FINANCIAL PARTICIPATION OF EMPLOYEES IN MALTA

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Abstract. Financial participation of employees in Malta has never been part of the ideology or mindset of the social partners. Its practice, in some Maltese enterprises, does not owe its origin to any specific piece of legislation while its evolutionary path is the result of a series of events in the Maltese political-economic scenario lacking a definite strategy by Government, trade union and employers. Consequently schemes of financial participation of employees among Maltese enterprises are neither well diffused nor broad based.

Introduction

Financial participation of employees is a form of remuneration additional to pay systems that enables employees to participate in profits and enterprise results. It embraces all schemes which give workers, in addition to a fixed wage, a variable portion of income directly linked to profits or some other measure of enterprise performance (Uvalic, 1991).

The two main forms of financial participation are profit sharing and employee share ownership. Generally profit sharing applies to all employees and is made in direct payment in cash. But it can be given as performance related pay (PRP) to individual employees or groups of them, in most cases to those in managerial position. Share ownership can be of various types: shares may be distributed free, sold at the market

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price (non discounted) or under preferential conditions. These preferential conditions include: sale at a discount rate (discounted purchase plan), sale at a lower price through forms of delayed payment or being given priority in public offerings to all or a group of employees (Vaughan-Whitehead, 1996:162). Producers cooperatives in which all the shares of the firms are owned by the workforce is another form of financial participation by employees.

These various forms of financial participation tend to have one common denominator: a remuneration to workers linked to company’s economic performance. However different forms of financial participations may have different impacts. Ramsay and Haworth (1984) argue that employee share holding has a much greater potential of modifying ownership relationship than profit sharing. Share plans can be seen as mechanisms to generate commitment and act as a signal that employees will receive some returns from the company’s performance.

Nevertheless Ramsay and Haworth argue that the small amounts of equity that owners and managers may be willing to transfer to employees may not bring about a significant change in employee attitudes and behaviour (Ramsay and Haworth 1984:306). They agree that in order to generate positive attitudes among employees, the portions of equity transferred to employees have to be significant. An empirical study conducted by Pendleton (2005:84) to test Ramsay’s view concluded that significant portions of equity transferred to employees produced significant positive associations between share ownership and employee commitment. The author argues that, “If share plans are valued by employees for reason other than ownership and governance, the plans could generate favourable employee attitudes even though their impact on the distribution of ownership and control is minimal.”

In this globalised economy which is making higher demands for companies to compete, financial participation may gain more currency as it can be the means of stimulating the collective efforts of employees thereby increasing productivity and/or enhancing efficiency (Vaughan-Whitehead, 1996:168). Indeed the concept of financial participation is based on the notion of enhancing both motivation and productivity. “As profit sharing does not only increase profits and decrease absenteeism, but also decreases staff turnover it seems both management and workforce gain”
The author asserts that it can therefore become an efficient human resource management tool. The schemes of financial participation of employees may thus form part of a specific strategy of employers. They can also be a manifestation of the principles espoused by the party in government. In Malta financial participation of employees cannot be linked to such strategies or policies as in most cases it happened more by default rather than design. In practice, financial participation of employees in Malta does not enjoy much political support. In this paper the economic-political scenario as well as the legal framework governing practices of workers’ participation provide the context within which financial participation of employees in Malta is analysed.

Historical Background

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) in Government 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-colonialisation process, seven years after the attainment of political independence. The banking sector, at the time dominated by two major banks, namely the National Bank of Malta owned by Maltese shareholders and Barclays Bank, 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 in 1974. Following a run on the bank by depositors, shareholders were forced by Government to surrender their shares.

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1 The seven year plan designed by the newly elected government, set 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 (Kester, 1980:72; Malta Government, 1972).

2 Following a run on the bank by depositors, shareholders were forced by Government to surrender their shares.
Bank case the Government became the major shareholder by owning 60% of the shares and on 1st October 1975, the bank was renamed Mid Med Bank. Later on Barclays renounced 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 privatisation 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 reversed 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. One of first of these entities to be affected by this policy was Bank of Valletta. In 1994 government sold a major part of its shares to the public. The side effect of this privatisation 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 another privatisation exercise in a telecommunication state-owned enterprise, a similar fund was set up for the employees of this enterprise.

In the enterprises where a financial participation scheme was introduced, the workers were unionised. In spite of their apparent lack of enthusiasm, the trade unions supported the schemes wherever they were introduced and in some cases they negotiated the terms under which they were to operate. The lack of collective bargaining at sectoral level tends to make it easier for the Maltese trade unions to be supportive of such schemes. It can be argued 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, 1996:166). However, 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

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3 This restructuring became more urgent in view of Malta’s Government formal application, submitted in July 1990, for access to the European Union (Rizzo, 2003: 31).
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 Maltese trade unions.

It has neither featured prominently in the agenda of the two major political parties namely the Malta Labour Party (MLP) and the Nationalist Party (NP)—which have dominated the Maltese political scenario since independence in 1964. Various attempts were made to introduce workers’ participation during the MLP administration of 1971 to 1987. This policy of participation started at Malta Drydocks Corporation (now Malta Shipyards Ltd) by introducing a co-determination system which ultimately culminated in workers’ self management in 1975.

Other participation schemes were introduced in industry where government had a majority shareholding with the aim of introducing financial participation of employees once these firms became economically competitive. These firms did not prove to be economically viable so that schemes for financial participation of employees could not be put into practice (Kester, 1980:152). Malta Drydocks managed to register a profit for 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 the two state-owned banks through a profit sharing scheme. The Minister of Finance and the Malta Union of Bank Employees (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 parastatal entities (independent statutory bodies within the realm of the public sector). 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. In addition, the government was afraid that this profit sharing scheme was going to have an adverse effect on the other parastatal enterprises which were not as commercially oriented as the banks.
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 had 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 Nationalist Party government in the 1990s to provide the co-operative framework in the public sector which enabled workers to submit bids for tender of work projects and share in the profits accruing from them. The government’s belief was that the initiative in workers’ participation emanating from government sources would take the form or 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 (parastatal enterprises) which are mostly congenial to the operation of a worker participation scheme. It was envisaged that these sectors were going to ultimately adopt a co-operative structure which would enable the workers to participate in the profits accruing from increase in productivity (Zammit, 1996:124). 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.

**Legal and Fiscal Framework**

In so far as legislation on financial participation of employees is concerned, 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 setting up of such schemes or any fiscal or other incentives of note.
The schemes of financial participation of employees, introduced in 1990s, in the two independent statutory bodies which were partially privatised did not have any statutory basis. Indeed, most financial participation schemes in Malta (the sole exception being co-operative societies, discussed below), were put into place and regulated by means of private agreements (individual contracts and collective agreements) between the newly privatised companies and their employees.

It is interesting to note that the statutes of both Enemalta Corporation\(^4\) and Water Services Corporation,\(^5\) (two as yet un-privatised utility providers) explicitly permit the establishment, by the Corporations of schemes of incentives related to productivity or performance. However, it would appear that this power has, to date, never been exercised.

**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, mainly for those holding executive or managerial positions. Provided that a company is empowered by its Memorandum and Articles of Association to implement employee financial participation schemes,\(^6\) 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.

**The Investment Services Act**

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

\(^4\) Enemalta Corporation Act, 1977 (Chapter 272 of the Laws of Malta).
\(^6\) 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.”
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 (1) (g) of the IS Act (Exemption) Regulations. 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. In view of this, companies planning to offer their own shares to employees and who intend circulating a fair amount of brochures, leaflets, etc regarding the issue to its employees need to apply for the MFSA’s approval under the above-quoted regulation 3(1)(g) in order to benefit from the exemption as regards investment advertisements.

The Companies Act

A company may also allot shares to its employees provided that it is so authorised by its Memorandum and Articles of Association. 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, 1995 (CA) (Chapter 386 of the Laws of Malta).

As a general rule, the CA prohibits companies from acquiring its own shares or the shares of its parent company or providing financial assistance for the purchase of its own shares or the shares of its parent company in respect of any shares, except in the circumstances set out in the CA or with the prior consent of the MFSA.

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7 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...”.

8 In terms of article 11(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.

9 See footnote 6 above.
company. However, article 106 para. 4 of the CA and article 110 para. 2 of the same Act, 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. This sub-article thus permits companies to contribute to employee share schemes. 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, article 106 (4) CA of the Act 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.

There is another provision of note in article 89 (e) of the same Act which exempts public limited companies from having to issue a prospectus when issuing shares to directors or employees. More specifically, article 89(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 Act 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 (article 113(1)). 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. Maltese tax law on the other hand does not offer any tax incentives of note for these schemes.

**Income Tax Act**

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 basis). 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.

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 (Legal Notice 125 of 2001), share options are only taxable upon exercise of the option (Rule 36 of the Fringe Benefit Rules (Legal Notice 125 of 2001)). Thus, when an employee decides to exercise the share option, 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 to be the difference, if any, between the option price and the market price of the shares at the time the option is exercised (Rule 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 (Rule 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).

**Trusts Act**

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

A Trust can take many forms. Its essential characteristic being that a person (the Settler) 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, such as France, Italy and Liechtenstein, have, by specific legislation, introduced the concept of a Trust. One of these civil law countries 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. It is to be noted that prior to 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.
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 Article 6 and Article 21 (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 Article 21 (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.

The Co-operative Societies Act

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 Article 21(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 cooperative 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 Article 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 registered. In line with the democratic member control principle, every member of a cooperative 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 (article 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 (article 91). 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 (article 92).

As regards taxation of co-operative societies, article 12 (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, by way of dividend, bonus shares or certificates, fully or partly paid shares allotted to the members and patronage refunds are all subject to the members’ full personal rate of income tax.

**Employment and Industrial Relations Act**

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 (article 22(3) and article 36(13) of the Employment and Industrial Relations Act, 2002). However, these are rarely used in practice as the employer is still bound by the provisions on minimum wage. That is if the company posts a loss, that employee must still be paid his/her 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 calculated
on the basis of the employers performance. This treatment as a ‘wage’ implies that the share of the profit will be computed together with his/her salary for the purposes of imposition of income tax.

Financial Participation of Employees in Practice

In spite of the lack of a statutory basis in the Maltese legislation related to financial participation of employees, 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. Share ownerships 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. Following is an overview of the schemes of financial participation of employees in Malta.

Employees Shares, Long Term Incentive Plans and Employee Shareholding

At Bank of Valletta (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) 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), as a form of repayment, were given shares. Many of these employees are still on the pay roll of the bank.

Privatisation and 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 privatisation 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 nominated 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 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 privatisation 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 privatisation 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. 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.

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, conforming to the minimum provisions laid down in the law, it became legally binding to both sides. 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. The BOV Trust Fund was possibly originally set up as an *ad hoc* or *sui generis* arrangement which exhibited similarities to a trust. It can be argued that a Fund initially set up that way, later with Trust legislation being amended, adapted its statute.
Co-operatives

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 cooperatives were set up following a circular issued by the Office of the Prime Minister (MPO Circular No. 35/1996). Chapter 442 Co-op Act refers to them in Section 29 (3) with the subtitle ‘Registration of Society’. The scheme, envisaged as an alternative to privatisation, 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.

Four co-operatives have been registered under the public sector cooperative 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. The co-operatives have adopted accrual accounting, compared to cash accounting system adopted in Government departments, thus enhancing transparency in their business practices.

Profit Sharing

Following the merger of the two state-owned entities, Malta Drydocks Corporation 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 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 of 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 (Naudi, 2003: 174).

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 line managers. The amount is based on
the Group’s overall financial performance during one year. This bonus is not tied directly to the individual’s performance but to the Group’s performance as a whole (ibid.:179)

**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.

**Participation Scheme and Employment Relations**

Most of the share ownership 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 employers’ aim of such schemes may be to engender a higher level of commitment and loyalty, thereby retaining their employees.

No empirical study in Malta has been conducted to test for the possible correlation between the existence of financial participation schemes and employment relations. Moreover Pendleton’s finding that significant portions of equity tend to engender higher workers’ commitment (Pendleton, 2005:84) could hardly be subjected to testing in Malta as schemes of financial participation of employees in Malta tend to be limited in scope in attaining a high level of equity.

Excerpts from newspapers and extracts from literature may however provide some evidence, though not very reliable, of positive effects of financial participation. The low labour turnover among middle and senior management in two companies, Baxter and International Island Group, which operate a system of performance related pay, is seen a sign of loyalty and commitment, induced maybe by these financial participatory schemes (Naudi, 2003:174). The Chief Executive Officer of Malta Shipyards Ltd was quoted in a newspaper as saying that the
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improvement in the results of the firm has been achieved against the background of the PRP scheme in operation at the enterprise (Macdonald, 2005). This was complemented by the Minister for Investment who stated that rewarding workers had its desired effect in increasing productivity whereas the secretary-general of General Workers Union (GWU) which signed the collective agreement, stated that the shipyards are facing a brighter future thanks to the reforms which the union supported (Farrugia, 2005).

Nevertheless these schemes may appear to be token efforts rather than any grand design to radicalise the industrial relations system. This form of participation thrives where there is government support. The increase in profit sharing schemes in 1990s in Britain is attributed to government support in the form of providing a legal framework and tax incentives to encourage the use of work related pay (Festing et al. 1999; 301). This kind of a legal support structure is lacking in Malta, maybe because of an absence of a political will among the Maltese political parties towards the ideals of financial participation. The absence of a legal structure makes it more congenial to employers in the sense that schemes can be easily changed or modified to suit their exigencies.

This attitude of indifference towards a regulatory contextualisation of such schemes seems to be also manifest among Maltese trade unions. The European Trade Union Confederation (ETUC) in Brussels, to which the two main Maltese trade union movements are affiliated, has not exhibited great enthusiasm towards such schemes, however, its policy is somewhat different. A senior researcher at European Trade Union Institute (the research arm of ETUC) stated that financial participation is not a central focus of ETUC (IAFP, 2006;13). However since it is becoming an issue of the European Commission, ETUC adopted a resolution in which it clearly stated its position by, among other things, insisting that financial participation should not act as a replacement or substitute for wages/salaries, and it should not increase inequalities. ETUC believes that financial participation must be embedded in the whole policy of employee involvement and has to be perceived as one of the core pieces in the unfinished jigsaw of worker participation (IAFP: 14).

The ETUC perspective should act as guide to Maltese trade unions and maybe even to policy makers. Even though no position has as yet been
defined by the Barroso Commission, financial participation of employees has undoubtedly become an important element of the European Social Model. Through its potential effects on economic performance as well on social development, it may constitute a key contributing element to the EU Lisbon agenda (Vaughan-Whitehead, 2006: 88).

Being seen as part of the gradually emerging reform of a ‘post capitalist’ society, untrammelled by the contours of state socialism (Ramsay and Haworth 1984:295), it may appeal to the ideology of the political spectrum at the centre, where most of the European political parties seem to be converging. The two major political parties in Malta also seem to be keen in occupying this centre in the political spectrum. It can thus easily fit into their political agenda.

Government’s introduction of the concept of cooperatives among the public sector employees in the mid-1990s tends to fall within such a reform model. Unlike other schemes of financial participation, which happened by default or as one-off opportunity, this scheme was discussed and designed by government and trade union officials. This initiative is quite innovative and in the comparative analysis of financial participation schemes in European countries it has been defined as ‘unique’ (Hashi et al., 2006:24). Unfortunately the take up of such schemes by government employees has not been impressive. Nevertheless 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 under 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, 2004:27).

If properly handled and planned, financial participation can act as a catalyst for change in the industrial relations system. Linked with other forms of worker participation, it has the potential of empowering workers and ushering a new form of employment relations that is more consonant with the principles of the new millennium.
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Conclusion

The privatisation drive, initiated in 1990s, may have created a basis for some employee ownership schemes, but the scope of the schemes is rather limited. The practice of financial participation of employees is mainly to be found in enterprise where the state is the major shareholder or in formerly state owned or run enterprises. The ramifications of the nationalisation programme in the 1970s and the privatisation drive of the 1990s, diametrically opposed to each other, had the unintended consequences of introducing financial participation practices for employees in two parastatal enterprises. The introduction of these schemes, which were one-off offers, did not form part neither of any political ideology nor of an official policy of the government.

Two cases however stand out which show evidence of policy design by government. The performance related pay introduced in the collective agreement of Malta Shipyards and the cooperative scheme in the public sector formed part of a government strategy to change the culture of work in these two sectors. On the other hand, the financial participation schemes in operation at HSBC Bank (Malta) may have an element of an ‘imported’ model from a leading global institution. The two local major banks 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. It suffers from a lack of a support structure in the form of legal framework and from an absence of an ideological base.

References


