

CAMILLERI PREZIOSI
— ADVOCATES —



Dispute resolution

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The Legal 500

DISPUTE RESOLUTION

Various methods of dispute resolution are available in Malta. Disputes in Malta relating to civil and commercial matters are generally resolved through recourse to the Courts. There are other methods of dispute resolution available such as those through specialised tribunals set up by the Laws of Malta, Arbitration and Mediation. With regards to Criminal Proceedings, these are exclusively determined by the Maltese Courts.

THE MALTESE COURTS

Maltese Courts are divided into two branches, referred to as the Superior Courts and the Inferior Courts. The Superior Courts, which are presided by Judges appointed by the President of Malta, are (i) The Constitutional Court, (ii) The Court of Appeal, (iii) The Court of Criminal Appeal (iv) The Criminal Court, and (v) The Civil Court. The Inferior Courts, presided by Magistrates, are (i) The Court of Magistrates (Malta) for the Island of Malta; (ii) The Court of Magistrates (Gozo) for the Islands of Gozo and Comino in its inferior jurisdiction even though the latter Court is sometimes endowed with a superior jurisdiction.

The First Hall, Civil Court has a general jurisdiction and determines claims of a civil or commercial nature, matters which relate to voluntary jurisdiction (such as the appointment of tutors and curators, interdiction adoption), and all causes which are expressly assigned by law to the said Court. As regards monetary claims, any claims exceeding €11,646.87 are to be heard by the First Hall, Civil Court. The inferior courts determine claims having a value not exceeding €11,646.87. Claims which, however, deal with the payment of small amounts under €3,494.06 are determined by a specific tribunal, the Small Claims Tribunal.

Appeals from the decisions of these Courts may be made to the Court of Appeal. In its superior jurisdiction, the Court of Appeal is composed of three judges. With regards to appeals from judgments handed down by the inferior courts, the Court of Appeal is constituted by only one judge.

Matters of a criminal nature are exclusively determined by the Criminal Courts.

JURISDICTION OF THE CIVIL COURTS

The Court of Magistrates (Malta) and the First Hall, Civil Court have jurisdiction over claims against defendants residing in Malta whereas the Court of Magistrates (Gozo), as a general rule, has jurisdiction over claims against defendants residing on the Islands of Gozo and Comino. In its superior jurisdiction, the Court of Magistrates (Gozo) is endowed with the same powers as the First Hall, Civil Court.

THE PROCEDURE FOR INSTITUTING CIVIL PROCEEDINGS

Civil Proceedings in the superior courts are generally instituted by means of a sworn application where the applicant must confirm the facts being presented on oath. In the inferior courts, the law only requires the presentation of an application laying down the grounds for the institution of proceedings.

Once the application, whether sworn or otherwise, is filed, this is served on the defendant who, once served, is granted twenty days to reply to the claim and put forward his defence by means of a sworn reply which must also be confirmed on oath.

Following this procedure, the Court will set a date for the first hearing during which it will proceed to plan the sittings for the presentation of evidence. Once all evidence is concluded, the parties put forward written or oral submissions in relation to the case. The judge will then adjourn the case for judgment.

INTERIM REMEDIES

The Maltese Code of Organisation and Civil Procedure ('COCP') provides the possibility to a person to request the court to order interim remedies in order to secure such person's pretended rights. The interim measures are obtained by the issuing of precautionary warrants. The various precautionary warrants available are the following (i) the warrant of description, (ii) the warrant of seizure, (iii) the garnishee order, (iv) the warrant of prohibitory injunction, (v) the warrant of arrest of sea vessels; and (vi) the warrant of seizure of a commercial going concern.

A demand for the issuance of a precautionary warrant is made by means of an application confirmed on oath by the applicant. Once the precautionary warrant is issued, the applicant has twenty days to institute legal proceedings. In the event that the applicant failed to do so, the precautionary warrant will be revoked.

Interim Remedies may also be requested in the event that a claimant does not institute proceedings before the court but opts to institute arbitration proceedings.

SPECIALISED TRIBUNALS

The Laws of Malta also provide for the establishment of specialised tribunals to determine matters of a specific nature relating to a particular law. The aim for the setting up of such tribunals is twofold: to reduce the case load from the inferior and superior courts and also to have specific tribunals which are focused on a particular area of the law which may, at times, be of a technical nature. Proceedings before these tribunals are generally, less informal than proceedings before the inferior or superior courts with the majority of tribunals having the power to regulate their own procedure.

The following are just a few examples of specialised tribunals set up in Malta:

- (a) The Industrial Tribunal – This tribunal hears cases relating to unfair dismissal and to discriminatory or other illegal treatment at the place of work;
- (b) The Competition and Consumer Appeals Tribunal – This Tribunal hears and determines appeals from decisions, orders or measures of the Director General (Competition) and the Director General (Consumer Affairs) as provided in the Competition Act and the Consumer Affairs Act.
- (c) The Financial Services Tribunal – This tribunal determines appeals filed in relation to decisions made by the Malta Financial Services Authority.
- (d) The Administrative Review Tribunal – This tribunal has the power to review administrative acts of public administration of points of law and fact.

ARBITRATION

Recourse to arbitration proceedings in Malta is gaining popularity particularly in matters relating to commercial disputes. This is largely because arbitration is seen to be a faster, more flexible form of dispute resolution. The Malta Arbitration Centre has been set up with the function of providing for the conduct of domestic and international arbitration in Malta and to provide the necessary facilities for arbitrations to be held within Malta.

Arbitration in Malta is regulated by the Arbitration Act (Cap 387 of the Laws of Malta). The Act incorporates the UNICTRAL Model Law, the Geneva Protocol on Arbitration Clauses, the Geneva Convention on the Execution of Foreign Arbitral Awards, the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. As regards international arbitration, the arbitration act provides parties to an international commercial arbitration a degree of flexibility. Parties may choose to exclude the operation of Model Law and apply their own rules or else adopt the procedure laid down in the Arbitration Act for domestic arbitrations.

The Arbitration Act provides for a legal framework which regulated domestic arbitration proceedings. With regards to domestic arbitration, proceedings are commenced by means of the filing of a notice of Arbitration with the Malta Arbitration Centre. This procedure is required on pain of nullity. The parties to the arbitration proceedings may then choose the arbitrators to determine the claim and may opt to have a panel composed of a single arbitrator or three arbitrators.

The arbitral award handed down by the arbitrators constitutes an executive title from which there is no appeal.

OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION

Another form of dispute resolution is mediation. This is, generally, a voluntary private dispute resolution process in which both parties appoint a mediator to help the parties to a dispute reach a negotiated settlement.

The role of the mediator is different to that of an arbitrator or a judge since his role is a pro-active one in which the mediator aids the parties to reach an amicable settlement. A mediator has no power to make any decision or award.

Mediation Centre has been set up by means of the Mediation Act and is responsible to promote mediation and to provide assistance to parties that would like to opt for mediation.



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

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