Dispute Resolution: Malta

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A Q&A guide to dispute resolution law in Malta.
The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.
For a full list of recommended dispute resolution law firms and lawyers in Malta, please visit PLC Which lawyer?
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This Q&A is part of the PLC multi-jurisdictional guide to dispute resolution. For a full list of jurisdictional Q&As visit www.practicallaw.com/dispute-mjg.
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Main dispute resolution methods

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

The main dispute resolution method used to settle large commercial disputes is court litigation. This is closely followed by arbitration, regulated under the Arbitration Act. Recent years have shown an increase in parties resorting to arbitration. Arbitration clauses in commercial contracts are being more widely used, which is reflected in the growing number of arbitration cases. Contracts relating to certain areas such as construction or shipping typically include an alternative dispute resolution (ADR) clause. Previously, most of these clauses referred to arbitration in a foreign jurisdiction. However, the number of instances where Malta is the chosen centre for ADR proceedings is increasing.

Court litigation

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The nature of the claim determines the applicable limitation period, for example:

- Contractual claims have the typical five-year limitation period, which normally starts to run from the day the obligation was due and was not met.

- Tortious claims have a two-year limitation period, which normally begins to run from the day the tort occurred.

A number of shorter limitation periods apply for particular warranties or contracts. These periods can generally be interrupted by the service of a judicial letter or by the debtor's admission of liability. Upon interruption, the period starts to run afresh. These limitation periods can also be suspended by certain other causes, although these cases must be carefully interpreted to ensure they fall within the suspension category. Some limitation periods established by law are peremptory, in that they cannot be interrupted, such as, for example:

- The short time period of two years relating to the warranty of latent defects when purchasing immoveable property.

- The short time period of one year from the notice of arrival of the vessel to bring an action for short delivery of goods under a contract of affreightment (that is, a contract between ship owners and charterers).

- The five-year time period to bring an action for the payment of a bill of exchange.

It is important that the relevant limitation periods applicable and their possible interruptions be determined before bringing a claim.
Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

All commercial disputes are heard by the First Hall of the Civil Court, which is presided by a judge and is split into chambers for practical purposes. There is no real difference procedurally between different types of commercial claims except that some categories of claims (for example, company or maritime disputes) are generally assigned to the judge currently dealing with those matters. Competition cases are heard by the Commission for Fair Trading, which is presided over by a Magistrate and two other persons (currently economists), who are all appointed by legal notice for a fixed period of time.

The answers to the following questions relate to procedures that apply in the Civil Courts.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

Generally, only persons having an Advocate's Warrant to practise law in Malta can appear and conduct cases before the Superior Courts of Malta. To obtain an Advocate's Warrant applicants must:

- Sit and pass an exam, which is in Maltese.
- Have a law degree (LLD or equivalent).
- Have a clean police conduct certificate.

Foreign lawyers

Lawyers from other EU member states who have a law degree from another EU member state can practise as lawyers in Malta on registration with the office of the President of Malta (Mutual Recognition of Legal Profession Regulations; subsidiary legislation issued under the Maltese Code of Organisation and Civil Procedure). To register, foreign lawyers must present a certificate confirming their registration with the competent authority in their home member state.

Foreign lawyers from non-EU member states cannot practise as lawyers in Malta.

Fees and funding

5. What legal fee structures can be used? Are fees fixed by law?

Lawyers’ fees are fixed by law and are stated in a Schedule attached to the Code of Organisation and Civil Procedure. Lawyers can enter into different fee arrangements, such as an hourly rate, with their clients, provided that any such agreement is made in writing. Lawyers in Malta are not permitted to negotiate a fee based on a percentage of their client’s anticipated award from the legal proceedings.
6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

**Funding**

Parties bringing or defending a claim before the Maltese Courts can obtain third party funding to pay for their legal costs. However, lawyers are prohibited from entering into funding arrangements with their clients.

**Insurance**

Insurance is a legitimate way of funding litigation. Maritime litigation in Malta is largely funded by protection and indemnity (P&I) clubs. Insurance companies normally pay for the costs of actions involving company officers. There is also an increase in the number of insurance companies, established locally and abroad, funding tort claims. It is also possible to enter into funding agreements with special firms operating in the litigation funding sector.

**Court proceedings**

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Court proceedings are usually held in open court and any member of the public can attend court hearings. Generally, judgments are delivered publicly in open court and court documentation is generally treated as information within the public domain.

However, some exceptions to this exist. For example, under the Trusts and Trustees Act, any claim brought before a court involving a trustee is treated as confidential. The hearings are held in private and only the parties have access to the documentation. Competition cases are also confidential.

The courts have discretion to restrict the public nature of cases or of pieces of evidence in the interests of justice (such as, court disclosure of banking documents or other confidential documents).

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

Courts do not normally impose any rules on the parties in relation to pre-action conduct. Although there are increasing instances where once a claim has been brought, the court imposes deadlines for the disclosure of documentation and evidence by affidavit. The penalty for failing to comply with such an order is typically a ruling prohibiting the non-compliant party from exhibiting or making use of the evidence in question at a later stage of the proceedings.

9. What are the main stages of typical court proceedings?
**Starting proceedings**

A claim in the Superior Courts is normally commenced by filing a sworn application in the court registry. The sworn application must:

- Contain a brief summary of the relevant facts and the remedy/relief being claimed.
- Be confirmed on oath by the claimant.

A list of witnesses that the party intends to bring must be included with the sworn application. A party is precluded from bringing any witnesses that were not disclosed with the sworn application during the hearing unless the party shows that he was not aware of the existence of the availability of this witness at the time when the claim was filed. Documents that the claimant considers essential for the determination of the claim can also be included with the sworn application. The sworn application must be confirmed on oath by the applicant and signed by a lawyer and a legal procurator, or the application may be declared to be invalid.

Not all claims are started by sworn application, such as, for example, claims brought under the unfair prejudice remedy in the Companies Act.

**Notice to the defendant and defence**

On receiving the claim, the cause is assigned to a particular judge by the Registrar, who sets a date for the initial hearing. Once this date is set, the sworn application together with the list of witnesses and the enclosed documents is served on the defendant who must reply within 20 days from the date of service. Service is usually effected by the Court’s officers. Service overseas is allowed within the EU, and is effected using the procedure set out in Regulation (EC) 1348/2000 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters (Service Regulation).

If defendants fail to file a sworn reply within 20 days from the date of service, the court will hear and decide the case without allowing the defendant to bring any evidence in support of his position unless he proves that his failure to file the reply was due to what in effect amounts to force majeure (principle of contumacy). The principle of contumacy does not apply to claims brought through the more informal procedure done by application.

**Subsequent stages**

Generally, courts hold an initial sitting for case management purposes when a reply has been filed. Evidence is heard in later sittings. When evidence has been collected the parties make final submissions. Generally, a judgment is issued shortly after this.

**Interim remedies**

10. **What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?**

A party can ask for a case to be dismissed before a full trial for a number of reasons. The most common are:
• Where there is a cause of nullity in the procedure followed by the claimant.
• Where it is alleged that the court lacks jurisdiction to hear the case.
• When expiry of a limitation period is raised as a defence.

In any of the above circumstances, the court may decide to limit its investigation to these matters, and, if it upholds that the case should be dismissed, it will abstain from further hearing the case. A party can also ask for the case to be dismissed if either:
• The written proceedings are not completed within the time period stipulated by law.
• The claimant fails to put up such security as may be required in particular cases.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can ask the court to order the claimant to provide security for its costs in the following cases:
• Where the claimant's ability to meet the costs (if ordered to do so) is questioned.
• Intellectual property (IP) cases.
• Cases for the enforcement of mortgages (on ships and aircraft).
• Where precautionary warrants have been issued at the request of the claimant.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

In commercial matters, interim injunctions other than precautionary warrants, are normally granted to restrain the defendant's actions within the scope of specific procedures. The following scenarios are the most common:
• **IP.** The court has wide powers to order the disclosure (subject to confidentiality) and conservation of evidence in the hands of the defendant or third parties (Enforcement of Intellectual Property Rights (Regulation) Act (Chapter 488, Laws of Malta)). Other provisional measures include the possibility of obtaining an order restraining the performance of any act likely to infringe a party's IP as well as the provisional seizure of assets.
• **Company law.** A number of specific precautionary orders can be issued (Companies Act (Chapter 386, Laws of Malta)). Examples include those pending liquidation proceedings (such as through the appointment of a provisional administrator) or pending actions brought by minorities alleging unfair prejudice.
• **Arrest of vessels.** Where a vessel is arrested (that is, impounded) the court may order the sale *pendente lite* (that is, while the litigation is pending) to conserve the asset if it appears that the debtor is insolvent or unable to maintain the vessel. This also applies in the case of arrest of aircraft.
Prior notice/same-day

Interim injunctions can be issued on a provisional basis and on the same day of the request if urgency so warrants. Given their provisional nature they can be issued even if the defendant is not notified. However, in these cases the order itself is subject to review on the basis of the defendant's response.

Mandatory injunctions

Mandatory injunctions in commercial matters are normally only available where expressly set out by statute. A good example of this type of injunction is found in the enforcement of IP rights where the court, at the request of a holder of IP rights, is given wide powers to order the disclosure and conservation of evidence.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

A number of methods are available to creditors to obtain security for their claims (in addition to interim orders (see Question 10) (Code of Organisation and Civil Procedure)). These include the following warrants:

- **Garnishee order.** This attaches movable assets belonging to the debtor that are in the possession of a third party, for example bank accounts.

- **Warrant of seizure.** This warrant allows for the seizure of movable or immovable property in the debtor's possession (including shares) and prohibits sale or transfer of the asset. It is also possible to seize a going concern.

- **Warrant of description.** A court martial describes and makes an inventory of the objects mentioned in the warrant and constrains the debtor to keep the objects in the place and condition in which they are found.

- **Warrant of arrest of ships.** This ensures that the vessel remains within the jurisdiction of the Maltese courts.

- **Warrant of arrest of aircraft.** This prevents the aircraft from leaving Malta.

Generally, a claimant must confirm on oath, and on the requisite form, that he has a prima facie claim against the debtor and that issuing a warrant is necessary to safeguard that claim. However, there may be specific requirements that vary according to the type of warrant.

Prior notice/same-day

Most precautionary warrants are issued on the same day they are requested, even without the defendant being notified, subject to the defendant bringing proceedings for the eventual removal of the warrant. Prohibitory injunction warrants are sometimes issued provisionally subject to the final ruling, which must be given not later than 30 days from the application's filing date.
Main proceedings

The main proceedings do not have to be held in Malta. Precautionary warrants are issued in security of claims brought before recognised courts or arbitration tribunals within the EU/EEA area.

 Preferential right or lien

Attachment of itself does not create any preferential right or lien. However, to conserve an existing preferential right it may be necessary to issue an attachment order. In such instances the preferential right is not created by the attachment but by the underlying juridical (legal) fact.

Damages as a result

Generally, the claimant is responsible for damages if it is shown that either:

• The proceedings were frivolous or vexatious.
• The claimant irresponsibly sought far more security than he was reasonably entitled to.

In practice, few judgments have awarded damages against claimants.

Security

Some statutes provide for the issue of security as a condition for the granting of the relief measure. Also, defendants can request security for damages that they may suffer as a result of warrants (Code of Organisation and Civil Procedure).

14. Are any other interim remedies commonly available and obtained?

There are no other interim remedies commonly available.

Final remedies

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

Courts can grant any remedy available at law. Courts can, for example:

• Order specific performance on the contract when the subject of a dispute is a promise of sale.
• Order the performance of, or prohibition from doing, any particular act.
• Order the payment of sums due under contract or in tort.

However, damages can only be compensatory. Damages are generally considered as either actual loss (damnun emergens) or loss of profits (lucrum cessans). The courts normally recognise and enforce a clause for liquidated damages even if these go beyond actual loss. Similarly, the courts will enforce penalty clauses. Generally, these are subject to abatement (reduction) unless the penalty is due to delay in performance.
Damages for pain and suffering or punitive damages are not available in most commercial claims. However, these damages may be available in consumer claims and claims for breach of IP rights. Generally, judgments given on pecuniary claims also include interest at the rate of 8% simple interest per annum. In commercial matters this runs from the date the debt was due. Interest can only be imposed from the date of judgment where damages are considered not to be liquid at the time the claim was brought. A higher rate of interest may be recovered under Maltese late payment provisions.

Evidence

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

There is no rule requiring a party to disclose documents to the other side. There are some specific rules of disclosure, for example, in the enforcement of IP rights. However, this type of disclosure is only granted at the claimant’s request as there is no overreaching disclosure obligation. Judges have discretion in the regulation of procedure in cases they are hearing. Orders requiring the parties to disclose all documentation in their possession at the outset of proceedings are not unheard of.

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

Advice and communications between clients and their lawyers are privileged and cannot be disclosed in court. In-house lawyers' opinions are not privileged.

Other non-disclosure situations

Other situations in which the courts are prepared to recognise non-disclosure requirements, include, for example, correspondence between lawyers on a without prejudice basis, which cannot be disclosed in court proceedings. However, a confidentiality clause does not prevent the court from viewing the document if the court believes it could be crucial for determining the respective rights of the parties. In such cases the court normally orders the document to be exhibited but limits its availability to both:

- The parties (for example, by prohibiting copying).
- The public.

A number of laws that impose secrecy provide for special procedures to respect the confidentiality of the parties involved. These laws include the:

- Banking Act.
Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Generally, witnesses of fact give oral evidence, although it is increasingly common for this to be prepared in the form of an affidavit.

Right to cross-examine

There is always the right to cross-examine witnesses of fact. When evidence is given by affidavit, the general rule is that this evidence is always subject to cross-examination, which is usually oral.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

Court experts may be ex parte (appointed by a party) or judicial experts (that is, appointed by the court). An ex parte witness is normally appointed by a party before the proceedings and included in that party’s declared list of witnesses. Where a witness is appointed by a party there is no particular procedure that must be followed. Such a witness need not necessarily be impartial although he must deliver testimony honestly, objectively and to the best of his ability. Judicial experts must be impartial and independent of the parties. A judicial expert can either be nominated:

- By the court of its own motion where, for example, there is a particular technical or factual issue that requires expert determination.
- At the request of a party.

Role of experts

The role of the expert is to give an expert opinion that assists the court in delivering judgment. Most expert witnesses are required for technical matters, such as, for example:

- Preparation of accounts.
- Surveying of property.
Liquidation of damages.

Sometimes experts are appointed to give opinions on legal issues such as, for example, the ranking of creditors in an insolvency. Maltese courts are never bound by the opinion of the experts. However, a Maltese court does not usually disregard the opinion of a duly appointed judicial expert without good reason, especially when the expertise refers solely to technical issues. Judicial experts are usually granted the power to hear witnesses and submissions by the parties when preparing their reports. The judicial experts usually arrange for sittings with the parties to be held for this purpose. A judicial expert's report is presented in court under oath after the judicial expert's fees have been paid.

**Right of reply**

A party disagreeing with the opinion of a judicial expert can either:
- Question the expert in open court.
- Request the appointment of additional referees.

The additional referees are appointed by the court at the request of a party with the duty to review the findings of the judicial expert. A party who disagrees with the report of the additional referees can then bring submissions to state why the report should not be followed.

**Fees**

The fees of judicial experts are provisionally paid for by the party requesting the appointment, subject to final determination in the judgment. The cost of *ex parte* experts is provisionally borne by the appointing parties. Judgements do not necessarily award the relevant costs to the unsuccessful side.

**Appeals**

20. **What are the rules concerning appeals of first instance judgments in large commercial disputes?**

**Which courts**

There is an automatic right of appeal against the Courts of First Instance judgments to the Court of Appeal. It may also be possible to appeal preliminary judgments. In many cases it is evident that there are issues that must be dealt with at a preliminary stage (such as jurisdictional pleas and pleas of prescription, and so on). The court may split the proceedings delivering preliminary judgments on these issues. In these circumstances a party aggrieved by any decision is entitled to request the First Hall to grant him leave to appeal from the preliminary judgment. There is an automatic right of appeal if the effect of the preliminary judgment is such as to decide the proceedings (such as a decision that the court does not have jurisdiction).
Grounds for appeal

Appeals are started by an application that:

- Sets out the grounds for appeal.
- Seeks the revocation (totally or partially) or the modification of the judgment that is being appealed.

An appeal can be filed both on points of fact and on points of law. Generally, to be successful an appeal on points of fact must show serious errors of judgment or obvious mistakes on the part of the First Hall. If an appeal is found to be frivolous and vexatious the court awards double costs against the appellant.

A cross-appeal can be filed on the appeal of a party. Therefore, if party A appeals, it is possible for party B to also file a cross-appeal on the appeal filed by party A. This can be important tactically because a party filing the original appeal is legally required to provide security for costs before the hearing of the appeals case. No such security is required to be given on a cross-appeal.

Time limit

Appeals must be filed within the time limit of 20 days from the date on which the judgment was delivered in open court. Where the court’s leave to appeal is required the application for leave must be filed within six working days from the date on which the judgment was read out in open court. The appeal application must then be filed within 20 days from the date on which leave to appeal was granted. A cross-appeal must be filed within 20 days from the date on which the appeal is served on the other side.

All these time limits are peremptory. This means that the deadlines cannot be extended for any reason whatsoever. It also means that any default will invalidate the application.

An appeal must be served on the other side within one year from the date on which it is filed under Maltese law. If this is not done the appeal will be held to be abandoned. This date may be extended once only by the Court of Appeal at the request of the appellant.

Class actions

21. Are there any mechanisms available for collective redress or class actions?

To bring an action a claimant must show that he has a juridical interest in the case (that is, a sufficient connection to bring a lawsuit on a particular matter or act on behalf of others). A number of claimants can bring an action collectively. However, under the present rules, each claimant must demonstrate his particular interest in the case. The situation is different, however, under the Collective Proceedings Act which was recently enacted and applies to proceedings brought under the Competition Act, the Consumer Affairs Act and the Product Liability Act. Although consumer organisations are recognised by law within the ambit of consumer litigation, with the exception of those proceedings under the Collective Proceedings Act, there is no other mechanism for classes or groups to bring an action other than a joint action filed by those interested.
Costs

22. Does the unsuccessful party have to pay the successful party’s costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

The normal rule in awarding costs is that the unsuccessful party will be ordered to:

- Pay the costs of the proceedings.
- Pay the costs of the party in whose favour the case was decided.

Courts can take other factors into account, such as the willingness of the unsuccessful party to negotiate and even pay up the non-contested part of the claim. For example, in an insurance claim that was decided against the insurance company, the court ordered the claimant to pay its own costs because the failure of the defendant to pay was due to the non-disclosure of documents that were always in the possession of the claimant and that would have induced the defendant to take a different position on the claim (Sammut v Citadel Insurance plc., First Hall, 22 October 2010). The court may also apportion the costs to reflect contributory responsibilities.

Costs consist of:

- Lawyers and legal procurators' fees.
- Court fees.
- Fees and expenses of court appointed experts, which are calculated according to official tariffs and issued by the court registrar in an official Taxed Bill of Costs (TBC).

It is not possible to recover legal fees in excess of those set out in the TBC. A party disagreeing with the TBC has the right to contest this through a separate procedure.

Parties often incur other costs in litigating that are not covered under the TBC, such as for example, costs for:

- Appointing ex parte witnesses.
- Effecting searches.
- Generally taking steps to safeguard the party's position.

A party commencing an action in Malta is advised to include separate heads of claim for the liquidation and collection of these costs. Otherwise, a solution is to file ad hoc proceedings in court for the award and subsequent collection of same.

23. Is interest awarded on costs? If yes, how is it calculated?

Interest is not awarded on costs.

Enforcement of a local judgment

24. What are the procedures to enforce a local judgment in the local courts?

Once a judgment becomes final it can be enforced through the local courts. Generally, the court can give various orders and make particular provision for their enforcement in its judgment. There are various methods available for enforcing a judgment, including:
• The issuance of any or all of the warrants available as a precautionary measure (see *Question 13, Availability and grounds*).

• Judicial sale by auction, which is a procedure whereby property belonging to the debtor is sold and the proceeds applied to the debt. The property of which the sale is sought will normally be valued and there are safeguards that allow the debtor to recover the:
  o payment of the price paid;
  o costs of the procedure; and
  o interest.

  When purchasing immovable properties following judicial sales it is important to conduct independent searches into the property as the sale itself does not cancel any registered hypothecs (a form of security over property) and privileges.

Where the court order involves the performance of an act that is not pecuniary in nature the court may, at the creditor’s demand, provide for the enforcement. There is also a procedure whereby a creditor can file an application to the court asking for the granting of measures to facilitate enforcement where circumstances exist that make enforcement difficult.

Cross-border litigation

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

Courts in Malta generally respect the choice of governing law in a contract if:

• It is reasonably connected with the subject matter of the contract.

• The foreign law is capable of being proven.

Maltese law treats a question of foreign law as a question of fact that is to be proven by expert witnesses.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

The courts normally respect contractual clauses choosing the forum for the resolution of disputes arising under the contract, provided that there is a reasonable connecting factor between the jurisdiction chosen and the subject matter of the contract or the parties. However, the courts do retain a residual jurisdiction and have on occasion declared that they were competent notwithstanding a contrary contractual provision, for example if either:

• The evidence is more readily available in Malta.

• It is clear that the chosen jurisdiction had no particular connection or affinity with the dispute and/or the parties.
27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

To effect service the relevant documents for foreign proceedings must be filed in Malta and these proceedings are then served through the Maltese courts.

In practice, a judicial letter or protest is filed, which is then served by a court martial on the person on whom service is required. A judicial letter is a formal letter of claim which is filed in Court Service, proven by a certificate of service attached to the act signed by the relevant court official. Also applicable is Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (Service of Documents Regulation).

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Maltese law recognises the procedure of letters of request, wherein a letter is addressed to a judge or magistrate within the foreign jurisdiction requesting the judge, magistrate or other person to examine the witness. Where no direct treaty exists between the two countries, the letter of request must be forwarded to the relevant authorities through the Minister for Justice. Within the EU, the taking of evidence in civil proceedings is regulated by Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters.

**Enforcement of a foreign judgment**

29. What are the procedures to enforce a foreign judgment in the local courts?

In cases involving the recognition and enforcement of judgments emanating from courts of an EU member state, the procedure is regulated by Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). The Code of Organisation and Civil Procedure was amended on accession to the EU to reflect the provisions of the Brussels Regulation. In the case of conflict between the provisions of national laws and those of the Brussels Regulation, the latter prevails.

In addition to the provisions of Brussels I, the Code of Organisation and Civil Procedure (Chapter 12, Laws of Malta) also sets out provisions regarding the enforcement of foreign judgments. These provisions apply to judgments from a court of non-EU member states. Any judgment delivered by a competent court outside Malta, and constituting a matter already judged (res judicata) may be enforced by the Maltese courts in the same way as local judgments, upon an application containing a demand that the enforcement of such judgment be ordered. Judgments from US courts can be enforced in this way.

If a judgment has been obtained in a superior court of the UK, the judgment creditor can apply to the Malta Court of Appeal within 12 months (a longer period may be allowed by the Court of Appeal) to have the judgment registered in one of the superior courts in Malta (British Judgments (Reciprocal Enforcement) Act (Chapter 52, Laws of Malta)). On such an application, the Court will, at its discretion, order the judgment to be so registered. Reciprocal enforcement of maintenance orders is
Alternative dispute resolution

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The main ADR method used to settle large commercial disputes is arbitration, which was introduced by the Arbitration Act. The Arbitration Act established the Malta Arbitration Centre (MAC) and adopted the UNCITRAL rules as the default rules for arbitration in Malta. Arbitration in Malta is commenced by filing a notice of claim with the MAC. The notice contains brief information about the claim. It also includes the appointment of an arbitrator by the claimant or, where applicable, a list of some names from which the sole arbitrator will be chosen and appointed. The MAC has a register of individuals who are recommended as arbitrators. Generally, the parties can agree on any person. Arbitrators must be independent and impartial. Service of all notices and documents required by the process is effected through the MAC. There is a limited right of appeal to the Court of Appeal from arbitration awards. There are grounds on which the Court of Appeal can set aside an award. This right of appeal is limited to points of law only and can even be excluded by prior agreement between the parties.

The use of arbitration in Malta has been increasing steadily. The construction industry commonly uses ADR as a method to resolve differences (for example, arbitrations which also use other methods such as neutral evaluation). There has also been an increase of arbitration in:

- Insurance claims.
- Disputes between shareholders.
- Maritime claims.
- Resolving disputes under public procurement tenders.

The other principal ADR method used in Malta is mediation, which was introduced by the Mediation Act in 2004. Mediation has so far not become firmly established as a dispute resolution method. However, with increased awareness of mediation's inherent potential, there is increased interest in appointing formal mediators. The outcome of a mediation is not binding unless both:

- The parties reach agreement.
- The agreement is formally set out in writing.

Mediation represents an informal and confidential method of resolution within which the parties interact with a mediator.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

A court cannot intervene or have jurisdiction in any matter except where provided in the Arbitration Act. Therefore, the courts will:
Limit themselves to reviewing the process if asked to do so by the parties in terms of the Arbitration Act.

Exercise residual jurisdiction if an award is eventually set aside.

Arbitration is of its nature consensual and the will of the parties to submit to the agreement must result from a written agreement (either ad hoc or that forms part of a contract). A court will not order the parties to refer their dispute to arbitration. However, when faced with a valid and clear arbitration clause, and a plea as to its jurisdiction, a court will order the discontinuance of any proceedings pending before it.

There are, however, mandatory arbitrations in Malta for disputes arising out of motor vehicle collisions and for disputes between condomini (that is, owners/residents of buildings who share common parts with others).

Mediation is also consensual and sometimes a court will ask the parties to attempt a mediation if it considers that there may be some benefit in getting the parties to discuss the dispute using a regulated procedure. A court can ask the parties to try mediation because the procedure is confidential and not prejudicial to the rights of the parties.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

Arbitration is a more informal procedure than court litigation. Generally, the parties can discuss and agree with the arbitrators the ways in which evidence will be produced. If there is no agreement, the rules in the Code of Organisation and Civil Procedure concerning witnesses apply. All evidence, apart from documentary evidence, is given either:

- Orally and confirmed on oath.
- By affidavit.

Experts can also be appointed to give evidence.

33. How are costs dealt with in ADR?

Costs in ADR are broadly dealt with in the same manner as lawsuits. There is a tariff that is similar to the tariff used in civil proceedings. However, the ADR tariff is cheaper. The parties can enter into agreements with their legal representatives for the payment of fees. The MAC cannot order the unsuccessful party to pay costs beyond those set out in the tariff. At the start of an arbitration, the arbitrators normally request the parties to pay half the expected costs of the arbitration.

34. What are the main bodies that offer ADR services in your jurisdiction?

The main bodies that provide ADR services are the:

- Malta Mediation Centre.
Proposals for reform

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

There are a number of proposals for dispute resolution reform. However, these are currently at an early stage. In particular, these proposals aim to enhance the effectiveness of arbitration and other ADR techniques such as mediation.

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