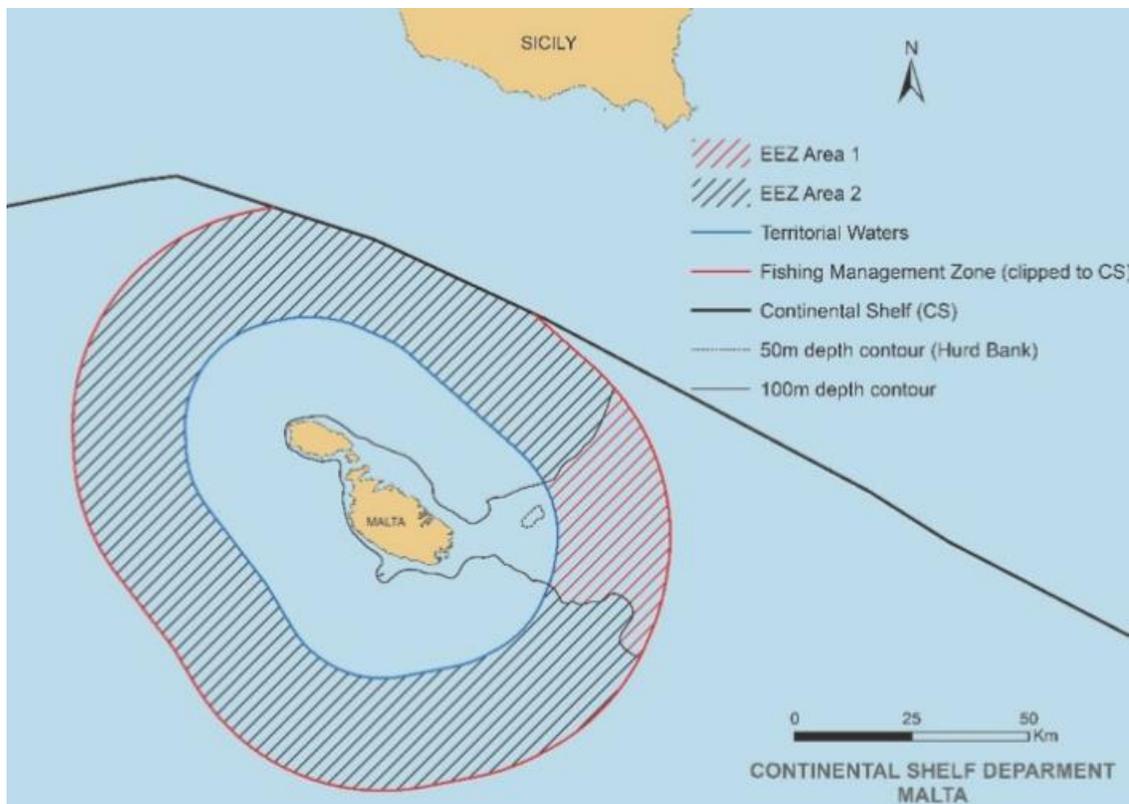
The salient section of the position paper relates to point 2 above. The MMF's gravest concern from an industry and macroeconomic perspective is the effect of a hindrance to business activity and ensuing multiplier effect resulting from a potential limitation on anchorage at Hurd Bank, even by means of an anchorage fee deemed prohibitive by the market. Such limitation on current business provided on and through Hurd Bank will result in detrimental direct and indirect effects on service providers costing the local economy:

¹ shipping, passenger ferry services, cargo handling, towage, pilotage, ship repair, port ancillary services, marine renewable energies, coastal, cruise and maritime tourism, yachting and marinas, education centres, mooring services, stevedores, ship agents, ship chandlers, surveyors, legal practitioners, providers of professional services, offshore oil, fisheries, aquaculture, coastal environmental protection, blue biotechnology and all components of the blue economy.

- (a) jobs,
- (b) indirect business activity through the multiplier effect,
- (c) investment,
- (d) foreign currency earnings and
- (e) direct and indirect tax revenue in Malta.

A comprehensive (though non-exhaustive) list of sectors which would become affected is provided. Besides, a huge concentration of shipping traffic typically moves along Area 1, i.e. the E to W and E to SE direction within the Malta Channel (between Malta and Sicily) as opposed to relatively sparse traffic below the south coast of Malta.

For this reason, the MMF firmly believes that Area 1 as denoted in the diagram below and representing Hurd Bank should be reserved exclusively for marine traffic and anchorages.



With regards to Area 2, the MMF holds that any regulated allocation of an EEZ must always respect the rhumb lines and navigation routes so as to ensure that maritime traffic may still flow freely, avoid any disruption and costly delays to shipping lines. The MMF recommends that a thorough risk assessment be carried out prior to any decision concerning allocations in the area under consideration.

From the legal perspective the MMF is of the view that there are a number of matters which would need to be considered and covered quite apart from the overarching idea that the country must assess its legal rights and obligations which in turn translate into financial burdens.

The report concludes that any declaration of an EEZ will need to follow from a number of elaborate studies not least :

- a) a shipping traffic risk and impact assessment,
- b) an environmental impact assessment, and
- c) an economic impact assessment.

The latter will need to estimate the net monetary benefit to the country from the economic exploitation of the increased territory after the forecasted costs are deducted. This exercise would need to incorporate those costs that the country would need to incur in shouldering added responsibility, rights and obligations that come with the new territory, in terms of monitoring and enforcement.

Malta has the responsibility to choose and examine the projects carefully to ensure they are compliant with ecological and environmental standards. This point is crucial in light of the declared intention to fast-track permits from the PA and ERA for EEZ-related projects. The MMF underlines the importance of ensuring that new projects sited in the EEZ do not create negative environmental and/or economic externalities which are detrimental to other economic sectors and/or the common good.

All in all, the MMF reiterates its position that Area 1 covering Hurd Bank be reserved exclusively for marine traffic and anchorages. With regards to Area 2, the MMF is not against the exploitation of the EEZ as long as the necessary safeguards are in place and as long as the projects contained therein are not detrimental to any Maltese service providers including all Maltese-registered companies that provide services on Hurd Bank to ship owner and that the projects do not hinder the existing navigational lines and take into account eventual legal implications.

6. Land Reclamation

The MMF is acknowledging repeated declarations regarding government's land reclamation aspirations to be potentially undertaken over the course of the current legislature. Once again, the MMF has articulated a position paper on the subject which is annexed to this paper.

The MMF also acknowledges the land reclamation projects which have been undertaken in Malta in the last century, which projects, in the main, have provided substantial impetus to the maritime industry in Malta and hence to the economic benefit of the country. With this hindsight, the MMF believes that the maritime industry would stand to gain significant strides ahead should another major land reclamation project be implemented for the purposes of upgrading maritime transport infrastructure.

To this end, the Forum is supportive of such projects that would be designed and operated by the Maritime stakeholders. It should fall within the remit of an already recognised Maritime Authority such as Transport Malta or the Malta Freeport Corporation.

The operating model should represent way forward for affording maximum flexibility in the use of quays without parcelling unnecessarily concessions that could possibly hinder capacity optimisation. Proper management of the quays is essential so that berthing allocations are maximised. This would yield optimum cross quay productivity in terms of tonnage.

Infrastructure needs to be planned to enable modular land reclamation concessions according to each operator's general requirements. In this respect the authority would be able to grant leases to operators on condition that their infrastructure investments are within an overall masterplan.

The maritime industry would benefit mostly were the reclamation to yield depths of waters that are suitable for today's ocean-going vessels. The land reclamation project must deliver berths capable of handling vessels of up to 400m length and 18m draft.

Once again, the MMF is recommending that any decisions on land reclamation projects are based on the conclusions of elaborate studies including:

- (a) a shipping traffic risk and impact assessment
- (b) an environmental impact assessment
- (c) an economic impact assessment

The Malta Maritime Forum, in virtue of its representation of all Maritime Stakeholders with its principal aim of promoting the maritime industry, is prepared to participate in a detailed consultation process for a land reclamation project that would give the opportunity for all its stakeholders to expand and modernise their maritime activity.

7. Public Private Promotional Arm

The MMF believes that government should set up a dedicated entity that would take the form of a public private partnership tasked with the international promotion of:

- a) Malta as a centre of excellence and a worthy destination for maritime investment
- b) all maritime services offered in and from Malta

The Malta Maritime Forum is eager to partner with Government in this venture which could run on the model of TechMT, Education Malta, Property Malta and Finance Malta amongst other examples. With this proposal, the maritime industry would benefit from the value and positive results in other sectors generated by the above quoted examples. The proposal would avoid potentially awkward situations for Transport Malta in balancing its regulatory and promotional roles. At the same time, the initiative could consolidate all international promotion of national maritime efforts under one, industry-driven, umbrella. The final aim is to consolidate Malta's position at the international level or the country's strengths as a centre of excellence in the maritime industry.

8. Introduction of Standard Operating Procedures for Bunkering

Although not strictly a fiscal matter, the MMF is proposing to raise professional standards in bunkering business through the introduction of mandatory internationally recognised standards.

The process of transferring oil supplies to a ship is termed as bunkering operation. Conventionally, bunkering is done in ports but with modern techniques and heavy traffic, bunkering can be done at sea under normal weather conditions. Malta enjoys a very advantageous geographical location for the delivery of bunkering at sea lying at half-way mark between the Straits of Gibraltar and the Suez Canal. Bunkering in and around Malta, in fact, requires little or no need for marine traffic crossing the Mediterranean to alter course. In this regard, the MMF believes that the Islands may and should introduce and adopt a set of internationally recognised standards with a view to enhance Malta's reputation in the field and attract the share of international business that generates invisible exports, investment, specialised employment opportunities and tax revenue to the country. Principal amongst these standards are Standard Operating Procedures for Bunkering.

Ship To Ship Bunkering, the process by which fuel is transferred between two adjacent ships positioned alongside is the most common type of bunkering procedure at sea. The eventual obligation for ship to ship bunkering operations to adhere to minimum standards will mitigate certain inherent risks including Oil Spills, Health Risks to operators, Disputes on the Sulphur Content between transaction parties and Mechanical damage to ships caused by low quality fuel.

The MMF is formulating a position paper on the subject which shall be submitted to the competent authorities in due course. Meanwhile, it is willing and prepared to contribute to the formulation of a Bunkering Procedure incorporating detailed steps for the various related phases including (a) Ordering, (b) Preparation, (c) Pre-Bunkering and (4) Bunkering. Procedures must also entail a Bunker Delivery Note, detailed precautions to be taken during the Bunkering Operation and relevant Checklists.

9. Support to Investors

As an overarching objective, the 2023 Budget must recognise the role of private investors in the maritime industry – both local and foreign – and their economic contribution in the generation of prosperity, jobs, tax revenues and other economic multipliers.

This central proposal is being made in the context of a string of experiences suffered by maritime operators whereby, due to lack of consultation, certain decisions were taken that seemingly compromised the legitimate expectations of private investors. This is indicative of the fact that key representatives of the country are still underestimating the importance of our industry and underestimating the fact that we are competing in a global village. As the prime interlocutor for the maritime industry, the Forum naturally, expects to work hand in hand with the authorities in all matters that require consultation and clarification on behalf of economic operators in an effort to not only avoid such instances in the future but to foster investor-friendly conditions within the industry. To this end, the Forum intends to contribute actively to the consultation process surrounding the Grand Harbour Regeneration Plan and if need be to also mobilise and facilitate feedback from the players themselves with a view to iron out any investor uncertainty which may arise. Investor uncertainty may, of course, equally arise out of a lack of information and to this end, the MMF is calling for a Strategy for the Port of Marsaxlokk.

In the context of long-term economic planning, the Forum expects all relevant stakeholders to ensure the safeguarding of strategic partnerships the country has built over the years with investors, both local and foreign in the long-term interest of maritime business and connectivity within our Islands. In the interest of ensuring the right conditions for investment, sustainability employment, and prosperity in the maritime industry, all responsible stakeholders must do all that is in their power to foster sustainable and resilient growth in the maritime industry by :

- (1) giving full institutional and policy backing to investors,
- (2) including the maritime sector within the scope of investment incentives and other forms of public-funded support afforded by the authorities from time to time,
- (3) ensuring that private investment is complemented by the necessary public-funded infrastructural investment, the execution of which needs to dovetail with the operational and legal privileges of the private sector,
- (4) communicating consistent policy messages in favour of the maritime industry in tune with its systemic importance to the country,
- (5) seeking to consult wherever necessary with individual operators and the Malta Maritime Forum as their interlocutor on matters of policy which are material to investment decisions,
- (6) ensuring that they do not only pay lip service by saying the right things, but by ensuring that their staffers carry out the policies on a day-to-day basis.

C. Summary & Conclusion

In light of the immediate and medium-term world economic outlook and in the context of the current extraordinary circumstances to which the maritime transport industry is naturally exposed, the Malta Maritime Forum believes that the Budget is of fundamental importance to the continuation of growth and development in the maritime industry.

To this end, it is putting forward to following (6) concrete proposals for the Minister of Finance and other competent authorities:

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- ✓ Detach maritime industry responsibilities from Transport Malta and re-establish a National Maritime Authority
 - ✓ Establish a dedicated Maritime Court
 - ✓ Invest in ensuring the Skills and Competences Required in the Maritime Industry
 - ✓ Partner with the Malta Maritime Forum towards the formulation of a National Integrated Maritime Policy for Malta
 - ✓ Exclusive Economic Zone
 - ✓ Land Reclamation
 - ✓ Partner with the Malta Maritime Forum towards establishing a Public Private Promotional arm for the Maritime Industry
 - ✓ Introduce Standard Operating Procedures for Bunkering
 - ✓ Offer its full and unrelented backing to local and foreign investors in the maritime industry.
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The Forum is well aware of the new, rapidly evolving realities its members are having to face which are characterised by the aftermath of the COVID-19 pandemic as well as significant political and environmental/climate change factors. It is aware of the challenges these realities pose and the requirements of industry players in finding themselves adequately geared to face them. For this reason, it is making the above proposals for the forthcoming 2023 Budget. Clearly, it hopes that a larger number of its proposals are considered for implementation and to this end, it is pledging its willingness and availability for further discussion with the Minister of Finance should this be deemed necessary.

03/08/2022

Annex 1	“Proposals by the Malta Maritime Forum for the Separation of Transport Malta into Separate Entities”
Annex 2	MMF Position Paper on the Setting Up of a Dedicated Maritime Court
Annex 3	A Position Paper outlining the views of the MMF on a document published by the Ministry of Finance and entitled “Malta’s Exclusive Economic Zone - A Sea of Opportunities”.
Annex 4	MMF Position Paper on Land Reclamation

Proposals by the Malta Maritime Forum or the Separation of Transport Malta into Separate Entities

Reference is made to Government’s intention as announced by Minister Ian Borg for Transport Malta (TM) to be divided into three entities each responsible for land transportation, aviation, and maritime. Reference is also made to an initial discussion held between the specially appointed Working Group and the Malta Maritime Forum (MMF) on 5th November, where the MMF committed to come back with its opinions on a number of specific areas related to the new Law which is expected to be enacted to provide for the establishment of a new national maritime authority. The feedback provided hereunder shall be limited to the separation of TM insofar as the new Maritime Entity is concerned.

1 Benefits of Single Entity Dedicated to Maritime Industry over Present Position

The Malta Maritime Forum reflects the conviction of its members that the maritime industry merits a high position in terms of policy-making and policy-making fora in the country in line with the importance given to other key economic pillars of the country such as tourism, industry, financial services, gaming, ICT and several others. The Forum recognises the great strides which our country has achieved over the past decades to establish Malta as a leading Maritime centre of excellence on a global scale. Nevertheless, going forward, the Forum’s position in favour of a single entity dedicated to the maritime industry is based on the need for enhanced:

- Specialisation
- Focus
- Urgency and improved reaction time, and
- Imparting the right message to the international market

With the amalgamation of a number of entities and departments into Transport Malta, the priority required by the Industry on both the national and international levels has become diluted in other overall responsibilities covered by Transport Malta including Aviation and Transport where the latter alone includes, vehicle registrations, drivers licences, VRT stations, the road network, traffic management, road safety, the bus service and all aspects of public transport animals and animal drawn-vehicles.

From the MMF’s perspective, the country was ahead of time and ahead of its competition when it established a Malta Maritime Authority in 1991. This provided Malta a competitive edge which has been lost since other important maritime jurisdictions such as the UK, Greece and Cyprus caught up and established their own specialised Authorities which they have retained till the present day.

For this reason, the Forum is proposing the re-establishment of a national entity which is solely responsible for the maritime industry. It is important that the entity be adequately resourced with the necessary technology and people who possess the necessary specialised and technical know-how. These points are elaborated upon hereunder.

In addition, members of the MMF reported that over the years, Transport Malta developed from executing the role of an operator (terminals, services) to performing the exclusive function of a regulator. This change in policy is correct however, TM today has become too detached from the maritime industry because it has relegated itself to an interpreter of laws and regulations.

The future Maritime Authority should retain the role of regulator but assume the equally important roles of enabler/facilitator. This entails:

- Engaging with the industry – independently from the pertinent Ministry but as an industry player.
- Facilitating industry initiatives.

2 MMF's Proposed Status and Position in the New Law

The Board of the MMF elected that its proposal in terms of its status and position in the new Law should be as follows.

- a) The Law should make direct reference to the Malta Maritime Forum (by name), and in so doing, validating and recognising it *ex lege* as the exclusive, consultative and interlocutory partner of the new Authority.
- b) The new Authority should take decisions after due consultation with the MMF. For the sake of clarity, the MMF should be part of the decision-making process and not simply be informed of those decisions.
- c) The MMF (through its representatives) should not be included in the composition of the Board of the new Authority.

The above proposal is being made in light of :

- (a) the wide representation of the industry within the Forum across a wide spectrum of sea and land-based maritime activity including Ship Owners & Operators, Shipping Agencies, Marine Surveyors, Classification Societies, Educational Institutions, Shipyards, Ship Builders; Terminal Operators, Oil & Energy Facilities, Short Sea Promotion Centre, Maritime Lawyers, Stevedores, Ship Management Companies, Naval Architects, Maritime Pilots, Bunker Suppliers, Towage Operators, Cruise Port Operators, Oilfield Services, Hauliers, Maritime Consultants, Freight Forwarders, others.
- (b) The fact that the main object of the Forum is *"To provide a central national organization for the representation, promotion and protection of all interests pertaining to the Maritime Industry and the Blue Economy, to act as the counter-weight for the National Authority and/or Ministry solely responsible for Maritime Affairs on the Island and to actively and constructively consult and be consulted by government in the development of public policies with a view to influence National Maritime Policy now and in the future;"* - Statute of the MMF [Clause 3.1 – Objectives]

3 Functions and Responsibilities

The regulations to govern the setting up of the Maritime entity must necessarily take into account the functions and responsibilities that such an entity will assume. Chief amongst these are proposed to be :

- Controls over territorial waters and ports
- Maintenance of law and order
- Prevention of pollution
- Care for the environment
- Provision and maintenance of infrastructure
- Provision of labour force
- Provision of port services
- Regulate navigation
- Promotion of Maltese ports
- Promotion of short sea shipping services for carriage of passengers and cargo
- Registration of ships, yachts and boats under the Malta flag
- Adherence to international maritime conventions
- Active participation in un agencies such as IMO
- Furtherance of maritime education and certification

4 Transfer of Assets

The proper functioning of the new entity would necessitate the transfer of assets, currently held by Transport Malta by means of Parliamentary approval. These assets include:

- Terminals
- Quays
- Breakwaters
- Moorings
- Lighthouses
- Equipment
- Any salvage and pollution control equipment
- Buildings
- IT systems

5 Governance in Appointments and Nominations

5a Appointment of Chairman

- Person to be chosen on the basis of meritocracy and objective criteria, taking account of specific proven competence and skills, professional experience, track-record of achievements, independence of thought and knowledge,
- Proposed by the Minister and approved via a Parliamentary process,
- Chairperson shall not be a member of the House of Representatives.

5b Appointment of Board

- Board to be composed of independent people with varied backgrounds, experience and competences,
- Members shall not be members of the House of Representatives
- Members shall not be actively engaged in/employed by/supplier to any maritime-related business to ensure they are not (and cannot be) conflicted

5c Board Committees

- In the interest of good governance, efficiency and effectiveness, the Board of Directors is to be supported by the existence of Board Committees dedicated to :
 - Governance
 - Internal Audit
 - Compliance and Risk
 - Remuneration

5d Appointment of CEO

- Person also to be chosen on the basis of meritocracy and objective criteria, proven competence and skills, professional experience, track-record of achievements, independence of thought and knowledge,
- Salary package must be performance-based (KPIs) and in line with Market rates and established by Board Remuneration Committee
- CEO to Chair an Executive Committee
- CEO to be appointed on Board of Directors
- CEO can only be removed by Parliamentary Process

5e Executive Committee

- Appointed to ensure constant communication, full alignment and complementarity between all Directorates
- Composed of CEO and COs and obliged to meet at regular intervals as defined by the Authority Regulation (Act)
- Chaired by CEO

5f Chief Officers (COs) & Directorates

- Appointed by CEO and answerable to same,
- COs can only be removed by the Board,
- Persons chosen must possess proven competence, relevant experience, track-record,
- Salary packages must be performance-based and in line with Market rates and established by Board Remuneration Committee
- Appointments to be made in line with gender-neutral and non-discriminatory process

6 MMF to Serve as “De Facto” Users Committee

Constant, structured and constructive feedback is a prerequisite for a successful functioning of an organisation, alignment to objectives and continuous improvement process. For this reason, the Malta Maritime Forum proposes that it shall perform the role of a “de facto” “Users Committee” to act as an independent and structured interface between new Entity and the Industry to ensure this organ of crucial national importance is functioning smoothly and as intended.

Setting Up A Dedicated Maritime Court

The Malta Maritime Forum (MMF) advocated the need for the setting up of a dedicated Maritime Court as part of its pre-Electoral proposals in July 2021. This proposal stemmed from its belief that Maritime cases are specialized cases involving specialized lawyers and likewise should be heard by a specialized court.

The setting up of a dedicated Maritime Court will strengthen the present administrative structure and send the right message to the international maritime community and international trade. Indeed, both the volume as well as the sector specific complexities involved in maritime legal cases justifies this direction of travel. The availability of specialised and dedicated judges (or judge) is a sine qua non in order to satisfy international expectations for the efficient and effective processing of cases concerning a myriad of issues which sooner or later could find themselves before a Maltese Court. Indeed, cases involving carriage of goods, ownership of or interests in Maltese registered vessels, marine insurance, the enforcement of mortgages through judicial sales by auction or court approved private sales, ship agency, pilotage, ship repair, salvage operations, towage operations, crew employment disputes, collisions, r containerisation, bunkering, the cruise line industry is mentioning but a few, quite apart from arrests and other security measures, the putting up of security to release from such arrests and other security measures, are commonplace and are becoming increasingly more technical with the ever intensifying sophistication in international maritime law.

Of course, in light of the fact that Malta is a maritime centre of significant importance on a global scale representing every niche of the maritime sector forming intrinsic links in the chain of international trade, cases decided by the Maltese Courts have multiple international interests and every maritime case decided in Malta is invariably studied and analysed by numerous international maritime interests. Therefore, the call for a specialised maritime court is deemed complementary to the country's role and aspirations to continue to serve the region and beyond as a centre of excellence in the maritime field. In fact, in light of the expanse and breath of maritime cases, the increasing specialisation in maritime law and the expectations of the industry, a dedicated maritime court is indeed a crucial requirement in the aspirations of the country as a continued centre of excellence.

The Malta Maritime Forum submitted this request to the Prime Minister on 15 July 2021 when the proposal was favourably received. On 18th July, the MMF wrote to the Prime Minister, making reference to a public declaration made by the then Minister for Justice to the effect that Cabinet had approved the extension of the jurisdiction and/or competence of the Civil Court (Commercial Section) to inter alia maritime affairs a decision which the Forum has already endorsed in public without reserve.

By means of its letter dated 18th July and in a concrete effort to ensure that the Bill to be presented in Parliament achieves legal certainty, the Forum, together with one of its members the Malta Maritime Law Association, further proposed that, as far as maritime affairs were concerned, the jurisdiction and/or competence of the Civil Court (Commercial Section) be extended :

- To actions relating to collisions at sea.
- To actions arising out of the carriage of goods by sea
- To actions in rem [Article 742(b) of Chapter 12 of the Laws of Malta)
- To actions in personam whether arising out of tort or contract involving the subject matters listed in Article 742(b) of Chapter 12 of the Laws of Malta
- To precautionary and executive warrants relating to the arrest of ships
- To judicial sales of ships and court approved private sales
- To the precautionary and executive warrant of ejectment or expulsion from seagoing vessels or aircraft, and any action for eviction relating to the eviction of an operator, lessee or other occupants, including any members of their staff from seagoing vessels or aircraft.
- To any civil or commercial dispute brought by or against (i) any Maltese shipping organization and (ii) against any international owner [as defined in S.L. 234.23]. And To actions relating to the following legislation :

(including any subsidiary legislation enacted by virtue of the principal Act and precautionary and executive warrants filed to secure actions arising from said principal and subsidiary legislation) :

- Part II of the Commercial Code (Chapter 13 of the Laws of Malta) [Of Maritime Trade and Navigation]
- Carriage of Goods by Sea Act (Chapter 140 of the Laws of Malta)
- Merchant Shipping Act (Chapter 234 of the Laws of Malta)
- Territorial Sea and Contiguous Zone Act (Chapter 226 of the Laws of Malta)
- Carriage of Goods by Sea (Regulation) Act (Chapter 283 of the Laws of Malta)
- Ports and Shipping Act Chapter 352 of the Laws of Malta)
- Law of the Sea (Ratification) Act (Chapter 363 of the Laws of Malta)
- Oil Pollution (Liability and Compensation) Act (Chapter 412 of the Laws of Malta)
- International Carriage of Goods By Road Act (Chapter 456 of the Laws of Malta)
- Maritime Pilotage Regulations (S.L. 499.26)

The Forum trusts that Government is giving careful consideration to this proposal and that the dedicated Maritime Court will be established as soon as practically possible to uphold the country's aspirations to be a regional and global centre of excellence for maritime affairs.

Annex 3 A Position Paper outlining the views of the MMF on a document published by the Ministry of Finance and entitled “Malta’s Exclusive Economic Zone - A Sea of Opportunities” – May 2022

Exclusive Economic Zone

The Malta Maritime Forum has considered the publication made available by the Ministry of Finance entitled Malta’s Exclusive Economic Zone - A Sea of Opportunities and submits the following views.

The MMF

The Malta Maritime Forum (MMF) is a non-governmental organisation established in 2015 with a vision to champion all matters related to the Maltese maritime industry and the Blue Economy and to serve as a common platform for those Malta-based entities involved in the maritime, logistical and transport industry in Malta. This platform acts as the flag-bearer for the entire maritime industry and facilitates communication between the authorities and various sectors that form this industry. The MMF is affiliated to the European Network of Maritime Clusters (ENMC) and the European Shortsea Network.

As the leading Maritime Cluster of the Maltese Islands, the MMF embraces all the major players in the Industry across a very wide spectrum including: Shipyards, Terminal Operators, Oil & Energy Facilities, Ship Owners & Operators, Shipping Agencies, Marine Surveyors, Classification Societies, Educational Institutions, Short Sea Promotion Centre, Maritime Lawyers, Stevedores, Ship Management Companies, Naval Architects, Maritime Pilots, Bunker Suppliers, Towage Operators, Cruise Port Operators, Oilfield Services, Haulier, Maritime Consultants, Freight Forwarders and others.

For the purposes of this paper, the MMF set up an ad hoc working group composed of the following :

- Judge Emeritus Joseph Zammit McKeon (Chairman)
- Dr Ann Fenech (Board Member)
- Capt Jesmond Mifsud (Board Member)
- Mr Thomas Sullivan (Board Member)
- Mr Kevin J Borg (CEO)

Preamble

On 13th January 2022, the Malta Maritime Forum was briefed by the Minister of Finance on Government’s plans to designate an Exclusive Economic Zone (EEZ) area extending from the territorial waters up to the 25 nm limit (or the median line whichever is the closest) as shown in Figure 1 below. The Minister informed the MMF that it was to embark on an open call aimed at seeking internationally recognized companies to undertake activities and projects in the

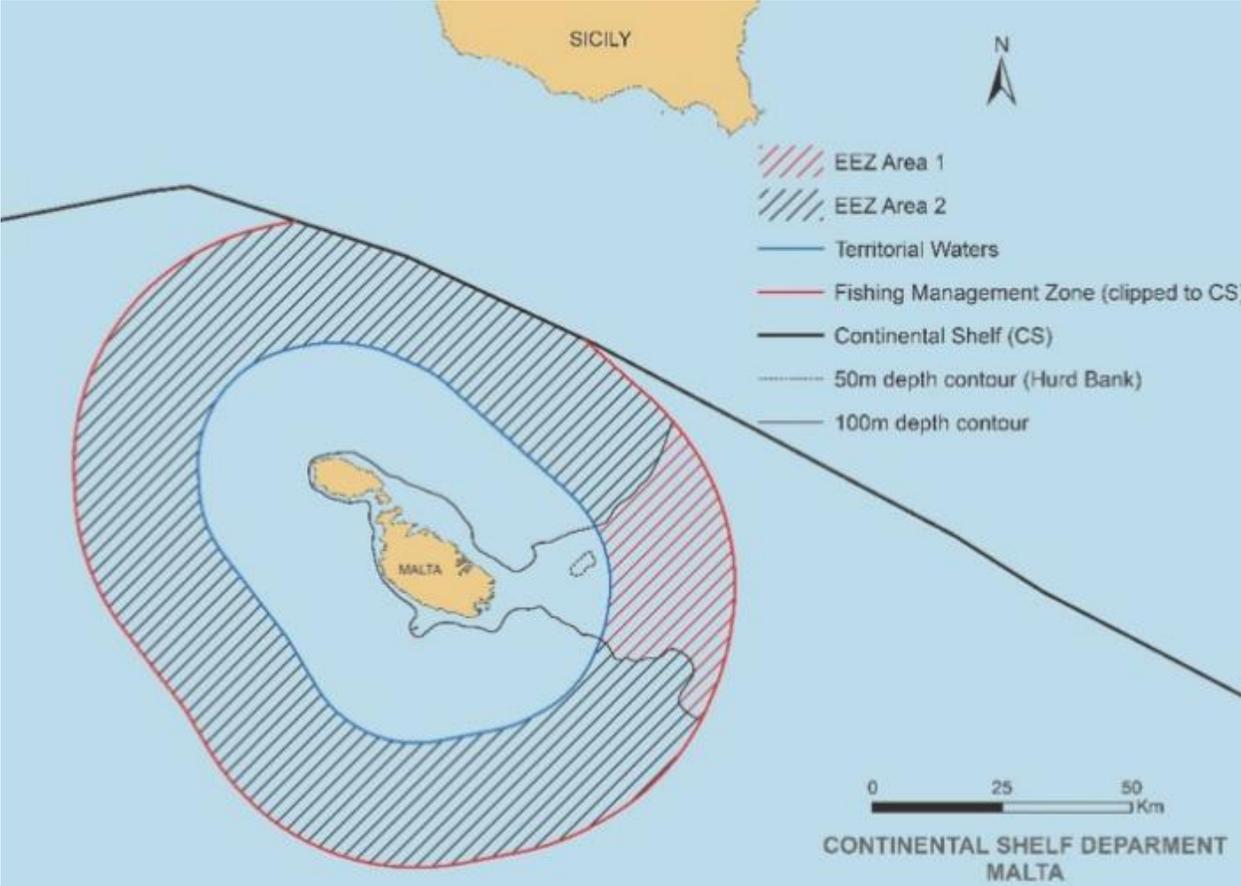
proposed exclusive economic zone area in line with the rights provided under the United Nations Convention on the Law of the Sea (UNCLOS) and the Malta EEZ Act.

In 2021, Government enacted legislation to establish an exclusive economic zone in the central Mediterranean which, in fact, allows Government to designate, beyond Malta’s territorial waters, an EEZ area or areas that partially or fully coincide with Malta’s continental shelf without prejudice to Malta’s final EEZ designation. The process has the potential of extending Malta’s responsibilities by as much as 71,446 square kilometers.

Malta’s EEZ Act (Cap 625 of the Laws of Malta), in fact, provides the legal framework for any activity within the established EEZ area and gives Malta:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters suprajacent to the seabed and for the economic exploration and exploitation such as the production of energy from the water, currents and winds;
- (b) jurisdictional rights with respect to :
 - (i) the establishment and use of artificial islands, installations and structures,
 - (ii) marine scientific research and
 - (iii) the protection and preservation of the marine environment

Figure 1: Proposed EEZ Area (hatched in black and red)



This paper sets out to identify:

- (a) What economic activity takes place at Hurd Bank and who benefits?
- (b) What is the opportunity cost of a regulated allocation of the EEZ?
- (c) How will international navigation routes be affected by potential designations within the EEZ? and
- (d) What legal framework was going to be put into place for the purposes of enforcement and control of the EEZ?

1 **What Economic Activity Takes Place at Hurd Bank and Who Benefits?**

The economic activity which takes place on and around Hurd Bank is varied and widespread. Some of it is crucially complementary to other operations which take place with Malta's ports and on-shore hence it is likely to affect directly the business environment of local and foreign investors in Malta's maritime industry. The economic activity taking place on Hurd Bank is an important "invisible export" (source of foreign currency earnings) in terms of the country's balance of payments. As will be further explained below, a multitude of other business sectors besides those associated with or are part of the shipping industry in Malta. These include importers, manufacturers, airlines, taxi services, hotels, entertainment, banks and others.

This generation of economic activity arises out of the bathymetry within the Hurd Bank area which is relatively shallow and favourable for anchorage. The alternative to using an anchorage is for the vessel to drift which is not suitable for ship owners. For many years, vessels of various typology, in fact, have been dropping anchor on Hurd Bank for the following reasons:

- When a vessel is Off Hire (when vessel is not under charter due to many factors such as the market and owners look for an anchorage.
- When a vessel is under charter awaiting instructions for the vessel to discharge or load at next port.
- Prior to entering Maltese territorial waters for the following reasons:
 1. To receive bunkers
 2. To conduct conveyance services at 5 nautical miles offshore Valletta
 3. To receive/deliver ship to ship equipment
 4. Enter Marsaxlokk Port (Freeport, LNG PowerStation, Evos Terminal, Enemed Terminals, Delimara power station)
 5. Enter Valletta Port (Palumbo Malta shipyards, Valletta Gateway terminals, Valletta cruise port, MMH)

Hurd Bank anchorage is also used for additional services during vessel lay ups or when anchored for long periods. The list of services offered by Maltese service providers include :

- Crew changes
- Bunkers
- Spares clearance
- Spares delivery
- Offshore repairs
- Garbage disposal
- Oil drums disposal
- Cash to Master
- Cargo sampling
- Doping
- Fendering
- Hull cleaning
- Hull surveys
- Diver services
- Delivery of Life-rafts
- Repairs of Life-rafts
- Supplies/Provisions
- Repairs offshore
- Transportation of cargo additives
IBC's
- Lube oil transport in drums/bulk
- Transportation of Surveyors/
Technicians
- Slop Disposal
- Medical arrangements

Besides relative shelter, bathymetry and the logistical advantage provided by the proximity of Maltese ports, ship owners are attracted to anchorage on Hurd Bank because it is economical to do so. Currently, no fees apply for anchorage on Hurd Bank as there is no charge applicable in similar (competing) anchorages elsewhere in the Mediterranean, including Gibraltar, Cyprus and Greece.

In addition, certain protocols and restrictions apply for anchorage inside territorial waters of Malta. These include:

1. The Port Authority (Transport Malta) forbids vessels to anchor inside territorial waters for long periods. Permission is granted for up to 48 hours unless a service is taking place.
2. Vessels may only anchor inside territorial waters for a valid reason
3. Not all services are allowed inside territorial waters at Malta's anchorages

2 **What is the Opportunity Cost of a Regulated Allocation of the EEZ?**

At the outset, it needs to be stated that in addition to challenges posed by regulatory restrictions, Malta is already losing competitiveness to other neighbouring ports due to frequent lack of maintenance and capital investment in Maltese ports. This effect of lack of maintenance and capital investment is exacerbated by the fact that, over the years, certain quays and creeks have become dedicated to recreational, HORECA, social, office-space, yacht marina purposes at the expense of commercial merchant shipping. With this in mind, and given that vessels are becoming ever larger, Hurd Bank offers an attractive very viable option – if not the only available option – for the servicing of certain vessels.

Consequently, in light of the above restrictions and developments that already exist, if for any reason, anchorage facilities on Hurd Bank become further hindered in any way, several services available today given to the international shipowner will become compromised to the detriment of Malta's competitiveness position in the regional shipping market, the direct and indirect service providers and the creation of jobs and growth in the local economy.

Thus, if for instance, fees should become payable to the port authority on vessels anchoring at Hurd Bank in a similar way as they are within the ports:

- Owners would sail to competing (non-paying) anchorages in Cyprus, Gibraltar, Greece
- Neighbouring Sicily will fill the vacuum and allow vessels to anchor offshore Pozzallo

Should business move away from Malta because due to loss of competitiveness and/or the activity becomes unfeasible, the following (non-exhaustive) list of sectors are set to lose out:

- All Maltese service providers including all Maltese-registered companies that provide services on Hurd Bank to ship owner:
- Shipping agents
- Travel agents
- Ship-to-ship operators assisting the largest oil traders in the world.
- Banks
- Insurance companies
- Maritime lawyers
- Auditors
- Doctors, Clinics, Hospitals
- Malta International Airport
- Ship chandlers
- Airlines
- Taxi operators
- Hotels
- Restaurants
- Logistics operators
- Local importers
- Manufacturers
- Supply Boats and crew,
- Tug-boats and crew,
- Crane hire / Forklift /Trucks
- Port workers
- Divers for hull cleaning, Hull repairs, and Hull inspections
- Ship repair yards. (Certain repairs can only take place outside territorial waters at Hurd bank as TM prohibits certain repairs inside territorial waters.
- Mechanical and electrical service providers
- Surveyors such as SGS, Bureau Veritas, Saybolt, Intertek
- Lloyds surveyors
- Warehouses and storage
- Rent of quayside usage for mobilisation and de-mobilisation prior to going offshore and return back to shore
- Oil lubricant and cargo additive suppliers
- Waste management contractors
- Wasteserv

It is to be underlined that the above all generate:

- (a) jobs,
- (b) indirect business activity through the multiplier effect,
- (c) investment,
- (d) foreign currency earnings and
- (e) direct and indirect tax revenue in Malta

BOX 1 – A Typical Everyday Life Example through the Supply-Chain for a Crew Change Operation Combined with Food Supply at Hurd Bank

Example pertains to a crew change with overnight stay(s) (which is 98% always the case)

Step 1 Crew department books flight (travel agency)

Step 2 Flight is booked (travel agency)

Step 3 Ship agent is appointed

Step 4 Taxi service is appointed from airport to hotel

NB: on the same launch boat other services can be combined. For instance, say food supplies are combined the below supply chain takes place

Step 5 Hotel accommodation booked

Step 6 During crew stay: restaurants, medical examinations/treatments, shopping trips, public transport and taxi services are booked

Step 7 Taxi service is appointed from hotel to seaport

Step 8 From seaport, an offshore launch boat is engaged to go offshore to Hurd Bank

Example of the supply chain when ordering food supplies for vessels anchored offshore Malta:

(this is combined with the crew change taking place)

Step 1 Ship owner appoints agent

Step 2 Ship agent sends mini tender to all food suppliers (ship chandlers)

Step 3 Appointed food supplier (ship chandler) is confirmed

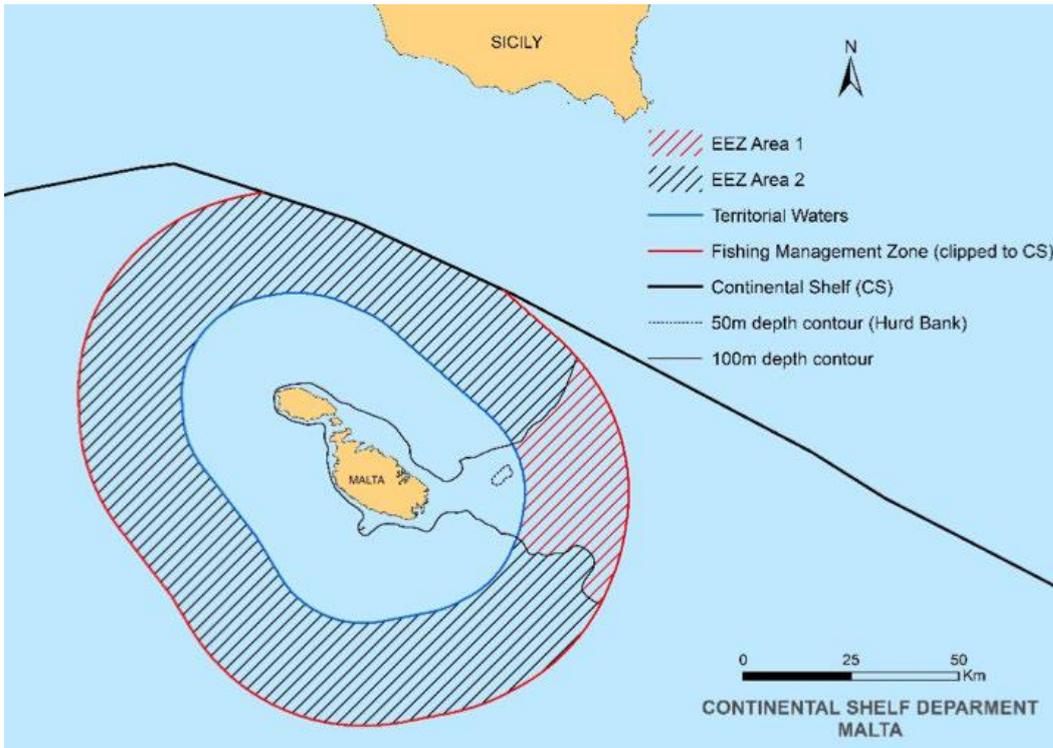
Step 4 Food supplier organises food and boxes up carefully

Step 5 Vans of food supplier deliver to seaport

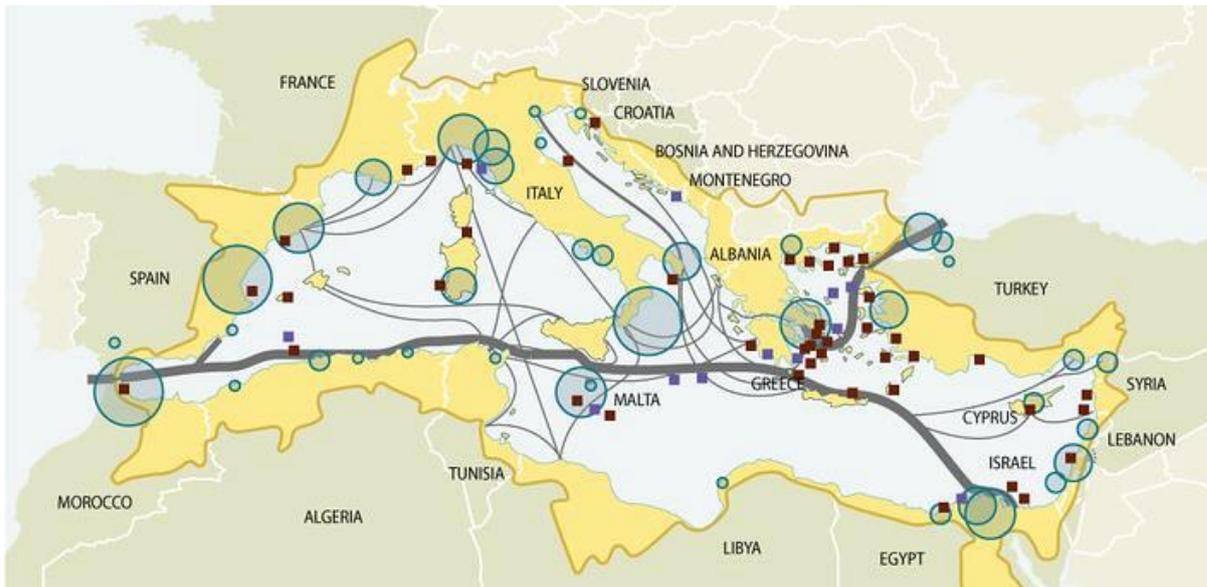
Step 6 Food and supplies are loaded onto a launch boat. For loading to take place, a crane and cherry picker are needed

Step 7 Launch boat departs to Hurd Bank

3 How Will International Navigation Routes be Affected by Potential Designations Within the EEZ?



From a marine traffic perspective, the EEZ borders the main east-west shipping route, including the route to and from the Strait of Gibraltar and the Suez Canal. This is clearly depicted below.



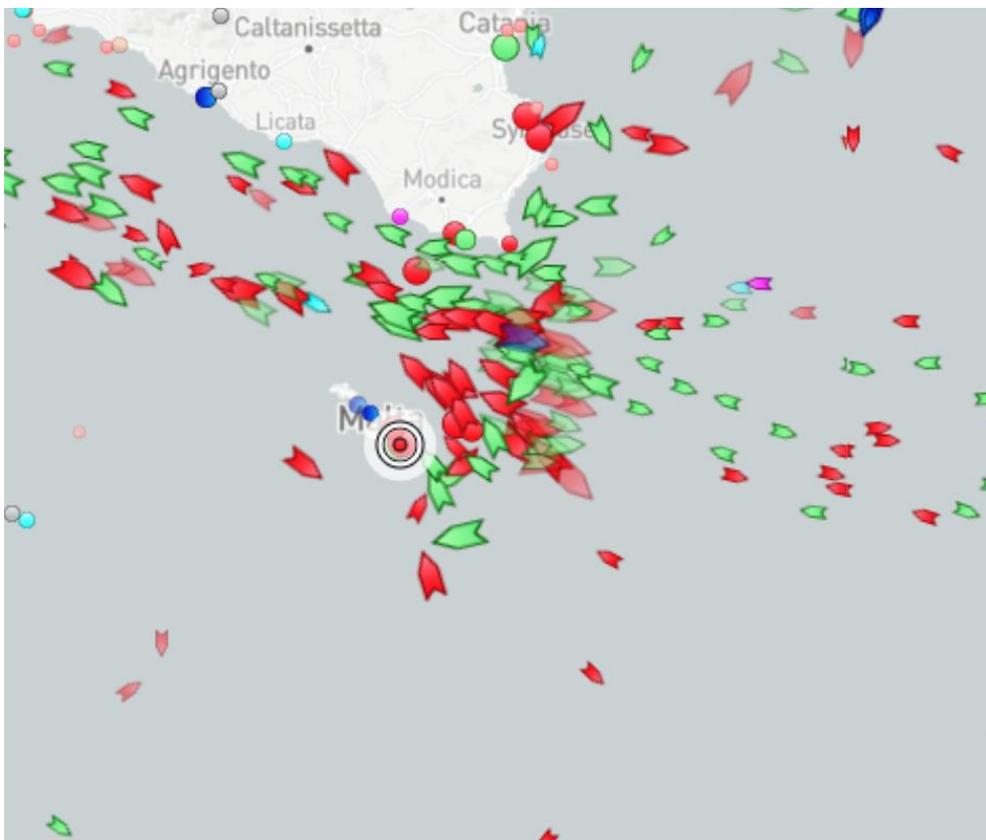
Malta Maritime Forum contends that any regulated allocation of an EEZ must respect the rhumb lines and navigation routes so as to ensure that maritime traffic may still flow freely, avoid any disruption and costly delays to shipping lines. Currently, ships following the routes above will transit relatively close to the EEZ, in particular the ENE sector - the Hurd bank area.

At the same time, any projects based on the EEZ need to avoid any risk of :

- allision. the running of a ship with a fixed object or another ship that is stationary. Recent examples of allision in Maltese waters involved vessels contacting fish farm installations;
- collision – when two moving vessels strike each other. This risk is always present in cases involving heavy concentration of shipping in a relatively small area. May require a traffic separation scheme to be established;

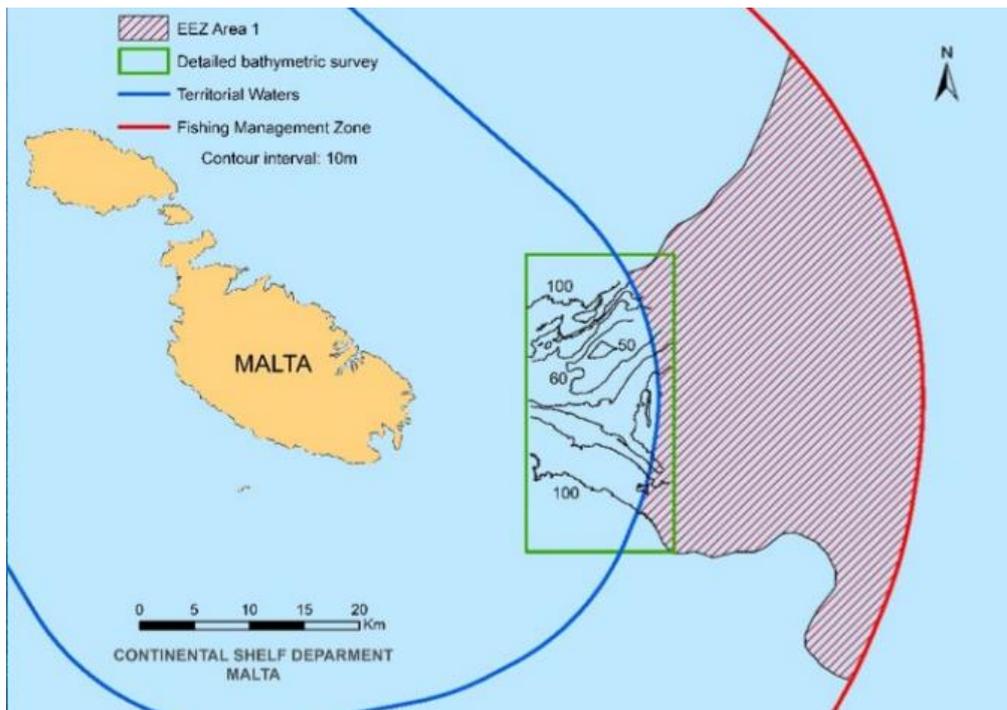
The MMF therefore recommends that a thorough risk assessment is to be carried out by the authorities prior to any decision concerning allocations in the area under consideration.

At the time of writing in fact, the AIS (Automatic Identification System) shows a huge concentration of shipping traffic along the E to W and E to SE direction within the Malta Channel (between Malta and Sicily) as opposed to relatively sparse traffic below the south coast of Malta.



The MMF is making this point because while nothing can be excluded a priori, given the stark difference in bathymetry between EEZ Area 1 (Hurd Bank) and EEZ Area 2, projects located in the latter zone are, one would assume, automatically disadvantaged from a feasibility point of view due to the depths and proneness to bad weather conditions particularly in the ENE and NW of the area given the prevailing wind. Meanwhile, projects which can be feasibly undertaken in the EEZ Area 2 include:

- Floating offshore wind farms;
- Offshore floating solar panels;
- Wave Profile Devices (these are elaborated upon in Annex 2)



4 What legal framework is going to be put into place for the purposes of enforcement and control of the EEZ?

As already stated, from the economic point of view, the MMF holds that any declaration of an Exclusive Economic Zone will need to follow on from a number of elaborate studies not least a shipping traffic risk and impact assessment, environmental impact assessments, as well as an economic impact assessment. The latter will need to estimate the net monetary benefit to the country from the economic exploitation of the increased territory after the forecasted costs are deducted. This exercise would need to incorporate those costs that the country would need to incur in shouldering added responsibility, rights and obligations that come with the new territory, in terms of monitoring, enforcement and control structures that will serve to prevent unsafe practices and environmental pollution and illegal activities.

On the one hand, Malta has the responsibility to choose and examine the projects carefully to ensure they are compliant with ecological and environmental standards. This point is of cardinal importance in light of the declared intention to fast-track permits from the Planning Authority and the Environment and Resources Authority for projects related to the EEZ. In this regard, the MMF underlines the importance of ensuring that new projects sited in the EEZ do not create negative environmental and/or economic externalities which are detrimental to other economic sectors and/or the common good.

From the legal perspective the MMF is of the view that there are a number of matters which would need to be considered and covered quite apart from the overarching idea that the country must assess its legal rights and obligations which in turn translate into financial burdens that influence the final economic impact assessment referred to above.

The legal implications would need to be examined very carefully and require in depth study which go beyond the preliminary views expressed in this paper.

Some preliminary views are as follows:

From what is being suggested it would appear that there would be three main legal pillars which would support this new activity venture: The United Nations Convention on the Law of the Sea (UNCLOS) and the principles annunciated therein related to EEZs , Chapter 625 of the laws of Malta – The Exclusive Economic Zone Act, possible amendments to the Code of Organisation and Civil procedure in so far as they relate to the grounds upon which Maltese courts exercise jurisdiction.

Part V of UNCLOS deals with the EEZ and provides the legislative parameters and boundaries for States to declare an EEZ.

Article 56 of UNCLOS establishes sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources whether living or non-living of the waters superjacent to the sea-bed and of the seabed and its sub soil and with regard to other activities for the economic exploitation and exploration of the zone such as the production of energy from the water, currents and winds.

In such a zone the coastal State has jurisdiction with regard to:

- (i) The establishment and use of artificial islands, installations and structures.
- (ii) Marine scientific research
- (iii) The protection and preservation of the marine environment

Specifically, Article 60 gives the coastal state an exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures for the purposes provided for in article 56 and other economic purposes, and installations and structures which may interfere with the exercise of the rights of the coastal Sate in the sone.

In relation to the right of a State declaring EEZ to exercise its jurisdiction which is normally limited to its territorial sea, UNCLOS gives the coastal state exclusive jurisdiction over such islands, installations and structures, including jurisdiction with regard to customs, fiscal, health safety and immigration laws and regulations.

The same clause bestows the right on the State declaring an EEZ to establish safety zones around such artificial islands installations and structures in which it may take appropriate measures to ensure the safety both of navigation and the artificial islands, installations and structures which safety zones cannot exceed 500m around such artificial islands, structures and installations.

Article 73 entitled “Enforcement of laws and regulations of the coastal State”, further states that the coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention. The article further provides that arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other securities and in the cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State through appropriate channels of the action taken and of any penalties subsequently imposed.

It is worth pointing out however that this article is limited to the action which the coastal State itself can take. This article is NOT taken to be an extension of the jurisdiction of a coastal state beyond its territorial sea in so far as third parties can invoke the jurisdiction of Maltese courts in the context of the action that needs to be taken in relation to private commercial disputes.

An example would be in the case of say collision damage caused by vessels to any of these installations. The question would arise whether the owners of such installations suffering the damage would be able to file precautionary warrants of arrest before the Maltese courts to secure their claim or even invoke the jurisdiction of the Maltese courts for the purposes of commencing an action.

Under our Code of Organisation and Civil Procedure, one can request the issuing of a warrant of arrest against a vessel if the vessel is in Maltese territorial waters. So the question arises whether an arrest of such a vessel in the EEZ and outside Maltese territorial waters would be possible given that article 73 only appears to be speaking about the rights of the coastal State to arrest such ships.

This question however appears to be answered in Part IV article 10 (2) of the Exclusive Economic Zone Act where it is stated that:

“For the purposes of civil jurisdiction exercisable by the Courts of Malta, any artificial island, installation, structure or device in the Zone or Area and any surrounding waters within 500 metres (500m) thereof, shall be treated as if they were situated in Malta itself.”

This would therefore imply that the grounds of jurisdiction found in article 742 and 742 B of our Code of Organisation and Civil Procedure laying down the grounds of jurisdiction of our courts in personam and in rem, would include any such artificial island, installation, structure or device plus the 500 meter around such areas every time the grounds refer to “Malta” even if such areas would be well outside the 12-mile territorial limit.

Similarly, when issuing warrants of arrest where it is obligatory to identify the location of the vessel in Malta, any area within the 500 meter surrounding such artificial island, installation, structure or device would be considered to be “Malta” and thus such warrants for the arrest of vessels can be issued.

Conclusion

All in all, the MMF acknowledges that with more territory comes more responsibility and the question of whether Malta has the capacity and economic power to make use of its rights, fulfil its duties and keep up with its obligations. As has also been commented upon by independent legal commentators, “The establishment of control and enforcement procedures in the exclusive economic zone is a determining factor in preventing unsafe practices, environmental pollution and illegal activities. These might include illegal fishing, piracy, terrorism, slavery, smuggling and the trafficking of drugs, among others. ¹”

Consequently, if the added rights and responsibilities bestowed upon the country as a result of UNCLOS and the newly enacted Malta EEZ Act are to result in any tangible benefit – monetary or otherwise - Malta must provide confidence to the industry and other stakeholders that it is able to manage its new responsibilities adequately, in particular by ensuring effective enforcement of law and order within the EEZ, honour its new contractual obligations with private concessionaries of EEZ sites and manage efficiently and effectively the policies and structures which need to be established to undertake the new ventures with the private sector.

In conclusion, in view of the points made in the above sections of this position paper and in so far as allocations of an EEZ are concerned, the MMF reiterates its position that Area 1 covering Hurd Bank be reserved exclusively for marine traffic and anchorages. With regards to Area 2, the MMF is not against the exploitation of the EEZ as long as (1) the necessary safeguards are in place and in conformity with the conclusions of the necessary impact assessment studies recommended above and (2) as long as the projects contained therein are not detrimental to any Maltese service providers including all Maltese-registered companies that provide services on Hurd Bank to ship owner and that the projects do not hinder the existing navigational lines and take into account eventual legal implications.

Malta Maritime Forum – Position on Land Reclamation

The Malta Maritime Forum, having taken cognisance of various successful land reclamation projects undertaken in Malta in the last century, has elected to express its position accordingly. It must be stated at the outset that all the above-mentioned land reclamation projects have been a tremendous boost to the maritime industry in Malta and hence to the economic benefit of the country. With this hindsight we believe that the maritime industry would stand to gain significant strides ahead should another major land reclamation project be implemented.

Objectives

The Maritime Forum would favourably support a land reclamation project that would be designed and operated by the Maritime stakeholders. It should fall within the remit of an already recognised Maritime Authority such as Transport Malta or the Malta Freeport Corporation.

The operating model should be the modern way of giving maximum flexibility for the use of quays without parcelling unnecessarily concessions that could possibly be an obstacle for the maximum fruitful use of quays. Proper management of the quays is essential so that berthing allocations are maximised. This would yield optimum cross quay productivity in terms of tonnage.

Infrastructure needs to be planned to enable modular land reclamation concessions according to each operator's general requirements. In this respect the authority would be able to grant leases to operators on condition that their infrastructure investments are within an overall masterplan.

The maritime industry would benefit mostly were the reclamation to yield depths of waters that are suitable for today's ocean going vessels. The land reclamation project has to deliver berths capable to handle vessels up to 400m length and 18m draft.

Environment

In consideration that the Malta Maritime Forum will support all environmental safeguards towards the realisation of a land reclamation project it is trusted that exhaustive studies in line with the environmental authorities guidelines and controls during execution will be to the maritime industries best ally. Of particular relevance would be the comprehensive Environmental Impact Assessment that would be conducted in parallel with the Planning Process.

Whilst not pre-empting the detailed environmental studies that would be required to be compiled by the competent authorities, it would be appropriate to mention the kind of studies that are essential for the success of the project. As a start, Wave Penetration studies by mathematical modelling would be of prime consideration. This would give the comfort of having vessels berthed safely. The next study would be the geotechnical one, which would guide significantly the construction system to be adopted. In fact, past experience has shown that the safest reclamation project would result from the initial peripheral containment structure within which reclamation would be safely contained.

Undoubtedly, the earthworks management would have to be well planned in order to sustain a logistics exercise of millions of cubic metres of inert material, preferably delivered by barges. Considering that most major developments are planned to take place close to shorelines, the extensive use of barges to transfer inert material from excavations for deposit within the land

reclamation containment would not adversely affect traffic on the roads. As system of rewarding this form of sea-based transportation would also be welcomed because it promotes the Maritime Industry itself.

With careful planning, the importation of materials to be used in the construction of the reclamation will be able to be landed on the reclamation itself. One is referring to imported construction materials for the quays i.e. steel, cement and hard aggregates. The materials would be shipped from the country of origin and landed directly within the initial footprint.

Integration with the existing TEN-T national road network will be of significant environmental benefit should the TEN-T be easily accessible from the land reclamation project itself. A suggestion that comes to mind is the present TEN-T road that links the Airport with the Freeport. The natural extension of the TEN-T network would facilitate the logistics behind the project.

Conclusion

The Malta Maritime Forum, in virtue of its representation of all Maritime Stakeholders with its principal aim of promoting the maritime industry, is prepared to participate with a land reclamation project that would give the opportunity for all its stakeholders to expand and modernise their maritime activity.