

MALTA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Historically, Malta has always been considered a civil law jurisdiction with the main civil, commercial and criminal laws having been based and structured around the continental European system. However, 160 years of British rule have influenced an increasing number of laws particularly in the administrative, financial, fiscal and corporate law fields, which are largely influenced by the common law system. This has led to the general body of Maltese Law resulting in a mixed or 'hybrid' system influenced by both common law and civil law.

Key places of arbitration in the jurisdiction	Valetta.
Civil law / Common law environment?	Mixed system.
Confidentiality of arbitrations?	Yes, for domestic arbitrations; not specified for international arbitrations
Requirement to retain (local) counsel?	No.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat?	Yes.
Availability of interest as a remedy?	Yes, but compound interest is not permitted.
Ability to claim for reasonable costs incurred for the arbitration?	Yes.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Not allowed.
Party to the New York Convention?	Yes.
Other key points to note	φ
WJP Civil Justice score (2016)	φ

ARBITRATION PRACTITIONER SUMMARY

Arbitration in Malta is regulated by the Arbitration Act, Chapter 387 of the Laws of Malta ("the Act").¹ The Act lays down a separate regime for domestic and international arbitration. Domestic arbitrations must be conducted with and under the rules of the Malta Arbitration Centre ("MAC"), under pains of nullity. As for international arbitration, the Act is largely based on the UNCITRAL Model Law.

Date of arbitration law?	It came into force on 23 February 1998 and was last amended in 2015.
UNCITRAL Model Law? If so, any key changes thereto?	<p>The legal regime for international arbitration is largely based on the Model Law, with the following main changes:</p> <ul style="list-style-type: none"> • the procedure for obtaining the recognition and enforcement of foreign awards; and • parties can choose to exclude the application of the Model Law, in which case the provisions applicable to domestic arbitration shall apply unless the parties have chosen different rules.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No, save inasmuch as the Chairman of the Board of Governors of the MAC is the competent authority designated for the purposes of Article 6 of the Model Law.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, before the First Hall, Civil Court. Where interim measures are granted prior to the commencement of arbitration proceedings, the party requesting such a measure must proceed to file the arbitration proceedings within twenty days from such request.
Courts' attitude towards the competence-competence principle?	Respected, unless for domestic arbitration if the court considers that any party will suffer irreparable harm if the court does not itself determine the issue (see Article 32 of the Act).
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	No. For domestic arbitral awards, it is possible to appeal them on a point of law (and on points of fact as well in the case of mandatory domestic arbitrations).
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Maltese courts have not so far expressed any views on this issue, but under the Act the courts could refuse to recognise such awards.

¹ Available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8854>.

Other key points to note?	The power of arbitral tribunals to grant interim measures does not extend to those such measures known under Maltese law as precautionary acts, namely the warrant of description, warrant of seizure, warrant of seizure of commercial going concern, garnishee order, warrant of impediment of departure, warrant of arrest of sea vessels, warrants of arrest of aircraft and the warrant of prohibitory injunction. If a court issues a precautionary act, it shall remain in force until the final determination of the dispute between the parties by the arbitral tribunal, or until the same court issues a counter-warrant.
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JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Arbitration in Malta is partially based on the UNCITRAL Model Law. Arbitration in Malta is governed by the Arbitration Act, Chapter 387 of the Laws of Malta ("the Act"),² which provides for a different regime for domestic and international arbitration. While international arbitration is indeed governed by the Model Law (incorporated at Article 55 of the Act and subject to the modifications discussed below), domestic arbitration is governed by a different set of provisions contained in the Act. Generally speaking, a domestic arbitration is defined as one not falling within the scope of the Model Law.³

Domestic arbitration in Malta entails two particular characteristics: (i) the arbitration must be conducted under the rules of arbitration of the Malta Arbitration Centre ("MAC"), in Valletta, under pain of nullity of the procedure and any ensuing award,⁴ and (ii) arbitration is mandatory for the resolution of condominium disputes, certain motor traffic disputes, disputes concerning water and electricity services, and Paying Agency disputes ("mandatory arbitrations").⁵

1.1.1 If yes, what key modifications if any have been made to it?

The Act makes two main changes to the UNCITRAL Model Law:

- Article 59 of the Act provides that Chapter VIII of the Model Law regarding the recognition and enforcement of foreign arbitration awards is replaced by Part VII of the Act. In practice, the only change relates to the procedure for obtaining the recognition and enforcement of foreign arbitral awards, and not to the basis upon which the recognition or enforcement of an award may be granted or refused.
- Within the area of application of the Model Law, it can be displaced by agreement of the parties, in which case (i) the provisions laid down in the Act for domestic arbitrations shall apply, unless the parties have chosen different rules for this purpose,⁶ and (ii) the award may be appealed on a point of law.⁷

1.2 When was the arbitration law last revised?

The law was last revised on 30 October 2015 through Act No. XXX of 2015. This made slight amendments to the Act to reflect changes to the Consumer Affairs Act.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

If there is no specific governing law stipulated in the arbitration agreement, the arbitral tribunal applies the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal then applies Maltese law including the rules of Maltese law relative to the conflict of laws. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so. In all cases, the arbitral tribunal decides in accordance

² Available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8854>.

³ Article 14 of the Act.

⁴ Article 17 of the Act.

⁵ Article 15(11) of the Act and Fourth Schedule to the Act.

⁶ Article 60 of the Act.

⁷ Article 69 of the Act.

with the terms of the contract and if relevant, takes into account the usages of the trade applicable to the transaction.⁸

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

An arbitration clause in a contract is treated by the tribunal as an agreement independent of the other terms of that contract. Therefore, a decision by the arbitral tribunal that the contract, or part thereof, is null and void does not entail *ipso jure* the invalidity of the arbitration clause.⁹

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement must be in writing. An arbitration agreement is in writing if it is contained in a document transmitted from one party to the other party, or by a third party to both parties, and no objection is raised thereto within thirty days of the receipt of that document. Reference in a written contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the reference is such as to make that clause part of the contract.¹⁰ An arbitration agreement is also concluded by the issuance of a bill of lading, if the latter contains an express reference to the arbitration clause in a charter party.¹¹ Moreover the agreement needs to reflect the intention of the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The rights of third parties depend on the terms of the arbitration clause and the nature of the dispute involving a third party. If the arbitration clause provides for submission to arbitration any disputes between the main parties arising in connection to the contract, the third party might be bound by the arbitration clause if it is involved in a dispute which can be said to arise from the contract.

2.5 Are there restrictions to arbitrability?

Yes.

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc)?

Disputes concerning questions of personal civil status, including those relating to personal separation, divorce or annulment of marriage, are not capable of settlement by arbitration, although questions relating to the division of property between spouses may be referred to arbitration subject to the approval by the competent court of the arbitration agreement and of the arbitrator to be appointed.¹²

2.5.2 Do these restrictions relate to specific persons (i.e. state entities, consumers etc)?

There is no outright restriction to specific persons submitting themselves to arbitration. However, any submission to arbitration of a dispute by an administrator, agent or attorney is not valid unless such person is authorised to submit disputes to arbitration and the submission refers to an issue which falls within the powers granted to such person.¹³

⁸ Article 45(3) of the Act.

⁹ Article 32(2) of the Act.

¹⁰ Article 2(b) of the Act.

¹¹ Article 2(c) of the Act.

¹² Article 15(6) of the Act.

¹³ Article 15(7) of the Act.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction?

If any party to a domestic arbitration agreement commences any legal proceedings in a court against any other party to that arbitration agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may, at any time before delivering any pleadings or taking other steps in the proceedings, apply to that court to stay the proceedings. The court shall stay those proceedings, unless it is satisfied that the arbitration agreement has become inoperative or cannot proceed. A party against whom court proceedings have been brought may make an application to stay the proceedings, notwithstanding that the arbitration agreement states that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures. Where such court proceedings have been brought, arbitral proceedings may still be commenced or continued, provided that the arbitral tribunal does not take any steps in the arbitration until the Court decides on the application (to stay court proceedings). Exceptions are cases in which failure by the arbitral tribunal to provide a remedy will result in irreparable harm to any party to the arbitral proceedings. Upon the decision of the Court, of which the arbitral tribunal must be notified by the applicant, the arbitral tribunal will be bound by the decision of the Court on the issues determined in the application and must act accordingly.¹⁴

In light of Article 14 of the Act,¹⁵ an international arbitration may also be seated in Malta, in which case Article 8(1) of the Model Law (which is the same as Article 15(3) of the Act) is applicable. Article 8(2) of the Model Law¹⁶ is not reflected in the Act regulating domestic arbitration although it is likely that it is still followed in practice.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Although Regulation 1215/2012 (Brussels I recast) does not apply to arbitration, it states that nothing in that regulation should prevent the courts of a Member State, when seized of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.¹⁷ On this basis, and subject to the provisions of Brussels I recast, the court would likely stay proceedings, even in situations where the place of arbitration is located outside of the jurisdiction.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Although the arbitral tribunal may, at the request of a party, order any party to take interim measures of protection,¹⁸ this is not usually done in practice as such measures are generally issued by the courts.

¹⁴ Article 15(3) of the Act.

¹⁵ This states that a domestic arbitration agreement is an arbitration agreement which does not fall under the Model Law.

¹⁶ This states that where an action is brought before a court in a matter which is the subject of an arbitration agreement, arbitral proceedings may nevertheless be commenced or continued and an award may be made, while the issue is pending before the court.

¹⁷ Preamble no. 12 of EU Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>).

¹⁸ Article 38(6) of the Act.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (relates to the anti-suit injunction but not only)

As a general rule, the Maltese courts cannot intervene in arbitration proceedings which have been instituted outside of their jurisdiction.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

The parties to arbitration proceedings may be represented or assisted by persons of their choice, including outside counsel. The names and addresses of such persons need to be communicated in writing to the other party and such communication must specify whether the appointment is being made for the purpose of representation or assistance. A legal practitioner or a person not qualified under the Laws of Malta may also act on behalf of a party to an arbitral proceeding to which this Act applies, including appearing before the arbitral tribunal. Such representation will not be deemed to be in breach of the rules regulating the practice of the legal profession in Malta.¹⁹

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

In the case of domestic arbitration, a person who is approached as a prospective arbitrator is required to disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, must disclose to the parties such circumstances, unless the parties have already been informed by him of these circumstances.²⁰ An arbitrator may be challenged if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.²¹ In case the arbitrator breaches his duty of independence because of an undisclosed conflict of interest or because of irregular communication or otherwise, with one of the parties or any person on behalf of a party, the Registrar of the MAC (the "**Registrar**") makes a written report to the Board of Governors (the "**Board**") copied to the arbitrator and to the parties, and it is up to the Board to decide what actions are to be taken.²²

Similarly, in the case of international arbitration, the Model Law provides that an arbitrator may be challenged if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence or if he does not possess qualifications agreed to by the parties.²³

In terms of the challenge procedure, in domestic arbitration, a party may challenge an arbitrator by giving notice of his challenge within fifteen days of receiving notification that the challenged arbitrator has been appointed, or within fifteen days of becoming aware of the particular circumstances forming the basis of the challenge.²⁴ Notice of the challenge is given to the Registrar, to the other party, to the arbitrator who is challenged, and to the other members of the arbitral tribunal; the written notice must state the reasons for the challenge.²⁵ When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, such a withdrawal

¹⁹ Article 18(2) of the Act.

²⁰ Article 23 of the Act.

²¹ Article 24 of the Act.

²² Article 72(4) of the Arbitration Rules (Subsidiary Legislation 387.01 of the Laws of Malta) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10502&l=1>.

²³ Article 12(2) of the Model Law.

²⁴ Article 25 of the Act.

²⁵ Article 25 of the Act.

does not imply acceptance of the grounds for the challenge.²⁶ If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the chairman of the Board of Governors of the MAC (the “**Chairman**”), whose decision is final and binding; when the Chairman sustains a challenge, he must appoint a substitute arbitrator.²⁷

In international arbitration, the parties are free to agree on a procedure for the determination of challenges.²⁸ This includes the situation where they have agreed to submit their arbitration to the rules of an arbitral institution.

Failing such agreement, a challenge must in the first instance be brought before the arbitral tribunal.²⁹ If the challenge is not successful, then the challenging party may apply to the authority designated for the purposes of Article 6 of the Model Law, namely in this instance the Chairman.³⁰

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

The Act does not provide for court intervention in the selection of arbitrators.

In an *ad hoc* international arbitration, where the parties fail to reach agreement on the designation of an arbitrator, the appointing authority pursuant to Articles 11(3) and 11(4) of the Model Law is the Chairman.³¹

Similarly, for domestic arbitration, the Chairman is given the authority to appoint the arbitrator(s) if the chosen method for selecting arbitrators fails.³² Where there are multiple parties to the arbitration proceedings and all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Chairman may, upon request of either party, appoint each member of the arbitral tribunal and shall designate one of them to act as presiding arbitrator.³³

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Unless otherwise agreed by the parties, any party may request the First Hall, Civil Court to issue interim measures or precautionary acts. These remain in force until they are revoked or until an award is issued by the arbitral tribunal ordering the party issuing the precautionary act to withdraw the same and issue the relative counter-warrant. The most commonly used precautionary acts available under Maltese law are the warrant of seizure of movables and the garnishee order. The warrant of seizure of movable property allows for the seizure from the debtor of the articles indicated by the creditor whereby a consignee must be appointed for the articles seized. The warrant of seizure of immovable property is only available once the creditor has obtained an executive title against the debtors. The garnishee order is used by a creditor in order to safeguard the payment of a debt owing to him by attaching in the hands of a third-party monies or movable property due or belonging to his debtor. Any such monies or movable property are then deposited for safe keeping at the court registry, until the dispute subjected to arbitration is conclusively determined.

Other interim measures available under Maltese law are the precautionary acts including the warrant of description, warrant of seizure of a commercial going concern, warrant of impediment of departure, warrant of arrest of sea vessels, warrant of arrest of aircraft, and the warrant of prohibitory injunction.³⁴

²⁶ Article 25 of the Act.

²⁷ Article 26 of the Act.

²⁸ Article 13(1) of the Model Law.

²⁹ Article 13(2) of the Model Law.

³⁰ Article 13(3) of the Model Law and Article 57(a) of the Act.

³¹ Article 57(a) of the Act.

³² See Articles 20-21 of the Act.

³³ Article 21A of the Act.

³⁴ Article 830(1) of Chapter 12 of the Laws of Malta.

Such measures are available to the creditor either before the commencement of arbitration proceedings, or whilst proceedings are pending. If proceedings have not yet been filed, the party requesting the issue of a precautionary act must file arbitration proceedings within twenty days of filing the judicial act requesting the issue of the precautionary act.³⁵ Such action is deemed to have been taken when the arbitration proceedings are commenced. The party at whose request a precautionary act has been issued must, within twenty days, file a note in the records of the proceedings for the issue of the said precautionary act together with a certificate by the Registrar showing that he has commenced arbitration proceedings.

4.4.1 If so, are they willing to consider *ex parte* requests?

Interim measures are generally only granted by the attendance of both parties to a dispute.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

In the context of international arbitration, Article 19(1) of the Model Law allows the parties to agree on a procedure regulating the conduct of the proceedings. In the absence of such agreement however, Article 19(2) allows the arbitral tribunal to conduct the arbitration in the manner it considers appropriate. Such power of the tribunal includes the determination of admissibility, relevance, materiality and weight of any evidence.

In domestic arbitration, the Arbitration Rules (Subsidiary Legislation 387.01 of the Laws of Malta) (the "Rules") include significant disciplinary provisions aimed at ensuring proper conduct of the arbitration.³⁶ Article 71(1) of the Rules provides that the arbitral tribunal is primarily responsible for exercising discipline over the arbitral proceedings, and confers all the necessary powers to issue orders to the parties in relation thereto. To this end, Article 71(2) confers powers on the arbitral tribunal to impose penalties for non-compliance with orders, for failure to observe time-limits and for failure to attend hearings or cancellation thereof without valid reasons.

The Rules also aim to keep in check the powers of the arbitrators. They provide that where there is evidence of disproportionate use of the powers of the arbitral tribunal relative to the action of a party, this is a valid ground of challenge of an arbitrator. The burden of proving disproportionality rests with the party claiming it and arbitrators are *prima facie* presumed to have acted within their powers.³⁷

In case of breach of duty by an arbitrator in relation to the management of the arbitration proceedings, the Registrar may issue orders in writing to the arbitrator who is bound to comply as soon as possible with such order. The Board may request the Registrar to issue any such orders to any arbitrator if, when reviewing progress in any arbitration, the Board notes that any provisions of the Act, the Rules or any guidelines are not being observed or that the arbitrator is failing to manage the arbitration process efficiently. When an arbitrator fails to observe the orders of the Registrar issued in accordance with this rule, the Registrar may report on such circumstances to the Board and the Board then determines what disciplinary action to take against the arbitrator after giving the arbitrator the opportunity of being heard and after considering such other evidence as may be appropriate. In such cases the Board has the power to issue orders in relation to the proceedings, order the removal of the arbitrator from the panel, and impose a disqualification to act as an arbitrator in Malta for a maximum period of three years.³⁸

³⁵ Article 38 of the Act, article 742(4) of Chapter 12 of the Laws of Malta.

³⁶ See <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10502&l=1>.

³⁷ Article 71(5) of the Rules.

³⁸ Article 72 of the Rules.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

In international arbitration, there is a presumption in favour of confidentiality, although no clear authority on this.

In domestic arbitration, every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration. The existence of arbitration proceedings, the filing of the arbitration notice, and the award will not be publicised or otherwise be publicly acknowledged by the MAC or the parties. The MAC treats all documents filed with it as confidential, except to the extent as authorised by the parties or otherwise necessary to implement the provisions of the Act. The hearings are held in private chambers and no person – other than the parties, their assistants or representatives, and the Registrar – are usually permitted to attend. Exceptions for persons supporting the proceedings may be ordered by the arbitral tribunal.³⁹ There are, however, exceptions to the confidentiality of proceedings. These include (a) where the parties expressly consent to the publication of the proceedings; (b) where any party seeks recourse in terms of the arbitration agreement or the Act and limitedly to such extent or otherwise requires to divulge the information to protect his own interests; and (c) in the case of mandatory arbitrations.⁴⁰

Finally, the confidentiality of the proceedings is also sought to be maintained where an appeal has been lodged against an award of the arbitral tribunal. In such cases, the Court of Appeal preserves the confidentiality of the arbitration by only revealing such facts as may be necessary to make the same intelligible and enforceable by the parties.⁴¹

4.5.2 Does it regulate the length of arbitration proceedings?

The law does not provide any specific time frame for the arbitration proceedings. However, in the context of domestic arbitration proceedings, Article 25(2) of the Rules states that the time-limits fixed by the arbitral tribunal shall be as short as reasonably possible and the same applies to any extensions it may grant. The arbitral tribunal must also try to conduct the proceedings as expeditiously as possible.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Unless the parties agree otherwise, domestic arbitrations are to be held at the premises provided by the MAC. However, the arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents.⁴² Similarly, the place of arbitration shall be determined by the arbitral tribunal in the case of international arbitrations unless the parties agree otherwise.⁴³

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Arbitrators in both domestic and international arbitrations may issue interim measures (including security),⁴⁴ save for precautionary measures (see above) which may only be granted by the courts.⁴⁵ The court may, on the application of any party, enforce any measure ordered by the tribunal and shall have all ancillary powers to amend or revoke such orders after hearing the parties and the arbitral tribunal as it deems necessary.⁴⁶

³⁹ Article 47 of the Rules.

⁴⁰ Article 48 of the Rules.

⁴¹ Article 70(5) of the Act.

⁴² Article 54 of the Act.

⁴³ Article 20 of the Model Law.

⁴⁴ Article 38(6) of the Act and article 17 of the Model Law.

⁴⁵ Article 38(1) of the Act.

⁴⁶ Article 38(7) of the Act.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The Act, in the context of domestic arbitration allows the MAC to make rules setting down the terms within which evidence is to be produced and the manner of its production, and the parties may agree that the evidence of witnesses is to be produced within such times and in such manner as may be determined by them provided that such agreement may not be incompatible with any rule made by the Centre and declared by it to be inderogable.⁴⁷ The arbitral tribunal may appoint one or more experts to report, in writing, on specific issues to be determined by the tribunal.⁴⁸ The arbitral tribunal is free to determine the manner in which witnesses are examined,⁴⁹ and the admissibility, relevance, materiality and weight of the evidence offered.⁵⁰

For international arbitrations, the tribunal has the power to decide whether to hold oral hearings for the presentation of evidence or for oral arguments or whether the proceedings shall be conducted on the basis of documents and other materials.⁵¹ Similar to domestic arbitration, the tribunal in international arbitrations can also appoint experts to report on specific issues.⁵²

4.5.6 Does it make it mandatory to hold a hearing?

There are very limited circumstances in which a hearing can be dispensed with. 'Documents Only' procedures may take place when the parties agree that the subject matter of the dispute is such that the arbitrator may determine the dispute by means of reviewing only the documents and submissions submitted by the parties, and a hearing shall not be required.⁵³ In any case, it is highly unlikely to have situations where no hearing is held.

4.5.7 Does it prescribe principles governing the awarding of interest?

In both domestic and international arbitration,⁵⁴ an arbitral tribunal may, when making an award for the payment of money – whether on a claim for a liquidated or an unliquidated amount – include interest on (i) the whole or any part of the money; and (ii) for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.⁵⁵ Unless otherwise agreed by the parties, the interest rate will be that of the applicable law and, in domestic arbitration, the default interest rate is 8%.⁵⁶

The power of tribunals to award interest, however, does not extend to compound interest.⁵⁷ Nor does the power apply in relation to any amount upon which interest is payable as of right, whether by virtue of an

⁴⁷ Article 36(2) of the Act.

⁴⁸ Article 39 of the Act.

⁴⁹ Article 37(4) of the Act.

⁵⁰ Article 37(5) and 45(4) of the Act.

⁵¹ Article 24(1) of the Model Law.

⁵² Article 26(1) of the Model Law.

⁵³ For international arbitration, see Article 24 of the Model Law; for domestic arbitration, see First Schedule, Part A, Article 3 of the Rules.

⁵⁴ Article 83 of the Act.

⁵⁵ Article 63(1) of the Act.

⁵⁶ Article 986(2) and 1852 of the Civil Code, Chapter 16 of the Laws of Malta <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>. However, in the case of commercial transactions, the interest rate as per the Late Payments Directive and the Commercial Code (Chapter 13 of the Laws of Malta) shall be applied.

⁵⁷ Article 63(2)(a) of the Act.

agreement or otherwise;⁵⁸ nor does it affect damages that may be recoverable as a result of a bill of exchange being dishonoured.⁵⁹

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

In both international⁶⁰ and domestic arbitration, the arbitral tribunal has the power to fix the costs of arbitration in its award.

The types of recoverable costs are exhaustively listed in the Act as follows: the fees of the arbitral tribunal to be stated separately as to each arbitrator, the travel and other expenses incurred by the arbitrators, the costs of expert advice and of other assistance required by the arbitral tribunal, the travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal, the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent deemed reasonable, and any fees and expenses payable to the MAC.⁶¹ Such fees and costs are determined by the tribunal in accordance with current rules and guidelines, and are subject to review.⁶²

In principle, the costs of arbitration (except for the costs of legal assistance of the successful party) are borne by the unsuccessful party. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable; taking into account the particular circumstances of the case.⁶³ With respect to the costs of legal representation and assistance, the tribunal, taking into account the particular circumstances of the case, is free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.⁶⁴

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

An arbitrator is not liable in damages for negligence in anything done or omitted to be done by him as arbitrator. However, an arbitrator is liable in respect of anything wilfully done or omitted to be done by him as arbitrator where his action or omission constitutes an intentional or grossly negligent breach of duty or is attributable to malice or fraud on his part.⁶⁵ This applies to both domestic and international arbitrations.⁶⁶

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Criminal liability may arise in the case of any participant in arbitration proceedings who acts fraudulently or commits perjury.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes, with respect to both domestic and international arbitrations, the parties can choose to waive the requirement for the award to include reasons as per article 44(3) of the Act and article 31(2) of the Model

⁵⁸ Article 63(2)(b) of the Act.

⁵⁹ Article 63(2)(c) of the Act.

⁶⁰ Article 65 of the Act.

⁶¹ Article 50 of the Act.

⁶² Article 51 of the Act.

⁶³ Article 52(1) of the Act.

⁶⁴ Article 52(2) of the Act.

⁶⁵ Article 20(5) of the Act; article 50 of the Rules.

⁶⁶ Article 66 of the Act renders Article 20(5) applicable also to international arbitrations.

Law. In such case, in domestic arbitrations, neither party may then appeal from the award on the basis of such matter.⁶⁷

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Maltese law does not provide for the possibility of waiving such right to seek annulment. On that basis, it is questionable whether any such waiver would be acceptable in terms of Maltese law.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

With respect to domestic arbitrations, an appeal before the Court of Appeal may lie on a point of law arising out of a final award made in the proceedings,⁶⁸ unless the parties have excluded such a right in the arbitration agreement or otherwise in writing, or where the parties had expressly agreed that no reasons are to be given in the award.⁶⁹ As regards mandatory arbitrations, appeals are allowed on both points of law and fact.⁷⁰

In the case of international arbitrations, an appeal on a point of law is permissible only if expressly agreed by the parties.⁷¹

5.4.1 If yes, what are the grounds for appeal?

The Court of Appeal shall only consider the appeal if it is satisfied that the determination of the point of law will substantially affect the rights of one or more of the parties; the point of law is one the tribunal was asked to determine or otherwise relied on in the award; the decision of the arbitral tribunal on the point of law is, on the basis of the findings of fact, prima facie open to serious doubt; and the appeal does not appear dilatory or vexatious.⁷²

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Pursuant to Article 61 of the Act, foreign awards are deemed to be valid. For the purposes of enforcing the same, foreign awards must be registered with the MAC.⁷³

The applicant for the registration of a foreign arbitration award needs to present the following documents to the Registrar of the MAC: (a) the duly authenticated original award or a duly certified copy thereof; (b) when the award is not in the English language a certified translation of the award into English; (c) the original arbitration agreement between the parties which resulted in the arbitration proceedings and the relative award; (d) a sworn declaration by the applicant or his authorised attorney that no recourse has been taken and is pending against the award and that the award is final; (e) the name, address and all other known

⁶⁷ Article 70A (1)(b) of the Act.

⁶⁸ In its judgment dated 17 June 2016 in the case *EuroShops Limited et v. Attard & Co Limited*, the Court of Appeal (Inferior Jurisdiction) rejected an appeal from an arbitral award (in voluntary arbitration proceedings) because it was not based on a point of law. This reasoning was also applied by the Court of Appeal (Inferior Jurisdiction) on 29 May 2009 in the case of *Lennart and Suzannah Depasquale v. Saviour Zammit*, and again by the same court on 16 September 2009 in the case of *James Grima v. Noel Buhagiar*.

⁶⁹ Article 70A of the Act.

⁷⁰ Article 70C of the Act.

⁷¹ Article 69A(3) of the Act.

⁷² Article 70A(3) of the Act; *Lay Lay Company Limited v. L-Ghajn Construction Company Limited* decided by the Court of Appeal on 28 June 2011.

⁷³ Articles 61(7), 69A(1), 74(1) and 75(2) of the Act.

communication details of the respondent and if he is not resident or otherwise present in Malta or his representative or another person who has some connection to him in Malta together with a description of the connection to him or his property in Malta.⁷⁴

On receipt of any such application with attachments, the Registrar will proceed to serve the same on the respondent and the respondent has 10 working days to state in writing whether there are any reasons why the Registrar should not proceed with the registration of the award. On receipt of the response to the application for registration or on the lapse of the period for filing a response, the Registrar shall refer the application and the response to the Chairman for determination. The Chairman determines the issue in a final manner on the basis of the documents presented but may at his discretion order a hearing of the parties and their representatives if he considers that the arguments merit further discussion or evidence.⁷⁵

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

An award which has been appealed or demanded to be annulled is not covered with *res judicata* and its enforcement is therefore suspended until it becomes *res judicata*.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The Act incorporates the Geneva Convention on the Execution of Foreign Arbitral Awards, which allows the courts of its signatory states to refuse the recognition and enforcement of a foreign award if such award has been annulled in the country in which it was made.⁷⁶

5.8 Are foreign awards readily enforceable in practice?

Yes, a party to a foreign arbitral award may register the award with the MAC for the purposes of enforcement, provided that the applicable fees are paid. Once the award is successfully registered, that award would be enforceable in the same manner as a domestic award and would constitute an executive title and may be enforced through the issuance of executive warrants in accordance with the rules provided for in Chapter 12 of the Laws of Malta, similarly to the enforcement of a judgment handed down by the Maltese courts.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

In terms of the Code of Ethics for lawyers, advocates are not to enter into any agreement with (i) any other professional who is not another advocate;⁷⁷ or (ii) any person who gives or receives any share of the fees or other remuneration earned in respect of professional work. The Code of Ethics also stipulates that advocates shall not, either directly or indirectly, enter into any agreement or stipulation *quotae litis*.⁷⁸ Article 83 of Chapter 12 also prohibits stipulations *quotae litis*.

6.1.1 If so, what is the practical and/or legal impact of such restrictions?

Representatives of the Maltese Chamber of Advocates have recently remarked that whilst conditional fee agreements and other similar agreements are not directly prohibited by Maltese legislation and/or Codes of

⁷⁴ Article 54 of the Rules.

⁷⁵ Article 55 of the Rules.

⁷⁶ Part II of the Second Schedule to the Act, Article 2(2).

⁷⁷ Code of Ethics and Conduct for Advocates, Chapter 4, Rule 4.

⁷⁸ Code of Ethics and Conduct for Advocates, Chapter 4, Rule 3. <http://www.legal-malta.com/law/adv-ethics> This prohibition is also reflected in Article 24 of the Legal Profession (Advocates) Regulation Act (Bill 123 of 2012). <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23966&l=1>

Ethics, any advocate charging a conditional fee would be scrutinised nonetheless by the Committee for Advocates and Legal Procurators, set up under the auspices of the Commission for the Administration of Justice. This level of uncertainty in a field so intrinsically linked to access to justice is naturally highly undesirable.

7. Is there likely to be any significant reform of the arbitration law in the near future?

No plans for reform are currently underway.